



Special - 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, December 2, 2020 5:30 p.m.

Virtual Meeting

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/120220CityCouncilMtg> or by calling in to: (669) 900-9128, then enter the meeting id: 814 9338 1114.

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.

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:30 pm for the purpose of conducting an Affordable Housing and Homelessness Workshop.

5:30 p.m. Workshop

7:00 p.m. Regular Meeting

SPECIAL MEETING

5:30 P.M. Workshop

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow

WORKSHOP

1. AFFORDABLE HOUSING AND HOMELESSNESS WORKSHOP

Recommendation:

1. Receive report;
2. Approve the BEGIN downpayment assistance guidelines;
3. Adopt resolution authorizing the City to become a member of the California Community Housing Agency JPA; supporting the California Community Housing Agency's Issuance of Tax-Exempt Bonds for the production, preservation, and protection of Middle-Income Rental Housing; and Authorizing the City Manager or Designee to enter into purchase option agreements with the California Community Housing Agency for middle-income rental housing created within City limits;
4. Adopt resolution endorsing the 2020 Community Plan to End Homelessness; and
5. Direct City Manager to return to City Council with the Morgan Hill Inclusionary Housing Ordinance (IHO) amended to require low, lower moderate- and moderate-income units in all new ownership developments.

Any City Council actions will be taken during item 20 during the regular meeting.

REGULAR MEETING

7:00 P.M.

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.

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)

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

2. ACCEPT COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2020

Recommendation:

Accept the City's Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2020.

3. ADOPT RESOLUTION APPROVING AND MAKING FINDINGS RELATED TO THE AB 1600 DEVELOPMENT IMPACT FEE ANNUAL REPORT FOR FISCAL YEAR 2019-20

Recommendation:

Adopt resolution making findings for unexpended development impact fees and accept the annual development impact fee report.

4. ACCEPT THE ANNUAL SB 165 REPORT FOR COMMUNITY FACILITIES DISTRICT NO. 2014-1 (FISHER CREEK)

Recommendation:

Accept and file the report.

5. ACCEPT DOWNTOWN CROSSWALK SAFETY IMPROVEMENTS PROJECT

Recommendation:

1. Accept as complete the Downtown Crosswalk Safety Improvements Project in the final amount of \$123,309;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

6. ACCEPT TENNANT AVENUE SEWER PROJECT

Recommendation:

1. Accept as complete the Tennant Avenue Sewer Main Project in the final amount of \$2,287,821;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

7. ACCEPT MORGAN HILL LIBRARY ADDITION PROJECT

Recommendation:

1. Accept as complete the Morgan Hill Library Addition Project in the final amount of \$2,072,574;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

8. ADOPT RESOLUTION INITIATING 2021 HAZARDOUS VEGETATION PROGRAM

Recommendation:

Adopt resolution declaring weeds and brush to be a nuisance and setting the hazardous vegetation public hearing on February 3, 2021.

9. ADOPT RESOLUTION AMENDING THE MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES RESOLUTION AND SALARY SCHEDULE TO INCLUDE APPOINTED CITY CLERK POSITION (THIS RESOLUTION RESCINDS RESOLUTION NO. 20-048)

Recommendation:

Adopt resolution amending the Management, Professional, and Confidential Employees Resolution and salary schedule to include appointed City Clerk position.

10. APPROVE THE RENAMING OF THE MORGAN HILL LIBRARY IN HONOR OF FORMER MAYOR STEVE TATE

Recommendation:

Approve the renaming of the Morgan Hill Library in honor of Former Mayor Steve Tate.

11. APPROVE IMPROVEMENT AGREEMENT WITH BW MORGAN HILL, LLC (BLUEWAVE EXPRESS CARWASH)

Recommendation:

1. Approve and authorize the City Manager to execute and administer an Improvement Agreement with BW Morgan Hill, LLC; and
2. Authorize the recordation of the Improvement Agreement.

12. APPROVE GENERATOR MAINTENANCE SERVICES AGREEMENT

Recommendation:

Approve and authorize the City Manager to execute and administer a three year agreement with Odyssey Power Corporation in the not-to-exceed amount of \$225,000 for annual, preventive maintenance, and emergency repair and rentals for the City's 28 standby generators.

13. APPROVE INCENTIVE AND FEE FREEZE AGREEMENTS FOR A NEW AUTOMOBILE DEALERSHIP

Recommendation:

1. Adopt resolution authorizing the City Manager to execute and administer an Incentive Agreement, consistent with the Auto Dealer Economic Development Strategy, with TSC Motors, Inc. for a new automobile dealership at the Auto Mall Planned Development Site on Condit Road;
2. Make findings of consistency with Section 53083(a)(6)(b) of the Government Code (AB 562); and
3. Direct the City Manager to execute an Impact Fee Freeze Agreement with TSC Motors, Inc. for the development of a 27,000 square foot new vehicle dealership to be located at 17085 Condit Road.

14. APPROVE AMENDED AND RESTATED IMPROVEMENT AGREEMENT WITH MONUMENT LAND COMPANY LLC AND ACCEPT PUBLIC IMPROVEMENTS AT THE INTERSECTION OF MONTEREY ROAD AND COCHRANE ROAD

Recommendation:

1. Approve an Amended and Restated Improvement Agreement with Monument Land Company LLC Relating to Reimbursement for Right-of-Way Improvements Constructed for City by Developer/Property Owner;
2. Authorize the City Manager to execute the Amended and Restated Improvement Agreement;
3. Authorize the recordation of the Amended and Restated Improvement Agreement;
4. Adopt resolution amending the Fiscal Year 2020-21 budget to appropriate \$191,145 from Local Drainage (303), Local Drainage – Non AB1600 (304), Sewer Operations (640), Water Operations (650), and Water Impact (651) funds to reimburse the Developer for the public improvements at the intersection of Monterey Road and Cochrane Road;
5. Accept the Public Improvements at the intersection of Monterey Road and Cochrane Road;
6. Authorize the City Engineer to sign a Notice of Completion; and
7. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

15. APPROVE PURCHASE OF FEE TITLE LAND AND A PUBLIC SERVICE EASEMENT FOR HALE AVENUE EXTENSION PROJECT

Recommendation:

1. Approve the purchase of Fee Title Land and a Public Service Easement of portions of APN 764-16-028 for a total amount of \$94,000 plus escrow and closing costs from the Morgan Hill Unified School District for the Hale Avenue Extension Project; and
2. Authorize the City Manager to execute all documents and make minor modifications as necessary in order to complete the transaction.

16. APPROVE THE NOVEMBER 18, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

17. DELEGATE THE COMPLETION AND ACCEPTANCE AUTHORITY OF PUBLIC IMPROVEMENTS MADE SUBJECT TO CITY COUNCIL APPROVED IMPROVEMENT AGREEMENTS FROM THE CITY COUNCIL TO THE CITY ENGINEER

Recommendation:

Delegate the completion and acceptance authority of public improvements made subject to the City Council approved Improvement Agreements from the City Council to the City Engineer.

18. RECEIVE MONTHLY BUDGET UPDATE AND OCTOBER 2020 FINANCIAL AND INVESTMENT REPORTS

Recommendation:

Accept and file report.

19. REJECT PROPOSALS FOR WATER WELL AND PUMP STATION REPAIRS, MAINTENANCE, AND REHABILITATION SERVICES AND REBID THE PROJECT

Recommendation:

1. Reject proposals for Water Well and Pump Station Repairs, Maintenance, and Rehabilitation Services per Municipal Code Section 3.04.170; and
2. Approve and authorize the City Manager to execute an amendment for the current service agreement with Salinas Pump for these services to extend the term to June 30, 2021 and increase the amount by \$240,000, to a new not-to-exceed amount of \$898,967.

OTHER BUSINESS

20. APPROVE BEGIN PROGRAM GUIDELINES, AND ADOPT RESOLUTIONS TO JOIN CALIFORNIA COMMUNITY HOUSING AGENCY'S JOINT POWERS AGREEMENT AND ENDORSING THE SANTA CLARA COUNTY'S 2020 COMMUNITY PLAN TO END HOMELESSNESS

Recommendation:

1. Approve the BEGIN downpayment assistance guidelines;
2. Adopt resolution authorizing the City to become a member of the California Community Housing Agency JPA; supporting the California Community Housing Agency's Issuance of Tax-Exempt Bonds for the production, preservation, and protection of Middle-Income Rental Housing; and Authorizing the City Manager or Designee to enter into purchase option agreements with the California Community Housing Agency for middle-income rental housing created within City limits;
3. Adopt resolution endorsing the 2020 Community Plan to End Homelessness; and
4. Direct City Manager to return to City Council with the Morgan Hill Inclusionary Housing Ordinance (IHO) amended to require low, lower moderate- and moderate-income units in all new ownership developments.

Estimated Time: 60 Minutes

21. APPROVE SERVICE AGREEMENTS FOR BROADBAND SERVICES FOR THE CITY OF MORGAN HILL

Recommendation:

1. Authorize the City Manager and City Attorney to negotiate final terms and execute Master Services Agreement and Service Order with Wave Business Solutions, LLC for a period of 20 years in an amount not-to-exceed \$2,400,000 for a dark fiber lease for intranet connectivity between City facilities, and the installation of telecommunications conduit in the City; and
2. Authorize the inclusion of Monterey Road Conduit Construction Option and direct City Manager to apply and execute all related documents for the Economic Development Administration Infrastructure Grant.

Estimated Time: 60 Minutes

PUBLIC HEARING

22. INTRODUCE ORDINANCE AMENDING SECTION 8.28.040 (ENUMERATION OF UNLAWFUL NOISES) OF CHAPTER 8.28 (NOISE) OF TITLE 8 (HEALTH AND SAFETY) AND AMENDING VARIOUS CODE PROVISIONS WITHIN TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING MINOR AMENDMENTS DUE TO CLERICAL ERRORS AND INCONSISTENCIES; AMENDING CHAPTER 18.52 (FENCES AND WALLS) OF TITLE 18 (ZONING) TO CLARIFY AND ESTABLISH DESIGN AND SCREENING REQUIREMENTS OF FENCES AND WALLS; AND TO ESTABLISH CHAPTER 18.115 (GENERAL PLAN AMENDMENTS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL ESTABLISHING PROCEDURES FOR AMENDING THE GENERAL PLAN (ZA2020-0001: MUNICIPAL CODE AMENDMENT)

Recommendation:

1. Open/close the public hearing;
2. Waive first and second reading of the Ordinance Amendment; and
3. Introduce Ordinance Amendment.

Estimated Time: 45 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 LEGAL COUNSEL--ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9.

One case

CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION (Govt. Code 54956.9(d)(1))

Name of case: City of Morgan Hill v. Bushey (Case No. 16-CV-292595)

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



These strategic priorities were established prior to the COVID-19 pandemic. In light of recent events, we recognize that all of these goals and priorities will be viewed through the lens of the global pandemic, and we will continue to have equity, public health, and financial responsibility in mind.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

PREPARED BY: Rebecca Garcia, Housing Manager
APPROVED BY: City Manager

AFFORDABLE HOUSING AND HOMELESSNESS WORKSHOP

RECOMMENDATION(S)

1. Receive report;
2. Approve the BEGIN downpayment assistance guidelines;
3. Adopt resolution authorizing the City to become a member of the California Community Housing Agency JPA; supporting the California Community Housing Agency's Issuance of Tax-Exempt Bonds for the production, preservation, and protection of Middle-Income Rental Housing; and Authorizing the City Manager or Designee to enter into purchase option agreements with the California Community Housing Agency for middle-income rental housing created within City limits;
4. Adopt resolution endorsing the 2020 Community Plan to End Homelessness; and
5. Direct City Manager to return to City Council with the Morgan Hill Inclusionary Housing Ordinance (IHO) amended to require low, lower moderate- and moderate-income units in all new ownership developments.

Any City Council actions will be taken during item 20 during the regular meeting.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

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

2020-2021 Strategic Priorities

Affordable Housing and Homelessness

GUIDING DOCUMENTS

Morgan Hill 2035 General Plan

POLICY CONSIDERATIONS:

1. Should the City Council adopt a resolution authorizing the City to become an Additional Member of the California Community Housing Agency; supporting the California Community Housing Agency's Issuance of Tax-Exempt Bonds for the production, preservation, and protection of Middle-Income Rental Housing; and Authorizing the City Manager or Designee to enter into purchase option agreements with the California Community Housing Agency for middle-income rental housing created within City limits?

2. Should the City amend the Inclusionary Housing Ordinance to require low-income, lower moderate income as well as moderate income units in all new ownership housing developments?
3. Should the City Council endorse the 2020 Community Plan to End Homelessness and direct staff to return with a local implementation plan?

REPORT NARRATIVE:

Annually, the Housing Team provides an update on the various activities of the City's Affordable Housing Program. The December 2 Housing Workshop will provide a forum for that update and an opportunity to discuss policy issues raised by the Planning Commission and City Council over the past year regarding the Community's housing needs and requirements.

The City's Housing Mission

Morgan Hill's housing mission is to continue the City's legacy to improve, preserve, and create safe, quality, rental and ownership housing in Morgan Hill for residents at all income levels. In addition, State law requires each local government in California to adopt a Housing Element as part of its General Plan demonstrating how the community will meet the existing and projected housing needs of residents at all income levels. The State sets standards for the components of the Housing Element including requirements to demonstrate the City's ability to provide for its "fair share" of affordable housing, comply with and support social justice and anti-discrimination housing practices, and support those that currently find themselves homeless.

The Regional Housing Need Allocation (RHNA) is the number of new homes that a city is "assigned" to produce in a Housing Element cycle. To further the State's market rate and affordable housing production goals, the RHNA has been created as a way of assigning each community's fair share allocation. It is determined in collaboration with the Association of Bay Area Governments (ABAG) based on State population projections and local employment and socioeconomic conditions. The City is in its fifth RHNA Housing Element Cycle. The current Housing Element is compliant until January 31, 2023. The current housing element "cycle" is for the Planning Period: January 31, 2015 – January 31, 2023. The last construction permits that can be counted for this fifth cycle planning period will be December 31, 2022. The next Housing Element will be due to State Office of Housing and Community Development (HCD) for certification by January 2023.

The Housing Team continues to look for opportunities to implement the City's Housing strategy through various housing functions, services, programs, partnerships, and development. Below are some highlights of the Housing work program that further the City's goals.

Morgan Hill's Housing Element Strategy 2015-2023

1. Build new housing to meet the full range of future community housing needs, including affordability and accessibility.
2. Build housing for groups with special needs.
3. Ensure a range of housing types for all age groups, served by transit, recreational amenities, shopping and health and personal services, that allow residents to age in place.
4. Preserve and rehabilitate existing affordable housing in the community.

What is Considered Affordable Housing?

Affordable housing is housing that a household can pay for, while still having money left over for other necessities like food, transportation, and health care. This means that what is considered “affordable” depends on a household’s income.

The federal government defines housing as affordable when it consumes no more than 30 percent of a household’s gross monthly income for a) rent and utilities; or (b) mortgage-loan principal and interest, property taxes, insurance, utilities, and homeowner association dues (if any). ¹Who needs affordable housing? Everyone. From high-income earners, to hourly wage workers, to the homeless, and everyone in between. The reality is that rent or home price that is affordable will vary from one household to the next, but the need for housing that is affordable remains the same for everyone.

The housing needs of some families are met adequately by the private market; however, a growing share of the population cannot afford its housing cost and is “severely cost burdened.” ² This means that individuals and families pay half or more of their income on housing. The lowest-income households are the most likely to find themselves in a bind, and even moderate-income renters are struggling to pay the rent or mortgage. A study, the Key Findings Report: 2019 County Health Rankings, by County Health Rankings & Roadmaps (CHR&R), shows that severely housing cost-burdened households experience greater food insecurity, more child poverty, and worse health outcomes.³

¹ <https://archives.hud.gov/local/nv/goodstories/2006-04-06glos.cfm>

² <https://nlihc.org/resource/study-finds-severely-housing-cost-burdened-households-experience-greater-food-insecurity>

³ <https://nlihc.org/resource/study-finds-severely-housing-cost-burdened-households-experience-greater-food-insecurity>, study, the [Key Findings Report: 2019 County Health Rankings](#), by County Health Rankings & Roadmaps (CHR&R) March 15, 2019

To qualify for affordable, income-restricted housing, individual or family income must fall within a specified range. Most income-restricted rental housing in Santa Clara County is affordable to households who make less than 80% of area median income (AMI), with recent efforts focusing on housing for extremely low-income households. Most income-restricted ownership housing in Santa Clara County is affordable to households who make less than 120% of area median income.

The U.S. Department of Housing and Urban Development (HUD) annually releases income limits that determine eligibility for various housing and community development funds. The State's Department of Housing and Community Development annually adjusts and publishes these limits for use with State programs. The County of Santa Clara has one of the highest area median incomes (AMI's) in the country, at \$141,600 for a family of four.

Area Median Income (AMI) – The median income of each county or adjacent counties based on all wage earners in the area, published separately by HUD and HCD to determine household eligibility for various federal, State, and State-governed housing programs, and updated annually. ⁴The basic AMI is the income level for a four-person household, around which is constructed a table of higher and lower incomes and smaller and larger household sizes. Other income levels are expressed in percentages of the median income (for instance, Extremely Low-Income is <30% of AMI), and always adjusted for household size.

Attachment 1 contains various schedules to help understand the HCD and TCAC income limits, rent rates, and Morgan Hill ownership pricings, including:

1. HCD 2020 - Maximum Income Limits for the Santa Clara County Effective April 30, 2020
2. HSD Below Market Rate (BMR) Rental Rates
3. TCAC - California Tax Credit Allocation Committee 2020's Maximum Rents for Projects placed in service on or after April 1, 2020 for Santa Clara County
4. TCAC - California Tax Credit Allocation Committee's 2020 Maximum Income Levels for Projects placed in service on or after April 1, 2020 for Santa Clara County
5. Morgan Hill Homeownership Program's applicable HSD 2020 Maximum Income Limits (Same as Santa Clara County)
6. Morgan Hill Homeownership Program's pricing for 2020-21

Households earning 30% of the area median income and below are considered Extremely Low Income (ELI), those earning between 31-50% of area median income are considered Very Low Income (VLI), those earning between 51-80% are considered Low Income (LI), and those earning between 81-120% are considered moderate income (MOD).

⁴ <https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/income-limits-2019.pdf>

Naturally Occurring Affordable Housing (NOAH) is typically rental housing that is not subject to an affordability restriction but is nonetheless relatively affordable because of age, location, size, or type of construction.⁵ A recent example of a NOAH alternative are ADUs, which, due to their smaller size, can be, but are not always more naturally affordable. Other examples include older, garden-style apartments and smaller properties – such as four- or six-plex or even older single-family homes for rent. This varies from city to city, and market to market based upon demand.

Pipeline of Proposed Affordable Housing Projects in The City

Fueled by recent changes in state law and the SB 330 suspension of the City's Residential Development Control System (RDCS), Morgan Hill has significant interest from developers of both market rate and affordable housing projects. This snapshot is intended to paint a picture of the City's current affordable housing pipeline (Attachment 2) although the project construction cannot be guaranteed at this time due to outside funding commitments and the competitiveness of tax credits.

There are six, 100%- rental, affordable projects in the City's development pipeline. These projects are primarily SB 330 projects that are either fully entitled or are seeking entitlements, tax credits, and bonds. Most units will likely contribute to Morgan Hill's current RHNA cycle, but one or two may trickle over to the next RHNA cycle. In the current RHNA cycle the City only "needs" 193 very low-income units (Attachment 3). At this time, it is difficult to predict exactly what RHNA cycle they will support, and at what affordability levels until future funding commitments confirmed. That being said, tentative mixes of income level have been proposed.

If a building permit is pulled before December of 2022, it will aid in meeting City goals for this current RHNA cycle. All projects in this pipeline will maintain a mix of traditional affordability levels ranging from 30% to 80% AMI (For example, for a household of 1 this is an income range of \$33,150 to \$78,550, and for a household of 4, this is an income range of \$47,350 to \$112,150. Although some of the units will be designated for subsidy holders referred by the County, most of the units will be targeted towards eligible South County residents. Staff ensures that local marketing efforts are made to assist with this goal.

Below is a summary of 6 potential projects that could yield 554, 100% affordable units, *of which approximately 256 are very low-income rentals*. If most of these units have building permits issued prior to December 30, 2022, then the City will meet its RHNA goals *in the very low-income category*. As of December 2019, the City had already exceeded its goals in the low, moderate, and above moderate categories for this 8-year cycle. At that end of 2019, the low-income category was satisfied at 123%, the moderate at 216%, and the above moderate at 441%.

Projects:

⁵ <https://siliconvalleyathome.org/resource-map/glossary/>

1. Urban Housing Communities (UHC): 73-unit project, 23 very low income units, located at 15480 Watsonville Road (the old mushroom farm site on the corner of Monterey and Watsonville Road), designed to serve agriculture workers and families at risk of homelessness.
2. First Community Housing (FCH): 66-unit modular project, 32 very low-income, called The Magnolias, located at 17965 Monterey Road (next to the RV repair), designed to serve homeless families and individuals.
3. Jemcorp: 249-unit project, 75 very low-income, located at 18960 Monterey and Madrone (wrecking yard site).
4. Beacon, Human Good: 83-unit project, 41 are very low-income, Morgan Hill Senior Housing, located on the southeast corner of San Pedro and Monterey, next to the post office).
5. Braddock and Logan (previously known as MWest): 78 units very low-income project, (part of the 389-unit apartment project) located at the northwestcorner of Monterey Rd. and Jarvis.
6. EDEN Housing, Depot: an existing project of 13 units that will undergo rehabilitation of the existing units, and the addition of 7 very low-income units.

Preliminary RHNA #s for the Next 8-Year Housing Reporting Cycle

Below are the recommended preliminary numbers currently being publicly circulated by ABAG. Prior cycle goals set for Morgan Hill were 928. ABAG will vote on these numbers in December after which they go to State HCD for approval. Post HCD approval, there is an appeal period where any municipality can appeal another municipality's number. Numbers will not be final until mid-2021. This cycle, cities are allowed to appeal their allocations, and are also allowed to appeal the allocations given to other cities in their region if they deem them unfair. Some cities in the County are preparing to appeal. It is not recommended that Morgan Hill appeal its allocation. Table below outlines the County's proposed allocations. Morgan Hill is expected to receive an allocation of 1,140.

	Variant					
	Baseline	2050 Households (Blueprint) - Unmodified Allocation				
	Income Group	VLI	LI	MOD	MOD+	Total
County	Jurisdiction					
Santa Clara	Campbell	1,020	580	660	1,700	3,960

Cupertino	1,620	930	1,020	2,650	6,220
Gilroy	410	240	230	590	1,470
Los Altos	580	330	380	980	2,270
Los Altos Hills	140	80	90	230	540
Los Gatos	520	300	310	800	1,930
Milpitas	1,650	950	1,110	2,870	6,580
Monte Sereno	50	30	30	80	190
Morgan Hill	290	170	190	490	1,140
Mountain View	2,880	1,660	1,910	4,940	11,390
Palo Alto	2,570	1,480	1,670	4,330	10,050
San Jose	16,390	9,440	11,340	29,350	66,520
Santa Clara	3,020	1,740	2,030	5,260	12,050
Saratoga	560	320	340	880	2,100
Sunnyvale	3,230	1,860	2,210	5,710	13,010
Unincorporated Santa Clara	1,110	640	660	1,720	4,130

Below Market Rate (BMR) Program Accomplishments

Since July 2015, the City has contracted with Nyanda and Associates, LLC, A California Limited Liability Company d/b/a HouseKeys, to perform the administration of the BMR Program and manage the City's loan portfolio. The key objectives of the BMR Program have been to support facilitation of providing ownership units of various affordability levels to our community, responsibly administering the program using a third party administrator, efficiently delivering on-going services, and appropriately administering BMR assets.

The BMR expertise that HouseKeys has continued to provide has created an invaluable partnership for implementation and oversight of the Program. The BMR portfolio continues to thrive with a total of 558 owner-occupied units. Focus is asset management, monitoring, and compliance to maintain the integrity and sustainability of the Program. In the past 12 months, the Program has contracted for the sale of 22 homes, performed 22 Escrow/Closings, held new homebuyer education workshops for 1,251 registrants, refined and restructured processes to offer online homebuyer orientations as a result of COVID-19, created user friendly FAQ Broadcasts and Zoom Orientation Webinars. Additionally, Housekeys provides annual value summaries to the County Assessor for all units based upon their individual contract appreciation formula. This year, HouseKeys also launched an Affordable Housing Marketplace with a Management Portal that the City uses to perform key functions like Program Preferences, and Lottery Management.

Since moving the BMR orientation workshops to an online platform, combined with today's low interest rates, *the homebuyer workshop attendance has soared from an average of 60 attendees to 270.* With a 40-year program that has 558 BMR properties

spread throughout 84 subdivisions, Morgan Hill proudly has one of the region's oldest, largest and most active affordable housing portfolios. Attached you will find Morgan Hill's "By the Numbers Report for October 1, 2019 – October 31, 2020." (Attachment 4)

Middle Income Workforce (60-120% of the Area Median Income) & California Community Housing Agency & Catalyst

Staff is recommending the City Council consider adopting a resolution authorizing the City to become an Additional Member of the California Community Housing Agency; supporting the California Community Housing Agency's Issuance of Tax-Exempt Bonds for the production, preservation, and protection of Middle-Income Rental Housing; and Authorizing the City Manager or Designee to enter into purchase option agreements with the California Community Housing Agency for middle-income rental housing created within City limits (Attachment 5).

In recent years, facilitating housing for moderate-income households has become an important priority for the City and regionally throughout the Bay Area. For rental units, this means monthly rental costs affordable to households earning up to 120 percent of the Area Median Income (AMI), adjusted for household size.

Most public funding sources for affordable housing—including Federal, State, regional, and local programs—are targeted for households earning 80 percent of AMI and below, driven primarily by low-income housing tax credit program requirements. As such, there have not been as many meaningful public subsidies for moderate-income housing, and market-rate housing does not typically produce affordable housing on its own. "Missing middle" describes the shortage of moderate-income housing due to the lack of a market mechanism as well as public programs for such housing.

The California Community Housing Agency (CalCHA) was formed as a joint powers authority (founded by Kings County and the Housing Authority of Kings County) to finance the production and preservation of moderate-income housing, generally targeting households earning up to 120 percent of AMI (Attachment 6). Note that CalCHA's moderate income limit is based on income limits from the California Tax Credit Allocation Committee (TCAC), which are higher than the income limits set by the Department of Housing and Community Development (HCD). For a moderate-income, one-person household, this means an annual income of up to \$132,720 (TCAC limit) instead of \$118,950 (HCD limit); for a household of four, this means an annual income of up to \$189,480 (TCAC limit) instead of \$169,900 (HCD limit). Under current market conditions, rents for newer buildings are still significantly higher than TCAC-based moderate-income rents.

CalCHA is authorized to issue governmental revenue bonds (Attachment 7) and to undertake various activities to meet its objectives, including new development (rental or ownership), acquisition and rehabilitation of existing units, operations and maintenance, and asset management. CalCHA can issue bonds for activities within the collective jurisdiction of its underlying member base. For cities, this means Council adoption of a

resolution to join CalCHA as an Additional Member. Over 15 municipalities have recently joined the JPA, and since inception in January 2019, CalCHA has acquired 5 major housing projects totaling over \$550 million.

CalCHA operates in partnership with Catalyst Housing Group (“Catalyst”). Catalyst’s primary roles are to identify viable acquisition or development opportunities, receive approval from CalCHA to pursue the opportunity, perform all due diligence, enter into the purchase and sale agreement, work with CalCHA to issue the bonds, and—upon closing the transaction—oversee all asset management of the properties.

Staff met with Catalyst to better understand the business model. Below is a summary of key aspects:

- Target Population: CalCHA’s focus is on creating affordable housing for households earning up to 120 percent of AMI.
- Types of Activities: CalCHA can issue bonds to finance new construction or acquisition of existing properties. To date, CalCHA has focused on the acquisition of existing market-rate rental properties and deed-restricting them to moderate income rents. Whether new construction or acquisition/preservation, the types of transactions that CalCHA considers are highly dependent on the economics of each opportunity.
- Preservation: CalCHA has the flexibility to acquire either newer buildings that need little or no rehabilitation, or older buildings that might require some or significant rehabilitation. For all buildings, Catalyst and CalCHA conduct due diligence to determine the appropriate and necessary level of rehabilitation. Any rehab work is done upfront and is financed through the bond issuance proceeds. The project also includes increasing the maintenance reserve that is set aside and factored into the pro forma spanning the project’s 30-year debt repayment period.
- Existing Tenants: Catalyst’s due diligence when assessing a potential preservation project includes analyzing a property’s current rents and existing household incomes. The JPA’s policy is that no *existing* household shall pay more than market rents and, if existing rents are greater than CalCHA’s restricted rents, then rents would be lowered for qualifying households. Additionally, the policy of the JPA is that there be *no displacement*. If an existing household is over 120 percent of AMI, those households are allowed to stay in their units and will continue to pay market rate rents. Upon voluntary turnover, those vacated units will then be released to qualifying moderate-income households. Every new lease signed at CalCHA’s properties are to qualifying households.
- Rents on affordable units created through this Program would be capped at a maximum of 35% of the applicable percentage of AMI, and annually rent increase percentages are also capped at a maximum of 4%, which is well below the limits allowed with AB1482.
- The JPA is structured in a way that allows for this type of flexibility and financing structure, whereas typical public subsidies, including local housing funds, come

with restrictions that would create deeper affordability levels but would, therefore, not be able to respond to mitigating potential displacement impacts as effectively.

- Financing and Obligations: CalCHA issues tax-exempt, 30-year bonds to finance its housing activities. Debt repayments are paid solely out of the project's revenues and additional cash flow after debt repayment goes entirely to the jurisdiction in which the property is located. *There is no contribution of City funds as part of project financing. Any and all debts, liabilities, and obligations of CalCHA are its own and not of any of its members.* All properties financed by CalCHA are exempt from property tax; the property tax exemption, combined with very low-cost financing, are the two key components that enable project feasibility.
- City Purchase Option: After the 15th year, the City has a 14-year option period to purchase the property. The purchase price is equal to the outstanding balance on the bonds at that time. If the bonds have been paid in full, the City would have several options, one of which is to exercise its purchase option at no cost (because the debt has been entirely repaid). Other options could include: acquiring the asset for \$0 and adjusting the affordability levels, purchasing at no cost, and turning the property over to a nonprofit to operate the property, or selling the asset with all proceeds passing to the City. What the City decides to do with the property once it has acquired it depends on its policy priorities, but the CalCHA program allows jurisdictions to make that determination.
- City Approval: As mentioned, the JPA requires jurisdictions to join as Additional Members (by adopting a resolution) before CalCHA can issue bonds for eligible development or acquisition activities in those jurisdictions. Subsequently, CalCHA/Catalyst coordinates with City staff if a development or acquisition opportunity is identified. The City Manager or other authorized designee must sign the purchase option agreement prior to any transaction that CalCHA executes. This provides jurisdictions the mechanism to ensure that a potential investment also aligns with the community's housing needs.
- Staff suggests that any excess cash flow from any project that the City receives, or any proceeds from the sale of a property that the City has acquired, be placed into a new housing fund to facilitate the production and preservation of affordable housing. Because there are no restrictions on the excess cash flow or sales proceeds (unlike the City's BMR or housing impact fee programs), the City could use such funds to implement a program that is more flexible to serve a wider range of needs, such as various AMI levels or addressing displacement. This account/program can be developed at a later time.
- The CalCHA program appears to include several components that could have a fiscal impact for participating jurisdictions. Housing activities financed by CalCHA do not require any local funding. Any excess cash flow from projects would go to the City. Participating jurisdictions have a 14-year purchase option window (beginning after the 15th year) to acquire the property from the JPA. Depending on if and when a jurisdiction exercises that option, there could be an acquisition

cost equal to the outstanding debt balance of the bonds but significantly less than the value of the asset after years of appreciation. If the bonds have been fully repaid, then the “purchase price” to the City would be zero dollars, allowing the City to take control of an asset with significant embedded equity at no cost. If a jurisdiction decides to acquire the property and operate it—whether directly or in partnership with an asset management organization—the jurisdiction would receive some or all of the project’s revenues. Each jurisdiction has full control of the long-term cash flows from the asset and the long-term affordability covenants. A jurisdiction could also direct CalCHA to sell the property and receive the proceeds from the sale.

Although it is unknown how many, if any, properties would be acquired through the Program, joining the JPA would bring the possibility of increased affordable housing opportunities to the City that is not dependent on local subsidies, and would provide rental housing affordable to middle income renters, who often do not have access to rent-controlled housing.

Building Equity and Growth in Neighborhoods (BEGIN) Down Payment Assistance Reuse Funds Are Available

Years ago, the City of Morgan Hill received a grant from the California Department of Housing and Community Development (HCD) for the BEGIN down payment assistance program specifically for the Madrone Plaza Housing Project. The Building Equity and Growth in Neighborhoods (BEGIN) Fund offers grants to qualifying cities, counties or cities and counties that provide incentives or reduce or remove regulatory barriers to affordable housing. These grants have been used to aid as 2nd mortgage loans for down payment purposes to qualifying first-time homebuyers of low- and moderate-incomes purchasing newly constructed homes. Qualified first-time homebuyers can receive 20% up to \$50,000 of the purchased price in down payment assistance.

Although the City has not received additional grant funds, there are approximately \$865,400 in the City’s BEGIN reuse account; funds generated from the repayment of loans. The aggregation of these funds now allows the City the opportunity to issue down payment assistance loans to BMR First Time Homebuyers. Important to note, staff recently received confirmation from the State Housing and Community Development Department *that the reuse funds could be used citywide and not just in one designated project.*

Staff is recommending that the reuse funds be administered by the City’s BMR Administrator HouseKeys, and that the reuse funds be designated to applicants of the City’s BMR First Time Buyer Home Ownership Program. The Loan underwriting procedures and Program Guidelines are attached for approval (Attachment 8). The Council could choose to make these funds available citywide, however, it is important to note that the 2016 Measure A Affordable Housing Bond funds designated to the Housing Trust of Silicon Valley for down payment “Empower Homebuyers SCC” assisting low to moderate income people in Santa Clara County, are not available to

BMR homebuyers. The City's BEGIN reuse funds provides a unique opportunity to support the City's BMR homebuyers.

Inclusionary Housing Ordinance (IHO)

On July 25, 2018, the City Council adopted Ordinance No. 2278, the City's Inclusionary Housing Ordinance (IHO) (Attachment 9). Prior to this, the City had administered affordable housing objectives through its Residential Development Control System (RDCS). Morgan Hill Municipal Code (MHMC) Chapter 14.04 (Inclusionary Housing) requires developers to set-aside a certain percentage of housing units in newly constructed or rehabilitated projects for low-and moderate-income buyers and renters. These units are made available at affordable rents or sales prices and are deed restricted for affordability for a minimum of 45 years. Utilizing the Inclusionary Housing Ordinance is one way in which the Housing Program achieves affordable units. While most BMR units are required to be built, under certain circumstances the ordinance permits residential projects to pay a "housing in-lieu fee" as an alternative means of compliance, on a case by case basis if approved by City Council. Housing in-lieu fees are needed to address situations in which the application of the inclusionary requirement results in a fraction of a unit. They are also useful to better align with some specific projects, provide local match dollars, to leverage 100% affordable projects, and provide the housing program with funds for rehabilitating units, program management and other housing and homeless support activities. Under the Ordinance, the payment of in-lieu fees can be considered in cases that are consistent with the following guiding principles:

- a. As provided in Section 14.04.040A, whenever application of the requirements of this Chapter results in a fractional number of .49 or less of required Inclusionary Units.
- b. For all other residential projects, upon determination by City Council that payment of an in-lieu fee is preferred to building inclusionary units onsite, or one of the other alternatives described in 14.04.070, considering the following:
 - i. Whether the production of the proposed Inclusionary Units will fill a need in an affordable housing category, or some other prioritized housing need area.
 - ii. Whether the proposed Inclusionary Units are in a category for which the City has already met its RHNA goal and therefore payment of a fee may be preferred.

- iii. Whether there is a specific identifiable project that the City can provide local match dollars and/or leveraged financing support with the fees, thereby producing more affordable units.
- iv. Whether affordable units are appropriate in the specific project.

Based upon recent aspirations expressed by several City Council members, this report includes a recommendation to direct the City Manager to amend the Inclusionary Housing Ordinance to require lower-moderate and low-income units as well as moderate income units in all new ownership housing developments. Currently, the Inclusionary Housing Ordinance requires only moderate income at 120% in the *ownership* program, which the team also recommends modifying to cap at 110%, for newly constructed ownership units. *Rental* projects are required to create low and very low-income units. There are no proposed changes to the rental portion of the Program.

Requiring projects to set-aside both Low and Moderate-income units also increases the financial cost to developers and would translate into a need to proportionately increase the in-lieu fee in order to establish the financial burden of the in-lieu fee to be equivalent to the burden of providing on-site BMR Units. Setting the amount of the in-lieu fee would require an additional economic analysis for which staff would return to Council, should the direction to staff be to add low income into the ownership mix.

Should the City Council desire to make this change, staff will return with an amendment to the IHO. Additionally, staff is recommending capping the *price* of the moderate-income units at 110% of the AMI, instead of 120% currently, for two important reasons: 1) the sales prices are too close to market rate home prices; and 2) the incomes of most moderate-income households are less than 120% of AMI, which results in them either having to fund a higher down payment or paying more than 35% of their income for monthly housing costs. Capping moderate units at 110% of the AMI is still considered an affordability level within the moderate range.

Exhibit 1 below provides a summary of the parameters of the City's existing BMR Ownership Program.

Exhibit 1		
Existing Program Parameters for Ownership BMR Units		
	Downtown Projects	Non-Downtown Projects

% Affordable Set-aside obligation	10%	15%
Income Range of Buyers	Up to 120% of AMI	Up to 120% of AMI
Affordable Housing Cost Formula	35% of 120% of AMI	35% of 120% of AMI

Staff is recommending the use of **the parameters in Exhibit 2** below for the Ownership Program, based on the upcoming RHNA needs of the next cycle, the need for this type of income in our ownership program, the availability of BEGIN Down payment assistance, and the demand in the applicant pipeline from lower income families. As show below, the staff recommendation for the ownership 15% set-aside requirement includes Low-income units and two levels of Moderate-income units to provide some variation in the Program.

Note: 2020 Median Incomes are used to calculate sales price and pricing is determined using bedroom count plus 1 (O Bedroom or “Studio” = Income Limit for 1-Person Household).

1	2	3	4	5	6	7	8
99,100	113,300	127,450	141,600	152,950	164,250	175,600	186,900

Exhibit 2 -All Areas (outside of Downtown)

% Affordable Set-aside Obligation	<u>Purchase Price Calculation</u>	<u>Estimated 2020 Prices</u>	
5%	Low Income – 70% of Median x 30% to get Max Housing Payment	Studio	152,339
		1 Bedroom	187,062
		2 Bedroom	216,477
		3 Bedroom	245,028
		4 Bedroom	266,395
		5 Bedroom	287,846
5%	Lower end of Moderate Income – 90% of Median x 35% to get Max Housing Payment	Studio	283,293
		1 Bedroom	336,782
		2 Bedroom	384,895
		3 Bedroom	432,144
		4 Bedroom	468,509
		5 Bedroom	504,892
5%	Upper end of Moderate Income – 110% of Median x 35% to get Max Housing Payment	Studio	370,596
		1 Bedroom	436,594
		2 Bedroom	497,173
		3 Bedroom	556,888
		4 Bedroom	603,251
		5 Bedroom	649,589
Total Obligation= 15%			

Staff is recommending the use of **Exhibit 3** for the Downtown portion of the Ownership Program. As shown, below the Staff recommendation for the ownership 10% set-aside requirement includes Low-income units and one level of Moderate-income units.

Exhibit 3 – Downtown Only

% Affordable Set-aside	Income of Buyers	Affordable Housing Cost Formula for Setting Home Prices
4%	<i>Low Income</i> - Up to 80% of AMI	30% of 70% of AMI
6%	<i>Moderate Income</i> - Up to 120% of AMI	35% of 110% of AMI
Total = 10%		

Community Development Block Grant

The County of Santa Clara administers U.S. Department of Housing and Urban Development (HUD) grants from for the Community Development Block Grant program (CDBG) and the Home Investment Partnership program (HOME) as part of a Joint Powers Agreement to serve the Unincorporated Areas of the County and the Urban County small cities with a population of less than 50,000 people, such as Morgan Hill. The CDBG and HOME-funded programs and project activities for FY 2020 (July 1, 2019 – June 30, 2020) served clients from all over Santa Clara County, including Morgan Hill, Campbell, Los Gatos, Los Altos, Los Altos Hills, Monte Sereno, Saratoga, and unincorporated sections of Santa Clara County. The following services were provided:

FY 2020 (July 1, 2019 – June 30, 2020).

- Next Door Solutions to Domestic Violence provided 16 families from Morgan Hill, and 171 families from the unincorporated area with emergency shelter and support services.
- Project Sentinel provided fair housing services designed to reduce or eliminate the incidence of illegal housing discrimination to 126 low-income individuals.
- Community Solutions, La Isla Pacifica Shelter, provided emergency shelter to individuals escaping violence. Community Solutions provided housing, legal, and peer counseling services to 17 very low-income women and their children in Morgan Hill and the unincorporated area.
- Senior Adults Legal Assistance (SALA) provided free legal assistance to 57 seniors in Morgan Hill to improve and/or stabilize elders' lives.
- Rebuilding Together Silicon Valley provided 47 low-income homeowners with maintenance and emergency repair.
- Through 17 Professional Service Agreements with community-based organizations, 4,300 low income individuals from the Urban County were assisted with shelter, housing, legal services, counseling, and other supportive services.

FY 2020 CAPER Annual Report:

<https://www.sccgov.org/sites/osh/HousingandCommunityDevelopment/UrbanCountyProgram/Documents/Draft%20CAPER%20FY20.pdf>

Fair Housing

Effective January 1, 2019, Assembly Bill 686 (AB 686) introduced a duty to affirmatively further fair housing into California state law.⁶

What is the Obligation to Affirmatively Further Fair Housing (AFFH)?

⁶ To read the text of AB 686, please visit: https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB686. February 2019 The National Housing Law Project, Public Advocates, and Western Center on Law & Poverty cosponsored the bill, authored by Assemblymember Miguel Santiago.

Congress, in passing the federal Fair Housing Act, realized that simply prohibiting housing discrimination was not sufficient to address the entrenched patterns of residential segregation across the United States. This recognition resulted in lawmakers including a duty to affirmatively further fair housing (AFFH) in the text of the landmark 1968 fair housing law. The AFFH obligation requires all federal agencies, including HUD, and their funding recipients to take steps to proactively address segregation in programs and activities related to housing and community development. In 2015, HUD issued a regulation requiring local governments receiving federal funds (e.g., Community Development Block Grants) and public housing authorities to complete an Assessment of Fair Housing as a condition of receiving HUD funds. The regulation requires local governments and housing authorities to identify the policies, practices, or conditions that shape disparities in access to housing and broader opportunities experienced by communities of color, persons with disabilities, and other groups protected by the Fair Housing Act (“protected groups”). More importantly, the regulation mandates that local governments and housing authorities identify meaningful goals to address the impacts of systemic issues such as residential segregation, housing cost burden, and unequal educational or employment opportunities to the extent these issues create and/or perpetuate discrimination against protected groups.

Why was AB 686 necessary? The Federal Government stopped implementing the 2015 AFFH regulation and was expected to take further steps to weaken the regulation. In response, the California legislature passed AB 686, which was signed into law in 2018.

What does AB 686 do?

- Introduces an AFFH obligation into state law
- Defines “affirmatively furthering fair housing” to mean taking meaningful actions that “overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity” for communities of color, persons with disabilities, and others protected by California law
- Requires the state, cities, counties, and public housing authorities to administer their programs and activities related to housing and community development in a way that affirmatively promotes fair housing
- Prohibits the state, cities, counties, and public housing authorities from taking actions materially inconsistent with their AFFH obligation
- Requires that the AFFH obligation be interpreted consistent with HUD’s 2015 regulation, regardless of federal action regarding the regulation
- Adds an AFFH analysis to the Housing Element (an existing planning process that California cities and counties must complete) for plans that are due beginning in 2021

- Includes in the Housing Element's AFFH analysis a required examination of issues such as segregation and resident displacement, as well as the required identification of fair housing goals

Although the City of Morgan Hill is not a direct recipient of HUD funds, it is a participant in the "Urban County" Joint Powers Agreement (JPA) with the County, who is a direct recipient of HUD's Community Development Block Grant Funds (CDBG), and HOME funds. In order to continue to receive those funds on our behalf, an Assessment of Fair Housing is required; hence, the County has contracted for services from the Lawyers' Committee for Civil Rights Under Law related to the preparation and submission of the Assessment of Fair Housing, which is an analysis required by the U.S. Department of Housing and Urban Development (HUD) and State of California. The Lawyers' Committee for Civil Rights Under Law is performing the Assessment of Fair Housing ("AFH") tasks for the Cities of Cupertino, Gilroy, Mountain View, Palo Alto, San José, Santa Clara, Sunnyvale and Santa Clara Urban County (which is composed of the Cities of Morgan Hill, Campbell, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Saratoga, and the Unincorporated Area); and the Santa Clara County Housing Authority.

Since August 2019 the Lawyers Committee has worked to encourage robust community engagement, establish a unified vision for regional activities, and ensure that the AFH complies with the United States Department of Housing and Urban Development ("HUD") and State of California requirements. Their objective has been to facilitate discussion of, and document, participating jurisdictions' perspectives on major systemic issues facing members of protected classes in the Santa Clara County housing market; meeting with key stakeholders, creating a diverse AFH Advisory Group from various backgrounds to address impediments and receive advice on recommendations about impediments to fair housing choice; as well as data gathering and analysis.

The Lawyers Committee is contracted to produce and provide a final regional AFH report that complies with HUD's and the California Department of Housing and Community Development's (HCD)'s regulatory requirements. This work occurred between August 27, 2019, and June 30, 2020. The City Council will see the final AFH report at an upcoming meeting.

Home Repair Program

In partnership with the City of Morgan Hill, between the fiscal years of 2016 and 2020, Rebuilding Together Silicon Valley was able to rehab a combined total of 125 low-income mobile and single-family homes. Rebuilding Together has continued to support and manage the program with an annual fiscal year budget of \$200,000 until this past fiscal year. Due to budget constraints, the City has only renewed the contract with a \$100,000 budget that will expire on June 30, 2021. The City does not plan to renew its contract with Rebuilding Together for fiscal year 2021-22. Moving forward, Morgan Hill

will rely on the County to continue the program with the City's participating CDBG funds.

2020 Housing Legislative Update

The year 2020 was early declared to be the year of "housing production" by many in Sacramento. The prior year had been dominated by bills designed to streamline local government permitting processes and create new housing permitting pathways by eliminating discretion in the local permitting process. It was anticipated that 2020 would be the follow-up year that helped actually get those units produced, as was evidenced by a plethora of housing bills, opening up ways to produce more units and reduce impediments to housing production.

Interestingly, most of the major housing initiatives were cut short by timing problems created by the pandemic, and a shortened and at times restricted legislative season. At the end of the statutory session deadline, most housing bills had cleared committees but were left on the floor of respective chambers without opportunity for hearing. Expect many, if not all of these bills to resurface in 2021.

In summary, those bills fell into four broad categories:

1. Eliminating/changing single family zoning to permit multiple units in single family zoned areas
2. Creating new requirements for Housing Elements in each City, including up-zoning, further entitlement streamlining and elimination of fees.
3. Creating pathways to convert non-performing commercially zoned land to housing at minimum densities of 20 – 30 units per acre
4. Requiring regional and local entities to bear responsibility for housing homeless

Two legislative ideas that Morgan Hill has been interested in advocating, include the action to legislatively protect local City and County Inclusionary Housing Ordinances (IHO's) from Density Bonus concessions, and championing a way to credit cities for meeting certain RHNA requirements with commensurate spending and other efforts to support and maintain shelter and homeless services.

The first action, to protect IHO's, was included in a Density Bonus Bill, SB 1085, carried in 2020 by Senator Nancy Skinner. SB 1085 was one of those measures that cleared committees but did not make it to a floor vote before legislative adjournment. The second, is a matter that staff have discussed with several non-profit housing groups and with the legislative support team at the League of California Cities (LOCC) but has yet to develop "legs". But in the future of "push and pull" with the State and local communities, this will be an important idea to continue to reinforce to create some equity in regulatory oversight as well as incentive to take on efforts to create mutual solutions to homelessness in all cities.

Legislatively, Morgan Hill also struggles with the streamlining provisions of SB 330, which became effective January 1, 2020. SB 330 specifically limits public meetings for housing projects to five (5). This includes required meetings for subdivision maps, Improvement Agreements, and all entitlements. Recently, with the City Council including projects of 100 residential units or more to be reviewed by the Planning Commission for Design Permit, it is possible that residential project approvals will be required to be bundled or delegated to administrative processes to avoid exceeding the public meeting cap. Coupled with the Housing Accountability Act (2018) and multiple Density Bonus Law enhancements, cities are restricted from requiring projects to reduce density and or incorporate design features that add to the cost of construction. In addition, the City must grant concessions to local development regulations and density for any project that includes a prescribed number of affordable units in the development. These concessions include exceptions to parking standards, height, density, side yards and setbacks. The maximum number of concessions had grown from five to eight, and density from 80% increase to no limit on density for projects located within ½ mile of a train station.

Homelessness

Homelessness is the result of various social and economic systemic failures, many of which disproportionately impact communities of color, and are further being exacerbated by the public health crisis caused by the spread of COVID-19. The unprecedented challenges created by COVID-19 make a comprehensive response more urgent for both our neighbors living outdoors, as well as for our neighbors who find themselves on the brink of homelessness. While homeless residents live with the reality of survival outdoors, housed residents and businesses also feel the pressure in their neighborhoods. Morgan Hill, being a smaller city and less urban, certainly experiences homelessness at a much lower rate than some of our neighboring jurisdictions; however, we do experience it and it is as equally as complex to solve with significantly less resources, requiring us to focus on having a meaningful impact and outcomes.

While programs have been tailored to urban communities' needs, how does a suburban community provide services with limited funding while being geographically separated from available resources, transportation, and the people that provide these safety net services? Partnership, Collaboration, and Focused Coordination to make a meaningful impact at our local level continues to be our philosophy.

The definition of homeless includes any person living in a temporary location, such as a shelter or a place not fit for human habitation (encampment, car, abandoned building, etc.), is considered homeless, according to the Department of Housing and Urban Development.⁷

⁷ https://files.hudexchange.info/resources/documents/HomelessDefinition_RecordkeepingRequirementandCriteria.pdf

According to the 2019 Point-in-Time count, there are 9,706 people experiencing homelessness in Santa Clara County.⁸ Of the 9,706 people countywide, 114 are homeless in Morgan Hill, and 704 are homeless in Gilroy. Individuals are counted in shelters, streets, encampments, vehicles or other areas not meant for human habitation. Additionally, according to a January 2020 study of the intersection of race and homelessness in Santa Clara County, there are disproportionately high rates of homelessness among specific racial and ethnic groups.⁹ Specifically, while Black/African Americans make up about 2.5% of the general population, they represent 16.9% of the homeless population. Similarly, while people identifying as Hispanic/Latinx make up 27% of the general population, they represent 43.7% of the homeless population. Indigenous/American Indian/Native Alaskans too are overrepresented at a 7:1 ratio compared to their general population numbers. Moreover, even before homelessness is experienced, significant rent burden is seen in communities of color in Santa Clara County, with 58% of African Americans and 60% of Latinx households experiencing rent burden compared to the County average of 47%. These data point to the critical need for strategies to be implemented with an equity lens.

Morgan Hill's Biannual Homeless Count from previous years indicated 61 people counted in 2013, 81 in 2015, 388 in 2017, and 114 in 2019.

Some promising news, over the past 15 months at the local level, 264 unhoused Morgan Hill individuals have been interviewed and assessed by an outreach worker or community based organization using an assessment and survey tool to determine health, housing and social risk factors. Of the 264 assessed (surveyed), 160 people officially enrolled with the County with the *intent* to be housed using either a Permanent Supportive Housing strategy or a Rapid Rehousing strategy. Out of the 160 enrolled, *139 of them have been housed successfully*. In summary using an innovative, coordinated, and comprehensive supportive housing system in partnership with the County's Office of Supportive Housing, we housed more than we counted in 2019. 114 people counted and 139 housed. Progress.

Current Efforts

In response to the rise in South County Homelessness in 2017, the Housing Team began coordinating efforts with a focused approach, and made every attempt to leverage dollars and partner with the County, Destination Home, the faith-based community, Compassion Center, the Development Community, and others to bring about programs, services and affordable housing. Through its regular work plan, the

⁸ Santa Clara County Homeless Census & Survey Comprehensive Report 2019, <https://www.sccgov.org/sites/osh/ContinuumofCare/ReportsandPublications/Documents/2015%20Santa%20Clara%20County%20Homeless%20Census%20and%20Survey/2019%20SCC%20Homeless%20Census%20and%20Survey%20Report.pdf>

⁹ Race and Homelessness in Santa Clara County, California, January 2020 <https://destinationhomesv.org/wp-content/uploads/2020/02/RacialEquityReport0131020.pdf>

Housing Division works to advance the Housing Element Strategy and Countywide Community Plan. Below are some examples of the work program.

1. Deployment of County/Abode nonprofit Homeless Outreach Workers who conduct interviews and assessments to determine the medical and social risk factors of the homeless on the streets in the City. The City contributes \$25,000 to this larger Countywide effort.
2. Ongoing County Rapid Rehousing Program, a Homeless Prevention (financial rental assistance) Program for families, targeting families with children in the school district at risk of homelessness. The City contributes \$25,000 to this much larger Countywide effort.
3. City Code Compliance Homeless Prevention Program, 3-day emergency hotel stay, if a household receives a notice of violation or “red tag” resulting in homelessness – City budgeted amount \$7,000.
4. Ongoing operation of Safe Park Program (FOCUS), Faith-based community volunteers offering an eight space, pet friendly overnight respite at a local church for eight homeless families (25 people max) living in their cars where they are receiving coordinated assessment, services, meals, and support with the goal of providing some stability while they wait for permanent housing. Service daily, 7:00 p.m. to 8:00 a.m. The City contributes \$30,000 towards the case management. The Team is currently looking to find an additional site for a second car park for single men.
5. 2019 was the establishment of a new Inclement Cold Weather Shelter, a partnership with Community Christian and their steadfast volunteers. This is a free shelter bed night for single men during inclement weather days. Staff is working to add additional beds at other locations for single women. The City contributes \$25,000 toward overnight security and the referral and assessment coordination is conducted by the Compassion Center.
6. Ongoing identification of affordable housing opportunities and the priority to create very low-income and extremely low-income units. Additionally, searching for funding opportunities to be a local match.
7. Basic Case Management of homeless individuals and families as time allows.

The Community Plan to End Homelessness 2020-25 (Community Plan)

The 2020 Community Plan to End Homelessness has been released (Attachment 10). You can view the published 2020 Community Plan and other materials [here](#). A short video detailing the plan can also be viewed [here](#).

In June 2019, Santa Clara County, Destination: Home (DH), other cities (Morgan Hill, Mountain View, and San Jose) and non-profits, embarked on strategic planning, and an extensive community engagement process to develop a new five-year Community Plan to End Homelessness for Santa Clara County (“Community Plan”).

The Community Plan, which is driven and adopted by the Santa Clara County Continuum of Care (CoC), is a planning requirement placed by the United States Department of Housing and Urban Development (HUD). For context, the CoC is the local planning body that coordinates countywide housing and services funding for homeless persons. The CoC Board membership includes representation from the City of San José Housing Department, Santa Clara County Housing Authority, Destination: Home, individuals with lived experience, and just recently, the City of Morgan Hill.

The CoC is dedicated to developing a plan through an inclusive, community-based planning process and structured the plan development to a) involve a wide array of stakeholders; b) consider local data on need and existing service performance; c) ensure alignment with existing local efforts; and d) foster local partnership formations and enhancements.

During the Community Plan development, community feedback was sought to identify successes and challenges in the homeless system of care, and to collect innovative and inspiring ideas about how to address homelessness generally countywide, and specifically for certain subgroups like youth and families. Together, staff from various agencies reached over 8,000 community members by convening opportunities to engage with people who have experienced homelessness, subject matter experts, community members, and key stakeholders. This work resulted in 14 strategies that essentially fall into three focus areas:

1. Address the root causes of homelessness through system and policy change;
2. Expand homelessness prevention and housing programs to meet the need;
3. Improve quality of life for unsheltered individuals and create healthy neighborhoods for all.

The Community Plan provides a county-level roadmap to address homelessness and its root causes; it is written assuming local jurisdictions will tailor the roadmap to meet local needs. For the next five years, this plan will guide the County, cities, nonprofits, and other community members as they make decisions about funding, programs, priorities, and needs.

The plan builds upon the achievements made possible by following the previous adopted 2015-2020 plan, efforts of the past five years, during which more than 14,000 people have been housed countywide, and nearly 4,000 served through a homelessness prevention system. Despite this progress, homelessness continues to grow, fueled by a number of systemic factors: the rising gap between the rich and the poor in our community, combined with the lack of affordable housing, particularly at the lowest income levels, and longstanding structural racial inequities. These challenges

have been compounded by the novel coronavirus (COVID-19) pandemic, placing ever-more pressure on the nearly 10,000 individuals currently experiencing homelessness and the tens-of-thousands more at risk of falling into homelessness in the coming months and years.

Progress To-Date and Next Steps

Several important steps toward implementing the new Community Plan are already underway as part of the community's response to COVID-19. Destination: Home (DH) and Sacred Heart Community Service have ramped up homelessness prevention assistance. Since the start of the pandemic, they have distributed more than \$15 million in assistance to approximately 7,000 families in Santa Clara County through a partnership of 70 agencies, focusing on extremely low-income households.

DH launched a COVID-19 Financial Assistance Program March 23rd to provide emergency financial assistance to lower income households whose housing stability is at risk due to COVID-19. DH continues to be one of our strongest allies and has prevented families in our South County community from becoming homeless. For example, \$395,850 in rental assistance was provided to Morgan Hill residents and \$543,383 provided to Gilroy residents. Alarming, their work indicates that there are 43,000 pending evictions in Santa Clara County.

Many of the plan strategies are activities that the Housing Division regularly advance in proportion to our resources and capacity. Staff is recommending endorsement of the new Community Plan (Attachment 11). Endorsement will provide staff with the certainty to keep moving forward and implementing such strategies during the COVID-19 public health crisis. The plan brings us one step closer to our collective goal of eliminating homelessness in our community.

Should the Council endorse the Community Plan, staff will return with a proposed, detailed implementation work plan to deploy locally tailored solutions to further innovation and housing outcomes in South County.

The Housing Team is working towards securing a capacity building grant that will allow the team to add a Full Time Case Manager to work directly with our unhoused community members, and to take the Community Plan and move from a countywide conceptual framework to focused and tailored solutions for Morgan Hill, and South County collectively. Advancing the strategies in the Community Plan will require broad cross-sector alignment and collaboration, and social innovation achieved through key stakeholders working together to create a common agenda to solve this problem. Moreover, in the coming year the Housing Team is looking to explore additional opportunities for smaller scale inclement cold weather shelters to serve single women and families in partnership with the faith based community, to increase inclement weather shelter bed capacity, secure a second safe car parking site for single men, develop an intermittent hygiene service and develop transportation options.

COMMUNITY ENGAGEMENT:

This report provides the community with an update on Affordable Housing and Homelessness.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 17, 2015, the City Council adopted a resolution to support the Community Plan to End Homelessness in Santa Clara County.

On February 3, 2016, the Council adopted a resolution at the request of the County Housing Task Force to further affirm the City of Morgan Hill's commitment to affordable housing.

On April 5, 2017, the Council authorized \$50,000 of the Housing Fund to support two new homeless programs as a partial match to the County's larger Program, a Rapid Rehousing Rental Assistance Program and Homeless Outreach Caseworker program. Shortly after, this same action was further added to at the May 19, 2017 budget workshop where the Council authorized an additional \$25,000. As a result, \$50,000 went towards outreach workers and \$25,000 towards rental assistance.

On May 2, 2018, City Council meeting to discuss meeting the Housing Accountability Act requirements, Morgan Hill's Regional Housing Needs Allocation (RHNA) housing goals. Additionally, the Council received a KMA report, "Strategy for Increasing the Supply of Affordable Housing."

On July 18, 2018, City Council Meeting, introduced the Inclusionary Housing Ordinance and provided the Santa Clara County-wide report from the Civil Grand Jury. The Ordinance was subsequently adopted July 25, 2018 and effective August 25, 2018.

On September 25, 2018, Planning Commission presented BMR Development Standards. September 26, 2018, City Council Meeting, introduced a range of New Housing Fees, BMR Guides, and BMR Development Standards, subsequently approved on October 17, 2018

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact in taking the recommended actions, as they are included in the Division's workplan.

CEQA (California Environmental Quality Act):

Not a Project—This is an informational report. Acceptance of the report will not have an impact on the environment.

LINKS/ATTACHMENTS:

1. Income limits - Rental HCD - Rental CA TCAC and HB Pricing - 11.16.2020
2. ProposedAffordableHousing_Nov2020_optimized
3. City RHNA Update

4. HouseKeys-City of Morgan Hill By The Numbers Report - October 1, 2019 - October 31, 2020 v1
5. CalCHA - Resolution
6. CalCHA - JPA Agreement
7. CalCHA - No Liability Letter
8. Begin Re-Use guidelines MH Final Nov 2020
9. Inclusionary Housing Ordinance (weblink)
10. Community Plan 2020 v4
11. Community Plan Resolution 2020
12. Community Plan Presentation

HCD 2020 - Maximum Income Limits for Santa Clara County Effective 04/30/2020

<https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/income-limits-2020.pdf>

Household size	1	2	3	4	5	6	7	8
Extremely Low	\$33,150	\$37,900	\$42,650	\$47,350	\$51,150	\$54,950	\$58,750	\$62,550
Very Low	\$55,300	\$63,200	\$71,100	\$78,950	\$85,300	\$91,600	\$97,900	\$104,250
Lower	\$78,550	\$89,750	\$100,950	\$112,150	\$121,150	\$130,100	\$139,100	\$148,050
Median	\$99,100	\$113,300	\$127,450	\$141,600	\$152,950	\$164,250	\$175,600	\$186,900
Moderate	\$118,950	\$135,900	\$152,900	\$169,900	\$183,500	\$197,100	\$210,700	\$224,250

HCD - BELOW MARKET RATE (BMR) RENTAL RATES					
No. of Bedrooms	Extremely Low (30%)	Very Low (50%)	Lower (80%)	*Moderate (120%)	*Median (100%)
0 Bedroom	\$743	\$1,239	\$1,487	\$2,725	\$2,478
1 Bedroom	\$850	\$1,416	\$1,700	\$3,116	\$2,833
2 Bedrooms	\$956	\$1,593	\$1,912	\$3,505	\$3,186
3 Bedrooms	\$1,062	\$1,770	\$2,124	\$3,894	\$3,540
4 Bedrooms	\$1,147	\$1,912	\$2,294	\$4,206	\$3,824

*Note: [California Health and Safety Code 50053](#) referenced in Morgan Hill Inclusionary Ordinance 14.04.030 (Definitions) does not have a Median Income rent. Area Median Income is used to produce all rent levels on the schedule, including Moderate Income.

California Health and Safety Code 50053:

http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC§ionNum=50053

TCAC - CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE 2020

Revised per HUD Notice Effective: April 1, 2020

Maximum Rents for Projects from Ceilings Post-1989 and those from the Pre-1990 Ceilings That Elected with the Secretary of the Treasury* to use the Post-1989 Rents

*(See IRC Section 42 - Section 13142(c) of the Omnibus Budget Reconciliation Act of 1993)

For Projects Placed in Service on or after 4/1/20+

<https://www.treasurer.ca.gov/ctcac/2020/supplemental.asp>

Santa Clara	Efficiency	1 BR	2 BR	3BR	4BR	5BR
100% Income Level	\$2,764	\$2,962	\$3,554	\$4,106	\$4,580	\$5,052
80% Income Level	\$2,212	\$2,370	\$2,844	\$3,285	\$3,664	\$4,043
70% Income Level	\$1,935	\$2,073	\$2,488	\$2,874	\$3,206	\$3,537
60% Income Level	\$1,659	\$1,777	\$2,133	\$2,463	\$2,748	\$3,032
55% Income Level	\$1,520	\$1,629	\$1,955	\$2,258	\$2,519	\$2,779
50% Income Level	\$1,382	\$1,481	\$1,777	\$2,053	\$2,290	\$2,526
45% Income Level	\$1,244	\$1,333	\$1,599	\$1,847	\$2,061	\$2,274
40% Income Level	\$1,106	\$1,185	\$1,422	\$1,642	\$1,832	\$2,021
35% Income Level	\$967	\$1,036	\$1,244	\$1,437	\$1,603	\$1,768
30% Income Level	\$829	\$888	\$1,066	\$1,231	\$1,374	\$1,516
20% Income Level	\$553	\$592	\$711	\$821	\$916	\$1,010

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

<https://www.treasurer.ca.gov/ctcac/2020/supplemental.asp>

2020 Maximum Income Levels for Projects that Place in Service on or after 4/1/2020+

<https://www.treasurer.ca.gov/ctcac/rentincome/20/income/13-income-limits-pis-post-042420.pdf>

SANTA CLARA	One Person	Two Person	Three Person	Four Person	Five Person	Six Person	Seven Person	Eight Person
100% Income Level	\$110,600	\$126,400	\$142,200	\$157,900	\$170,600	\$183,200	\$195,800	\$208,500
80% Income Level	\$88,480	\$101,120	\$113,760	\$126,320	\$136,480	\$146,560	\$156,640	\$166,800
70% Income Level	\$77,420	\$88,480	\$99,540	\$110,530	\$119,420	\$128,240	\$137,060	\$145,950
60% Income Level	\$66,360	\$75,840	\$85,320	\$94,740	\$102,360	\$109,920	\$117,480	\$125,100
55% Income Level	\$60,830	\$69,520	\$78,210	\$86,845	\$93,830	\$100,760	\$107,690	\$114,675
50% Income Level	\$55,300	\$63,200	\$71,100	\$78,950	\$85,300	\$91,600	\$97,900	\$104,250
45% Income Level	\$49,770	\$56,880	\$63,990	\$71,055	\$76,770	\$82,440	\$88,110	\$93,825
40% Income Level	\$44,240	\$50,560	\$56,880	\$63,160	\$68,240	\$73,280	\$78,320	\$83,400
35% Income Level	\$38,710	\$44,240	\$49,770	\$55,265	\$59,710	\$64,120	\$68,530	\$72,975
30% Income Level	\$33,180	\$37,920	\$42,660	\$47,370	\$51,180	\$54,960	\$58,740	\$62,550
20% Income Level	\$22,120	\$25,280	\$28,440	\$31,580	\$34,120	\$36,640	\$39,160	\$41,700

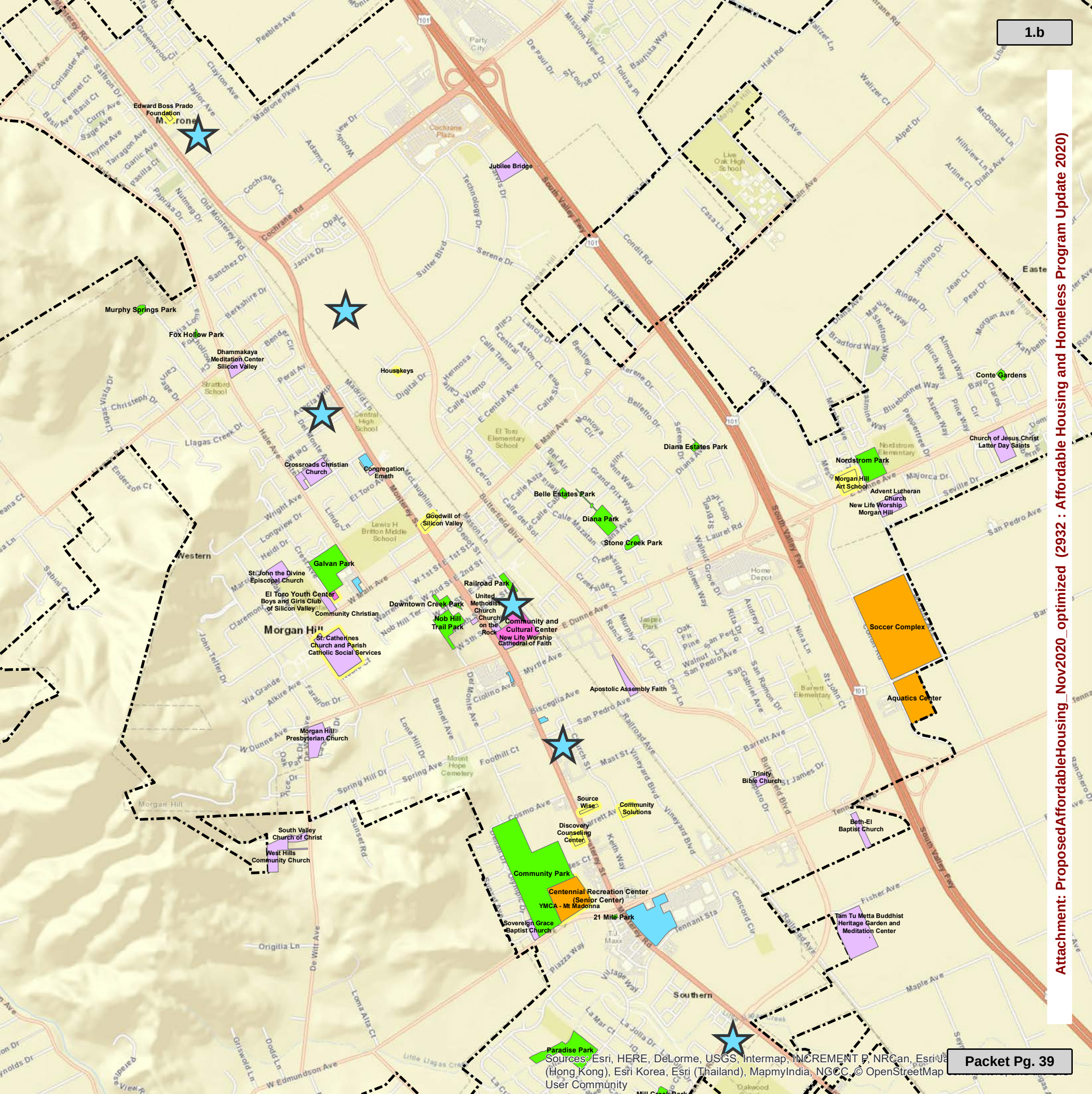
**Morgan Hill Homeownership Program
HCD 2020 - Maximum Income Limits for Santa Clara County
Effective 04/30/2020**

<https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/income-limits-2020.pdf>

Household size	1	2	3	4	5	6	7	8
Extremely Low	\$33,150	\$37,900	\$42,650	\$47,350	\$51,150	\$54,950	\$58,750	\$62,550
Very Low	\$55,300	\$63,200	\$71,100	\$78,950	\$85,300	\$91,600	\$97,900	\$104,250
Lower	\$78,550	\$89,750	\$100,950	\$112,150	\$121,150	\$130,100	\$139,100	\$148,050
Median	\$99,100	\$113,300	\$127,450	\$141,600	\$152,950	\$164,250	\$175,600	\$186,900
Moderate	\$118,950	\$135,900	\$152,900	\$169,900	\$183,500	\$197,100	\$210,700	\$224,250

**Morgan Hill Homeownership Program
Pricing for 2020- 2021**

Unit Size	Low Income	Moderate Income
Studio	\$379,000	\$454,800
1 Bedroom	\$439,000	\$526,800
2 Bedroom	\$499,000	\$598,800
3 Bedroom	\$563,000	\$675,600
4 Bedroom	\$613,000	\$735,600
5 Bedroom	\$602,000	\$794,400



Current RHNA #'s (2014-2019) – HCD – updated NOV 2020									Projection		
Income Level	RHNA # Allocated to MH	Permits Issued 2014/ 2015	Permits Issued 2016	Permits Issued 2017	Permits Issued 2018	Permits Issued 2019	Total	HCD % Met	HCD Remaining Allocation	Pipeline	Units Still needed
Very Low Income up to 50% AMI (includes ELI)	273	12	29	0	39	0	80	29%	193	256*	-63*
Low Income 51% to 80% AMI	154	118	23	13	24	11	189	123%	0	46*	-81*
Moderate Income 81% to 120% AMI	185	107	6	9	263	14	399	216%	0	352**	-566**
Above Moderate Income/Market Rate more than 120% AMI	316	647	219	192	193	142	1393	441%	0	TBD	-1077
Total	928	884	277	214	519	167	2061	222%	193	654	0
* Braddock & Logan/MWEST included (78 VLI) * Beacon Included (41 VLI and 41 LI) UHC Watson/Hordness included (23 VLI) Magnolia – 1 st Comm Hsg. Included (32 VLI) JEMCORP Monterey/Madrone included (75 VLI) Depot Commons Rehab included (7 VLI)											
**Non – Deed Restricted Moderate Units Included – NOT yet issued: (311 MWest, 8 Borello (ADU's), Already Issued and Reported: 167 Evergreen, 83 Sunsweet 11 Borello, and 61 Diamond Creek											



Toll Free: 1-877-460-KEYS (5397)

Office (By Appointment)

358 Digital Drive

Morgan Hill, CA 95037

City of Morgan Hill by the Numbers Report

October 1, 2019 – October 31, 2020

5	Number of in person BMR Home Buyer & Rental Orientations (pre COVID-19 pandemic)	October 2019 November 2019 December 2019 January 2020 February 2020 Note: In person Orientations came to a halt in March 2020 due to COVID-19/Shelter in Place
405	Number of Registrants for In Person Orientations (pre COVID-19 pandemic)	October 2019 November 2019 December 2019 January 2019 February 2020 Note: In person Orientations came to a halt in March 2020 due to COVID-19/Shelter in Place
32	Number of Online BMR Home Buyer & Rental Webinar Broadcasts (ZOOM Orientation/Friday FAQ's)	May 2020 June 2020 July 2020 August 2020 September 2020 October 2020 Note: HouseKeys offered an online option in March and April 2020. This option consisted of 8 short videos, quiz, live phone, and email support during our COVID-19 transition to user friendly online platforms (March and April 2020).
846	Number of Registrants for BMR Webinar Broadcasts (Orientation/Friday FAQ's)	May 2020 June 2020 July 2020 August 2020 September 2020 October 2020 Note: HouseKeys offered an online option in March and April 2020. This option consisted of 8 short videos, quiz, live phone, and email support during our covid-19 transition to user friendly online platforms.

Mailing Address:

409 Tennant Station #395
Morgan Hill, CA 95037

Main Line: 408-684-8712
Main Fax: 408-684-8762

info@housekeys.org
www.housekeys.org



Toll Free: 1-877-460-KEYS (5397)

Office (By Appointment)

358 Digital Drive

Morgan Hill, CA 95037

11	Number of New Construction Units Sold	
8	Number of Units Resold	
3	Sold out of the Program	
23	Number of Units in the Pipeline to be Sold	1. Index 158 Solera Ranch 18083 Monterey Road Coming Soon- 15 New Construction BMR Units Monterey Gate Way (moderate income) 2 Units in Veneto closing in October and November 2020 5 Upcoming Resales
1,413	Number of Application I.D.'s Issued to people interested in the BMR Homeownership Program	
7	Number of Opportunity Drawings from October 1, 2019 – October 31, 2020 (Lotteries held to give buyers an opportunity to purchase an affordable home)	Index #121 Index #123 Index #127 Index #128 Index #129 Index #131 Index #158
86	Number of Subordination Ticket Requests	
24	Number of Interested in Selling Ticket Requests Currently Being Processed	

Mailing Address:

409 Tennant Station #395
Morgan Hill, CA 95037

Main Line: 408-684-8712
Main Fax: 408-684-8762

info@housekeys.org
www.housekeys.org



Toll Free: 1-877-460-KEYS (5397)

Office (By Appointment)

358 Digital Drive

Morgan Hill, CA 95037

27	Number of Other Ticket Requests	
21	Number of BMR Closed Refinances	
22	Number of Pending Refinances	
13	Number of Reconveyances	
9	Number of Release of Resale Restriction Agreements	
N/A	Number of 2020 City of Morgan Hill BMR Ownership Annual Certifications Distributed	Slated for Q1-2021
5	Number of BMR Ownership Legal Cases	Five (5) as of October 2020. Please reference September 2020 NOD Report.
N/A	Number of Cases (2020 City of Morgan Hill BMR Ownership Program Annual Certification Non-Responsive Units)	
4	Number of Rehab Projects	
5	Number of Bankruptcy and Foreclosures	Five (5) as of October 2020. Please reference September 2020 NOD Report. Notice of Default/Sale BMR Properties

Mailing Address:

409 Tennant Station #395
Morgan Hill, CA 95037

Main Line: 408-684-8712
Main Fax: 408-684-8762

info@housekeys.org
www.housekeys.org



Toll Free: 1-877-460-KEYS (5397)

Office (By Appointment)

358 Digital Drive

Morgan Hill, CA 95037

426	Morgan Hill Loan Portfolio Processing, Detailing and Logging (Loan Portfolio Project)	240 Active Loans 4 Amended Notes 6 Lost to Foreclosure 29 Unknown (under review) 147 Closed Grand Total = 426
519	Number of Application I.D.'s issued to people interested in the BMR Rental Program	
10	Number of BMR Rental Program Opportunity Drawings: October 1, 2019 – October 31, 2020 (Lotteries held to give potential tenants an opportunity to lease an affordable rental unit).	Index #151 (3 units) Index #150 (3 units) Index #149 (1 unit) Index #148 (1 unit) Index #139 (1 unit) Index #138 (1 unit) Index #137 (1 unit) Index #136 (1 unit) Index #135 (1 unit) Index #134 (1 unit)
5	Number of BMR Rental Units with Identified Tenants (and where)	1230 Vintage Lane Unit #220 (Index #135) 1100 Vintage Lane Unit #230 (Index #135) 1230 Vintage Lane Unit #240 (Index #136) 1230 Vintage Lane Unit #250 (Index #137) 1190 Vintage Lane Unit #240 (Index #138)
9	Number of BMR Rental Units in the Pipeline to be Rented (Vacancies)	1100 Vintage Lane Unit #310 (Index #134) 1180 Vintage Lane Unit #210 (Index #148) 1180 Vintage Lane Unit #230 (Index #149) 1170 Vintage Lane Unit #240 (Index #150) 1160 Vintage Lane Unit #210 (Index #150) 1150 Vintage Lane Unit #220 (Index #150) 1170 Vintage Lane Unit #220 (Index #151) 1160 Vintage Lane Unit #230 (Index #151) 1150 Vintage Lane Unit #220 (Index #151)
N/A	Number of BMR Rental Annual Recertifications	Slated for Q3/Q4 2021 (will be deployed on 1-year leasing anniversary)
N/A	Number of BMR Rental Cases	

Mailing Address:409 Tennant Station #395
Morgan Hill, CA 95037Main Line: 408-684-8712
Main Fax: 408-684-8762info@housekeys.org
www.housekeys.org

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL
AUTHORIZING THE CITY TO BECOME AN ADDITIONAL MEMBER OF THE
CALIFORNIA COMMUNITY HOUSING AGENCY (“CALCHA”); SUPPORTING
CALCHA’S ISSUANCE OF TAX-EXEMPT BONDS FOR THE PRODUCTION,
PRESERVATION AND PROTECTION OF ESSENTIAL MIDDLE-INCOME RENTAL
HOUSING; AND AUTHORIZING THE CITY MANAGER AND OR HIS OR HERS
DESIGNEE TO ENTER INTO PURCHASE OPTION AGREEMENTS WITH CALCHA
FOR ESSENTIAL MIDDLE-INCOME RENTAL HOUSING CREATED WITHIN CITY
LIMITS

WHEREAS, one of the primary goals of the City of Morgan Hill (the “City”) is to meet the growing housing needs of its residents by actively supporting the production, preservation and protection of market-rate and affordable rental housing for all; and

WHEREAS, no existing Federal, State or local subsidies, programs or motivations currently exist to meaningfully address the growing shortfall of protected middle-income rental housing; and

WHEREAS, CalCHA is a Joint Powers Authority created specifically to produce, preserve and protect quality affordable rental housing made available to California’s essential middle-income workforce; and

WHEREAS, CalCHA intends to acquire existing rental properties within City limits and restrict future occupancy to middle-income households earning no more than 120% of area median income; and

WHEREAS, CalCHA will avoid the displacement of existing residents, implement regulatory agreements restricting the incomes and rents of future residents, and impose caps on the annual rent increases of qualified middle-income households; and

WHEREAS, CalCHA will finance its acquisitions through the issuance of tax-exempt bonds, and in order for CalCHA to issue tax-exempt bonds in the City of Morgan Hill, the City must be an Additional Member of CalCHA; and

WHEREAS, the City proposes to become an Additional Member of CalCHA pursuant to Section 12 of the Joint Exercise of Powers Agreement Relating to the California Community Housing Agency; and

WHEREAS, subsequent to becoming an Additional Member of CalCHA, any existing rental housing within City limits which CalCHA intends to acquire and finance with tax-exempt bonds must receive support and approval from the City; and

WHEREAS the City proposes to support and approve CalCHA’s issuance of tax-exempt bonds for the acquisition of existing rental properties as a means towards the

Resolution. No. _____
Page 1 of 3

Attachment: CalCHA - Resolution (2932 : Affordable Housing and Homeless Program Update 2020)

preservation and protection of essential middle-income rental housing within City limits; and

WHEREAS, CalCHA's issuance of tax-exempt bonds will provide public benefit through the production, preservation and protection of below-market-rate rental housing, as well as the granting of all surplus project revenues to the City; and

WHEREAS, pursuant to one or more purchase option agreements (the "Purchase Option Agreements"), between CalCHA and the City, CalCHA will grant the City the option, but never the obligation, to purchase each essential middle-income rental housing property commencing on the date fifteen (15) years after CalCHA's acquisition of such property; and

WHEREAS, the Purchase Option Agreements will additionally provide the City with all surplus project revenues from each essential middle-income rental housing property; and

WHEREAS, the City will maintain the option to exercise such Purchase Option Agreements for a period of fourteen (14) years following the commencement dates of the Purchase Option Agreements for each essential middle-income rental housing property; and

WHEREAS, the City proposes to authorize the City Manager and or her or his designee to enter into Purchase Option Agreements with CalCHA for all essential middle-income rental housing created within City limits.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morgan Hill hereby authorizes the City to become an Additional Member of CalCHA and authorizes City Manager and or his or her designee to execute the Joint Exercise of Powers Agreement Relating to the California Community Housing Agency, subject to approval as to form by the City Attorney.

BE IT FURTHER RESOLVED that the City Council of the City of Morgan Hill hereby supports and approves CalCHA's issuance of tax-exempt bonds as a means towards the production, preservation and protection of essential middle-income rental housing within City limits.

BE IT FURTHER RESOLVED that the City Council of the City of Morgan Hill hereby authorizes the City Manager and or her or his designee to enter into Purchase Option Agreements with CalCHA for all essential middle-income rental housing created within City limits, subject to approval as to form by the City Attorney.

IN CITY COUNCIL DULY PASSED this 2nd day of December 2020.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____ APPROVED: _____
City Clerk Mayor

APPROVED AS TO FORM:

City Attorney

Exhibit A – Joint Exercise of Powers Agreement Relating to the California Community
Housing Agency

Exhibit B – Purchase Option Agreement

Attachment: CalCHA - Resolution (2932 : Affordable Housing and Homeless Program Update 2020)

Resolution. No. _____
Page 3 of 3

**JOINT EXERCISE OF POWERS AGREEMENT
RELATING TO THE CALIFORNIA COMMUNITY HOUSING AGENCY**

THIS AGREEMENT, dated as of January 29, 2019, among the parties executing this Agreement (all such parties, except those which have withdrawn as provided herein, are referred to as the "Members" and those parties initially executing this Agreement are referred to as the "Charter Members"):

WITNESSETH

WHEREAS, pursuant to Title 1, Division 7, Chapter 5 of the California Government Code (in effect as of the date hereof and as the same may from time to time be amended or supplemented, the "Joint Exercise of Powers Act"), two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, each of the Members is a "public agency" as that term is defined in Section 6500 of the Joint Exercise of Powers Act; and

WHEREAS, each of the Members is empowered by law to promote economic, cultural and community development, including, without limitation, the promotion of opportunities for the creation or retention of employment, the stimulation of economic activity, the increase of the tax base, and the promotion of opportunities for education, cultural improvement and public health, safety and general welfare; and

WHEREAS, each of the Members may accomplish the purposes and objectives described in the preceding preamble by various means; and

WHEREAS, each Member is also empowered by law to acquire, construct, improve, operate and dispose of real property for a public purpose; and

WHEREAS, the Joint Exercise of Powers Act authorizes the Members to create a joint exercise of powers entity with the authority to exercise any powers common to the Members, including but not limited to acquiring, constructing, improving, operating and disposing of real property for a public purpose, all as specified in this Agreement, and to exercise the additional powers granted to it in the Joint Exercise of Powers Act and any other applicable provisions of the laws of the State of California; and

WHEREAS, a public entity established pursuant to the Joint Exercise of Powers Act is empowered to issue or execute non-recourse debt, which may include bonds, notes, commercial paper or any other evidences of indebtedness, leases, installment sale or other financing agreements or certificates of participation therein (herein "Obligations"), and to otherwise undertake financing programs under the Joint Exercise of Powers Act or other applicable provisions of the laws of the State of California to accomplish its public purposes; and

WHEREAS, the Members have determined to specifically authorize a public entity authorized pursuant to the Joint Exercise of Powers Act to issue non-recourse Obligations pursuant to the Joint Exercise of Powers Act or other applicable provisions of the laws of the State of California; and

WHEREAS, it is the desire of the Members to use a public entity established pursuant to the Joint Exercise of Powers Act to undertake the financing and/or refinancing of projects that provide, preserve and support affordable local housing for low-income, moderate-income and middle-income families and individuals within the jurisdictions of the Members, including, but not limited to, capital or working capital projects, purchase or acquisition of property, receivables, commodities, bonds, other revenue streams or assets of any kind, liability or other insurance, or retirement programs, or facilitating Members use of existing or new financial instruments and mechanisms in the furtherance of this purpose; and

WHEREAS, by this Agreement, each Member desires to create and establish the "California Community Housing Agency" for the purposes set forth herein and to exercise the powers provided herein;

NOW, THEREFORE, the Members, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

Section 1. Purpose.

This Agreement is made pursuant to the provisions of the Joint Exercise of Powers Act. The purpose of this Agreement is to establish a public entity for the joint exercise of powers common to the Members and for the exercise of additional powers given to a joint powers entity under the Joint Powers Act or any other applicable law, including, but not limited to, the issuance of non-recourse Obligations for any purpose or activity permitted under the Joint Exercise of Powers Act or any other law; provided, however that such purpose shall be solely for the acquisition, construction, rehabilitation, ownership, operation, maintenance, administration and/or financing of multifamily housing for low-income, moderate-income and middle-income families and individuals (the "Purpose"). Such Purpose will be accomplished and said power exercised in the manner hereinafter set forth.

Section 2. Term.

This Agreement shall become effective in accordance with Section 17 as of the date hereof and shall continue in full force and effect until such time as it is terminated in writing by all the Members; provided, however, that this Agreement shall not terminate or be terminated until all Obligations issued or caused to be issued by the Agency (defined below) shall no longer be outstanding under the terms of the indenture, trust agreement, resolution or other instrument pursuant to which such Obligations are issued.

Section 3. Agency.

A. CREATION AND POWERS OF AGENCY.

Pursuant to the Joint Exercise of Powers Act, there is hereby created a public entity to be known as the "California Community Housing Agency" (the "Agency"), and said Agency shall be a public entity separate and apart from the Members. Its debts, liabilities and obligations do not constitute debts, liabilities or obligations of any Members, and the Obligations of the Agency shall only be non-recourse obligations.

B. BOARD.

The Agency shall be administered by the Board of Directors (the "Board," or the "Directors" and each a "Director") whose members shall be, at all times, members of the Board of Supervisors (the "Board of Supervisors") of Kings County, California, with each such Director serving in his or her individual capacity as Director of the Board. The term of office as a member of the Board shall terminate when such member shall cease to be a member of the Board of Supervisors and the successor to such member of the Board of Supervisors shall become a member of the Board.

Notwithstanding the preceding paragraph, the Board may by resolution or bylaws provide for changes in the qualifications, composition and number of Directors, the appointment of Directors, successors, their respective terms of office and any other provisions relating to the qualification and office of the Directors, including provision for alternative Directors (in which case all references in this Agreement to any Director shall be deemed to refer to and include the applicable alternate Director, if any, when so acting in place of a regularly appointed Director).

The Board shall be the administering agency of this Agreement and, as such, shall be vested with the powers set forth herein, and shall administer this Agreement in accordance with the purposes and functions provided herein.

Directors shall not receive any compensation for serving as such, but shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a Director, if the Board shall determine that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

C. OFFICERS; DUTIES; OFFICIAL BONDS.

The officers of the Agency shall be the Chair, Vice-Chair, Secretary and Treasurer (defined below). The Board, in its capacity as administering agent of this Agreement, shall elect a Chair, a Vice-Chair, and a Secretary of the Agency from among Directors to serve until such officer is re-elected or a successor to such office is elected by the Board. The Board shall appoint one or more of its officers or employees to serve as treasurer, auditor, and controller of the Agency (the "Treasurer") pursuant to Section 6505.6 of the Joint Exercise of Powers Act to serve until such officer is re-elected or a successor to such office is elected by the Board.

Subject to the applicable provisions of any resolution, indenture, trust agreement or other instrument or proceeding authorizing or securing Obligations (each such resolution, indenture, trust agreement, instrument and proceeding being herein referred to as an "Indenture") providing for a trustee or other fiscal agent, and except as may otherwise be specified by resolution of the Board, the Treasurer is designated as the depository of the Agency to have custody of all money of the Agency, from whatever source derived and shall have the powers, duties and responsibilities specified in Sections 6505, 6505.5 and 6509.5 of the Joint Exercise of Powers Act.

The Treasurer of the Agency is designated as the public officer or person who has charge of, handles, or has access to any property of the Agency, and such officer shall file an official bond with the Secretary of the Agency in the amount specified by resolution of the Board but in no event less than \$1,000.

The Board shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

The Board shall have the power, by resolution, to the extent permitted by the Joint Exercise of Power Act or any other applicable law, to delegate any of its functions to one or more of the Directors or officers, employees or agents of the Agency and to cause any of said Directors, officers, employees or agents to take any actions and execute any documents or instruments for and in the name and on behalf of the Board or the Agency.

D. MEETINGS OF THE BOARD.

(1) Ralph M. Brown Act.

All meetings of the Board, including, without limitation, regular, adjourned regular, special, and adjourned special meetings shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code of the State of California), or any successor legislation hereinafter enacted (the "Brown Act").

(2) Regular Meetings.

The Board shall provide for its regular meetings; provided, however, it shall hold at least one regular meeting each year. The date, hour and place of the holding of the regular meetings shall be fixed by resolution of the Board. To the extent permitted by the Brown Act, such meetings may be held by telephone conference.

(3) Special Meetings.

Special meetings of the Board may be called in accordance with the provisions of Section 54956 of the Government Code of the State of

California. To the extent permitted by the Brown Act, such meetings may be held by telephone conference.

(4) Minutes.

The Secretary of the Agency shall cause to be kept minutes of the regular, adjourned regular, special, and adjourned special meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director.

(5) Quorum.

A majority of the Board shall constitute a quorum for the transaction of business. No action may be taken by the Board except upon the affirmative vote of a majority of the Directors present at the meeting, except that less than a quorum may adjourn a meeting to another time and place.

E. RULES AND REGULATIONS.

The Agency may adopt, from time to time, by resolution of the Board such bylaws, policies or rules and regulations for the conduct of its meetings and affairs as may be required.

Section 4. Powers.

The Agency shall have the power, in its own name, to exercise the common powers of the Members and to exercise all additional powers given to a joint powers entity under any of the laws of the State of California, including, but not limited to, the Joint Exercise of Powers Act, for the Purpose authorized under this Agreement. Such powers shall include the common powers specified in this Agreement and may be exercised in the manner and according to the method provided in this Agreement. The Agency is hereby authorized to do all acts necessary for the exercise of such power, including, but not limited to, any of all of the following: to make and enter into contracts; to employ agents and employees; to acquire, construct, improve, own, maintain and operate, or provide for maintenance and operation, and sell, lease, pledge, assign, mortgage or otherwise dispose, of any property, improvements, commodities, leases, contracts, receivables, bonds or other revenue streams or assets of any kind relating to the Purpose; to exercise the power of condemnation; to incur debts, liabilities or obligations; to receive gifts, contributions and donations of property, funds, services, and other forms of assistance from person, firms, corporations and any governmental entity; to sue and be sued in its own name; to establish and collect fees; to form public benefit nonprofit corporations or other affiliate entities to accomplish any of its Purposes; to make grants, loans or provide other financial assistance to governmental, nonprofit and for profit organizations to accomplish any of its Purposes; and generally to do any and all things necessary or convenient to accomplish its Purposes. The boundaries of the Agency shall encompass the boundaries of all the Members and the powers of the Agency may be exercised anywhere within those boundaries or to the extent permitted by the laws of the State of California, including, but not limited to the Joint Exercise of Powers Act,

outside of those boundaries, which may be outside of the State of California, provided that the power of condemnation may only be exercised within the jurisdictional boundaries of the Charter Members.

Without limiting the generality of the foregoing, the Agency may issue or cause to be issued Obligations, and pledge any property, contracts or revenues as security to the extent permitted under the Joint Exercise of Powers Act, or any other applicable provision of law.

The manner in which the Agency shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which a California county could exercise such powers and perform such duties. The manner in which the Agency shall exercise its powers and perform its duties shall not be subject to any restrictions applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a party to this Agreement or not.

Section 5. Fiscal Year.

For the purposes of this Agreement, the term "Fiscal Year" shall mean the fiscal year as established from time to time by resolution of the Board, being, at the date of this Agreement, the period from July 1 to and including the following June 30, except for the first Fiscal Year which shall be the period from the date of this Agreement to June 30, 2019.

Section 6. Disposition of Assets.

At the end of the term hereof or upon the earlier termination of this Agreement as set forth in Section 2, after payment of all expenses and liabilities of the Agency, all property of the Agency both real and personal shall automatically vest in the Members in the manner and amount determined by the Board in its sole discretion and shall thereafter remain the sole property of the Members; provided, however, that any surplus money on hand shall be returned in proportion to the contributions made by the Members.

Section 7. Obligations.

From time to time the Agency shall issue Obligations, in one or more series, for the purpose of exercising its powers and raising the funds necessary to carry out its Purposes under this Agreement, including but not limited to acquiring, constructing, improving, operating and disposing of real property for a public purposes.

The services of bond counsel, financing consultants and other consultants and advisors working on the projects and/or their financing or refinancing or on post-issuance compliance or administration may be used by the Agency. The expenses of the Board shall be paid from the proceeds of the Obligations, payments made by Obligation obligors or other third parties, or any other unencumbered funds of the Agency available for such purpose.

Section 8. Obligations Only Limited and Special Obligations of Agency.

The Obligations, together with the interest and premium, if any, thereon, shall not be deemed to constitute a debt of any Member or pledge of the faith and credit of the Members or the Agency. The Obligations shall be only special non-recourse obligations of the Agency, and the Agency shall under no circumstances be obligated to pay the Obligations except from revenues and other funds pledged therefor. Neither the Members nor the Agency shall be obligated to pay the principal of, premium, if any, or interest on the Obligations, or other costs incidental thereto, except the Agency from the revenues and funds pledged and available therefor, and neither the faith and credit nor the taxing power of the Members nor the faith and credit of the Agency shall be pledged to the payment of the principal of, premium, if any, or interest on the Obligations nor shall the Members or the Agency in any manner be obligated to make any appropriation for such payment.

No covenant or agreement contained in any Obligation or related document shall be deemed to be a covenant or agreement of any Director, or any officer, employee or agent of the Agency in his or her individual capacity, and neither the Board of the Agency nor any Director or officer thereof executing the Obligations shall be liable personally on any Obligation or be subject to any personal liability or accountability by reason of the issuance of any Obligations.

Section 9. Accounts and Reports.

All funds of the Agency shall be strictly accounted for. The Agency shall establish and maintain such funds and accounts as may be required by good accounting practice and by any provision of any Indenture (to the extent such duties are not assigned to a trustee of Obligations). The books and records of the Agency shall be open to inspection at all reasonable times by each Member.

The Treasurer of the Agency shall cause an independent audit to be made of the books of accounts and financial records of the Agency by a certified public accountant or public accountant in compliance with the provisions of Section 6505 of the Joint Exercise of Powers Act. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California and shall conform to generally accepted auditing standards. When such an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with each Member and also with the county auditor of each county in which a Member is located; provided, however, that to the extent permitted by law, the Agency may, instead of filing such report with each Member and such county auditor, elect to post such report as a public record electronically on a website designated by the Agency. Such report if made shall be filed within 12 months of the end of the Fiscal Year or Years under examination.

The Treasurer is hereby directed to report in writing on the first day of July, October, January, and April of each year to the Board and the Charter Members which report shall describe the amount of money held by the Treasurer for the Agency, the amount of receipts since the last such report, and the amount paid out since the last such report (which may exclude

amounts held by a trustee or other fiduciary in connection with any Obligations to the extent that such trustee or other fiduciary provided regular reports covering such amounts.)

Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants in making an audit pursuant to this Section, shall be borne by the Agency and shall be a charge against any unencumbered funds of the Agency available for that purpose.

In any Fiscal Year the Board may, by resolution adopted by unanimous vote, replace the annual special audit with an audit covering a two-year period.

Section 10. Funds.

Subject to the applicable provisions of any Indenture, which may provide for a trustee or other fiduciary to receive, have custody of and disburse Agency funds, the Treasurer of the Agency shall receive, have the custody of and disburse Agency funds pursuant to the accounting procedures developed under Sections 3.C and 9, and shall make the disbursements required by this Agreement or otherwise necessary to carry out any of the provisions of purposes of this Agreement.

Section 11. Notices.

Notices and other communications hereunder to the Members shall be sufficient if delivered to the clerk of the governing body of each Member; provided that, to the extent permitted by law, the Agency may provide notices and other communications and postings electronically (including, without limitation, through email or by posting to a website).

Section 12. Additional Members/Withdrawal of Members.

Qualifying public agencies may be added as parties to this Agreement and become Charter Members upon: (1) the filing by such public agency with the Agency of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such public agency approving this Agreement and the execution and delivery hereof; and (2) adoption of a resolution of the Board approving the addition of such public agency as a Charter Member. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing.

Qualifying public agencies may also be added as Non-Charter Members ("Additional Members") of the Agency upon: (1) the filing by such public agency with the Agency of a resolution of the governing body of such public agency requesting to be added as an Additional Member of the Agency, and (2) adoption of a resolution of the Board approving the addition of such public agency as an Additional Member. An Additional Member may limit in the aforementioned resolution the scope of its Additional Membership to what is necessary or appropriate to facilitate the financing or refinancing of one or more specified projects or programs.

A Member may withdraw from this Agreement upon written notice to the Board; provided, however, that at least one Member shall be a Charter Member and no such withdrawal shall result in the dissolution of the Agency so long as any Obligations remain outstanding. Any such withdrawal shall be effective only upon receipt of the notice of withdrawal by the Board, which shall acknowledge receipt of such notice of withdrawal in writing and shall file such notice as an amendment to this Agreement effective upon such filing.

Section 13. Indemnification.

To the full extent permitted by law, the Board may authorize indemnification by the Agency of any person who is or was a Director or an officer, employee or other agent of the Agency, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a Director or an officer, employee or other agent of the Agency, against expenses, including attorneys fees, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith in a manner such person reasonably believed to be in the best interests of the Agency and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful and, in the case of an action by or in the right of the Agency, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. The Board may purchase a policy or policies of insurance in furtherance of any indemnification obligation created or otherwise in protection of Directors, officers, employees or other agents.

Section 14. Contributions and Advances.

Contributions or advances of public funds and of the use of personnel, equipment or property may be made to the Agency by the Members for any of the Purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution or advance. Any such advance may be made subject to repayment, and in such case shall be repaid, in the manner agreed upon by the Agency and the Member making such advance at the time of such advance. It is mutually understood and agreed to that no Member has any obligation to make advances or contributions to the Agency to provide for the costs and expenses of administration of the Agency, even though any Member may do so. The Members understand and agree that a portion of the funds of the Agency that otherwise may be allocated or distributed to the Members may instead be used to make grants, loans or provide other financial assistance to governmental units and to nonprofit organizations to accomplish any of the governmental unit's or nonprofit organization's purposes.

Section 15. Immunities.

All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, and other benefits which apply to the activity of officers, agents or employees of Members when performing their respective functions within the territorial limits of their respective public agencies, shall apply to the same degree and extent to the Directors, officers, employees, agents or other representatives of the Agency while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

Section 16. Amendments.

Except as provided in Sections 3B and 12 above, or to cure any error, omission or ambiguity in this Agreement, this Agreement shall not be amended, modified, or altered except with (i) written consent of all holders of any outstanding bonds of the Agency, (ii) written consent of each of Charter Member, and (iii) negative consent of each Additional Member. To obtain the negative consent of each such Additional Member, the following negative consent procedure shall be followed: (a) the Agency shall provide each such Additional Member with a notice at least sixty (60) days prior to the date such proposed amendment is to become effective explaining the nature of such proposed amendment and this negative consent procedure; (b) the Agency shall provide each such Additional Member who did not respond a reminder notice with a notice at least thirty (30) days prior to the date such proposed amendment is to become effective; and (c) if no such Additional Member objects to the proposed amendment in writing within sixty (60) days after the initial notice, the proposed amendment shall become effective with respect to all Members.

Section 17. Effectiveness.

This Agreement shall become effective and be in full force and effect and a legal, valid and binding obligation of each of the Members on the date that the Board shall have received from two of the Charter Members an executed counterpart of this Agreement, together with a certified copy of a resolution of the governing body of each such Charter Member approving this Agreement and the execution and delivery hereof.

Section 18. Partial Invalidity.

If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

Section 19. Successors.

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the consent of the other Members.

Section 20. Miscellaneous.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

This Agreement shall be governed under the laws of the State of California.

This Agreement is the complete and exclusive statement of the agreement among the Members, which supercedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the Members relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their duly authorized representatives as of the day and year first above written.

Charter Member:

KINGS COUNTY

By Joe Neves
 Name: Joe Neves
 Title: Chairman JAN 29 2019

ATTEST:

By Melanie Curtis
 Name: Melanie Curtis
 Title: Deputy Clerk to the Board of Supervisors

Charter Member:

HOUSING AUTHORITY OF THE
 COUNTY OF KINGS

By Joe Neves
 Name: Joe Neves
 Title: Chairman

ATTEST:

By Jennifer Molina
 Name: Jennifer Molina
 Title: Deputy Clerk to the Board of Supervisors

Attachment: CalCHA - JPA Agreement (2932 : Affordable Housing and Homeless Program Update 2020)

**FIRST AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT
RELATING TO THE CALIFORNIA COMMUNITY HOUSING AGENCY**

THIS FIRST AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT, dated July 30, 2019 (this "First Amendment"), is executed and delivered to amend the provisions of that certain Joint Exercise of Powers Agreement, dated as of January 1, 2019, (the "Agreement"), among the County of Kings and the Housing Authority of the County of Kings (the "Charter Members") and the other members (the "Additional Members" and, together with the Charter Members, the "Members") thereto.

WITNESSETH

WHEREAS, pursuant to Title 1, Division 7, Chapter 5 of the California Government Code (in effect as of the date hereof and as the same may from time to time be amended or supplemented, the "Joint Exercise of Powers Act"), the Charter Members and the Additional Members entered into the Agreement; and

WHEREAS, pursuant to Assembly Bill No. 1912, enacted on September 29, 2018 ("AB 1912"), Section 6508.1 of the California Government Code prohibits Members from disclaiming the retirement obligations of the Agency if the Agency were to contract with a public retirement system (as defined in such statute); and

WHEREAS, also pursuant to AB 1912, Section 6508.2 of the Government Code requires that the retirement obligations of the Agency be apportioned among former and current Members such that the apportionment equals 100% of the retirement liability of the Agency if the Agency is unable to meet its retirement obligations under the circumstances described in such statute; and

WHEREAS, the Agency does not currently have any retirement contract with any public retirement system; and

WHEREAS, pursuant to Section 16 of the Agreement, the provisions of the Agreement may be amended with the written consent of the Charter Members provided that no amendment shall materially adversely affect the interests of any Additional Member unless the negative consent of that Additional Member is also obtained; and

WHEREAS, in order to ensure that Members will not be obligated for any portion of any future retirement obligations of the Agency, the Charter Members now find it necessary and desirable to amend the Agreement as provided herein, which amendment does not materially adversely affect the interests of any Additional Member; and

NOW, THEREFORE, the Charter Members, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

Section 1. Authority for Amendment.

This First Amendment is hereby executed in accordance with Section 16 of the Agreement.

Section 2. Definitions.

All terms defined in the Agreement shall have the same meanings when used in this First Amendment, except as otherwise provided herein.

Section 3. Amendments.

A. Amendment to Section 3.A. of the Agreement.

The paragraph in Section 3.A. of the Agreement is hereby amended to read in full as follows (additions to the Agreement shown in underline text and deletions shown in ~~striketrough~~ text):

Pursuant to the Joint Exercise of Powers Act, there is hereby created a public entity to be known as the "California Community Housing Agency" (the "Agency"), and said Agency shall be a public entity separate and apart from the Members. To the extent permitted by law, its ~~its~~ debts, liabilities and obligations do not constitute debts, liabilities or obligations of any Members, and the Obligations of the Agency shall only be non-recourse obligations.

B. Amendment to Section 4 of the Agreement.

Section 4 of the Agreement is hereby amended to read in full as follows (additions to the Agreement shown in underline text and deletions shown in ~~striketrough~~ text):

The Agency shall have the power, in its own name, to exercise the common powers of the Members and to exercise all additional powers given to a joint powers entity under any of the laws of the State of California, including, but not limited to, the Joint Exercise of Powers Act, for the Purpose authorized under this Agreement. Such powers shall include the common powers specified in this Agreement and may be exercised in the manner and according to the method provided in this Agreement. The Agency is hereby authorized to do all acts necessary for the exercise of such power, including, but not limited to, any of all of the following: to make and enter into contracts; to employ agents and employees; to acquire, construct, improve, own, maintain and operate, or provide for maintenance and operation, and sell, lease, pledge, assign, mortgage or otherwise dispose, of any property, improvements, commodities, leases, contracts, receivables, bonds or other revenue streams or assets of any kind relating to the Purpose; to exercise the power of condemnation; to incur debts, liabilities or obligations; to receive gifts, contributions and donations of property, funds, services, and other forms of assistance from person, firms, corporations and any governmental entity; to sue and be sued in its own name; to establish and collect

fees; to form public benefit nonprofit corporations or other affiliate entities to accomplish any of its Purposes; to make grants, loans or provide other financial assistance to governmental, nonprofit and for profit organizations to accomplish any of its Purposes; and generally to do any and all things necessary or convenient to accomplish its Purposes. The boundaries of the Agency shall encompass the boundaries of all the Members and the powers of the Agency may be exercised anywhere within those boundaries or to the extent permitted by the laws of the State of California, including, but not limited to the Joint Exercise of Powers Act, outside of those boundaries, which may be outside of the State of California, provided that the power of condemnation may only be exercised within the jurisdictional boundaries of the Charter Members.

Notwithstanding anything to the contrary in this Agreement, the Agency shall not have the power or the authority to enter into any retirement contract with any public retirement system (as defined in Section 6508.2 of the California Government Code) for any reason. The provision in this paragraph is intended to benefit the Members and to be a confirming irrevocable obligation of the Agency which may be enforced by the Members, individually or collectively.

Without limiting the generality of the foregoing, the Agency may issue or cause to be issued Obligations, and pledge any property, contracts or revenues as security to the extent permitted under the Joint Exercise of Powers Act, or any other applicable provision of law.

The manner in which the Agency shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which a California county could exercise such powers and perform such duties. The manner in which the Agency shall exercise its powers and perform its duties shall not be subject to any restrictions applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a party to this Agreement or not.

C. Amendment to Section 20 of the Agreement.

Section 20 of the Agreement is hereby amended to read in full as follows (additions to the Agreement shown in underline text and deletions shown in ~~strikethrough~~ text):

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

This Agreement shall be governed under the laws of the State of California.

This Agreement, along with its recitals which are an integral part and are incorporated herein, is the complete and exclusive statement of the agreement among the Members, which ~~supersedes~~^{supersedes} and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the Members relating to the subject matter of this Agreement.

Section 4. Effective Date.

This First Amendment shall become effective and be in full force and effect on the date that the Board shall have received from two of the Charter Members an executed counterpart of this First Amendment.

Section 5. Miscellaneous.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

The recitals are an integral part of this First Amendment and are incorporated herein.

Any section not so amended as stated above shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to Joint Exercise of Powers Agreement to be executed and attested by their duly authorized representatives as of the day and year first above written.

Charter Member:

KINGS COUNTY

By Joe Neves

Name: Joe Neves

Title: Chairman AUG 06 2018

ATTEST:

By Catherine Venturella

Name: Catherine Venturella

Title: Clerk of the Board of Supervisor

Charter Member:

HOUSING AUTHORITY OF THE
COUNTY OF KINGS

By Doug Verboon

Name: Doug Verboon

Title: Vice Chairman

ATTEST:

By Jennifer Molina

Name: Jennifer Molina

Title: Administrative Assistant



May 30, 2019

Orrick, Herrington & Sutcliffe LLP

The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669

+1 415 773 5700
orrick.com

Justin Cooper

E jcooper@orrick.com
D +1 415 773 5908
F +1 415 773 5759

California Community Housing Agency
2999 Oak Road, Suite 710
Walnut Creek, CA 94597
Attn: Michael LaPierre

Re: California Community Housing Agency

The California Community Housing Agency (“CalCHA”) was formed pursuant to a Joint Exercise of Powers Agreement (the “Agreement”) between two original members, Kings County and the Housing Authority of Kings County (the “Charter Members”). In accordance with Section 12 of the Agreement, additional cities, counties and other local government entities may, and have, joined CalCHA (each a Non-Charter Member or “Additional Member” and, together with the Charter Members, the “Members”). You have asked whether an Additional Member is exposed to liability by virtue of its decision to become a member of CalCHA and/or its approval of bonds proposed to be issued by CalCHA.

CalCHA is a political subdivision of the State of California created under the California Joint Powers Act (California Government Code Section 6500 and following) (the “Act”) and the Agreement. Pursuant to the Act and the Agreement, CalCHA is authorized to issue revenue bonds and to acquire, construct, improve, own, maintain and operate, or provide for maintenance and operation, and sell, lease, pledge, assign, mortgage or otherwise dispose, of any property.

In order to meet state law, federal income tax law, and policy requirements for the issuance of certain bonds, CalCHA has adopted a policy to not issue bonds or other forms of indebtedness unless the governing body of an Additional Member (or Charter Member, as the case may be) in which the proposed project (the “Project”) is located approves the issuance of bonds for the Project.

Attachment: CalCHA - No Liability Letter (2932 : Affordable Housing and Homeless Program Update 2020)



Page 2

Pursuant to applicable state law, CalCHA policies, and the documents providing for the issuance of bonds by CalCHA, the bonds are issued as limited obligations of CalCHA, not of any Charter Member or Additional Member, and are payable solely out of the revenues and receipts derived from the Project being financed.

Specifically, Section 8 of the Agreement provides that “[t]he Bonds, together with the interest and premium, if any, thereon, shall **not** be deemed to constitute a debt of any Member or pledge of the faith and credit of the Members...Neither the Members nor...shall be obligated to pay the principal of, premium, if any, or interest on the Bonds, or other costs incidental thereto...” (emphasis added). The Agreement also expressly provides that CalCHA is a public entity separate and apart from the Members, and “[i]ts debts, liabilities and obligations do not constitute debts, liabilities or obligations of any Members.”¹ Accordingly, bonds issued for any particular Project will be indebtedness solely of CalCHA.

Please do not hesitate to contact me if you have further questions with respect to this matter.

Sincerely yours,

/s/ Justin Cooper

Justin Cooper

¹ See Cal. Government Code Section 6508.1. “...the debts, liabilities, and obligations of the agency shall be debts, liabilities, and obligations of the parties to the agreement unless the agreement specifies otherwise.”

CITY OF MORGAN HILL

Begin Re-Use Program Guidelines

OCTOBER 2020 (Finalized 11.15.2020)

Purpose of the Program

The BEGIN Program is administered by the City of Morgan Hill and funded by the State of California Housing and Community Development Department. The Program is designed to make grants to qualifying cities to be used for down payment assistance in the form of deferred payment loans to qualifying first-time homebuyers of low and moderate income eligible households, purchasing newly constructed homes in a specific development project within the City of Morgan Hill limits.

1. Eligible uses of Funds:

BEGIN funds are project specific and may be used only for:

- a. The provision of permanent secondary mortgage assistance to first time homebuyers in connection with a new primary mortgage loan for the purchase of a principal place of residence located within the specific homeownership development project for which the City has received BEGIN funds.
- b. Self-help housing mortgage assistance
- c. Funds can be used to pay non-recurring closing costs

Eligibility Requirements for Program Participants and Property

1. General Requirements

- All applicants are required to be first time homebuyers. A first-time homebuyer is a low-or moderate-income household whose members have not owned a primary residence in the past three tax years. An exception is allowed for a "displaced homemaker" or a single parent who, while married, owned a home with his or her spouse. See Section 6 for a more detailed description of this requirement.
- All program applicants must submit evidence that they have completed an approved first-time homebuyer training course before their applications will be considered. Approved training courses are those certified by HUD, Fannie Mae or the online course offered by MGIC. On line approved class can be found at www.Hud.gov or www.housing.org
- Program applicants must submit a pre-approval letter from their first mortgage lender, and their loan application (1003 form) prior to the City's consideration for approval of their application.

2. Type of Residence and Maximum Loan Amount

Loan funds may be used to purchase the following types of residences for ownership purposes:

- Single family homes
- Duplexes, triplexes, four-plexes
- Condominiums and townhomes

- Manufactured housing on a permanent foundation.

All City-assisted homes must meet federal housing quality standards and all local City building codes in effect at the time of loan application or prior to funding.

Requirements for Residence

- The property must be located within Morgan Hill City limits.
- The initial maximum home sales price shall not exceed the price set by the City based on the amount that an eligible Household can afford under reasonable financing assumptions such as those set by the California Department of Housing and Community Development and the California Housing Finance Agency. In setting the initial sales price the City shall consider whether the price exceeds the annual maximum sales price published by the California Housing Finance Agency.
- The total amount of the loan shall **not** exceed \$50,000.
- The BEGIN loan shall be secured by the property or leasehold interest, as applicable.

3. Income Requirements

The combined household income of program participants shall not exceed limits established for moderate or low-income households, based on the number of persons in the household. The area median income limits (AMI) are published by the California Department of Housing and Community Development and are 80% of the AMI for low income, and 120% of AMI for moderate income. HCD does make minor adjustments to the income limits based on special circumstances and conditions. Once household size and gross income has been established and verified, the City will compare the information to the current BEGIN Program income limits to determine if the household is eligible to participate in the BEGIN loan program.

The website link to published income limits is:

<http://www.hcd.ca.gov/hpd/hrc/rep/state/inc2k6.pdf>

Calculating Gross Income

Household income may not exceed the income limit in effect at the time of application to the homebuyer program. Income is defined as the anticipated income earned from all household members age 18 years and above, calculated for the 12 month period following the date of determination of income. Income includes earnings from employment, government benefits, investments, and other cash-generating activities. The following methods will be used by City staff to calculate income.

- a. Income from employment for full-time applicants will be calculated from the applicant's most recent paystubs for the prior three months and projected forward at the same level of earnings for 12 consecutive months.

- b. For part-time hourly employees, the City will calculate the year-to-date income from the most recent paystubs for the prior three months and divide the earnings by the number of weeks covered through the year in order to find the average amount of weekly earnings. The weekly earnings will be multiplied by 52 and divided by 12 to calculate monthly gross income. If the year-to-date income covers less than three months in the current year, the City can request to include the average year-to-date earnings from the prior calendar year in addition to the current year.
- c. Income from overtime, commissions, ongoing stipends, shift differential pay, and other sources will be averaged (using year-to-date earnings) and included in the applicant's gross monthly income. Exceptions can be made for applicant's receiving one-time non-recurring bonuses or relocation benefits.
- d. Income that is pay in lieu of earnings, such as unemployment, worker's compensation, severance pay, and welfare assistance will be calculated. Although such payments may be excluded by the first mortgage lender for underwriting purposes, they shall be included in determining the applicant's eligibility for the City's program.
- e. Interest income from investments, such as saving accounts, stocks, bonds, money market, and certificate of deposit accounts, dividend income from mutual fund accounts, and other income-generating assets that are in excess of \$5,000 gross income will be included in the applicant's household income to include the greater of:
 - 1. The actual amount of income, if any, derived from all the net household assets
 - OR
 - 2. 2.5% (Passbook rate) of the value of all such assets
- f. Current monthly income payments from retirement accounts, (including social security and pensions), alimony, child-support, and other steady, ongoing sources will be included in the applicant's gross monthly household income calculation.
- g. All forms of Income from non-applicant spouses and other household members will be included in the gross monthly income calculation, regardless of the taxability of such income. They will be counted as part of the household to determine total household size.
- h. Income from seasonal and part-time jobs such as coaching, lecturing, test proctoring, etc. will be included in the city's definition of household income only when the applicant has been employed in the same line of work for at least two years and the work can reasonably be expected to continue into the future.
- i. Net income from the operation of a professional business, the production and/or sale of goods, or the provisions of a service as determined by calculating the average net income as reflected in the business' federal income-tax returns for the past three years.

Verifying Gross Income Calculations

- a. Income documentation that may not provide sufficient information will be verified with a VOE from an applicant's employer that is provided by the first mortgage lender to show the start date of employee, hourly pay or salary, average number of hours worked, overtime, tips and bonus income that is standard employee compensation.

- b. City staff and/or Administrator will compare the calculated gross annual income to the first mortgage lender's income calculation by comparing the information provided on the Uniform Residential Loan Application (commonly referred to as a 1003) that was prepared by the first mortgage lender and signed by the applicants.
- c. City staff will utilize a Gross Income Calculation Work Sheet to document the household total gross income and will submit the worksheet with the draw request for the household.

Self-Employed Borrowers

The following documents may be required to document income:

- a. A year-to-date profit/loss income statement prepared and signed by a Certified Public Accountant, with information covered through the last quarter
- b. A year-to-date balance sheet, prepared to reflect the financial position of the business at a specific point in time
- c. A signed letter of explanation regarding the applicant's anticipated gross household income over the next 12 months.
- d. Three years federal tax returns with 1099's.

4. Determining Household Size

Household size is determined by referencing the most recent federal tax returns and counting the family members identified on the tax return. Some households may include persons who are not counted as family members for the purpose of income limits and whose income, if any, is not considered when calculating gross income. Examples of household members that will NOT be counted are: foster children, unborn children and children being pursued for legal custody or adoption who are not currently living with the household. A child who is subject to a shared-custody agreement, in which the child resides with the household at least 50% of the time, can be counted.

Any non-applicant spouses or other household members who are documented on federal tax returns will be counted as household members

5. Occupancy Requirements

Borrower shall use the home purchased under this program as their primary residence. During the thirty years of the BEGIN loan the owner occupant shall not lease or rent out the subject property and shall occupy the property for no fewer than ten months per year. If the home is subject to a Resale Restriction Agreement with a qualified non-profit agency or the City of Morgan Hill the terms of primary residence and occupancy standards as established in that Agreement are to be in a priority position and would be subordinated by the City of Morgan Hill BEGIN deed of trust.

6. Qualification as a First-Time Homebuyer.

BEGIN Program Guidelines a "First-time homebuyer" means a borrower who has not owned a home or on title within the three-year period before the purchase of a home with BEGIN assistance, except for several exclusions:

- a. A displaced homemaker who, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse. A displaced homemaker is an

adult who has not, within the preceding two years, worked on a full-time basis as a member of the labor force for a consecutive twelve-month period and who has been unemployed or underemployed, experienced difficulty in obtaining or upgrading employment and worked primarily without remuneration to care for his or her home and family;

- b. A single parent who, while married, owned a home with his or her spouse or resided in a home owned by the spouse. A single parent is an individual who is unmarried or legally separated from a spouse and has one or more minor children for whom the individual has custody or joint custody or is pregnant; or
- c. An individual or individuals who owns or owned, as a principal residence during the three-year period before the purchase of a home with BEGIN assistance, a dwelling unit whose structure is:
 1. Not permanently affixed to a permanent foundation in accordance with local or state regulations; or
 2. Not in compliance with state, local or model building codes and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

Verification of a first time homebuyer status will require that the borrowers provide copies of their last three (3) years signed federal tax returns and credit report verifying that the borrower did not claim a principal residence deduction for mortgage interest or taxes on real property.

Acceptable alternative exhibits to document federal tax returns are:

- a. If the borrower filed the 1040 Long Form for the prior three years and cannot produce an original copy of the signed tax returns, then the borrower must request a copy of the returns from the IRS by completing a Form 4506-T for submittal via mail or fax, or Calling the IRS at 1-800-829-1040 and requesting a transcript to be mailed.
- b. If the Borrower has filed the short form 1040A or 1040EZ for the prior three years and cannot produce the signed returns, the City staff will accept a Return Transcript from the IRS verifying the filing status of the Borrower. The letter should confirm that the Borrower filed the 1040A or 1040 EZ for the years in question. The Borrower can request tax account information by completing a Form 4506-T and mailing or faxing it or use the IRS automated request system by phoning 1-800-829-1040 and following the instructions.

The information to be provided on IRS individual transcripts should include: (1) name and social security number; (2) type of return filed; (3) marital status; (4) tax shown on the return; (5) adjusted gross income (6) taxable income; (7) self-employment tax; and (8) number of exemptions. If the address on the tax returns filed is different than the Borrower's current address, the Borrower should also provide a written statement (signed by all Borrowers) indicating that the previous returns had been filed at a different address.

- c. In the event the Borrower was not obligated to file federal income tax returns for any of the preceding three years, it will be necessary for the Lender or City staff to obtain from the Borrower a completed and signed Applicant Income Tax Certification which is required in place of (a) or (b) above. This document is to be forwarded to the City staff with the BEGIN Loan Application and the Lender Initial Certification of Borrower Eligibility. The Applicant Income Tax Certification must be accompanied with documented proof of the reason for not filing taxes.

d. When an application is submitted during the period between January 1 and April 15, and the Borrower has not yet filed his/her Federal income tax return for the preceding year with the IRS, the City staff may rely on a certification from the Borrower that the Borrower is not entitled to claim deductions for taxes or interest on indebtedness with respect to property constituting his/her Principal Residence for the preceding calendar year. The certification must be included within the Applicant Income Tax Certification. All BEGIN loan applications do require that the Borrowers provide their W-2 or 1099 forms for each employed applicant for the proceeding year.

e. The City and Borrower are cautioned that in the above noted situations, a BEGIN loan commitment will be issued conditional upon receipt of substantiating documentation such as the prepared Federal Income Tax Return. The BEGIN loan may not be issued or funded at the time of close of escrow if the missing documentation has not been submitted and reviewed by City staff and or Administrator.

7. Debt-to-income Ratios

Housing costs

The housing payment or "front-end: debt-to-income ratio as it is commonly called, is calculated by dividing the total monthly housing payment by the applicant's gross monthly income.

Monthly payments for the following items are to be included when considering the monthly housing payment.

- a. Principal and interest payment on the first mortgage
- b. Real Estate taxes and local district assessments
- c. Hazard insurance premium
- d. Flood insurance premium
- e. Private Mortgage Insurance Premium, if applicable
- f. Monthly Homeowners' Association dues for condominiums and for homes located in planned unit developments (PUD)

The first ratio calculation should not exceed forty percent (40%) of the applicant's gross monthly income or lower than twenty-eight percent (28%).

Total Debt

The total debt-to-income ratio, or "back-end ratio" as it is commonly called, is calculated by adding together the total monthly payments of all existing long-term debt (debt with a remaining term of 10 or more months) and the total monthly housing payment and dividing that sum by the applicant's gross monthly income, as defined in Section 3.

The total monthly debt to be considered includes:

- a. the monthly housing payment as defined above

- b. Long-term installment debt beyond 10 months remaining to be paid
- c. Revolving accounts and lines of credit
- d. Alimony, child support or maintenance, if applicable.

Generally, the result of the second ratio calculation should not exceed forty-five percent (45%) of applicant's gross monthly income.

In setting and reviewing both the Housing costs and Total Debt ratios, the City and or Administrator will consider whether the debt ratio guidelines exceed any current published ratio guidelines by the California Housing Finance Agency.

Allowances for Higher Ratios

Some borrowers may qualify for first-mortgage financing at higher ratios than those cited above.

Recognizing that the financial circumstances of each homebuyer are unique and that there may be other factors besides debt-to-home ratios that reflect the borrower's ability and willingness to repay mortgage loans, the City may consider compensating factors when reviewing standard mortgage underwriting guidelines in approving higher ratios. Examples to be looked at include:

- If the applicant has met their housing obligations as well as all other debts that are equal to or greater than the proposed monthly housing costs for the property being purchased, there is a valid consideration to consider a lower score as acceptable.
- The applicant has demonstrated he/she is a limited user of credit and they show a history of being able to save money indicating they have more income to devote towards housing costs.
- When the applicant has substantial non-taxable income special consideration may be given to regular sources of income which will continue in the future to be "grossed up". Non-taxable income is worth more because the applicant does not have to pay taxes on it and is worth a fifteen percent 15% factor to be added to income for an increase in total income, to be used for loan underwriting calculations only.
- There will be no more than a five percent 5% increase in the prospective applicant's housing expense in the future

8. Credit History

Analyzing the Credit Report:

The applicant's first mortgage lender will provide a tri-merged credit report for each applicant for review by the City's BEGIN Coordinator to analyze the applicant's overall pattern of credit usage to determine their likelihood of repayment of their first mortgage in a timely manner;

- The credit report must be analyzed for consistency with loan applications as well as for complete credit account information from the credit reporting agency(ies)
- Generally, all applicants shall have a minimum 620 FICO credit score.

Exceptions for Lower Scores

Some borrowers may qualify for a first-mortgage with lower credit scores than cited above. Exceptions are on a case by case basis and may include applicants who have successfully completed an ACORN homeownership program, may not have an established credit history and have demonstrated the ability to make regular payments over a twelve month period by using non-standard documentation such as rent and utility records to establish alternative credit scoring.

If Lenders and applicants seeking City approval of lower credit scores should submit a written request and a letter of explanation to the HCD Coordinator as part of the applicant's loan application. The decision of the HCD Coordinator shall be final.

Loan Conditions and Terms

1. Review of Primary Lender's Loan Terms and Conditions

City staff or Administrator will review the term, interest rate, and conditions of the primary lender's loan to insure that the Program requirements are met;

- a. The interest rate must be reasonable in relation to the current market. A below-market-rate of interest and flexible underwriting terms as found in the state lending products are preferred.
- b. Mortgages may not include provisions for potential negative amortization, principal increases, deferred interest, balloon payments, adjustable rates and temporary buy downs where the future interest rate is not established.
- c. The terms of the first mortgage shall be for 30 years with a fixed rate.

2. Subordinate Financing Requirements

- a. No financing subordinate to the City's loan may have a balloon payment due prior to 30 years from the term of the subordinate loan
- b. All subordinate financing shall defer all principal and interest payments for the term of the BEGIN loan
- c. **Fees or charges for subordinate** financing shall be consistent with reasonable loan origination fees for first mortgage financing as determined by the City based on industry standards.
- d. Homebuyer mortgage assistance loans can be no more than 20% of the purchase price and must have a combined loan-to-value ratio not exceeding 100% of the sales price plus a maximum of up to 5% of the sales price to cover actual non-recurring closing costs.

3. Establishing Maximum Amount of BEGIN City Loans

The City will use the following method(s) for determining and/or approving the maximum downpayment assistance amounts.

- a. The maximum second mortgage amounts for City-assisted for sale projects will be determined by city staff, and will not exceed funding source maximum limits per program.

Downpayment assistance BEGIN loans will not exceed the limit of \$50,000. The Amount of the BEGIN loan shall be determined on a case-by-case basis by the City or Administrator in accordance with these established Guidelines and, when considered with other available financing and assistance, the minimum amount necessary to;

- a. Ensure affordable monthly housing costs as defined by the first mortgage lender (The first lender shall make the largest first mortgage loan amount possible given the ability of the Borrower to repay in order to keep the BEGIN loan amount at the minimum amount necessary).
- b. Exceptions to the limit of \$50,000. Maybe considered with City approval.

4. Loan to Value Limits

The Loan to Value (LTV) ratio for a BEGIN loan, when combined with all other indebtedness to be secured by the property, shall not exceed 100% of the sales price plus a maximum of up to 5% of the sales price to cover closing costs.

5. Interest Rate of BEGIN City Loans

The interest rate is fixed over the 30-year loan period:

- 1% for the 30 year term of the loan

6. Deferment Period for BEGIN City Loans

The maximum deferment period is thirty years. Within the thirty-year deferment period, borrowers may repay the principal amount without incurring an interest charge. After the thirty year deferment period, borrowers shall pay the City the balance of the principal and all accrued interest. Any and all principal and interest owed are due upon sale of the property, a refinance of the first mortgage, or maturity of the first mortgage loan, which ever occurs first. BEGIN loans are repayable when the property ceases to be owner-occupied if it occurs during the first five years..

7. Assumption of BEGIN City Loan

The BEGIN loans are assumable after the first five years of ownership by the first borrower, if the home is resold to an income qualifying household with a new note and deed of trust.

8. Repayment Program

If the City determines that repayment of the BEGIN loan at maturity date causes a hardship to the borrower, the City has two other options. They are:

Amend the note and deed to defer repayment of the amount due for up to an additional thirty years at 0% additional interest, this may be offered one time; OR

Convert the debt at loan maturity, including the original principal balance and all accrued interest, to an amortized loan, repayable in 15 years at 0% additional interest.

9. BEGIN City Loan Period

The loan period is 30 years. All principal and applicable interest must be paid at the end of the 30-year loan period. Borrowers may pay off the entire loan balance (principal and any applicable interest) at any time during the 30-year loan period without prepayment penalty.

Continued Eligibility throughout Application and Funding Processes

Applicants shall maintain eligibility throughout application and funding processes. Changes to income, number of persons in household, residing within the City limits, and inability to secure a primary mortgage that complies with Program Guidelines may affect household eligibility for funding. Applicants shall report any changes that may affect their program eligibility to the City when changes occur. The City may request updated paystubs or tax returns from applicant prior to disbursement of the loan.

Other BEGIN City Loan Requirements;

1. All City loans must be secured by the property through a deed of trust no more junior than second position. The City will subordinate its loan to state-funded downpayment assistance loans with a requirement to be in second position.
2. All borrowers must have a first mortgage loan
3. The City does not allow non-occupant or non-applicant co-signers to the City loans. Any individual listed on the loan application must occupy the City-assisted home as their primary residence.
4. The combined indebtedness of all loans, including other junior and senior loans, cannot exceed one hundred five percent (105%) of the sales price.
5. The City will require the assisted borrower to obtain title insurance that includes the amount of the City BEGIN loan at close of escrow.
6. Borrower must provide and maintain fire and floor (if property is located in a 100-year floodplain) insurance in an amount at least equal to the replacement value of the improvements. City must be named as an additional loss payee on the policy.

Loan Approval Process

Approval of loan applications for the Morgan Hill BEGIN Loan Program shall be subject to approval by the HCD Coordinator or their designee and shall remain in effect for **one hundred eighty (180) days** from the City's approval date.

Completed Loan Application Contents and Process

The City shall date and time stamp all completed loan applications received, prior to their consideration.

Each applicant shall submit to the City the following information and documents:

- City's BEGIN Loan Application Packet signed and dated where indicated;
- Copies of First Mortgage Lender's pre-approval letter and loan application (called a 1003) completed by applicants;
- Copies of all secondary loan applications and approvals from the lender, government agency or non-profit agency.
- Copy of First-Time Homebuyer Training Certificate (if applicant is a first-time homebuyer);
- Copy of a tri-merged credit report for each applicant that is dated within the last 30 days.
- Bank statements including savings, CDs, money market dividend income from mutual fund accounts for verification of applicant's assets
- Income verification documents
 - Three months of all verifiable income for all applicants (income statements or pay stubs)
 - Two years of federal tax filings and associated W-2s; and/ or prior year's W2 if application received during the first three (3) months of a calendar year.
 - Social Security Income (if applicable);
 - Retirement Income, e.g. annuity or pension (if applicable);
 - Three months of bank statements for all applicants.

If the application is approved, the City will issue a **BEGIN Approval Letter** to the applicants.

Method of Allocation of BEGIN funds

The City shall consider completed loan applications on a first-come, first-served basis as funds are available for eligible new home development. City shall only accept applications when accompanied by **ALL** documents required for the loan approval stage.

Loan Commitment Letter

If the loan is approved, the City will issue an Approval letter stating that the City will fund the BEGIN loan. The loan Approval letter shall remain in effect for a period of **one hundred eighty (180) days** from the date of loan approval.

Extension of Loan Commitment

The applicant may request, in writing, that the City extend its Loan Commitment. The letter must set forth the reasons for the request, such as a delay in construction of completion of the new home. If approved, the maximum time extension shall **NOT** exceed **sixty (60) additional days**. Only one extension shall be granted.

Promissory Note and Deed of Trust

In order to receive the Loan, Borrower will be required to execute a promissory note evidencing the loan and its terms. Borrower shall also sign a deed of trust securing the loan.

Title Insurance with City named as Beneficiary

Borrower shall obtain a title insurance policy listing the "City of Morgan Hill" as a beneficiary.

Lending Restrictions

The City **BEGIN** loan shall be subject to the first lender to secure its first mortgage on the property, such as the California Housing Finance Agency, to secure any financial assistance it may provide Buyer. The City BEGIN loan shall also be subject to a Resale Restriction Agreement between the City or an approved non-profit agency, and the borrower.

The City shall **NOT** fund BEGIN loans accompanied by the following first mortgage loans.

- Interest only mortgage loans
- First mortgage applications allowing undocumented income.
- Adjustable rate mortgage loans
- First mortgage applications allowing all calculated housing debt to exceed 40% and total debt to gross income ratios that exceed 45%.

Use of Funds

Loan funds shall be used for down payment assistance and non-recurring loan closing costs only. Use of loan funds for recurring closing costs associated with purchasing the home, repairs, room additions, remodeling, refinancing, or purchase of any non-real property is prohibited.

Loan Documentation

1. All BEGIN loans shall be accompanied by the following documents and provisions;
 - a. Promissory Note payable to the City in the principal amount of the loan and stating the terms and rate of interest.
 - b. Deed of Trust securing the Note; this deed shall be recorded and shall secure the City's financial interest in the property.
 - c. Other appropriate security instruments naming City as beneficiary (for instance, Resale Restriction Agreement between Borrower and City)
 - d. Request for Copy of Notice of Default
 - e. Escrow Instructions to Title Company

Disbursement of Funds

Upon receipt of the following documents, City staff may disburse approved loan funds into an escrow account as may be designated by the Seller (and approved by City):

- Executed purchase contract (signed by both seller and applicant);
- Appraisal prepared by an independent, State-licensed appraiser who has the knowledge and experience necessary to appraise residential property. The appraisal must have been completed not be more than 60 days from date of close of escrow.
- Signed BEGIN Program Deed of Trust; securing the Note.
- Signed BGIN Program Promissory Note;
- Initialed Truth in Lending Statement and other disclosure documents legally required;
- First Lender's Note and Deed of Trust;
- Copies of any new or updated applications or approvals provided by other assistance sources, such as the Mortgage Credit Certificate Program or California Housing and Finance Agency programs such as CHDAP and School Fee Assistance Grants; non profit downpayment assistance programs such as NeighborWorks and Santa Clara County Housing Trust, or state agencies such as Cal HOME and Joe Serna Farmworker Grant program.
- Updated pay stubs, tax returns that were not available at time of application
- Preliminary title report, escrow company, and escrow account number, escrow officer contact information including e-mail address;
- Buyer's Closing statement from escrow company; and
- Wiring instructions from the escrow company.



SANTA CLARA COUNTY

COMMUNITY PLAN TO END HOMELESSNESS

2020–2025



Table of Contents

2	Introduction
4	Our Homelessness Crisis
6	Ending Homelessness in Santa Clara County
7	The Strategies
9	Strategy 1: Address the Root Causes of Homelessness Through System and Policy Change
11	Strategy 2: Expand Homelessness Prevention and Housing Programs to Meet the Need
12	Strategy 3: Improve Quality of Life for Unsheltered Individuals and Create Healthy Neighborhoods for All
14	Thank you!

Acknowledgements

The Community Plan Steering Committee would like to thank the many community stakeholders, people with lived experience of homelessness, and organizations for their participation in the process to update the plan and their valuable input.
For a full list of organizations that participated in the process, see page 14.



Introduction

In 2015, the community came together to create a roadmap for ending homelessness in Santa Clara County. This plan— which was centered around a collective impact response and the proven Housing First model—set an ambitious goal to create 6,000 new housing opportunities and identified innovative strategies and programs for reducing homelessness.

Supportive Housing System Progress 2015-2019

Thanks to the collective efforts of partners throughout the community, over the past five years, we have done the following:

Helped **8,884 households** resolve their homelessness,

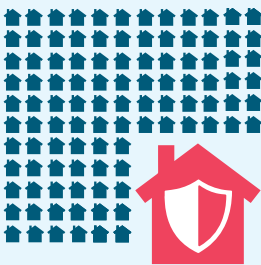
representing **14,132 people**



Doubled the number of supportive housing units in Santa Clara County



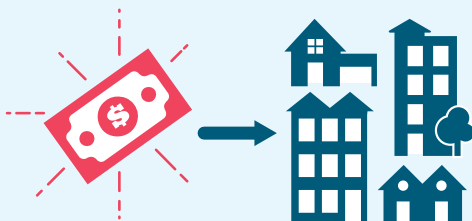
Doubled our temporary housing and emergency shelter capacity



Launched a new homelessness prevention system that now serves about **1,000 households annually**



Led a community-wide campaign that has successfully housed more than **1,600 veterans** and engaged nearly **800 private landlords** in the effort



Voters approved **\$950 million** to develop affordable housing through the 2016 Measure A Affordable Housing Bond and raised another **\$100 million** in private contributions to support the implementation of the community plan

Despite our progress creating a supportive housing system that assists thousands of homeless individuals and families each year, the crisis continues to grow. The systemic factors driving homelessness in our community— from the failed policies at the local, state, and national level to the extreme lack of housing options that are affordable for low-income residents—remain stronger than ever and are pushing more of our neighbors onto the streets every day.

These challenges have been compounded by the novel coronavirus (COVID-19) pandemic that arrived in our community as this plan was in development, making implementation of many of these strategies even more urgent. This public health crisis has ground our local economy to a halt, leaving many more households on the brink of homelessness due to job loss, lack of childcare, and economic uncertainty. The pandemic has also required a massive and immediate response by our crisis response system to quickly ramp up shelter capacity, increase access to hygiene services for people living outside, and protect those people experiencing homelessness who are particularly vulnerable. As a result, as this plan goes into effect, we anticipate there will be many more people experiencing or at risk of homelessness who will need immediate support, which will require our community to continue to be flexible and innovative in our responses to homelessness.

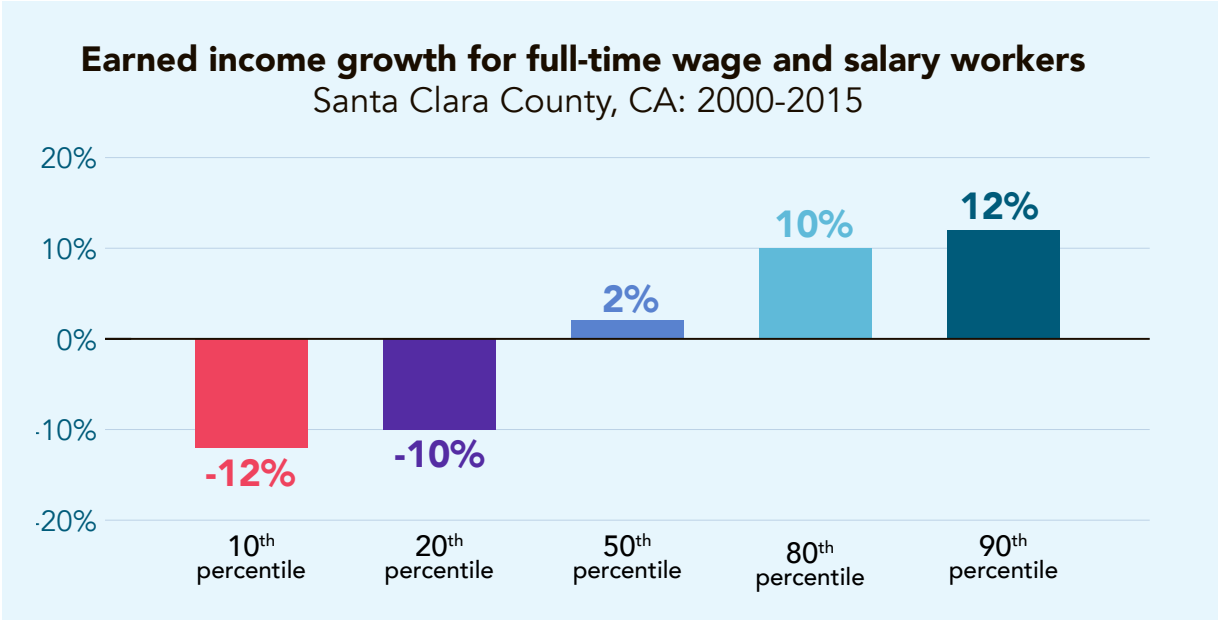
To truly end homelessness in Santa Clara County, we must summon the collective will and resources to not only respond to the current crisis and scale our successful housing strategies, but also address and eliminate the root causes of homelessness in our community.

Signatures

Our Homelessness Crisis

According to the 2019 Point-in-Time count, there are 9,706 individuals experiencing homelessness on any given night in Santa Clara County.¹ Families with children, seniors, individuals with disabilities, veterans, youth and young adults are all represented in the county’s diverse homeless population. More than 80% of these individuals are unsheltered—sleeping outside, in cars, or other places not meant for human habitation. We expect that these numbers will increase over the coming months as the full impact of the COVID-19 pandemic is felt.

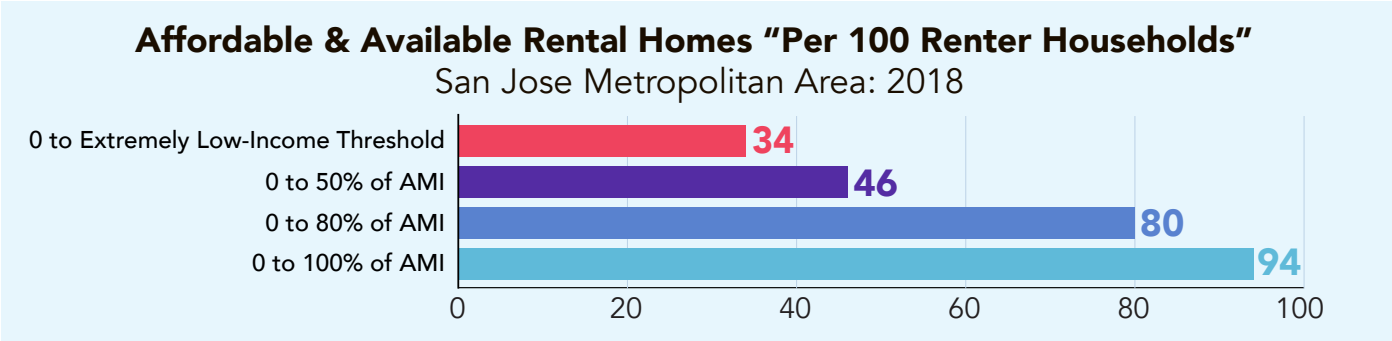
The gap between the rich and the poor in our community, combined with the lack of housing development particularly at the lowest income levels, is fueling the homelessness crisis. According to the Public Policy Institute of California, families at the highest income levels in the Bay Area (the 90th percentile) have more than 12 times the income of families at the bottom (the 10th percentile).² Those at the bottom rung of the economic ladder have also not shared in the region’s significant economic growth. Between 2000 and 2015 in Santa Clara County, workers with earnings in the 10th percentile saw their income decline by 12%.³



This income inequality has been further exacerbated by the economic slowdown caused by the COVID-19 pandemic as many low-income households living paycheck-to-paycheck struggle to make rent and pay for other basic needs.

¹ Applied Survey Research, “Santa Clara County Homeless Census & Survey Comprehensive Report 2019.” 2019. <https://www.sccgov.org/sites/osh/ContinuumofCare/ReportsandPublications/Pages/HomelessnessCensusandSurvey.aspx>
² Public Policy Institute of California, “Income Inequality in California.” 2020. <https://www.ppic.org/publication/income-inequality-in-california/>
³ Bay Area Equity Atlas, “Earned income growth for full-time wage and salary workers: Santa Clara County, CA, 2000–2015.” <https://bayareaequityatlas.org/indicators/income-growth#/?geo=040000000000006085>

Compounding the impacts of this inequality is the fact that housing costs are higher than ever and housing that is affordable to the lowest-income families is not being produced. In fact, the National Low-Income Housing Coalition’s most recent report, The Gap: A Shortage of Affordable Homes, found that in 2018 there were only 34 affordable and available units for every 100 extremely low-income renter households in the San Jose metro area.⁴



In addition, longstanding and structural racial inequities continue to affect who becomes homeless in our community. A recent report commissioned by Destination: Home found that people of color are dramatically more likely than their white counterparts to become homeless in Santa Clara County, and that poverty alone cannot explain disparities in homelessness. For example:



While the brunt of this crisis is borne by our unhoused neighbors, we know its impacts are felt much more broadly. Our neighborhoods, first responders, businesses, and environment are also suffering the consequences of our region’s severe homelessness crisis.

Even worse, the problem continues to grow as more people are slipping into homelessness than ever before—the result of growing income inequality, gentrification and displacement, rising housing costs, an extreme housing shortage, and a lack of sufficient safety net services to adequately care for the most vulnerable in our community. In fact, for every homeless family or individual we connect to housing, between two and three more are experiencing homelessness for the very first time.

If this trend continues, in addition to the nearly 10,000 individuals currently experiencing homelessness, another 20,000 are at-risk of falling into homelessness over the next five years—far more than our supportive housing system currently has the capacity to serve.

⁴ National Low-Income Housing Coalition, “The Gap: A Shortage of Affordable Homes.” 2020. https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2020.pdf

Photo of Villas on the Park.
Courtesy of Dahlin Group
Architecture Planning and
Mark Davidson Photography

Ending Homelessness in Santa Clara County

Solving this crisis is one of the great moral challenges facing us. It will require tremendous effort, new partnerships, and even bolder strategies—and it will require the entire community to be a part of the solution.

We must take immediate actions that can improve the quality of life for the huge number of unsheltered residents in our community. We must increase shelter capacity and increase interim housing options, and we must expand services to meet their basic health and safety needs.

We need to significantly scale our housing development and programs to meet the growing need in our community. This includes building many thousands more supportive housing units, expanding our homelessness prevention strategies, and enhancing the way our supportive housing system serves those in need.

Most importantly, we will never end homelessness in our community if we do not attack the systemic root causes that continually push more of our neighbors into homelessness. As a result, we must address inequitable land use and housing policy to allow every jurisdiction to achieve their Regional Housing Needs Allocation goals for very low and extremely low-income housing production. We must ensure every resident who is able to work can access living wage employment and we must reverse decades-long structural inequities that have driven people of color and other vulnerable residents onto the streets.

As we implement the strategies in this plan, we will raise the voices of people with lived experience and share power with our unhoused and recently-housed neighbors. We will focus on policies and programs that reduce racial inequity, in an effort to reverse the disproportionately high rates of people of color who are unhoused.

None of this will be easy or cheap. In fact, just meeting the affordable housing needs of our community would require several billion dollars. But we cannot accept a future in which thousands of our neighbors are forced to live outside. Every member of our community deserves a safe and stable home—and it is our collective responsibility to make this vision a reality.

Our Plan

The 2020–2025 Community Plan to End Homelessness will serve as our roadmap for ending homelessness in Santa Clara County and is organized around three main strategies:



Address the root causes of homelessness through system and policy change



Expand homelessness prevention and housing programs to meet the need



Improve quality of life for unsheltered individuals and create healthy neighborhoods for all

The strategies included in this plan are grounded in evidence-based practices, lessons learned over the past five years, and robust conversation and input from more than 8,000 members of our community; including people with lived experience of homelessness, subject matter experts, key stakeholders, and community members.

In addition, this plan sets aggressive targets designed to reverse the current growth in homelessness we are experiencing and bring us one step closer to our collective goal of eliminating homelessness in our community.

By 2025, we will:



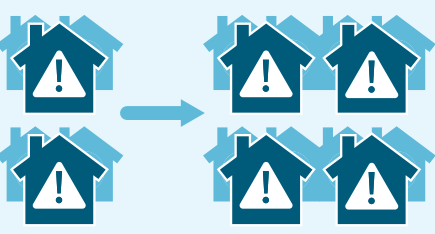
Achieve a **30% reduction** in annual inflow of people becoming homeless*



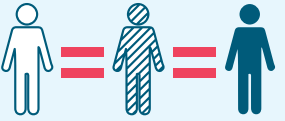
House **20,000 people** through the supportive housing system



Expand the Homelessness Prevention System and other early interventions to serve **2,500 people per year**



Double temporary housing and shelter capacity to reduce the number of people sleeping outside



Address the **racial inequities present** among unhoused people and families and track progress toward reducing disparities

*The reduction in annual inflow target was based on annual inflow prior to the COVID-19 pandemic. This target will be reevaluated once the longer term impacts of COVID-19 are known.



The Strategies

Reaching these ambitious goals will require a collaborative community response based on proven, evidence-based strategies to end homelessness as well as innovative approaches that maximize the resources available.

The strategies are organized under three areas of focus that make up the basic framework for the plan.

STRATEGY 1



Address the Root Causes of Homelessness Through System and Policy Change

To end homelessness in our community, we must address its root causes. This plan sets a five-year goal of reducing new unhoused individuals and families in a given year by 30%. The strategies below are targeted to address the entrenched economic and societal causes of homelessness through transformational systemic and policy change. The system we live in has created social, economic, and racial disparities and it will take monumental shifts in policies and priorities to make effective change. While eliminating these disparities across our community will take more than the five years covered by this plan, we can make substantial progress towards this important goal by implementing the strategies below.

1 Ensure that people accessing safety net services have the support they need to obtain and maintain housing.

- A** Adopt housing screening and referral processes for individuals and families accessing safety net services.
- B** Expand housing programs for families involved in the child welfare system.
- C** Expand and diversify housing programs for foster youth to meet their long-term housing needs, so no foster youth become homeless.
- D** Expand housing resources available to Medi-Cal recipients accessing services in the Specialty Mental Health System.
- E** Advocate for the state and the federal government to increase funding and access to safety net services.

2 Ensure that people involved in the criminal justice system do not become homeless.

- A** Support households with incarcerated family members to prevent homelessness.
- B** Expand existing and develop new housing and workforce development programs to successfully reintegrate people leaving probation, parole, jails, and prisons into the community.

STRATEGY 1

Address the Root Causes of Homelessness Through System and Policy Change
(Continued)

3 Create the conditions to develop enough affordable housing to meet the need in our community.

- A Work with cities to change local land use and housing policy to allow for development of more affordable housing and help reverse housing disparities that have negatively impacted people of color.
- B Identify underutilized land across the county to be used for dense affordable housing development.
- C Prioritize development of housing for extremely low-income individuals and families making 30% of Area Median Income or less and set joint targets.
- D Advocate for flexible funding that can speed up and create more affordable housing.

4 Protect residents from evictions, displacement, and housing discrimination.

- A Adopt and implement new fair housing plans for the region.
- B Strengthen local rent control and tenant protections.
- C Provide legal assistance to ensure that individuals and families most severely impacted by the lack of affordable housing, namely people of color, have equal access to housing.
- D Create a fund to preserve both naturally affordable and income-restricted affordable housing.

5 Ensure all residents who are able to work have access to living wage employment.

- A Support efforts to increase the minimum wage to a living wage in Santa Clara County.
- B Partner with corporations to create living wage job opportunities for people who are unhoused or at risk of homelessness.
- C Provide training, internships, and mentorships to help people who are unhoused or at risk of homelessness to obtain access to living wage jobs.
- D Invest in social enterprises that train and employ people who are unhoused or at risk of homelessness.

6 Expand public and private sector support for ending and preventing homelessness.

- A Increase community engagement and support for affordable and supportive housing development throughout the county.
- B Provide leadership opportunities for people with lived experience of homelessness to shape how we address homelessness in our community.
- C Create a county-wide education campaign that increases awareness of the causes and impacts of homelessness and ongoing efforts to end homelessness.



STRATEGY 2

Expand Homelessness Prevention and Housing Programs to Meet the Need

While Strategy 1 aims to close the gaps in our social safety net and address the other systemic causes of homelessness, we know that there will be some people over the next five years who will still become unhoused due to a severe shortage of affordable and accessible housing. To end homelessness, we will need to continue to build capacity to provide a broad array of housing and services over the next five years.

1 Increase the capacity of supportive housing programs for people experiencing homelessness.

- A Expand the supportive housing system to provide housing and services to help 20,000 unhoused people secure stable, permanent housing. Expansion would target the following:
 - 7,000 people housed in Permanent Supportive Housing programs that provide long-term support.
 - 10,000 people housed through Rapid Rehousing programs that provide short- and medium-term support.
 - 3,000 people housed through Housing Problem Solving and other short-term or one-time assistance.
- B Develop programs tailored to the needs of specific populations of people experiencing homelessness, including:
 - Youth and young adults
 - Older adults (55+) and seniors
 - Families with children
 - Adults (ages 25 to 54) without children

2 Provide a broad range of supports to prevent homelessness.

- A Expand the Homelessness Prevention System to prevent homelessness for an additional 7,000 households who are at risk by providing targeted financial assistance and supportive services.
- B Provide targeted financial resources to prevent homelessness and eviction for severely rent-burdened residents living in existing affordable units.

3 Create a state-of-the-art supportive housing system.

- A Center the voices of people who have lived experience of homelessness, especially people of color, in the policy and program design decisions of the supportive housing system.
- B Invest in professional development and competitive pay to attract and retain a highly qualified workforce of homeless service provider staff.
- C Incentivize hiring of people who have lived experience of homelessness to reflect the client population—especially people of color and LGBTQI+ persons.
- D Increase access to supportive housing programs for people of color by addressing racial bias in our system.

STRATEGY 3



Improve Quality of Life for Unsheltered Individuals and Create Healthy Neighborhoods for All

The first two strategies of the plan seek to end and prevent homelessness for as many people as possible over the next five years. However, the reality is that many people will remain unhoused due to an extreme housing crisis and increasing income inequality. To address this immediate crisis in our community and ensure healthy neighborhoods for all, we must begin by doubling our temporary housing and shelter capacity to serve 2,000 additional households each night and increase investment in health, safety and other basic services to better meet the needs of people living in unsheltered conditions and build connections to housing programs and safety net services offered throughout the county.

1 Double the number of year-round temporary housing beds and offer a variety of welcoming temporary housing options throughout the county.

- A Build new partnerships to host emergency shelter, safe places to park and access services, and sanctioned encampments that are not swept and include hygiene and supportive services.
- B Reduce barriers to shelter such as allowing for pets, storage of personal items, greater privacy, longer stays, and provide higher levels of safety for residents.
- C Expand hours at new and existing shelters to remain open during the day.
- D Ensure that all families with children under 18 years old who are unhoused have access to emergency shelter or temporary housing.
- E Provide more public services in neighborhoods hosting emergency shelter or temporary housing programs.

2 Increase street outreach, hygiene services, and transportation options to match the needs of unsheltered residents.

- A Increase access to basic hygiene resources, including bathrooms, showers, and laundry
- B Increase the number of free public transit passes and other transportation options for people who are unhoused to access services.
- C Increase the number of street outreach staff and case managers working in encampments.
- D Provide opportunities for people who have lived experience of homelessness to provide peer-to-peer support.

3 Increase mental health and substance use services.

- A Increase the number of mobile crisis teams with clinical staff, and expand their hours, to support individuals experiencing severe mental health and substance use crises.
- B Increase the number of beds available for substance use treatment and provide the follow-up supportive services needed to prevent relapses.
- C Increase access to mental health treatment for people who are unhoused and struggling with mental illness.
- D Develop a plan to eliminate service access and treatment gaps for unsheltered people struggling with chronic and severe mental illness.

STRATEGY 3



Improve Quality of Life for Unsheltered Individuals and Create Healthy Neighborhoods for All (Continued)

4 Engage a cross-section of community partners to address the needs of unsheltered residents.

- A Increase outreach to city and County staff and business and neighborhood associations about available resources to assist people who are unhoused.
- B Engage the private sector to contribute funding to support health and safety services and shelter for people who are unhoused.
- C Increase coordination between agencies engaging people living in encampments to ensure consistent and humane approaches to encampment resolution.
- D Create a referral system where unhoused residents can access information and services, such as available temporary housing and homeless services.

5 Ensure that community spaces are safe and welcoming for housed and unhoused residents.

- A Partner with new private sector, community-based, and faith-based organizations to create safe and welcoming community spaces in every community for unhoused people to access services during the day.
- B Work with community organizations, cities, County agencies, and neighborhood associations to ensure that public spaces such as parks, libraries, and community centers remain clean, well-maintained, and welcoming to all.

Process Improvements Across Strategies 1, 2, and 3

Throughout our work, we must continue to expand coordination between systems, increase the use of data to improve programs, and increase training opportunities for all partners, including:

- Share data across safety net, criminal justice, and housing systems to better predict and target households who are experiencing homelessness or at risk of homelessness.
- Better utilize data collected in the homeless system of care and across County departments to know what is working well, what programs need improvement, and to identify inequities in the system.
- Provide demographic data, including race and ethnicity, in all reports on homelessness to highlight and address inequities.
- Create accessible dashboards that show our progress and hold our systems accountable.
- Provide trauma-informed care and racial equity/anti-racism training to all staff working with people experiencing homelessness.
- Increase access to services, including providing system navigation resources and training to all staff working with people experiencing homelessness.
- Align racial equity work in the homelessness sector with other racial equity initiatives in Santa Clara County.
- Expand partnerships with corporations, philanthropic institutions, and individual donors to secure private funding to reduce and prevent homelessness.
- Align and coordinate with other community efforts to address homelessness, such as the Homelessness Task Force.

Thank You!

The Community Plan Steering Committee would like to thank the following agencies and staff who participated in the Community Plan Work Group to gather community input and update the community plan:

- County of Santa Clara: Jackie MacLean, Hilary Barroga, Kathryn Kaminski, Hilary Armstrong
 - City of San José: Sarah Zárate, Ragan Henninger
 - Destination: Home: Ray Bramson, David Low
 - City of Morgan Hill: Rebecca Garcia
- City of Mountain View: Wayne Chen
 - LifeMoves: Bruce Ives
 - Sacred Heart Community Service: Erin Stanton
 - Community Solutions: Erin O’Brien

The Steering Committee and Work Group would like to thank the many people who are currently or formerly unhoused who shared their input and experiences to inform the community plan, including the following:

- Lived Experience Advisory Board
 - Sacred Heart’s Survivors of the Streets
- HomeFirst Sunnyvale Shelter’s Client Collaborative
 - Clients/residents from Hope’s Corner, Bill Wilson Center, New Haven Inn, and Second Street Studios

The Steering Committee and Work Group would like to thank the following community stakeholders, agencies, and organizations for participating in the process:

- Abode Services
 - Alta Vista High School
 - Amigos de Guadalupe
 - Anthem Blue Cross
 - Bill Wilson Center
 - Bitfocus
 - Catholic Charities of Santa Clara County
 - Charities Housing
 - Cisco
 - Cities Association of Santa Clara County
 - City Team
 - City of Cupertino
 - City of Morgan Hill
 - City of Mountain View
 - City of Palo Alto
 - City of San José
 - City of Milpitas
 - City of Santa Clara
 - Community Services Agency
- Community Solutions
 - County of Santa Clara:
 - Behavioral Health Services
 - Office of the District Attorney
 - Probation Department
 - Public Defender Office
 - Public Health Department
 - Reentry Services
 - Santa Clara Valley Medical Center
 - Social Services Agency
 - Office of Supportive Housing
 - Office of Equity and Social Justice
 - Offices of Supervisors Cindy Chavez, Dave Cortese, Susan Ellenberg, Joe Simitian, and Mike Wasserman
 - Valley Homeless Healthcare Program
 - David and Lucile Packard Foundation
 - Destination: Home
 - Dependency Advocacy Center

- Downtown Business Association
 - Downtown Streets Team
 - EAH Housing
 - East Side Union High School District
 - Family Supportive Housing
 - First Community Housing
 - Gilroy Compassion Center
 - HomeFirst
 - Housing Trust Silicon Valley
 - Humane Society of Silicon Valley
 - Hunger at Home
 - Kaiser Permanente
 - Kids in Common
 - Law Foundation of Silicon Valley
 - LifeMoves
 - LinkedIn
 - Los Altos Community Foundation
 - Mental Health Systems
 - Next Door Solutions
 - On Lok
 - PATH
 - Razing the Bar
 - Resources for Community Development
- Santa Clara County City Managers Association
 - Santa Clara County Housing Authority
 - Santa Clara County Office of Education
 - Santa Clara County Domestic Violence Advocacy Consortium
 - Santa Clara Family Health Plan
 - Sacred Heart Community Service
 - Salvation Army
 - Silicon Valley Community Foundation
 - Silicon Valley Council of Nonprofits
 - Silicon Valley at Home
 - Silicon Valley Independent Living Center
 - Silicon Valley Organization
 - South Bay Coalition to End Human Trafficking
 - Spectrum Equity
 - St. Joseph Family Center
 - Sunnyvale Community Services
 - The Health Trust
 - United Way Bay Area
 - U.S. Department of Veterans Affairs
 - West Valley Community Services
 - YWCA of Silicon Valley

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF MORGAN HILL ENDORSING
THE COMMUNITY PLAN TO END HOMELESSNESS 2020-25

WHEREAS, nearly five years ago, the City Council adopted the Community Plan to End Homelessness in Santa Clara County (2015-2020) (“Community Plan”), with partners working collectively to, among other efforts, help households resolve their homelessness, increase the number of supportive housing units in Santa Clara County, increase temporary housing and emergency shelter capacity, and launch a new homelessness prevention system; and

WHEREAS, the Community Plan, which is driven by and adopted by the Santa Clara County Continuum of Care (“CoC”), is a planning requirement placed by the United States Department of Housing and Urban Development on CoC funding that provides a county-level roadmap to address homelessness and its root causes, with local jurisdictions tailoring the roadmap to meet local needs; and

WHEREAS, despite the substantial progress made in creating an innovative, coordinated, and more comprehensive supportive housing system, the housing crisis continues to grow nationally and locally; in 2019 9,706 found themselves homeless in County of Santa Clara, and the challenges in ending homelessness are compounded by the COVID-19 pandemic and its impacts on the economy and local budgets; and

WHEREAS, in June 2019, the City of Morgan Hill (“City”) together with Santa Clara County (“County”), Destination: Home, the City of San Jose and the City of Mountain View and non-profits, embarked on strategic planning and an extensive community engagement process to develop a new five-year Community Plan; and

WHEREAS, during the development of the new Community Plan, community feedback was sought to identify successes and challenges in the homeless system of care, and to collect innovative and inspiring ideas about how to address homelessness generally countywide, and specifically for certain subgroups such as youth and families; and

WHEREAS, this work resulted in the development of 14 strategies that fall into three focus areas: (1) Address the root causes of homelessness through system and policy change; (2) Expand homelessness prevention and housing programs to meet the need; and (3) Improve quality of life for unsheltered individuals and create healthy neighborhoods for all; and

WHEREAS, the Community Plan provides stakeholders with a common agenda that, if followed, will result in large collective impact, and endorsement of the new Community Plan will provide the City’s Administration the certainty to continue implementing urgent strategies during the COVID-19 public health crisis that also align with the Community Plan strategies;

Resolution. No. _____

Page 1 of 3

Attachment: Community Plan Resolution 2020 (2932 : Affordable Housing and Homeless Program Update 2020)

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MORGAN HILL THAT:

The City Council hereby endorses the Community Plan to End Homelessness 2020-25.

IN CITY COUNCIL DULY PASSED this 2nd day of December 2020.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____ APPROVED: _____

Irma Torres
City Clerk

Rich Constantine
Mayor

APPROVED AS TO FORM:

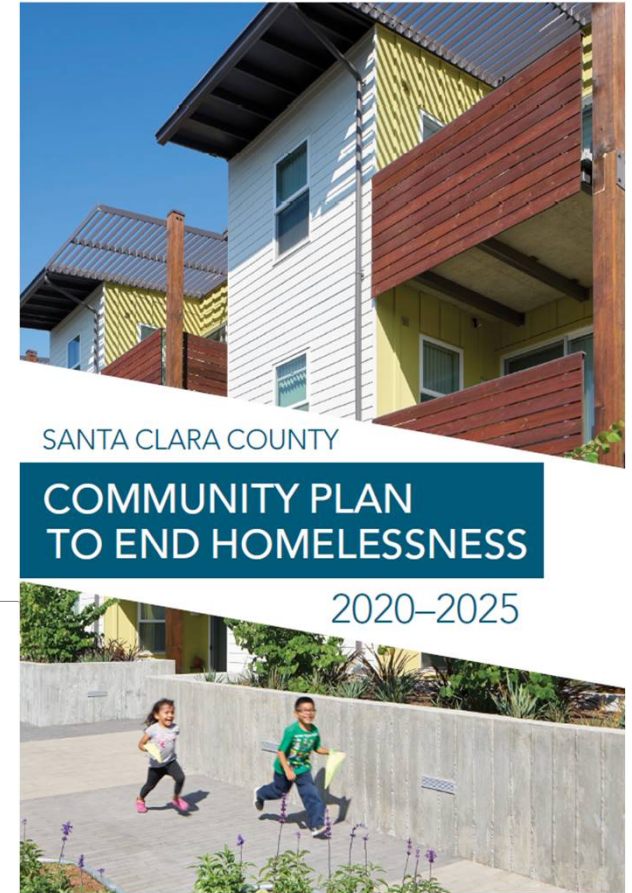
Donald Larkin
City Attorney

Attachment: Community Plan Resolution 2020 (2932 : Affordable Housing and Homeless Program Update 2020)

Resolution. No. _____
Page 2 of 3



SANTA CLARA COUNTY COMMUNITY PLAN TO END HOMELESSNESS



PRESENTERS

Ray Bramson - Chief Operating Officer,
Destination: Home

Kathryn Kaminski - Acting Deputy
Director, County of Santa Clara Office of
Supportive Housing

ABOUT THE CONTINUUM OF CARE

- Broad group of stakeholders dedicated to ending and preventing homelessness
- Ensure a community-wide implementation of efforts & programmatic and systemic effectiveness



Supportive Housing System Progress 2015-2019

Thanks to the collective efforts of partners throughout the community, over the past five years, we have done the following:

Helped **8,884 households** resolve their homelessness,

representing **14,132 people**



Doubled the number of supportive housing units in Santa Clara County



Doubled our temporary housing and emergency shelter capacity



Launched a new homelessness prevention system that now serves about **1,000 households annually**



Led a community-wide campaign that has successfully housed more than **1,600 veterans** and engaged nearly **800 private landlords** in the effort



Voters approved **\$950 million** to develop affordable housing through the 2016 Measure A Affordable Housing Bond and raised another **\$100 million** in private contributions to support the implementation of the community plan

PROGRESS TO DATE

HOMELESSNESS CONTINUES TO GROW

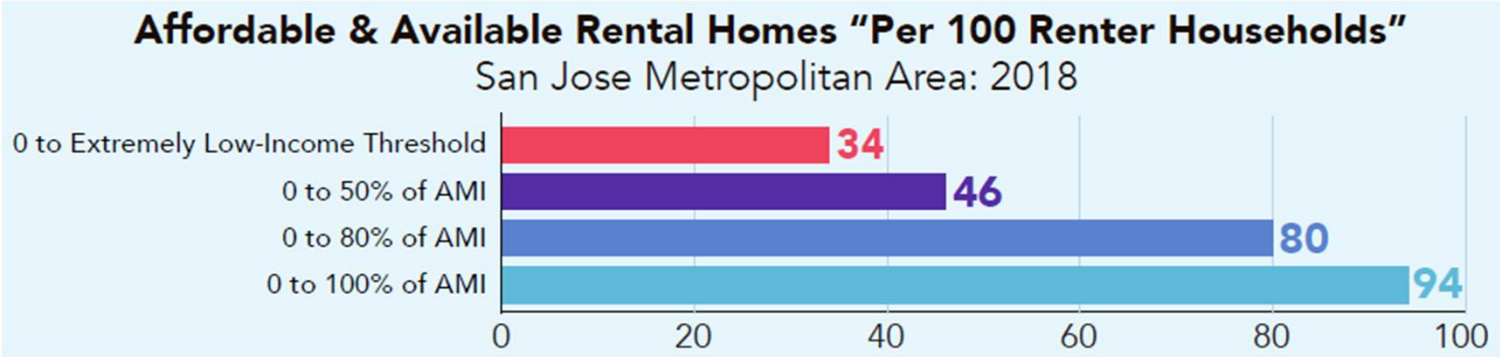


For every homeless family or individual connected to housing in the county, two to three more are experiencing homelessness for the very first time

SYSTEMIC FACTORS DRIVING HOMELESSNESS

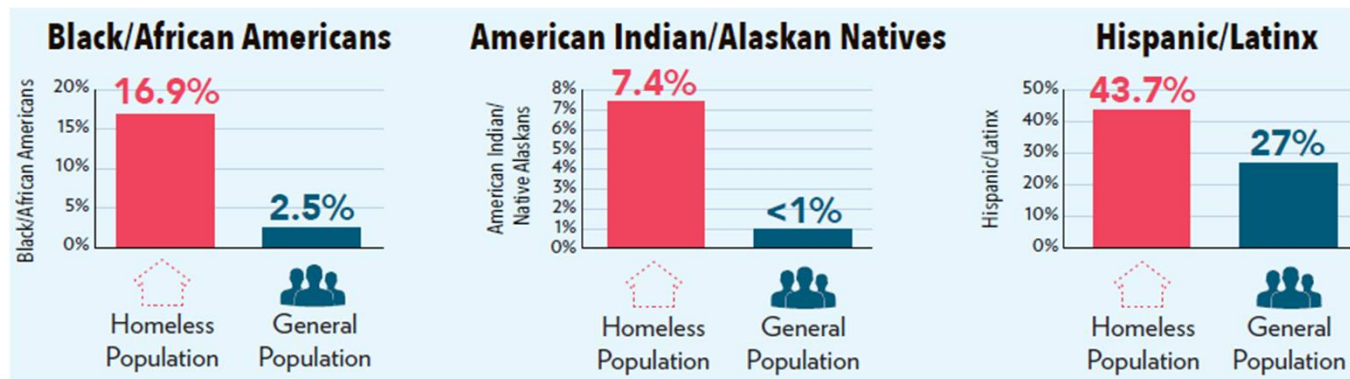


SYSTEMIC FACTORS DRIVING HOMELESSNESS



↑
**SHORTAGE OF
AFFORDABLE
HOMES**

SYSTEMIC FACTORS DRIVING HOMELESSNESS



**RACIAL
DISPARITIES IN
HOMELESSNESS**

2020-2025 COMMUNITY PLAN TO END HOMELESSNESS

GUIDING VALUES

As we implement the strategies in this plan, we will **raise the voices of people with lived experience** and **share power** with our unhoused and recently-housed neighbors.

We will focus on policies and programs that reduce racial inequity, in an effort to **reverse the disproportionately high rates of people of color who are unhoused**.

THIS PLAN IS BUILT ON:

- ü Input from more than 8,000 community members
- ü Subject-matter expert convenings
- ü Voices of lived experience
- ü Evidence-based practices & data

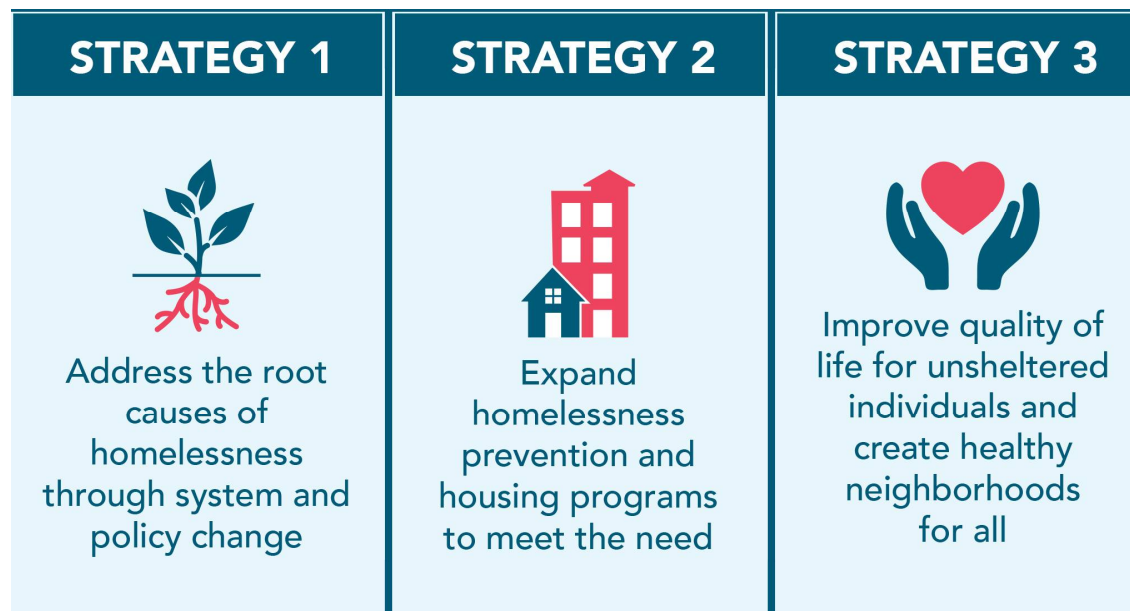


SANTA CLARA COUNTY

COMMUNITY PLAN TO END HOMELESSNESS

2020–2025

PLAN BUILT ON 3 CORE STRATEGIES



STRATEGY 1

ADDRESS ROOT CAUSES



1. Ensure that people accessing safety net services have the support they need to obtain and maintain housing.
2. Ensure that people involved in the criminal justice system do not become homeless.
3. Create the conditions to develop enough affordable housing to meet the need in our community.
4. Protect residents from evictions, displacement, and housing discrimination.
5. Ensure all residents who are able to work have access to living wage employment.
6. Expand public and private sector support for ending and preventing homelessness.

STRATEGY 2

EXPAND PROGRAMS



1. Increase the capacity of supportive housing programs for people experiencing homelessness.
 - 7,000 people housed in Permanent Supportive Housing programs
 - 10,000 people housed through Rapid Rehousing programs
 - 3,000 people housed through Housing Problem Solving
2. Provide a broad range of supports to prevent homelessness.
 - Expand the Homelessness Prevention System to prevent homelessness for an additional 7,000 households who are at risk by providing targeted financial assistance and supportive services.
3. Create a state-of-the-art supportive housing system.
 - Center the voices of people who have lived experience of homelessness, especially people of color, in the policy and program design decisions of the supportive housing system.
 - Invest in professional development and competitive pay to attract and retain a highly qualified workforce of homeless service provider staff.

STRATEGY 3

IMPROVE QUALITY OF LIFE



1. Double the number of year-round temporary housing beds and offer a variety of welcoming temporary housing options throughout the county.
2. Increase street outreach, hygiene services, and transportation options to match the needs of unsheltered residents.
 - Increase access to basic hygiene resources, including bathrooms, showers, and laundry
3. Increase mental health and substance use services.
 - Increase the number of mobile crisis teams with clinical staff, and expand their hours, to support individuals experiencing severe mental health and substance use crises.
4. Engage a cross-section of community partners to address the needs of unsheltered residents.
5. Ensure that community spaces are safe and welcoming for housed and unhoused residents.

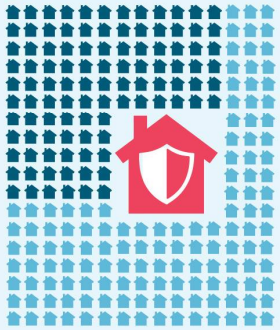
By 2025, we will:



Achieve a **30% reduction** in annual inflow of people becoming homeless*



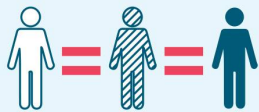
House **20,000 people** through the supportive housing system



Expand the Homelessness Prevention System and other early interventions to serve **2,500 people per year**



Double temporary housing and shelter capacity to reduce the number of people sleeping outside



Address the **racial inequities present** among unhoused people and families and track progress toward reducing disparities

AGGRESSIVE TARGETS

WORK ALREADY UNDERWAY

- ü Created centralized shelter hotline which has connected over **2,900 households** into congregate and non-congregate shelter
- ü Destination: Home and Sacred Heart Community Service have distributed more than \$21.8 million in direct financial assistance to approximately **11,700 families** in Santa Clara County via a 70-agency partnership
- ü Distributed over **100,000 pieces of PPE**, and provided mobile shower and sanitation services for individuals living in encampments
- ü Connected **1,168 homeless households** to permanent housing
- ü Three emergency interim housing communities in development by CSJ to provide interim housing for over **300 homeless households**

Next Steps



ENDORSEMENT TODAY



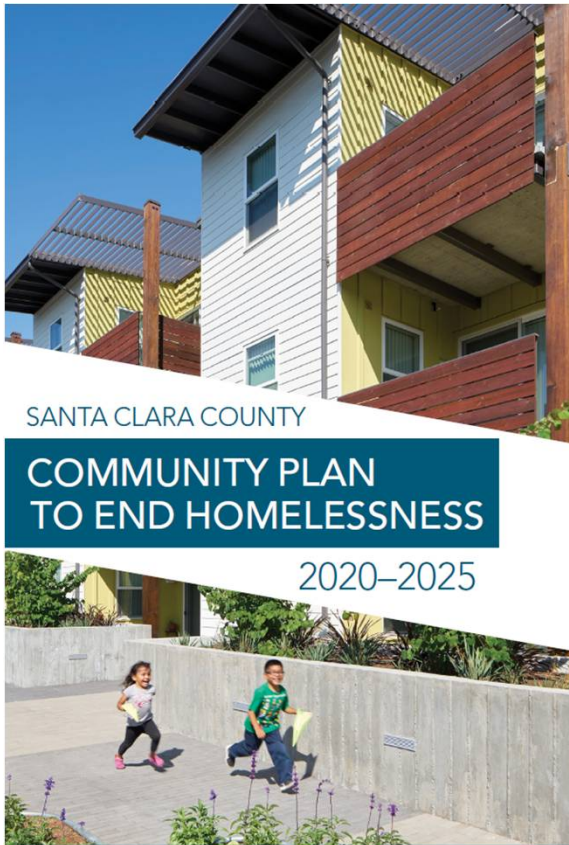
SHARE & PROMOTE THE PLAN
<https://bit.ly/CommPlan2020>



IMPLEMENTATION



REPORT ON PROGRESS



Questions/Comments



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

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

ACCEPT COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2020

RECOMMENDATION(S)

Accept the City's Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2020.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Community Engagement and Messaging
Fiscal Sustainability

REPORT NARRATIVE:

The Fiscal Year 2019-20 Comprehensive Annual Financial Report (CAFR) is presented for your review. Each year the City engages an independent firm to audit the books and accounts of the City's general ledger. Included in this audit are the review and verification of all finance processes. An annual audit is required by state law and by bond covenants.

The CAFR presents the operations and financial activity of all the City's various funds, including the General Fund. It includes an unmodified audit opinion from Maze & Associates, the City's external auditors, stating that the financial statements present fairly the results of operations for the year ended June 30, 2020, in conformance with Generally Accepted Accounting Principles (GAAP). An auditor gives an Unmodified Opinion (or clean opinion) when they do not have any significant reservation in respect of matters contained in the Financial Statements.

A summary of significant highlights follows:

General Fund: The fund balance increased by \$1.9 million compared to prior year, this is despite of the pandemic-induced recession. The increase is attributable to the Council's strategic decisions to control expenditures as we continue to weather these uncertain times. In addition to conservative spending, the fair market value adjustment for the investments contributed approximately \$0.8 million of the increase.

Development Services Fund: At the end of FY 2019-20, the fund has a small negative balance of less than \$0.1 million, a decrease of \$1.4 million from prior year. The COVID-19 pandemic has had a material and immediate impact to development services

related revenue. The fund was originally budgeted to end the fiscal year with an operating deficit of approximately \$0.7 million, however, it ended up twice the amount budgeted. It is nonetheless better than staff's projection in May 2020 which anticipated the fund would need a temporary loan from the General Fund of approximately \$425,000 as residential development activities have picked up faster than anticipated. To help address the fund's long-term sustainability, staff is currently engaging a consultant to conduct a comprehensive fee study to update the current fees which were developed about five years ago.

Enterprise Funds: Unrestricted net position on June 30, 2020, amounted to \$11.1 million for Sewer Operations and \$6.4 million for Water Operations. Water Operations' unrestricted net position increased by \$3.0 million compared to prior year. The operating revenues saw an increase of \$0.8 million primarily due to the water rate adjustments. Sewer Operations' unrestricted net position increased by \$2.2 million from prior fiscal year with operating revenues increased by \$0.1 million primarily due to increase in usage and rate adjustments, partially offset by a reduction in capital contribution from development activities. The Sewer Impact Fund had \$20.8 million in net position restricted for capital improvements and expansion, an increase of \$2.7 million from prior year mainly due to higher collection of impact fees while the Water Impact Fund had \$2.8 million for the same purpose.

COMMUNITY ENGAGEMENT: Inform

Finance staff presents these audited reports in an effort to keep the City Council, community, and various lenders and stakeholders informed on the financial health of the organization, which assists each one of the interested parties in making sound financial decisions.

ALTERNATIVE ACTIONS:

No alternative action as this is an audited report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The audited comprehensive financial report is presented to Council each year for the prior fiscal year ending June 30.

FISCAL AND RESOURCE IMPACT:

The resources and costs associated with the audit and preparation of the comprehensive annual financial report are budgeted and included in the Finance Division.

CEQA (California Environmental Quality Act):

Not a Project as this is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. 2020 Comprehensive Annual Financial Report (6-30-20) (weblink)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

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

ADOPT RESOLUTION APPROVING AND MAKING FINDINGS RELATED TO THE AB 1600 DEVELOPMENT IMPACT FEE ANNUAL REPORT FOR FISCAL YEAR 2019-20

RECOMMENDATION(S)

Adopt resolution making findings for unexpended development impact fees and accept the annual development impact fee report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure
Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

Government Code Section 66000 et seq. requires that any city imposing development impact fees must report certain information each year. In accordance with this requirement, staff is presenting the Annual Development Impact Fee Report (Attachment 1) for the fiscal year ending June 30, 2020. The report includes a fee description, a schedule of impact fees for the reporting period as approved by City Council, and a report of the 2019-20 revenues and expenditures for each impact fee, along with the balance available for current and future projects. A description of the project that resources were used for is also included for each impact fee.

Section 66001(d) requires that for the fifth fiscal year following the collection of development fees, and every five years thereafter, the local agency shall make findings with respect to any portion of the fee collected remaining unexpended, whether committed or uncommitted. Staff identified \$4,949,181 from the Storm Drain Impact Fee (Fund 303); and \$2,604,482 from the Public Safety Facilities Impact Fee (Fund 315) in unexpended fees that were collected over five years ago (Attachment 2). These unexpended fees have been or will be appropriated into existing and future capital improvement projects:

- 1) Storm Drain Impact Fee to fund Storm System Expansions and Llagas Flood Control Project. The Storm System Expansions will expand storm system capacity in alignment with the 2018 Storm Drain System Master Plan and the Llagas Flood Control Project is to address storm water conveyance that drains into the Upper Llagas Creek Flood Protection Project (ULCFPP) and the West Little Llagas watershed. A total of \$12,600,000 from Storm Drain Impact Fees has been allocated

to these projects in the adopted Fiscal Year 2020-21 - 2025-26 Capital Improvement Program (CIP).

- 2) Public Safety Facilities Impact Fee to fund construction of the Fire Station on Butterfield Boulevard. A total of \$5,980,000 from Public Safety Facilities Impact Fees has been allocated to this project in the adopted Fiscal Year 2020-21 - 2025-26 CIP.

COMMUNITY ENGAGEMENT: Inform

Finance staff prepares this annual report in an effort to keep City Officials, Council, Community, and stakeholders informed on the financial status of each impact fee, which assists each one of the interested parties in making sound financial decisions.

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is an annual report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The annual impact fee report is presented to Council each year for the prior fiscal year ending June 30.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Not a project.

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

LINKS/ATTACHMENTS:

1. Impact Fee Report FY19-20
2. Resolution

**City of Morgan Hill
AB 1600 Development Impact Fee Report
Fiscal Year 2019-20**

Impact Fee Fund Descriptions

Park Impact – This fund receives revenues from developers of properties and the fund may only be used for the design, development, maintenance, and construction of new parks within the City.

Storm Drain – This fund receives revenues from developers of properties to cover the costs of design and construction of new storm drain that benefit new customers residing within the City of Morgan Hill as a result of growth in population.

Traffic Impact – This fund receives revenues from developers when their projects have an adverse impact on traffic flows, etc. The funds collected may be expended on new streets, traffic signals and improvements of existing streets where they are impacted by new development.

Police and Fire Impacts – Revenues are collected to finance the expansion of police and fire facilities necessary to benefit, and to provide police services to new customers residing within the City of Morgan Hill as a result of growth in population.

Public Safety Facilities Impact – This fee was created as a result of combination of Police and Fire Impact Fees. Revenues are collected from developers to cover the costs required for police and fire capital expansion projects to assist in providing services to new developments.

Community/Recreation Center Impact – Revenues are collected to finance the expansion of existing and construction of new recreation and community center facilities demanded by new development.

Public Facilities – Revenues are collected to finance the expansion of public facilities necessary to benefit new customers residing within the City of Morgan Hill as a result of growth in population.

Library Impact – Revenues are collected to finance the provision of future library space and materials necessary to benefit, and necessary to provide library services to, new residents residing in the City of Morgan Hill as a result of population growth.

Sewer Impact – Revenues are collected to finance the expansion of wastewater facilities necessary to benefit, and necessary to provide wastewater services to new customers residing in the service area within the City of Morgan Hill as a result of growth in population.

Water Impact – Revenues are collected to finance the expansion of water facilities necessary to benefit, and necessary to provide water services to, new customers residing in the service area within the City of Morgan Hill as a result of growth in population.

City of Morgan Hill
Impact Fee Schedule Summary
Fiscal Year 2019-20

Description of Fee	Unit of Measure	Amount
Water Impact Fee	Single Family Dwelling Unit	3,913.00
	Multi Family Dwelling Unit	3,531.00
	Commercial/Industrial/Office per acre	11,109.00
Sewer Impact Fee	Single Family Dwelling Unit	15,315.00
	Multi Family Dwelling Unit	12,962.00
	Commercial/Industrial/Office per GPD	50.43
Storm Drain Impact Fee	Single Family Dwelling Unit	1,941.00
	Multi Family Dwelling Unit (>1200SF)	1,105.00
	Multi Family Dwelling Unit (<1200SF)	514.00
	Commercial/Office per acre	21,018.00
	Industrial per acre	15,475.00
	Auto Dealership per acre	21,018.00
	Hotel per room	311.00
Park Impact Fee	Single Family Dwelling Unit-Sub	5,807.00
	Single Family Dwelling Unit-No Sub	4,222.00
	Multi Family Dwelling Unit-Sub	5,595.00
	Multi Family Dwelling Unit-No Sub	4,072.00
Traffic Impact Fee	Single Family Dwelling Unit	3,373.00
	Multi Family Dwelling Unit (>1200SF)	2,090.00
	Multi Family Dwelling Unit (<1200SF)	1,285.00
	Commercial/Industrial/Office per PHT	3,373.00
Library Impact Fee	Single Family Dwelling Unit	2,132.00
	Multi Family Dwelling Unit	2,054.00
Public Safety Facilities Impact Fee	Single Family Dwelling Unit	1,941.00
	Multi Family Dwelling Unit (>1200SF)	1,716.00
	Multi Family Dwelling Unit (<1200SF)	1,285.00
	Commercial per acre	10,846.00
	Industrial per acre	13,018.00
	Office per acre	13,003.00
	Auto Dealership per acre	5,202.00
	Hotel per room	60.00
Public Facilities	Single Family Dwelling Unit	553.00
	Multi Family Dwelling Unit	532.00
	Commercial per acre	1,218.00
	Office per acre	1,447.00
	Industrial per acre	1,705.00
	Auto Dealership per acre	488.00
	Hotel per room	14.00

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2019-20

FUND 301 - PARKS IMPACT FEE	Project Number	FY 19-20 AB 1600		
<u>Revenue</u>				
Interest		\$ 75,468		
Development Impact Fees		1,560,560		
Total Revenue		\$ 1,636,028		
			% from this Fund	Total Project Expenditures
<u>Revenue Expended For</u>				
Parks Land	110097	\$ 1,232,134	100.00%	1,232,134
Inclusive Playground	137015	181,479	100.00%	181,479
Madrone Channel	141A16	15,133	2.82%	535,866
Community Garden	142017	96,223	100.00%	96,223
Tree Planting/Urban Forest Mgmt	143017	16,335	100.00%	16,335
Butterfield Blvd Connector Path Project	148017	142,677	100.00%	142,677
W. Little Llagas Creek Trail Phase	117001	70,844	100.00%	70,844
Park Enhancements-Shade Additions & Park Res	149018	127,209	100.00%	127,209
Sports Facility Development	148018	154,887	100.00%	154,887
General Plan Update		7,704	7.00%	110,000
RCSD Services - Infrastructure Planning		75,000	24.59%	305,000
Banking and Merchant Service Fees		4,300	100.00%	4,300
Taxes		17,747	100.00%	17,747
Impact Fee Study		314	11.11%	2,826
Administration		40,956	2.29%	1,791,416
Total Expenditures		\$ 2,182,942		
Revenue Less Expenditures		\$ (546,914)		
Balance as of July 1, 2019		4,116,066		
Balance as of June 30, 2020		\$ 3,569,152		

Attachment: Impact Fee Report FY19-20 [Revision 1] (2936 : AB 1600 Development Impact Fee Report For FY 2019-20)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2019-20

FUND 303 - STORM DRAIN IMPACT FEE	Project Number	FY 19-20 AB 1600		
Revenue				
Interest		\$ 184,113		
Development Impact Fees		79,372		
Total Revenue		\$ 263,485		
			% from this Fund	Total Project Expenditures
Revenue Expended For				
Storm System Expansion	415020	\$ 1,625	100.00%	1,625
Llagas Flood Control	417099	344,802	100.00%	344,802
Impact Fee Study		314	11.11%	2,826
General Plan Update		7,704	7.00%	110,000
RCSD Services - Infrastructure Planning		15,000	4.92%	305,000
Administration		6,948	0.39%	1,791,416
Total Expenditures		\$ 376,393		
Revenue Less Expenditures		\$ (112,908)		
Balance as of July 1, 2019		12,117,049		
Balance as of June 30, 2020		\$ 12,004,141		

Attachment: Impact Fee Report FY19-20 [Revision 1] (2936 : AB 1600 Development Impact Fee Report For FY 2019-20)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2019-20

FUND 309 - TRAFFIC IMPACT FEE	Project Number	FY 19-20 AB 1600		
REVENUE				
Interest		\$ 30,823		
Traffic Impact Fees		1,293,108		
TOTAL REVENUE		\$ 1,323,931		
Revenue Expended For			% from this Fund	Total Project Expenditures
Hale Avenue Extension	546007	\$ 459,733	100.00%	459,733
General Plan Update		31,896	29.00%	110,000
RCSD Services - Infrastructure Planning		75,000	24.59%	305,000
Impact Fee Study		314	11.11%	2,826
Banking and Merchant Service Fees		1,406	100.00%	1,406
Interest Expense		57,824	100.00%	57,824
Administration		12,036	0.67%	1,791,416
Total Expenditures		\$ 638,209		
Revenue Less Expenditures		\$ 685,722		
Balance as of July 1, 2019		(1,115,811)		
Balance as of June 30, 2020		\$ (430,089)		

Attachment: Impact Fee Report FY19-20 [Revision 1] (2936 : AB 1600 Development Impact Fee Report For FY 2019-20)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2019-20

FUND 311 - POLICE IMPACT FEE	FY 19-20		
	AB 1600		
<u>REVENUE</u>			
Transfer In From Public Safety Facilities Fund	\$ 640,897		
TOTAL REVENUE	\$ 640,897		
<u>Revenue Expended For</u>		% from this	Total Project
Transfer Out to Public Safety Facilities Impact Fee	\$ -	Fund	Expenditures
Total Expenditures	\$ -	0.00%	-
Revenue Less Expenditures	\$ 640,897		
Balance as of July 1, 2019	(640,897)		
Balance as of June 30, 2020	\$ -		

Attachment: Impact Fee Report FY19-20 [Revision 1] (2936 : AB 1600 Development Impact Fee Report For FY 2019-20)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2019-20

FUND 313 - FIRE IMPACT FEE	Project #	FY 19-20 AB 1600		
<u>REVENUE</u>				
Fire Impact Fees		\$ -		
TOTAL REVENUE		\$ -		
Revenue Expended For			% from this Fund	Total Project Expenditures
Transfer Out to Public Safety Facilities Impact Fee		\$ 3,873,198	100.00%	3,873,198
Total Expenditures		\$ 3,873,198		
Revenue Less Expenditures		\$ (3,873,198)		
Balance as of July 1, 2019		3,873,198		
Balance as of June 30, 2020		\$ -		

Attachment: Impact Fee Report FY19-20 [Revision 1] (2936 : AB 1600 Development Impact Fee Report For FY 2019-20)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2019-20

FUND 315 - PUBLIC SAFETY FACILITIES	Project #	FY 19-20 AB 1600		
<u>REVENUE</u>				
Interest		\$ 75,239		
Public Safety Facilities Impact Fees		375,084		
Transfer In		3,232,301		
TOTAL REVENUE		<u>\$ 3,682,624</u>		
			% from this Fund	Total Project Expenditures
<u>Revenue Expended For</u>				
RCSD Services - Infrastructure Planning		\$ 25,000	8.20%	305,000
Debt Service		197,696	53.39%	370,284
Administration		7,541	0.42%	1,791,416
Total Expenditures		<u>\$ 230,237</u>		
Revenue Less Expenditures		\$ 3,452,387		
Balance as of July 1, 2019		-		
Balance as of June 30, 2020		<u><u>\$ 3,452,387</u></u>		

Attachment: Impact Fee Report FY19-20 [Revision 1] (2936 : AB 1600 Development Impact Fee Report For FY 2019-20)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2019-20

FUND 347 - PUBLIC FACILITIES IMPACT FEE	Project Number	FY 19-20 AB 1600		
<u>REVENUE</u>				
Interest/Other		\$ 14,121		
Public Facilities Impact Fees		178,149		
Project Reimbursement/Others		51,829		
TOTAL REVENUE		\$ 244,099		
			% from this Fund	Total Project Expenditures
<u>Revenue Expended For</u>				
Corporation Yard Long Term Plan Study		\$ 74,925	100.00%	74,925
RCSD Services - Infrastructure Planning		25,000	8.20%	305,000
Impact Fee Study		314	11.11%	2,826
Banking and Merchant Service Fees		409	100.00%	409
Administration		2,208	0.12%	1,791,416
Total Expenditures		\$ 102,856		
Revenue Less Expenditures		\$ 141,243		
Balance as of July 1, 2019		668,851		
Balance as of June 30, 2020		\$ 810,094		

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2019-20

FUND 348 - LIBRARY IMPACT FEE	Project Number	FY 19-20 AB 1600		
<u>REVENUE</u>				
Interest		\$ 49,056		
Library Impact Fees		585,729		
Library Lease		174,142		
TOTAL REVENUE		<u>\$ 808,927</u>		
<u>Revenue Expended For</u>			% from this Fund	Total Project Expenditures
Library Expansion	251015	\$ 1,893,329	100.00%	1,893,329
Civic Center Debt Service		215,328	67.53%	318,861
Impact Fee Study		314	0.10%	305,000
Banking and Merchant Service Fees		1,580	100.00%	1,580
Administration		5,400	0.30%	1,791,416
Total Expenditures		<u>\$ 2,115,951</u>		
Revenue Less Expenditures		<u>\$ (1,307,024)</u>		
Balance as of July 1, 2019		<u>2,987,436</u>		
Balance as of June 30, 2020		<u><u>\$ 1,680,412</u></u>		

Attachment: Impact Fee Report FY19-20 [Revision 1] (2936 : AB 1600 Development Impact Fee Report For FY 2019-20)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2019-20

FUND 360 - COMMUNITY/REC CENTERS IMPACT FEE	Project Number	FY 19-20 AB 1600		
REVENUE				
Interest/Others		\$ 41,738		
Com/Rec Centers Impact Fees		1,084,003		
TOTAL REVENUE		\$ 1,125,741		
Revenue Expended For			% from this Fund	Total Project Expenditures
Centennial Recreation Center Expansion	138016	\$ 1,058,957	100.00%	1,058,957
CRC Backup Generator	299018	19,574	100.00%	19,574
Villa Mira Monte Enhancements	144017	8,923	100.00%	8,923
Sports Facility Improvements	148018	31,136	100.00%	31,136
Minature Golf	149019	75,267	100.00%	75,267
Banking and Merchant Service Fees		2,930	100.00%	2,930
Administration		492	0.03%	1,791,416
Total Expenditures		\$ 1,197,279		
Revenue Less Expenditures		\$ (71,538)		
Balance as of July 1, 2019		2,122,228		
Balance as of June 30, 2020		\$ 2,050,690		

Attachment: Impact Fee Report FY19-20 [Revision 1] (2936 : AB 1600 Development Impact Fee Report For FY 2019-20)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2019-20

FUND 641 - SEWER IMPACT FEE	Project Number	FY 19-20 AB 1600		
REVENUE				
Interest		\$ 386,676		
Sewer Impact Fees		4,990,132		
TOTAL REVENUE		\$ 5,376,808		
Revenue Expended For			% from this Fund	Total Project Expenditures
Sewer Plant Expansion	303093	\$ 185,503	100.00%	185,503
Sewer Plant Improvements	303a11	1,115,918	100.00%	1,115,918
Sewer Main Upgrades	302t17	24,396	26.90%	90,698
Trunk Line - Phase I & II	308a08	465,052	101.37%	458,767
General Plan Update		7,704	7.00%	110,000
RCSD Services - Infrastructure Planning		25,000	8.20%	305,000
Debt Service		791,743	40.81%	1,940,125
Impact Fee Study		314	11.11%	2,826
Banking and Merchant Service Fees		10,317	100.00%	10,317
Administration		57,192	3.19%	1,791,416
Total Expenditures		\$ 2,683,139		
Revenue Less Expenditures		\$ 2,693,669		
Balance as of July 1, 2019		18,103,114		
Balance as of June 30, 2020		\$ 20,796,783		

Attachment: Impact Fee Report FY19-20 [Revision 1] (2936 : AB 1600 Development Impact Fee Report For FY 2019-20)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2019-20

FUND 651 - WATER IMPACT FEE	Project Number	FY 19-20 AB 1600		
<u>REVENUE</u>				
Interest		\$ 49,841		
Water Impact Fees		1,411,404		
TOTAL REVENUE		\$ 1,461,245		
<u>Revenue Expended For</u>			% from this Fund	Total Project Expenditures
Main Ave Well #3	601u15	\$ 456,379	364.884%	125,075
General Plan Update		7,704	7.004%	110,000
RCSD Services - Infrastructure Planning		25,000	8.20%	305,000
Debt Service		656,122	41.000%	1,600,313
Impact Fee Study		314	11.11%	2,826
Banking and Merchant Service Fees		2,900	100.000%	2,900
Administration		18,120	1.011%	1,791,416
Total Expenditures		\$ 1,166,539		
Revenue Less Expenditures		\$ 294,706		
Balance as of July 1, 2019		2,140,457		
Balance as of June 30, 2020		\$ 2,435,163		

Attachment: Impact Fee Report FY19-20 [Revision 1] (2936 : AB 1600 Development Impact Fee Report For FY 2019-20)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL MAKING FINDINGS FOR UNEXPENDED DEVELOPMENT IMPACT FEES IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 66001 AND ACCEPTING THE ANNUAL DEVELOPMENT IMPACT FEE REPORT

WHEREAS, the Mitigation Fee Act, Government Code Section 66000 et seq., authorizes the City of Morgan Hill (“City”) to impose, collect, and expend mitigation fees to offset the impacts of development within the City; and;

WHEREAS, among the procedural requirements mandated by the Mitigation Fee Act is a requirement that beginning with the fifth fiscal year following deposit of development fees into a designated account, and each fifth fiscal year thereafter, the City make specified findings regarding any portion of the fees that remain unexpended; and

WHEREAS, a portion of the fees currently deposited in the City’s Storm Drain Impact Fee Fund and Public Safety Facilities Impact Fund were collected over five (5) years ago, and therefore the City wishes to make the findings required by Government Code Section 66001(d); and

WHEREAS, the City also wishes to review and accept reports required by the Mitigation Fee Act under the annual information disclosure requirements of Government Code Section 66006(b), including but not limited to the amount of the fee, the beginning and ending balance of the fee account or fund, and the interest earned thereon.

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

1. The City Council has considered the full record before it, which may include, but is not limited to, the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council finds that the Storm Drain Impact Fee Fund currently contains Four Million Nine Hundred Forty Nine Thousand One Hundred Eighty One Dollars (\$4,949,181), and Public Safety Facilities Impact Fee Fund currently contains Two Million Six Hundred Four Thousand Four Hundred Eighty Two Dollars (\$2,604,482) in unexpended fees that were collected over five (5) years ago.
3. In accordance with Government Code section 66001(d)(1), the City Council finds as follows:
 - a. The Unexpended Fees will be used to provide for the following projects:

- (A) Storm Drain Impact Fee to fund Storm System Expansions and Llagas Flood Control Project. The Storm System Expansions will expand storm system capacity in alignment with the 2018 Storm Drain System Master Plan and the Llagas Flood Control Project is to address storm water conveyance that drains into the Upper Llagas Creek Flood Protection Project (ULCFPP) and the West Little Llagas watershed. The project would provide flood protection and mitigate the increased risk of flooding when the ULCFPP is completed;
 - (B) Public Safety Facilities Impact Fee to fund construction of the Fire Station on Butterfield Boulevard. The project will address the need for a new fire station as the community grows.
 - b. There exists a reasonable relationship between the Unexpended Fees and the purpose for which they were charged as described above.
 - c. The current estimated costs that have been appropriated or will be appropriated for the Storm System Expansions and Llagas Flood Control Project are approximately Twelve Million Six Hundred Thousand Dollars (\$12,600,000); and costs for the Fire Station on Butterfield Boulevard are approximately Five Million Nine Hundred Eighty Thousand Dollars (\$5,980,000). The City's funding sources will include the Unexpended Fees described above and future impact fees to be collected for these projects.
 - d. The Unexpended Fees have been deposited in the respective Impact Fee Funds, which are the appropriate funds to finance the projects described above.
4. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 2nd day of December 2020 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.20-XXX, adopted by the City Council at the meeting held on December 2, 2020.

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

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

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

ACCEPT THE ANNUAL SB 165 REPORT FOR COMMUNITY FACILITIES DISTRICT NO. 2014-1 (FISHER CREEK)

RECOMMENDATION(S)

Accept and file the report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure
Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The Local Agency Special Tax and Bond Accountability Act ("The Act") requires that any local special tax or local bond measure subject to voter approval contain a statement indicating the specific purposes of the special tax, require that the proceeds of the special tax be applied to those purposes, require the creation of an account into which the proceeds shall be deposited, and require an annual report containing specified information concerning the use of proceeds.

The Act was enacted by Senate Bill 165 and codified in the California Government Code Sections 53410 through 53412. The City's Community Facilities District (CFD) No. 2014-1 (Fisher Creek) falls within these reporting requirements and the attached annual report is intended to comply with the regulation.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the required reporting information for the CFD.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the SB 165 Report for CFD No. 2014-1 (Fisher Creek) annually.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):
Not a Project.

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

LINKS/ATTACHMENTS:

1. FY19-20 SB165

SENATE BILL 165

Senate Bill 165, filed with the Secretary of State on September 19, 2000, enacted the Local Agency Special Tax and Bond Accountability Act. This Act requires that any local special tax or local bond measure subject to voter approval contain a statement indicating the specific purposes of the special tax, require that the proceeds of the special tax be applied to those purposes, require the creation of an account into which the proceeds shall be deposited, and require an annual report containing specified information concerning the use of the proceeds. The Act only applies to any local special tax measure or local bond measure adopted on or after January 1, 2001 in accordance with Section 50075.1 or Section 53410 of the California Government Code.

Some of the requirements of the Act are handled at the formation of the Special Tax District and others are handled through annual reports. This Section of this report intends to comply with Section 50075.3 or Section 53411 of the California Government Code that states:

“The chief fiscal officer of the issuing local agency shall file a report with its governing body no later than January 1, 2002, and at least once a year thereafter. The annual report shall contain all of the following:

- (a) The amount of funds collected and expended.
- (b) The status of any project required or authorized to be funded as identified in subdivision (a) of Section 50075.1 or Section 53410.”

The requirements of the Act apply to the Funds for the following District:

City of Morgan Hill
Community Facilities District No. 2014-1 (Fisher Creek)
Formed September 17, 2014

Purpose of Special Tax

The District was formed to fund all or a portion of the costs of the maintenance and monitoring required by the San Francisco Bay Regional Water Quality Control Board for the realignment of Fisher Creek. The special tax funds the cost of maintenance, monitoring and reporting of the Fisher Creek Realignment project; pay for administrative expenses; pay for any amounts required to establish or replenish capital improvement funds, repair and contingency funds or reserve funds; and pay for reasonable anticipated delinquent special taxes.

Collections & Expenditures

Fund	7/1/2019 Balance	Total Amount Collected ⁽¹⁾	6/30/2020 Balance	Amount Expended	Service Status
Special Tax Fund	\$112,386.00	\$46,282.00	\$126,360.00	\$32,308.00	Ongoing

(1) Figure represents the total amount levied for Fiscal Year 2019/20, including interest earned, less County Collection Fees of 1.0% of the total levy amount and delinquencies.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

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

ACCEPT DOWNTOWN CROSSWALK SAFETY IMPROVEMENTS PROJECT

RECOMMENDATION(S)

1. Accept as complete the Downtown Crosswalk Safety Improvements Project in the final amount of \$123,309;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure

2020-2021 Strategic Priorities

Transportation

GUIDING DOCUMENTS

Morgan Hill 2035 General Plan
Vision Zero

REPORT NARRATIVE:

On December 4, 2019, City Council awarded a construction contract for the Downtown Crosswalk Safety Improvements Project. The project scope included the installation of pedestrian-activated in-roadway warning lights (IRWL) for the crosswalks at the intersections of First Street and Fifth Street on Monterey Road (Attachment 1). The IRWL system is operated by wireless push buttons that activate flashing lights embedded in the pavement. The IRWL system is the same system that was installed at the Third Street intersection in 2017. The new IRWL system at the First Street and Fifth Street intersections replaced the bright orange flags carried by pedestrians with flashing lights to alert motorists that a pedestrian is crossing the street.

The project was scheduled to begin in March of this year but production of the IRWL system material was impacted as a result of the COVID-19 pandemic shutdown. The IRWL system materials were ultimately received by the Contractor in August and construction was completed in September.

The project was awarded to Golden Bay Construction Company for \$123,309 and the project authorized a 10% contingency of \$12,331. During construction, there were no contract change orders issued (Attachment 2).

Staff recommends accepting the project as the work is complete and in accordance with the plans and specifications (Attachment 3).

COMMUNITY ENGAGEMENT: Inform

The project sites were in the Downtown area; the Contractor notified the businesses at the affected intersections. Staff provided construction updates through Nextdoor, City social media accounts, on the City's website, and through the City-wide email notifications. In addition, City staff contacted the businesses at the affected intersections, the Morgan Hill Downtown Association, and the Morgan Hill Chamber of Commerce.

ALTERNATIVE ACTIONS:

Accepting the project in accordance with the contract documents is a required process and enables the City to release any retained funds owed to the contractor per the California Public Contract Code Section 7107.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On December 4, 2019, City Council awarded a construction contract to Golden Bay Construction, Inc. for \$123,309.
- On June 6, 2018, the City Council adopted the Capital Improvement Program fiscal years 2018-19 through 2023-24.

FISCAL AND RESOURCE IMPACT:

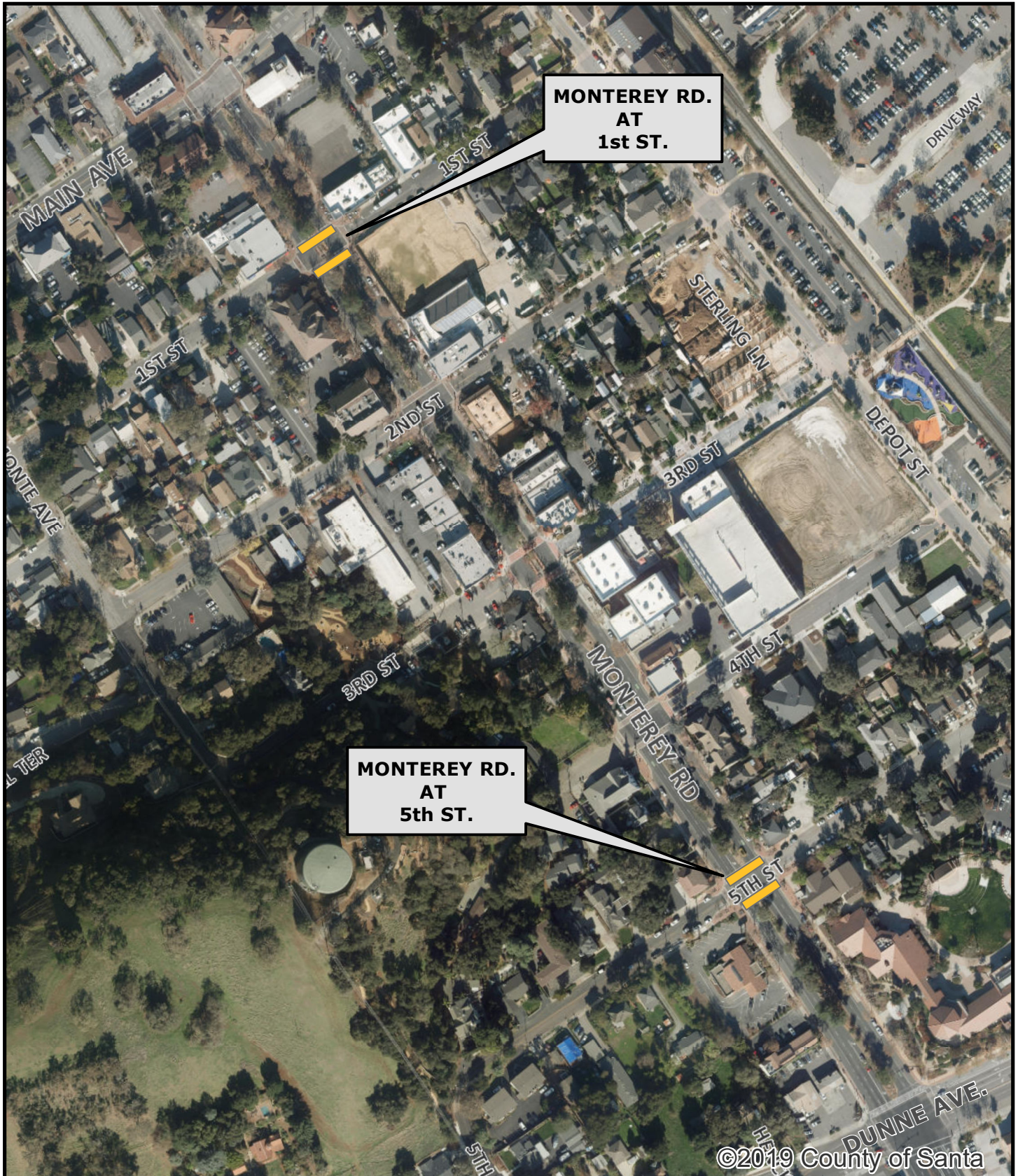
The final contract amount for the Downtown Crosswalk Safety Improvements Project is \$123,309. The project was awarded to Golden Bay Construction, Inc. for \$123,309 and the project was authorized with a 10% contingency of \$12,331, totaling \$135,640 authorized for construction. The entire base contract was spent, and no contract change orders were issued for a final contract cost of \$123,309. The remaining balance of \$12,331 will be returned to the Public Facilities (Non AB1600) Fund (346).

CEQA (California Environmental Quality Act): Categorical Exemption

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15401 of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance, or minor alteration of existing City facilities involving negligible or no expansion or use of these facilities.

LINKS/ATTACHMENTS:

1. Project Location Map
2. Funding Closeout Statement Downtown Crosswalk Safety 12-02-20
3. Notice of Completion Downtown Crosswalk Safety 12-02-20



Attachment: Project Location Map (2931 : Accept Downtown Crosswalk Safety Improvements Project)



CITY OF MORGAN HILL

**Engineering and Utilities Department
CIP Engineering Division**

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

SITE MAP DOWNTOWN CROSSWALK SAFETY IMPROVEMENTS



0 100 200 400 600 800
Feet

CIP Contract Acceptance Funding Closeout Statement

Project:	Downtown Crosswalk Safety Improvements		
Project No:	525018		
Date of Project Award:	4-Dec-19	Project Award Amount:	\$123,309
Funding Source:	f346	Contingency Authorized:	\$12,331
Date of Project Acceptance:	2-Dec-20	Total Authorized:	\$135,640
		Actual Base Contract Spent:	\$123,309

Change Orders			
Description	Date	Council Approval Req'd? (Y/N)	
None			
Total C.O.:			\$0

Additional Appropriations		
Source	Amount	Date
None		

		Total Construction Amount (Base Contract plus CO's):	\$123,309
Construction Fund Balance:	\$12,331		

Record at the Request of
and When Recorded Mail to:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Record at No Fee Pursuant to
Government Code Section 27383

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN, pursuant to Civil Code Section 9204, that:

- 1) On December 4, 2019, the City of Morgan Hill, a Municipal Corporation, entered into a contract with Golden Bay Construction, Inc. for the Downtown Crosswalk Safety Improvements Project located at the intersections of First Street and Fifth Street crossing Monterey Road in Morgan Hill, CA.
- 2) The owner of said property is the City of Morgan Hill, a Municipal Corporation, located at 17575 Peak Avenue, Morgan Hill, CA 95037, and is the owner of said property in fee simple.
- 3) The contractor is Golden Bay Construction, Inc. located at 3826 Depot Road, Hayward, CA 94545.
- 4) The surety is "Everest Reinsurance Company".
- 5) The project was completed on September 4, 2020 and accepted by the City Council of the City of Morgan Hill on December 2, 2020.

CITY OF MORGAN HILL, a Municipal Corporation

By _____
Scott Creer
City Engineer

I, the undersigned, declare that I am the City Engineer for the City of Morgan Hill. I have read the forgoing Notice of Completion and know and understand the contents thereof and that the facts stated therein are true and correct. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, at Morgan Hill, California.

Scott Creer
City Engineer

Attachment: Notice of Completion Downtown Crosswalk Safety 12-02-20 [Revision 1] (2931 : Accept Downtown Crosswalk Safety



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

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

ACCEPT TENNANT AVENUE SEWER PROJECT

RECOMMENDATION(S)

1. Accept as complete the Tennant Avenue Sewer Main Project in the final amount of \$2,287,821;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure

2020-2021 Strategic Priorities

Fiscal Sustainability

GUIDING DOCUMENTS

Wastewater System Master Plan

REPORT NARRATIVE:

The City's current Sewer Master Plan identified the existing 18-inch sewer pipe within Tennant Avenue between Monterey Road and Railroad Avenue as deficient under peak flow conditions and recommended that it be increased in size to prevent sewer overflows within this segment of the City's sewer system.

On July 17, 2019, City Council awarded a construction contract for the Tennant Avenue Sewer Main Project (Attachment 1). The project scope of work involved the following: removal of the existing sewer pipe and installation of new 27-inch sewer pipe, auger bore under the Union Pacific Railroad tracks, temporary sewer by-pass system, new manholes and/or manhole modifications, manhole coating, lateral reconnections, traffic control, project clean up and video of completed installation.

The project was awarded to KJ Woods Construction, Inc. for \$2,148,000 and the project was authorized a 15% contingency of \$322,200. During construction, seven contract change orders totaling \$310,069 were authorized to address unforeseen conditions and project changes (Attachment 2).

Staff recommends accepting the project as all of the work is complete and in accordance with the plans/specifications and directing City Clerk to file the Notice of Completion (Attachment 3).

COMMUNITY ENGAGEMENT: Inform

The Tennant Avenue Sewer Main Project is located within mostly commercial area. Some residential areas exist on the north side of Tennant Avenue near Church Street. Lane closures were kept to a minimum and some work was performed at night on Monterey Road to minimize delays to commuters. Staff provided community outreach to inform the entire City of the project and notified residents and businesses adjacent to the work area with door notifications in advance of construction work. Staff also provided updated construction information weekly through Nextdoor and on the City's website.

ALTERNATIVE ACTIONS:

Accepting the project in accordance with the contract documents is a required process and enables the City to release any retained funds owed to the contractor per the California Public Contract Code Section 7107.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On June 6, 2018, City Council adopted the FY 2018-19 through 2023-24 Capital Improvement Program.
- On October 18, 2017, City Council adopted the 2017 Sewer Master Plan.
- On July 17, 2019, City Council awarded the Tennant Avenue Sewer Project to KJ Woods for \$2,148,000.

FISCAL AND RESOURCE IMPACT:

The final contract amount for the Tennant Avenue Sewer Main Project is \$2,287,821. The project was awarded to KJ Woods Construction, Inc. for \$2,148,000 and the project was authorized a 15% construction contingency of \$322,200 (total of \$2,470,200). Out of the original base contract, only \$1,977,752 was spent along with seven change orders totaling \$310,069 for a total cost of \$2,287,821 (\$1,977,752+\$310,069). The balance of \$182,379 (\$2,470,200-\$2,287,821) will be unencumbered and returned to the Sewer CIP Fund (Fund 643).

CEQA (California Environmental Quality Act): Project

The activities described in this Staff Report are categorically exempt under the CEQA Guidelines, specifically pursuant to Section 15302 (c) Replacement or Reconstruction of existing utilities and Section 15303(d) New construction or conversion of small structures, as the subject work involves the removal and replacement of a sewer main within an existing paved roadway to eliminate a flow deficiency.

LINKS/ATTACHMENTS:

1. Project Location Map
2. Funding Closeout Statement-Tennant Sewer 12-02-20
3. Notice of Completion-Tennant Sewer 12-02-20



Attachment: Project Location Map (2018 : Accept Tennant Avenue Sewer Project)



CITY OF MORGAN HILL

**Engineering and Utilities Department
CIP Engineering Division**

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

TENNANT AVENUE SEWER MAIN PROJECT



0 200 400 800 1,200 1,600
Feet

CIP Contract Acceptance Funding Closeout Statement

Project:	Tennant Avenue Sewer Main Project		
Project No:	302T17		
Date of Project Award:	17-Jul-19	Project Award Amount:	\$2,148,000
Funding Source:	f643	Contingency Authorized:	\$322,200
Date of Project Acceptance:	2-Dec-20	Total Authorized:	\$2,470,200
		Actual Base Contract Spent:	\$1,977,752

Change Orders				
	Description	Date	Council Approval Req'd? (Y/N)	
C.O. #1:	Install sewer main during night shifts at Monterey/Tennant intersection to minimize traffic impacts.	11-Oct-19	N	\$33,668
C.O. #2:	Pave Monterey/Tennant intersection during night shift to avoid traffic impacts.	8-Nov-19	N	\$12,614
C.O. #3:	Additional paving required along Tennant between Vineyard and Railroad due to failed existing pavement.	17-Mar-19	N	\$28,325
C.O. #4:	Additional costs to remove obstruction and repair equipment due to hitting an obstruction during the bore work.	15-Jun-20	N	\$24,596
C.O. #5:	Additional costs to: Unclog bypass system, sewer debris disposal, bulhead replacement, grind & repave Vineyard intersection, sewer later extension, secondary bypass trench paving and concrete median digout.	23-Jul-20	N	\$38,399
C.O. #6:	Additional cost for mismarked water line, daily cleaning of sewer debris, plug pave outside trench limits.	31-Jul-20	N	\$22,467
C.O. #7:	Additional costs due to unforeseen adverse soils conditions between Vineyard and Railroad.	15-Oct-20	N	\$150,000
			Total C.O.:	\$310,069

Additional Appropriations		
Source	Amount	Date
None		

Construction Fund Balance:	\$182,379	Total Construction Amount (Base Contract plus CO's):	\$2,287,821
----------------------------	-----------	--	--------------------

Attachment: Funding Closeout Statement-Tennant Sewer 12-02-20 (2918 : Accept Tennant Avenue Sewer Project)

Record at the Request of
and When Recorded Mail to:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Record at No Fee Pursuant to
Government Code Section 27383

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN, pursuant to Civil Code Section 9204, that:

- 1) On July 17, 2019, the City of Morgan Hill, a Municipal Corporation, entered into a contract with KJ Woods Construction, Inc. for the Tennant Avenue Sewer Main Project located in Morgan Hill, CA.
- 2) The owner of said property is the City of Morgan Hill, a Municipal Corporation, located at 17575 Peak Avenue, Morgan Hill, CA 95037, and is the owner of said property in fee simple.
- 3) The contractor is KJ Woods Construction, Inc. located at 1485 Bayshore Blvd., #149, San Francisco, CA 94124.
- 4) The surety is "Hartford Fire Insurance Company".
- 5) The project was completed on April 13, 2020 and accepted by the City Council of the City of Morgan Hill on December 2, 2020.

CITY OF MORGAN HILL, a Municipal Corporation

By _____
Scott Creer
City Engineer

I, the undersigned, declare that I am the City Engineer for the City of Morgan Hill. I have read the forgoing Notice of Completion and know and understand the contents thereof and that the facts stated therein are true and correct. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, at Morgan Hill, California.

Scott Creer
City Engineer

Attachment: Notice of Completion-Tennant Sewer 12-02-20 [Revision 1] (2918 : Accept Tennant Avenue Sewer Project)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

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

ACCEPT MORGAN HILL LIBRARY ADDITION PROJECT

RECOMMENDATION(S)

1. Accept as complete the Morgan Hill Library Addition Project in the final amount of \$2,072,574;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure
Supporting Our Youth
Seniors
and Entire Community

GUIDING DOCUMENTS

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

The Morgan Hill Library at its current location (660 West Main Avenue) was completed in August 2007. In 2014, the Friends of the Library commissioned a space needs study to evaluate the current floor plan and a proposed expansion plan to meet both the current and future needs of the library.

In August 2016, the City Council awarded a design service agreement with Weston Miles Architects (WMA) to further develop the conceptual design and to provide design and construction plans for the Library Expansion Project. WMA met with Santa Clara County Library representatives, other Library stakeholders, and City staff to finalize the conceptual design for the project.

On April 4, 2017, City staff and WMA shared the finalized conceptual design for the Library Expansion Project with the Library and Cultural Arts Commission. The recommendations from the Library and Cultural Arts Commission along with the finalized conceptual design was submitted to City Council for approval on April 5, 2017.

The initial Library Expansion Project was bid in July 2018. However, the bid results exceeded the project budget, and all bids were subsequently rejected by the City

Council. WMA, Santa Clara Library representatives, and other library stakeholders along with City staff collaborated to reduce the scope of work for the project. An updated conceptual design with a smaller footprint was reviewed and approved by both the Library and Cultural Arts Commission and the City Council in October 2018.

Since the scope of work was reduced, the project was renamed to the Morgan Hill Library Addition Project. The final project design and scope for this project included a 2,500 square foot addition, with approximately 1,650 square feet of Program Room and 850 square feet of Children's Activity Area (Attachment 1).

The project plans and specifications were completed in May 2019 and the project was advertised for bidding in June 2019. The bid opening was held on August 8, 2019 and the project was awarded to Selden & Son. The project began in October 2019 and was substantially completed in October 2020. During the construction phase, four change orders were authorized in the amount of \$86,774. The final construction contract amount is \$2,072,574 (Attachment 2).

Staff recommends the acceptance of this project as the work has been completed in accordance with plans and specifications. Staff additionally recommends authorizing the City Clerk to file the Notice of Completion (Attachment 3).

COMMUNITY ENGAGEMENT: Inform

WMA and staff met regularly with Library Staff during both design and construction. Staff provided weekly updates through social media accounts and on the City's website during construction.

ALTERNATIVE ACTIONS:

Accepting the project in accordance with the contract documents is a required process and enables the City to release any retained funds owed to the contractor per the Public Contract Code Section 7107.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

August 24, 2016 – The City Council approved a Service Agreement for Design Professionals with WMA for Design and Construction Support Services for the Library Expansion Project.

April 4, 2017 – Library and Cultural Arts Commission reviewed conceptual design and forwarded recommendations to City Council

April 5, 2017 – The City Council approved the conceptual design for the Library Expansion Project

June 7, 2017 – The City Council approved the First Amendment to WMA for the Library Expansion Project

November 15, 2017 – The City Council approved the adoption of a resolution approving the Design Permit for the Library Expansion Project

August 22, 2018 – Rejection of bids for the Library Expansion Project

September 4, 2018 – Library and Cultural Arts Commission reviewed updated conceptual design and forwarded recommendations to City Council

September 26, 2018 – The City Council approved the Third Amendment to WMA for the Library Expansion Project

October 17, 2018 – The City Council approved the Updated Conceptual Design for the Library Expansion Project

September 4, 2019 – The City Council awarded the Morgan Hill Library Addition to Selden & Son

FISCAL AND RESOURCE IMPACT:

The total authorization for this project was \$2,184,380, which included a 10% contingency of \$198,580. The final contract amount for the Morgan Hill Library Addition Project is \$2,072,574. The project is funded in the adopted Capital Improvement Program budget, under Project #251015 – Library Expansion, funded by the Library Impact Fund (348).

The balance of \$111,806 will be returned to the Library Impact Fund (348).

CEQA (California Environmental Quality Act): Categorical Exemption

The Morgan Hill Library Addition Project is exempt from the California Environmental Quality Act (CEQA) under Section 15301 (Existing Facilities) (E) (1) of Guidelines for CEQA and Section 21083 of the Public Resources Code.

LINKS/ATTACHMENTS:

1. Vicinity Map 12-2-20
2. Morgan Hill Library Addition Change Order Closeout 12-2-20
3. Notice of Completion 12-2-20



**PROJECT
LOCATION**

Attachment: Vicinity Map 12-2-20 (2022 : Acceptance of Morgan Hill Library Addition Project)



CITY OF MORGAN HILL
Engineering and Utilities Department
CIP Engineering Division

MORGAN HILL LIBRARY ADDITION PROJECT



0 50 100 200 300 400
 Feet

CIP Contract Acceptance Funding Closeout Statement

Project:	Morgan Hill Library Addition Project		
Project No:	251015		
Date of Project Award:	4-Sep-19	Project Award Amount:	\$1,985,800
Funding Source:		Contingency Authorized:	\$198,580
Date of Project Acceptance:	2-Dec-20	Total Authorized:	\$2,184,380
		Actual Base Contract Spent:	\$1,985,800

Change Orders			
	Description	Date	Council Approval Req'd? (Y/N)
C.O. #1:	Demolish concrete footings not in project scope and Dewater for Pier Footings	12/3/2019	N
C.O. #2:	Add 7 floor boxes for Outlets	12/9/2019	N
C.O. #3:	Add Corner Guards, Interior Painting, and Roofing Work	9/29/2020	N
C.O. #4:	Additional Wiring for Existing Lighting System to connect to new Lighting	9/29/2020	N
Total C.O.:			\$86,774

Additional Appropriations		
Source	Amount	Date
None		

Construction Fund Balance:	\$111,806	Total Construction Amount (Base Contract plus CO's):	\$2,072,574
----------------------------	-----------	--	-------------

Attachment: Morgan Hill Library Addition Change Order Closeout 12-2-20 (2022 : Acceptance of Morgan Hill Library Addition Project)

Record at the Request of
and When Recorded Mail to:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Record at No Fee Pursuant to
Government Code Section 27383

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN, pursuant to Civil Code Section 9204, that:

- 1) On September 4, 2019, the City of Morgan Hill, a Municipal Corporation, entered into a contract with Selden & Son for the Morgan Hill Library Addition Project located in 660 West Main Avenue Morgan Hill, CA 95037.
- 2) The owner of said property is the City of Morgan Hill, a Municipal Corporation, located at 17575 Peak Avenue, Morgan Hill, CA 95037, and is the owner of said property in fee simple.
- 3) The contractor is Selden & Son located at 425 West Beach Street Watsonville, CA 95076.
- 4) The surety is "Travelers Casualty and Surety Company of America".
- 5) The project was completed on October 25, 2020 and accepted by the City Council of the City of Morgan Hill on December 2, 2020.

CITY OF MORGAN HILL, a Municipal Corporation

By _____
Scott Creer
City Engineer

I, the undersigned, declare that I am the City Engineer for the City of Morgan Hill. I have read the forgoing Notice of Completion and know and understand the contents thereof and that the facts stated therein are true and correct. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, at Morgan Hill, California.

Scott Creer
City Engineer

Attachment: Notice of Completion 12-2-20 [Revision 1] (2022 : Acceptance of Morgan Hill Library Addition Project)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

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

ADOPT RESOLUTION INITIATING 2021 HAZARDOUS VEGETATION PROGRAM

RECOMMENDATION(S)

Adopt resolution declaring weeds and brush to be a nuisance and setting the hazardous vegetation public hearing on February 3, 2021.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment and Preserving
Open Space and Agricultural Land
Maintaining Infrastructure

REPORT NARRATIVE:

Under Government Code section 39561, cities may adopt a resolution declaring weeds and dry brush to be a public nuisance and order their abatement (Attachment 1).

Weed and brush abatement services constitute the City's hazardous vegetation program and are key to reducing fire risk and protecting public safety. The City of Morgan Hill has contracted with Santa Clara County for weed and brush abatement services since 1996. In the last several years, City and County staff have successfully worked together to streamline program administration and improve communications with Morgan Hill property owners. The County's Consumer and Environmental Protection Agency - Weed Abatement Program manages the program.

As in prior years, staff has combined the initial resolution for both the weed and brush abatement programs. Staff proposes that the abatement program commencement hearing take place on February 3, 2021. Once the resolution is adopted, County staff will notify the affected property owners of the February 3rd public hearing and of their obligations to abate hazardous vegetation before the deadline. In response to the City's past request for more notification to the property owners, the County will also be mailing a courtesy notice out to affected property owners in the early Spring to further remind them of their obligations.

The City's Fire Department and the County's Weed Abatement Division are continuing to integrate their efforts and communication methods to enhance customer service. The improvements instituted have eliminated customer complaints about receiving

conflicting information from the two programs.

COMMUNITY ENGAGEMENT: Empower

The hazardous vegetation abatement program relies on a full range of community engagement approaches. Much of it begins when the County Program or City Fire Department informs a property owner that a hazardous situation has been observed on their property. The owner is given several months during which they may consult and work together with program staff to understand the situation and the needed remedies. Ultimately, each property owner is invited and empowered to remedy the situation themselves in order to minimize their program charges while maintaining public safety. In addition, many of the properties on the original list get onto the list as a result of a complaint from a community member about a hazardous situation.

ALTERNATIVE ACTIONS:

The Council could choose to not act or delay action on this resolution. Not declaring weeds and brush to be a nuisance would potentially compromise community fire safety. Delaying action would ultimately provide the affected property owners with less notice and time to plan for abating their hazardous vegetation.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

While this will be the first Council action addressing hazardous vegetation for the 2021 fire season, the recommended approach is consistent with the actions taken by the Council for over a decade.

FISCAL AND RESOURCE IMPACT:

The Hazardous Vegetation Program is designed to be user fee supported. The per-lot assessment includes costs for doing the weed and brush control work plus overhead county costs to administer the program. Based on the City's agreement with the County, the City may need to ultimately contribute to the program's costs if user fee revenues do not completely cover all of the County's costs. Administering this program is an activity anticipated in the Community Services and Fire Departments' work programs and budgets. Fees imposed by the County Program do not cover the cost of the City staff time associated in providing oversight and those resources are budgeted and funded through the General Fund (010).

CEQA (California Environmental Quality Act): Categorical Exemption

These activities are categorically exempt from environmental review under the California Environmental Quality Act pursuant to California Code of Regulations, Title 21, Section 15304(i) (Minor Alterations to Land – Fuel Management Activities).

LINKS/ATTACHMENTS:

1. Initial Resolution

RESOLUTION NO. 20-XXX**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING CERTAIN HAZARDOUS VEGETATION GROWING IN THE CITY OF MORGAN HILL TO BE A PUBLIC NUISANCE, DESCRIBING PROPERTIES WHERE SUCH NUISANCE EXISTS; ORDERING ABATEMENT AND SETTING A PUBLIC HEARING THEREON**

WHEREAS, the City Council finds that certain weeds and brush are growing in the City of Morgan Hill upon the various streets, alleys, sidewalks, and upon private property, which said weeds and brush bear seeds of a wingy or downy nature, or may attain such growth as to become, when dry, a fire menace, or which are otherwise noxious and dangerous; and

WHEREAS, the City Council further finds and declares that said weeds and brush constitute a public nuisance.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morgan Hill authorizes as follows:

1. That the weeds, as described in the above recital, constitute and will continue to constitute a public nuisance, and it is ordered that this public nuisance be abated in the manner provided in Title 8, Chapter 8.20 of the Morgan Hill Municipal Code.
2. That the nuisance exists upon all streets, alleys, sidewalks, and private property within said City as shown, described and delineated on the several maps of the property in the City, which are recorded in the Office of the County Recorder of the County of Santa Clara, reference in each instance for the description of any particular street, alley, or private property being hereby made to the several maps mentioned, and in the event of there being several subdivision maps on which lots are shown, reference is hereby made to the latest subdivision map.
3. That it is ordered that Wednesday, the 3rd day of February 2021, at 7:00 p.m., in the Council Chambers of the City Council of the City of Morgan Hill is hereby fixed as the time and place when objections to the proposed destruction or removal of weeds shall be heard and be given due consideration. It is recognized and noticed that this hearing may instead be held virtually if the COVID pandemic meeting restrictions are still in force.
4. That the City Clerk of the City of Morgan Hill is hereby ordered and directed to cause notice of the adoption of this Resolution and notice of hearing to be given to property owners pursuant to Section 39562.1 of the Government Code.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 2nd day of December 2020 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

IRMA TORREZ, City Clerk

∞ **CERTIFICATION** ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.20-XXX, adopted by the City Council at the meeting held on December 2, 2020.

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

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

PREPARED BY: Maureen Tobin, Communications and Engagement Director
APPROVED BY: City Manager

ADOPT RESOLUTION AMENDING THE MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES RESOLUTION AND SALARY SCHEDULE TO INCLUDE APPOINTED CITY CLERK POSITION (THIS RESOLUTION RESCINDS RESOLUTION NO. 20-048)

RECOMMENDATION(S)

Adopt resolution amending the Management, Professional, and Confidential Employees Resolution and salary schedule to include appointed City Clerk position.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Community Engagement and Messaging
Fiscal Sustainability

REPORT NARRATIVE:

The City Clerk position in the City of Morgan Hill has been elected since the City's incorporation in 1906. Since that time, the duties, responsibilities, and requirements of the position have changed significantly. To ensure that future City Clerks of Morgan Hill are qualified professionals with adequate experience and knowledge of the tasks and requirements of the role, the City Council, per Government Code §36508, voted unanimously on July 18, 2018 to place the question of "Shall the office of City Clerk be appointive?", Measure J, on the November 6, 2018 Ballot. Measure J passed, requiring the City Clerk position to be appointive at the end of the current elected City Clerk's term. At the November 28, 2018 City Council Meeting, the City Council took action to delegate the authority to appoint the City Clerk to the City Manager (Attachment 1). The current elected City Clerk's term comes to an end on December 9, 2020.

Morgan Hill is fortunate to have a highly qualified internal candidate, Michelle Bigelow, who has served as the Council Services and Records Manager, and as the Deputy City Clerk for the past four years. Prior to that she served as the Council Services and Record Coordinator, with the position being reclassified to Manager in 2016. During this time, Michelle has obtained three certifications which are recognized as the gold standard in the City Clerk field: Certified Municipal Clerk, Master Municipal Clerk, and California Professional Clerk Certification. Over the last few years Michelle has taken on

a majority of City Clerk responsibilities, in addition to her Council Services and Records Management duties.

Michelle also serves as the Region 14 Director for the City Clerks Association of California, a role that allows her to provide leadership for the region, coordinate training opportunities, and mentor her peers working to obtain their certifications.

The City Clerk position is recommended to be classified as a Middle Management position reporting to the Communications and Engagement Director with a dotted line to the City Manager. As a Management position it is non-represented and works under the City Council's adopted Management, Professional & Confidential Employees Resolution (Attachment 2).

The average monthly salary range for a similar Clerk position of comparable agencies is between \$10,692 - \$13,586. For Morgan Hill, it is recommended that the City Clerk position be in the same band as the Assistant City Attorney and the Assistant to the City Manager, within Group B - Middle Management, of the Management, Professional, & Confidential Employees salary schedule, with a monthly salary range of \$11,114 - \$14,579. The recommended range makes the City Clerk position very competitive with other agencies and is equitable for the additional level of roles and responsibility the incumbent will take on. Further, it will allow us to attract highly qualified candidates should we need to recruit sometime in the near future.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the creation of the newly appointed City Clerk position and the related salary.

ALTERNATIVE ACTIONS:

The City Council could choose not to approve the new position leaving the City without a City Clerk. The Council could also choose to adjust the recommended salary range. Neither of these alternative actions are recommended as the City Clerk role is an essential one in municipal organizations and the recommended salary is within an existing and comparable band on the salary schedule.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On July 18, 2018, the City Council approved placing a measure on the November 6, 2018 ballot asking, "Shall the office of the City Clerk be appointive?"

On November 28, 2018, after the passing of Measure J, the City Council introduced an ordinance delegating the authority to the City Manager to appoint the City Clerk.

FISCAL AND RESOURCE IMPACT:

The recommended salary of the City Clerk position is between \$11,114 – \$14,579 per month, or \$133,368 - \$174,948 annually.

With the appointment of the current Council Services and Records Manager to the new City Clerk position, the budgetary impact is expected to be cost neutral. The

change in salary is estimated to be \$8,200 per year, as the incumbent's salary will commence at the lower end of the range in the new position. This increase will be offset by the cost savings from the current elected City Clerk position budget.

Once the City Clerk is appointed, the Council Services and Records Manager position will become an unfunded position.

CEQA (California Environmental Quality Act):

Not a Project - Pursuant to CEQA, organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment and are therefore exempt activities.

LINKS/ATTACHMENTS:

1. 2291- Authorization to appoint City Clerk by the City Manager
2. Resolution - Management, Professional & Confidential Employees Salary Schedule

ORDINANCE NO. 2291, NEW SERIES**AN ORDINANCE OF THE CITY OF MORGAN HILL
AUTHORIZING THE CITY MANAGER TO APPOINT THE
CITY CLERK.**

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

SECTION 1. At the expiration of the existing term of the City Clerk of the City of Morgan Hill, the City Manager shall appoint the City Clerk on the basis of his or her experience and ability. The City Clerk shall hold the office at the pleasure of the City Manager.

SECTION 2. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. Effective Date; Posting. This Ordinance shall take effect on January 5, 2019. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 28TH DAY OF NOVEMBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 5TH DAY OF DECEMBER, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES:	COUNCIL MEMBERS:	Rich Constantine, Larry Carr, Rene Spring, Caitlin Robinett Jachimowicz, Steve Tate
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:



STEVE TATE, Mayor

ATTEST:



IRMA TORREZ, City Clerk

DATE:

12/12/2018

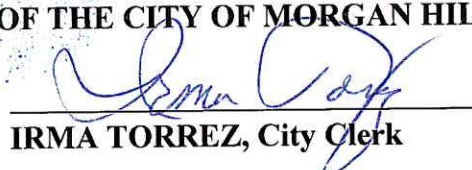
∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2291, New Series adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 5th day of December 2018.

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

DATE:

12/12/2018



IRMA TORREZ, City Clerk

Attachment: 2291- Authorization to appoint City Clerk by the City Manager (2937 : Approve Appointed City Clerk Position)

RESOLUTION NO. 20-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADJUSTING THE SALARY SCHEDULE FOR MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES (THIS RESOLUTION RESCINDS RESOLUTION NO. 20-048)

WHEREAS, the City Manager has presented to the City Council of the City of Morgan Hill a recommended set of salary ranges and benefits for the Management, Professional, and Confidential employees; and

WHEREAS, the City Council of the City of Morgan Hill has reviewed said recommendations;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morgan Hill as follows:

SECTION 1 - SALARY RANGES

- A. Effective December 29, 2019, base salaries for Groups 1-A, 1-B, 1-C, and 1-D, increase by 3.5%.
See Salary Schedule attached as **Exhibit A**.
- B. Groups 1-A, 1-B, 1-C, and 1-D base salary ranges include the employee PERS contribution which is deducted from payroll (See SECTION 3, E-H.)

SECTION 2 - ESTABLISHMENT OF COMPENSATION AND JOB DESCRIPTIONS FOR GROUPS 1-A, 1-B, 1-C, and 1-D

- A. The City Manager will establish the monthly compensation for the classifications in Group 1-A. In order to attract high quality executive managers, foster job security within a professional climate, and provide the flexibility to remain competitive within the area job market, the City Manager has authority to enter into individual employment agreements with each executive manager; provided that the terms of the employment agreement do not exceed the total compensation permitted by this Resolution.

Employees listed in Group 1-A may receive a severance allowance as provided for in an individual employment agreement when they are separated in good standing from employment; provided that such separation is not for cause, or for reasons listed in Government Code 19572, or for any employee who voluntarily resigns from City service for personal reasons.

- 1. The City Manager shall establish an allowance amount, not to exceed six months' salary, which is determined to be in the best interest of the city for the following executive classifications of the Group 1-A:

Assistant City Manager for Administrative Services*
 Assistant City Manager for Development Services
 Chief of Police
 Public Services Director

**Currently Unfunded Position*

2. The City Manager shall establish an allowance amount, not to exceed three months' salary, which is determined to be in the best interest of the City for the remaining classifications of the Group 1-A.
 3. This severance allowance is in addition to any unused vacation or administrative leave pay unused at the time of separation.
- B. Each Department Director will recommend to the City Manager the proposed monthly salary to be paid to each of the employees whose classification appears in Group 1-B, 1-C, and 1-D. Upon approval of the City Manager, the monthly salary will be set within the prescribed range for each classification. The City Manager has the authority to increase the monthly compensation for employees in Group 1-B, 1-C, and 1-D, by a maximum of 10% within the prescribed range each fiscal year based on each individual employee's performance.
- C. The City will contribute to a City-sponsored IRS 457 deferred compensation program of the employee's choice (ICMA or MassMutual) according to the following schedule:
1. 1% of base salary per pay period for employees who have been employed with the City from four to eight years.
 2. 2% of base salary per pay period for employees who have been employed with the City for over eight years.
- D. When it is proposed by the Personnel Officer that a new classification be created or an existing classification be changed, the City Manager shall submit justification for approval of that action to the City Council and if that action is approved, the City Manager will have the authority to approve new and revised job descriptions.

SECTION 3 - CONTRIBUTIONS TO THE CalPERS RETIREMENT SYSTEM, GROUPS 1-A, 1-B, 1-C, and 1-D

- A. For "Classic Members" as defined by the Public Employees' Pension Reform Act of 2013 (PEPRA) and in the CalPERS retirement system:
1. Non-Safety (miscellaneous) employees listed in Groups 1-A, 1-B, 1-C, and 1-D will receive CalPERS retirement benefits under the 2.5% at age 55 plan.
 2. Safety (sworn) employees listed in Groups 1-A and 1-B, will receive CalPERS retirement

benefits under the 3% at age 50 plan.

B. For "New Members" as defined by PEPRA and in the CalPERS retirement system:

1. Non-Safety (miscellaneous) employees listed in Groups 1-A, 1-B, 1-C, and 1-D will receive CalPERS retirement benefits under the 2.0% at 62 plan.
2. Safety (sworn) employees listed in Groups 1-A and 1-B will receive CalPERS retirement benefits under the 2.7% at age 57 plan.

C. CalPERS defines a "New Member" as:

1. A new hire who is brought into CalPERS membership for the first time on or after January 1, 2013, and who has no prior membership in any other California public retirement system.
2. A new hire who is brought into CalPERS membership for the first time on or after January 1, 2013, and who is not eligible for reciprocity with another California public retirement system.
3. A member who established CalPERS membership prior to January 1, 2013, and who is hired by a different CalPERS employer after January 1, 2013, after a break in service of greater than six months.
4. CalPERS refers to all members that do not fit the definition of a "new member" as a "classic member."

D. Non-Safety (miscellaneous) employees: Beginning with CalPERS rates effective July 1, 2013, the City and Non-Safety (miscellaneous) Management, Professional, and Confidential employees agreed to split future employer rate increases at a 50/50 ratio. This methodology will be used in subsequent years should CalPERS increase the Miscellaneous contribution rates.

E. The Miscellaneous "Classic Members" shall contribute, in addition to the "Classic Members" rate of 8.0%, an additional 4.485% towards the "Classic Members" CalPERS contribution rate for FY 2020-21. The total "Classic Members" employee contribution obligation shall be 12.485%.

F. The Miscellaneous "New Members" shall contribute, in addition to the "New Members" rate of 6.25%, an additional 4.485% towards the "New Members" CalPERS contribution rate for FY 2020-21. The total "New Members" employee contribution obligation shall be 11.485%.

G. Safety (sworn) PEPRA employees: Beginning with CalPERS rates effective July 1, 2013, at which time the City's employer contribution PEPRA rate was 11.5%, the City and Association agreed that, beginning with CalPERS PEPRA rates effective July 1, 2013, safety (sworn) PEPRA employees would not pay less than 11.50% and would split future increases to the City's employer PEPRA contribution rates, including both the normal cost and any unfunded actuarial liability at a 50/50 ratio. For example, the City's employer CalPERS safety PEPRA obligation was 12.114% in FY 16-17 with the PEPRA employees' obligation was at 11.50%.

Therefore, City paid half of the 0.614% increase over the base year City's employer PEPR cost of 11.50% (equal to 0.307%) and safety PEPR employees paid the other half (also equal to 0.307%). This methodology has been used in each year subsequent to FY 2016-17 and will be used in future years should CalPERS increase the City's employer Safety PEPR contribution rates. The Safety PEPR employees CalPERS contributions rate for 2020-21 shall be 14.867% (13.00% employee + 1.867% of the employer share).

- H. Safety (sworn) Classic employees: Beginning December 30, 2018, the City and Safety (sworn) Management, Professional, and Confidential employees agreed, in addition to employee CalPERS rate of 9.0%, a 6.12% towards the employer's share of pension costs (i.e. the total safety (Sworn) employee contribution for FY 2019-20 shall be 15.12% (9.00% employee + 6.12% of the employer share). The total employee contribution shall remain at 15.12% for the Safety (sworn) classic employees during the term of the Morgan Hill Police Officers' Association Memorandum of Understanding (MOU), which is December 30, 2018 – December 31, 2021.

SECTION 4 - HEALTH CARE CONTRIBUTIONS AND IRS 125 PLAN, GROUPS 1-A, 1-B, 1-C, and 1-D

- A. The City will contribute to the City's medical and dental plans as follows:
1. For employees with family coverage, up to \$1,976/month in 2020 and up to \$2,055/month in 2021.
 2. For employees with employee plus one coverage, up to \$1,508/month in 2020 and up to \$1,568/month in 2021.
 3. For employees with employee only coverage, up to \$800/month in 2020 and up to \$832/month in 2021.
 4. Employees enrolling in City health but not using the maximum amount available from the City for their premium category (employee only, employee + 1, employee + family) shall not be entitled to the surplus. Employees enrolling in plans whose cost exceeds the maximum amount available from the City for their premium category shall have the difference deducted on a pre-tax basis from their paycheck.
 5. Employees who waive medical coverage and annually provide proof of alternate medical coverage shall be entitled to a taxable health in lieu payment of six hundred ten dollars (\$610) per month.
 6. If an employee waives medical and elects dental coverage, the employee will receive the taxable health in lieu payment of six hundred ten dollars (\$610) per month but will pay the appropriate dental premium.
- B. The City will continue to provide coverage under the Concern Employee Assistance Program.
- C. The City will continue to offer an IRS Section 125 program.

SECTION 5 - GENERAL BENEFIT PROVISIONS, GROUPS 1-A, 1-B, 1-C, AND 1-D

The City will comply with the requirements of the City Personnel Rules and Regulations and the Fair Labor Standards Act governing the use of taking and reporting time off work for

management employees.

A. Holidays

1. The City will grant the following paid holidays to employees:

New Year's Day
Martin Luther King, Jr. Day
President's Day
Cesar Chavez Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Day after Thanksgiving
Christmas Eve
Christmas Day

One-half (1/2) day holiday to be used during the furlough period or on the last workday before the holiday.

Two floating holidays which must be used during the fiscal year.

2. Holidays are paid at a rate of eight hours of time off; employees on alternate work schedules must use additional leave balances to receive full pay on a holiday.
3. With the approval of the employee's supervisor, employees may "float" holidays to another day within the same fiscal year provided they work on the holiday.

B. Sick Leave Accrual

1. Sick Leave credit for employees will be accumulated on the basis of eight hours of sick leave per month (96 hours per year).
2. The City will, at the end of each calendar year, pay each employee twenty-five percent of the unused sick leave earned that year unless the employee requests not to receive such a payment.
3. The balance of the unused sick leave will then be accumulated on an unlimited basis.
4. Upon retirement, 100% of the employee's unused sick leave balance will be credited to the employee's retirement eligibility. This amount would then be converted into time in service and added to the employee's retirement eligibility. (Reference - City contract with CalPERS, Section 20862.8)
5. Each employee may take 16 hours of personal leave time during the fiscal year which is

charged against the current year's sick leave accrual.

6. The City Manager may negotiate establishing a leave "bank" with new employees at time of hire.

C. Vacation Leave Accrual

1. Each employee will be credited vacation on the basis of 120 hours per year for the first five years of City service. After five years of service, vacation will be credited on the basis of 160 hours per year.
2. The maximum accumulation of vacation will be no more than that earned for two years.
3. Additional vacation accrual will not be provided until the employee's vacation balance drops below the maximum accrual limit as of June 30 in any given year.
4. The City Manager may negotiate vacation accrual rates and/or establish a leave "bank" with new employees at time of hire.

D. Administrative Leave, Groups 1-A, 1-B, and 1-C

1. Employees listed in Groups 1-A, 1-B, and 1-C receive and may use up to 72 hours of administrative leave with pay per fiscal year.
2. Administrative leave time for employees in Groups 1-A, 1-B, and 1-C will be available for one additional year if not used in the fiscal year that it was initially available. If, however, the administrative leave time that was carried over to the following fiscal year is not used during the second year, it will be lost at the end of the second fiscal year. In effect, the maximum amount of administrative leave time that may be available to an employee at any given time is 144 hours.
3. Effective July 1, 2016, new employees who are hired during any month other than July, will initially receive prorated administrative leave hours of six (6) hours per month depending on date of hire and the hours will be banked at time of hire (i.e. employees hired in the month of August would receive 66 hours of administrative leave because they will be working a total of eleven (11) months in the fiscal year). All regular, full-time employees will receive 72 hours of administrative leave each fiscal year following their hire date. Part-time employees have prorated benefits and their total administrative leave hours will be prorated based on their position allocation.

E. Leave Cash Out

Employees listed in Groups 1-A, 1-B, 1-C and 1-D may cash out up to 120 hours of accrued vacation, administrative leave, or a combination of the two, per calendar year. Employees must make an irrevocable election by December 1 of each year for the following calendar year stating their intent to cash out and the eligible number of hours. If employees do not request payment of the elected cash amount by November 1 of each year, Payroll will automatically cash out the amount designated by the employee on or after

the pay period including November 1st.

F. Bereavement Leave

Management, Professional, and Confidential employees shall, per occurrence, be granted Bereavement Leave when a death occurs in the employee's or spouse's immediate family. For the purpose of this section, "immediate family" is defined as father, mother, brother, sister, spouse, natural or legally adopted child, step-child, in-laws, grandparents, and grandchildren. Up to three (3) days of bereavement leave shall be granted when the death and service are within the State of California and up to five (5) days when the death or service is outside the State. Bereavement Leave usage shall not be charged against the employee's Sick Leave or Vacation Time. Employees may also use up to two (2) additional days of Sick Leave to supplement their allotted Bereavement Leave if other circumstances require absence during this time, subject to the approval of the employee's supervisor and deducted from the employee's other leave banks.

Special circumstances beyond this definition may be considered on a case-by-case basis and must be approved by the City Manager. This leave will not affect the twenty-five percent cash out of sick leave for the same calendar year.

G. Professional Development

It shall be the philosophy of the City to encourage employees to attend classes, seminars, conferences, etc. which will enable the employee to develop professionally. Such attendance must be approved by the Department Director or the City Manager. The City may request employees who complete such a course to report or train other employees in the skills they have attained.

1. Tuition Reimbursement Program

Employees are eligible to receive tuition reimbursement of up to \$3,000 per fiscal year for the cost of books and tuition for classes or courses beneficial to the employee's career development. All classes must be approved in advance by the Department Director or City Manager. Reimbursement will take place upon a successful completion or passing of the course.

2. Membership Dues

For employees listed in Groups 1-A and 1-B, the City shall provide a personal membership dues reimbursement of up to \$1,200 per fiscal year for costs associated with joining and participating in Morgan Hill community service organizations such as Rotary or Kiwanis. Reimbursement of membership dues for community service organizations requires the prior approval by the Department Director or the City Manager.

H. Life and Disability Insurance

The City shall pay the premiums for short-term disability, long-term disability, and life insurance plans.

1. Life insurance levels shall be as follows for the employees listed in Section 1:

Group 1-A	\$250,000
Group 1-B	\$150,000
Group 1-C	\$100,000
Group 1-D	\$100,000

This amount decreases when the employee reaches age 65, 70, and 75. The Life Insurance benefit will be paid to the employee's beneficiary upon the death of the employee as outlined in the program documents.

2. Short-term disability coverage for employees shall be at the maximum rate of \$1,384 per week based on 66 $\frac{2}{3}$ % of the actual weekly salary after an eight-day elimination period.
3. Long-term disability coverage for employees shall be at the maximum rate of \$6,000 per month based on 66 $\frac{2}{3}$ % of the actual monthly salary after a 60-day elimination period.

I. Retirement Medical Plan

Upon retirement, employees may continue enrollment in the medical insurance plans provided by CalPERS without an interruption of coverage. Such enrollment will be contingent upon the employee meeting the requirements of the medical plans provided by CalPERS and paying the monthly premium to CalPERS at the employee's expense. It will be the employee's responsibility to make sure the insurance premium is paid to CalPERS before the due date. Failure to do so will result in the employee being terminated from their medical coverage.

J. Special Assignment Pay

Special Assignment Pay may be granted to employees who have assumed, for an extended period, significant additional responsibilities outside their current classification. The request for special assignment shall describe the assignment, justify why it is to be performed by the designated employee, and give a specific duration for completion of the assignment with a start and end date. Special assignment pay is up to 10% above the employee's normal pay rate. The special assignment and related compensation may be revoked at any time at the discretion of the Department Director, or the City Manager or designee. Special Assignment Pay will be requested in advance by the Department Director and authorized by the City Manager or designee, and then processed by the Human Resources Division. Special Assignment Pay shall be discontinued on the date originally identified for completion of the assignment, unless an extension of specific duration is approved by the City Manager or designee prior to the end of the original assignment end date. This pay will not be considered additional compensation as defined by the California Public Employees' Retirement Systems (CalPERS).

K. Employee Uniform Allowance

Safety employees in Groups 1-A and 1-B will be eligible for the following uniform allowance:

Chief of Police and Police Captain:	\$1,400
Police Support Services Manager:	\$810

L. Work Schedule

The City Manager will establish the standard work schedule for employees. Based on the needs of the City, the City Manager may at his/her discretion, change the work schedules of employees at any time.

M. Auto Allowance

The City Manager may establish a monthly allowance for selected employees listed in Groups 1-A and 1-B who use their personal vehicles on City business. Based on the needs of the City, the City Manager may, at his/her discretion, change the auto allowance of employees at any time. The current monthly allowance range is \$225 - \$325.

N. Cell Phone Allowance

The City Manager may establish a monthly allowance for selected employees who use their personal cell phones on City business. Based on the needs of the City, the City Manager may, at his/her discretion, change the cell phone allowance of employees at any time. The current monthly allowance is established in Administrative Policy III019.

SECTION 6 - EFFECTIVE DATE

This resolution shall be effective December 2, 2020. Compensation shall be made available to only those employees covered by this section who are still employed as a Management, Professional, or Confidential employee with the City as of the effective date of this agreement. As of the effective date of this Resolution, Resolution No. 20-048 shall be superseded and rescinded.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 2nd day of December 2020 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

IRMA TORREZ, City Clerk

∞ **CERTIFICATION** ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 20-XXX, adopted by the City Council at the meeting held on December 2, 2020.

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

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

**CITY OF MORGAN HILL
MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEE
SALARY SCHEDULE**

Revised: December 2, 2020

Effective: December 29, 2019

* Currently Unfunded Positions

Job Classification	Bottom of Range Monthly	Top of Range Monthly
Group 1-A: Executive Management		
<i>Assistant City Manager for Administrative Services *</i>	\$14,430	\$18,961
Assistant City Manager for Development Services	\$14,430	\$18,961
Chief of Police	\$14,430	\$18,961
Public Services Director	\$14,430	\$18,961
<i>Community Services Director *</i>	\$13,746	\$18,100
Development Services Director	\$13,746	\$18,100
Economic Development Director	\$13,746	\$18,100
<i>Engineering and Utilities Director *</i>	\$13,746	\$18,100
Finance Director	\$13,746	\$18,100
Communications and Engagement Director	\$11,861	\$15,586
Human Resources Director	\$11,861	\$15,586
Information Technology Director	\$11,861	\$15,586
Group 1-B: Middle Management		
Police Captain	\$12,096	\$15,893
Building Official	\$11,861	\$15,586
Deputy Director for Engineering	\$11,861	\$15,586
Deputy Director for Utilities Services	\$11,861	\$15,586
Housing Manager	\$11,861	\$15,586
<i>Planning Manager *</i>	\$11,861	\$15,586
Program Administrator	\$11,861	\$15,586
Assistant City Attorney	\$11,114	\$14,579
Assistant to the City Manager	\$11,114	\$14,579
City Clerk	\$11,114	\$14,579
Economic Development Manager	\$10,486	\$13,754
Principal Planner	\$10,486	\$13,754
Senior Civil Engineer	\$10,486	\$13,754
Senior Project Manager	\$10,486	\$13,754
Budget Manager	\$9,696	\$12,752
<i>Building Manager *</i>	\$9,696	\$12,752
<i>Communications and Engagement Manager *</i>	\$9,696	\$12,752
<i>Community Services Manager *</i>	\$9,696	\$12,752
<i>Information Services Manager *</i>	\$9,696	\$12,752
Maintenance Manager	\$9,696	\$12,752
Police Support Services Manager	\$9,696	\$12,752
Recreation Manager	\$9,696	\$12,752
Supervising Civil Engineer	\$9,696	\$12,752
Utility Systems Manager	\$9,696	\$12,752
<i>Accounting Manager *</i>	\$9,025	\$11,863
Financial and Policy Analyst	\$9,025	\$11,863
Senior Planner	\$9,025	\$11,863
Community Services Supervisor	\$8,177	\$10,433
<i>Council Services and Records Manager *</i>	\$8,177	\$10,433
<i>Deputy City Attorney *</i>	\$8,177	\$10,433
<i>Economic Development Coordinator *</i>	\$8,177	\$10,433
Emergency Services Coordinator	\$8,177	\$10,433
GIS / Land Use Data Administrator	\$8,177	\$10,433
Maintenance Services Coordinator	\$8,177	\$10,433
Older Adult Services Supervisor	\$8,177	\$10,433
Programmer Analyst	\$8,177	\$10,433
Senior Human Resources Analyst	\$8,177	\$10,433
Risk Management Analyst (.50 FTE)	\$3,898	\$5,114
Group 1-C: Confidential Exempt		
Administrative Analyst	\$7,794	\$10,227
Legal Specialist	\$7,012	\$9,226
Group 1-D: Confidential Non-Exempt		
Accounting Technician	\$6,217	\$8,159
Human Resources Technician	\$6,217	\$8,159
<i>Human Resources Assistant *</i>	\$4,869	\$6,369



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

PREPARED BY: Christina Turner, City Manager

APPROVED BY: City Manager

APPROVE THE RENAMING OF THE MORGAN HILL LIBRARY IN HONOR OF FORMER MAYOR STEVE TATE

RECOMMENDATION(S)

Approve the renaming of the Morgan Hill Library in honor of Former Mayor Steve Tate.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Fostering a Positive Organizational Culture

REPORT NARRATIVE:

Former Morgan Hill Mayor Steve Tate has made innumerable contributions to the Morgan Hill community throughout his over 25 years in public service. With his passion for community access to libraries and library services, Steve Tate through his work on the City Council and with the County Library District worked to ensure that library services were available to all. As a long-time patron of the library, he knew what an amazing resource it is and led an effort within the community to ensure that all children in Morgan Hill had a library card. When the County Library District and City were looking to build the new library, Steve ran a countywide effort to raise funding for the Morgan Hill Library, as well as raise funds for libraries throughout the County.

With the Library addition project completed and ready for acceptance by the City Council, community members requested honoring Steve Tate by naming the library the "Steve Tate Morgan Hill Library" (Attachments 2 & 3). Should the Council move forward with the request from the Community, staff is recommending that the formal renaming be to the "Morgan Hill Steve Tate Library", which is consistent with the naming of other City facilities.

In accordance with Council Policy CP-04-02 (Attachment 1), the recommendation is to consider the request to rename the Morgan Hill Library in honor of Steve Tate. Staff would work with the Library District staff on next steps.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommendation to name the Morgan Hill Library in honor of Steve Tate.

ALTERNATIVE ACTIONS:

The Council can decide whether or not to move forward with the renaming.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Not applicable.

FISCAL AND RESOURCE IMPACT:

There are no fiscal or resource impacts associated with this action. There is a community effort underway to raise the necessary funds for the building signage.

CEQA (California Environmental Quality Act):

Not a Project. Administrative activities of governments that do not result in direct physical changes in the environment do not qualify as a project for purposes of CEQA.

LINKS/ATTACHMENTS:

1. CP-04-02 Naming of City Facilities
2. Request to Name Library in Honor of Steve Tate
3. Steve Tate Morgan Hill Library (MCox)

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-04-02

SUBJECT: Naming of City Facilities

DATE: April 7, 2004, Reviewed June 27, 2007,
Revised September 2, 2015

ORIGINATING DEPT: City Manager

BACKGROUND

The City of Morgan Hill has a number of planned new facilities and the City does not currently have a system in place to guide the naming of facilities.

PURPOSE

The primary purpose of this policy is to provide guidance on the naming of facilities.

POLICY

I. Process

The City Council shall be the decision-making body for the naming of parks, buildings, and public facilities.

II. Procedures for Naming New Facilities

In the naming of new parks, buildings, and other facilities, consideration shall primarily be given to:

1. Neighborhood, geographic, or common usage identification;
2. A natural or geological feature;
3. Significant historical events or cultural attributes;
4. A historical figure;
5. An individual (living or deceased) who has made a significant land and/or monetary contribution to the City's public facilities and who has stipulated the name as a condition of the donation;
6. An individual (living or deceased) who has contributed outstanding civic service to the City and who has not served in elected City office for a period of at least one year.

II. Procedures for Naming Existing Facilities

The City does not normally rename existing parks, buildings, and other facilities. In the event that extraordinary circumstances result in the need to rename an existing facility, consideration shall primarily be given to:

1. An individual (living or deceased) who has made a significant land and/or monetary contribution to the City's public facilities and who has stipulated the name as a condition of the donation;
2. An individual (living or deceased) who has contributed outstanding civic service to the City and who has not served in elected City office for a period of at least one year.

This Policy shall remain in effect until modified by the City Council.

APPROVED:



STEVE TATE, Mayor

Mayor Constantine, Councilmembers and City Staff,

November, 24, 2020

Morgan Hill is a wonderful community, and we are proud to be long-standing active members of this community. But we also recognize that what we all love about Morgan Hill is not by chance. It takes leadership and vision, values and hard work to achieve goals and the quality-of-life that is precious to us all. And when we have city leaders that devote themselves to our community, we should recognize them.

It is with a sense of community pride that we request the city of Morgan Hill pass a resolution to recognize former Mayor Steve Tate by renaming the Morgan Hill Library to the Steve Tate Morgan Hill Library.

Mayor Tate served Morgan Hill in elected office for 20 years, 12 as Mayor. The City of Morgan Hill has much to be proud of during these years of service, but perhaps nothing more meaningful as the Morgan Hill Library. Libraries and library services continue to be a passion of Mayor Tate. Early in his time as a councilmember he eagerly took on the assignment as Morgan Hill's representative to the Santa Clara County Library District and served on the Joint Powers Authority Board for 20 years. He volunteered countless hours as a library volunteer with the Friends of the Morgan Hill Library. He led efforts to be sure every child in Morgan Hill has a library card. And he is a long-standing user of the library services himself.

When Morgan Hill needed to rebuild our library, we turned to Steve Tate to create a budget and political plan to gain support and get the job done. When the County's library district needed to seek new funding, it was Steve Tate who stepped up and ran a countywide campaign to raise much-needed tax dollars to rebuild libraries across the county.

We can think of no better recognition for former Mayor Steve Tate. It is rare in today's political climate that someone can serve in elected office for 20 years, indeed it is unlikely to happen ever again.

Timing is important as the Morgan Hill library is near completion of a much-anticipated expansion program. The completion of the expansion will be the perfect time to rename the facility in honor of Steve Tate's 20 years of serve to our community. We request that an agenda item be placed on the December 2, 2020 agenda in order to publicly approve the necessary authority to rename the library the Steve Tate Morgan Hill Library.

On behalf of Mary and Mike Cox; Cricket and Mike Rubino; Dana and Elaine Ditmore; Linnie Lee; Rosy and Rich Bergin; Mario Banuelos and Fawn Myers; Carol O'Hare; Margo and Rich Hinnenkamp; Claudia Rossi and Jim Levis.

We thank you,



Roger and Janie Knopf, rjknopf@garlic.com, 408-621-3617

Attachment: Request to Name Library in Honor of Steve Tate (2941 : Naming of Morgan Hill Library)



15906 Concord Circle Morgan Hill, CA 95037



Dear Mayor Constantine, Councilmembers, and City Staff,

Mike and I were extremely pleased to hear of support for the “Steve Tate Morgan Hill Library” in our community and asked what we could do to help make this happen.

It is more than fitting and the perfect time to rename our library the “Steve Tate Morgan Hill Library”.

During the 15 years we have known Steve Tate, the one Morgan Hill organization that was a constant topic was the library. His support was far reaching:

- Active advocate for funding to build the new library which opened in 2007
- Worked with planners to assure a large space for community use such as lectures and meetings
- Modernized library use, supporting the addition of many computers, considering those children and families who did not have technical resources at home
- Advocated for and helped raise community funds for artwork in and outside the library
- Volunteer member of Friends of the Library
- Made sure the library remained open when funding was reduced during the recession and was vigilant to help bring funding back
- Continues as an active library user and supporter

I was in the Morgan Hill Library on Opening Day and was amazed at the space, the functionality, the beauty and the preservation and modernization of our library services when other libraries were reducing services. The photo above shows community enthusiasm for our library.

I also attend monthly AAUW Programs (open to the public) and many other lectures at the library. It is a perfect space for community education.

Let’s not take this for granted.

We are so thankful that Steve Tate’s interest and support of library services over many years resulted in an active, broad reaching community hub.

We are especially thankful for Steve Tate’s 20 years of dedicated public service to Morgan Hill. We believe recognizing Steve Tate by renaming our library the “Steve Tate Morgan Hill Library” is most appropriate and the perfect time to do so. Please approve the authorization for this recognition.

Sincerely,

Mary Cox
marycox@anaerobesystems.com
408-591-8814

11-25-20

Mike Cox
mcox@anaerobesystems.com
408-591-5001

11-25-20

Attachment: Steve Tate Morgan Hill Library (MCox) (2941 : Naming of Morgan Hill Library)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

PREPARED BY: Maria Angeles, Senior Civil Engineer
APPROVED BY: City Manager

APPROVE IMPROVEMENT AGREEMENT WITH BW MORGAN HILL, LLC (BLUEWAVE EXPRESS CARWASH)

RECOMMENDATION(S)

1. Approve and authorize the City Manager to execute and administer an Improvement Agreement with BW Morgan Hill, LLC; and
2. Authorize the recordation of the Improvement Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving
Open Space and Agricultural Land

2020-2021 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

The BlueWave Express Carwash project is a proposed drive-through, self-service, automated carwash located on the northwest corner of the Monterey Road and Cochrane Road intersection (Attachment No. 1). As required by the project's conditions of approval for the Design Review (SR2018-0005), the developer is required to enter into an Improvement Agreement (Attachment No. 2) with the City of Morgan Hill and provide a financial guarantee covering the project's public improvements. The public improvements to be constructed as part of this project include the property frontage along Monterey Road and minor traffic signal improvements at the Monterey Road and Cochrane Road intersection.

The developer has furnished the City with the necessary documents to complete the processing of the Improvement Agreement by providing surety bonds and insurance for the project's proposed public improvements.

Staff recommends that the City Council authorize the City Manager to sign and record the Improvement Agreement on behalf of the City.

COMMUNITY ENGAGEMENT: Involve

On October 12, 2018, a public notice was published in the Morgan Hill Times regarding the Planning Commission hearing that approved the project's Conditional Use Permit (UP2018-0004). Additionally a public notice was mailed out on November 14, 2018 to residents within a 300 feet radius of the project which informed them that in order for

their comments to be considered as part of the Administrative Review and Decision process, a letter or e-mail must be received by the Development Services Department no later than November 27, 2018 @ 5:00 p.m. Comments received from the public and from the project applicant were considered in the project's design review process.

On February 6, 2019, the Community Development Director approved the Administrative Design Review for the project.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On October 23, 2018, the Planning Commission approved a Conditional Use Permit (UP2018-0004) to allow the proposed carwash on the site.

FISCAL AND RESOURCE IMPACT:

Development review costs for this project are paid from development processing fees. The public improvements to be constructed under this agreement are valued at \$380,810.

CEQA (California Environmental Quality Act):

Categorical Exemption: Pursuant to CEQA Section 15301, Existing Facility.

LINKS/ATTACHMENTS:

1. Site Map
2. Improvement Agreement



©2019 County of Santa Clara, all rights reserved,

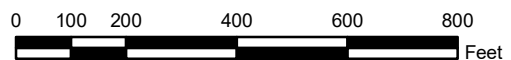


CITY OF MORGAN HILL

**Land Development Engineering
Engineering and Utilities Department**

Document Path: G:\R-14\PROJ\GIS\John\Maria_BlueWaveCarWash.mxd

**SITE MAP
BLUEWAVE EXPRESS CARWASH
APN 764-10-008**



Attachment: Site Map (2884 : Improvement Agreement for BlueWave Express Carwash)

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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

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

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

IMPROVEMENT AGREEMENT

BW Morgan Hill, LLC, a California Limited Liability Company
18625 Monterey Road
APN: 764-10-008
BlueWave Express Car Wash

THIS AGREEMENT is made on this ____ day of _____, 20____, by the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and BW MORGAN HILL, LLC, a California Limited Liability Company ("PROPERTY OWNER").

RECITALS

The following Recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Morgan Hill Municipal Code Chapter 12.02.
2. PROPERTY OWNER has filed a Development Application and supporting documents on the property with the address of **18625 Monterey Road**, and the **APN: 764-10-008** having the development name of **BlueWave Express Car Wash** ("Development").
3. CITY requires as a condition of approval of the Development Permit, as described on said permit, that certain improvements be installed by PROPERTY OWNER as shown on the fully executed Development Improvement Plans entitled **Monterey Road - Offsite Improvement Plans for BlueWave Express Car Wash** ("Improvements"), on file with CITY and incorporated herein by this reference.
4. PROPERTY OWNER has been unable to complete, prior to the issuance of the Development Permit, all of the Improvements required by CITY to the satisfaction of the City Engineer.
5. PROPERTY OWNER is required by the terms of the Morgan Hill Municipal Code to improve all streets, highways, or public areas which are part of the Development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer.

6. To assure CITY that PROPERTY OWNER will complete all the work and Improvements required for the Development, the parties have entered into this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

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

assigns, PROPERTY OWNER's Performance/Labor & Material Bonds associated with this Development, or from the then owner of the Development, and/or place a lien upon the Development property for the cost and expense. Any and all CITY costs shall include but not be limited to administrative and attorney costs.

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

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

Improvements and the City Engineer's Estimated Costs of Improvements as of **December 10, 2019** are attached hereto as Exhibit "A".

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

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

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

7. **Irrevocability of Security.** The securities provided under this Agreement shall be irrevocable, shall

not be limited as to time, and may be released only upon the written approval of the City Engineer and City Council.

8. **Duty to Warn.** PROPERTY OWNER shall give adequate warning to the public of each and every dangerous condition which may exist in the Improvements, and will take all reasonable actions to protect the public from any dangerous condition.

9. **Warranty.** PROPERTY OWNER guarantees and warrants the Improvements required by this Agreement and agrees to remedy any defects in the Improvements arising from faulty or defective materials or construction occurring within twelve (12) months after acceptance by CITY of said Improvements. Following notice, PROPERTY OWNER shall, without delay or cost to CITY, repair, replace, or reconstruct any defective or unsatisfactory portion of Improvements. CITY may, at its sole option, perform the repair or replacement itself if PROPERTY OWNER has failed to commence repair within twenty (20) days after CITY has mailed written notice to PROPERTY OWNER. In such event, PROPERTY OWNER agrees to pay the cost of repair and replacement, plus 15%, by CITY; and CITY may recover such costs as a lien against the Development. CITY may proceed immediately to make repairs should an emergency arise without waiving its rights of recovery against PROPERTY OWNER.

10. **Failure of Performance.** In addition to the other remedies provided by this Agreement, CITY shall have recourse to the security given. In the event that CITY seeks recourse against any security, CITY shall have recourse against PROPERTY OWNER for any and all amounts necessary to complete the obligation. All administrative costs, including attorneys' fees shall be a proper charge against the security and PROPERTY OWNER pursuant to Government Code. The right of CITY to draw upon or utilize the security is additional and not in lieu of any other remedy available to CITY at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Improvements, and therefore, CITY damages for PROPERTY OWNER's default shall be measured by the cost of completing the required Improvements.

11. **Certificate of Occupancy.** PROPERTY OWNER understands that CITY will expect completion, to the satisfaction of CITY, of specific public improvements as well as private utility improvements prior to CITY Approval of a Certificate of Occupancy for any building on the Development property. The specific improvements shall include activation of all public utilities (water, sewer, storm drain); activation of all private utilities (electric, gas, phone) except for cable; street lights turn-on request filed with P G & E; and full street improvements (curb-gutter and paving with/without final lift) from existing public street to building under consideration for Certificate of Occupancy. PROPERTY OWNER, furthermore, agrees to so inform successor in lot interest should lot be transferred to another party prior to CITY acceptance of public improvements.

12. **Final Toxic Report.** Where applicable, PROPERTY OWNER hereby agrees to furnish the City Attorney with a copy of the Final Toxic Report issued by the appropriate licensed consultant on the proposed Development. This report must be received prior to final acceptance of on-site improvements and issuance of certificate of occupancy.

13. **Public Improvements Fee Schedule.** PROPERTY OWNER shall pay the following sums in cash to CITY pursuant to the provisions of Resolution 1383 and any amendments. These sums shall be paid to CITY at the time of issuance of the Development Permit, and shall be in accordance with the attached Department of Public Works Fee Schedule attached hereto demonstrating a current Total Fee Obligation of

\$198,610. All Fees are estimated and may be increased by CITY subject to current resolutions and ordinances. These fees are subject to a minimum annual revision. PROPERTY OWNER consents to increases in these fees. This Agreement shall not be construed to fix or freeze fees as of any point prior to issuance of Development Permits.

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

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

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

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

☐ CITY Public/Private Utility Reimbursement Agreement

☐ Landscape & Lighting Maintenance Assessment District Annexation

☐ Improvements Deferral Agreement

15. **Insurance Requirements.**

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

such coverage at PROPERTY OWNER's expense and deduct the cost from payments due to PROPERTY OWNER, assess payment against Development, or terminate the Agreement for default. Any deductibles or self-insured retentions must be declared to and approved by City. PROPERTY OWNER further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to PROPERTY OWNER, at any time as deemed necessary to protect the interests of CITY.

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

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

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

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

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

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

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

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

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

(1) ALL Policies:

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

(2) ALL policies except Workers Compensation:

a. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds.

b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing.

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

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

(e) Certificates. PROPERTY OWNER shall furnish CITY with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to the PROPERTY OWNER's agreement with CITY shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to CITY, unless due to non-payment of premiums, in which case ten days written notice must be made to CITY.

Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

16. **Non-Liability of Officials and Employees of CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.
17. **Non-Discrimination.** PROPERTY OWNER covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.
18. **Independent Contractor.** It is agreed to that PROPERTY OWNER shall act and be an independent contractor, and not an agent or employee of CITY.
19. **Compliance with Law.** PROPERTY OWNER shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
20. **Right to Inspect and Inspection Fees.** PROPERTY OWNER shall at all times maintain proper facilities and provide safe access for inspection for CITY and its employees to all parts of the Improvements. PROPERTY OWNER shall pay and reimburse CITY for all expenses incurred by CITY for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. CITY Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.
21. **Conflict of Interest and Reporting.** PROPERTY OWNER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
22. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed addresses. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

- a. Address of PROPERTY OWNER is as follows:

BW MORGAN HILL, LLC
2175 Francisco Blvd. East, Suite G
San Rafael, CA 94901

b. Address of CITY is as follows:

With a copy to:

City Engineer
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

City Clerk
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

23. **PROPERTY OWNER'S Representations.** This Agreement shall include application or items submitted by PROPERTY OWNER to CITY'S Planning Department, Building Department, Planning Commission, and City Council. In the event of any inconsistency between their representations and this Agreement, this Agreement shall govern.

24. **Licenses, Permits and Fees.** PROPERTY OWNER shall obtain a CITY Business License, all permits, and licenses as may be required by this Agreement.

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

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

27. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement nor any portion shall be assigned by PROPERTY OWNER without prior written consent of CITY.

28. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

29. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

30. **Indemnification.** PROPERTY OWNER agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by PROPERTY OWNER, PROPERTY OWNER'S agents, officers, employees, subcontractors, or independent contractors hired by PROPERTY OWNER. The only exception to PROPERTY OWNER'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by PROPERTY OWNER.

31. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by

subsequent mutual written agreement executed by CITY and PROPERTY OWNER.

32. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Santa Clara County Superior Court.

33. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

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

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

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

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

[TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS: (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND** (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.]

ATTEST:

THE CITY OF MORGAN HILL

City Clerk

Date: _____

City Manager

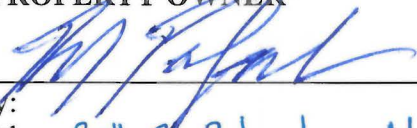
Date: _____

APPROVED AS TO FORM:

"PROPERTY OWNER"

City Attorney

Date: _____

By: 

Title: Bill R. Poland - Manager

Date: 10/22/20

By:

Title: _____

Date: _____

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT A
IMPROVEMENTS AND
ESTIMATED COSTS OF IMPROVEMENTS
AS OF DECEMBER 10, 2019

December 10, 2019



OFFSITE IMPROVEMENTS - BLUEWAVE EXPRESS CAR WASH
MORGAN HILL, CA

Opinion of Probable Construction Costs

Description	Quantity	Unit	Unit Price	Cost	Total
Demolition & Site Preparation					\$40,275
Clear and grub	1	ls	\$5,000.00	\$5,000.00	
Demolition of asphalt paving	6,800	sf	\$3.00	\$20,400.00	
Demolition of existing vertical curb	200	lf	\$15.00	\$3,000.00	
Demolition of existing curb and gutter	60	lf	\$15.00	\$900.00	
Demolition of existing chain link fence	465	lf	\$5.00	\$2,325.00	
Demolition of existing metal beam guardrail	65	lf	\$5.00	\$325.00	
Temporary construction fencing	465	lf	\$5.00	\$2,325.00	
Demolition of existing drain inlet	1	ea	\$800.00	\$800.00	
Demolition of existing street light	2	ea	\$2,000.00	\$4,000.00	
Demolition of existing fire hydrant	1	ea	\$1,200.00	\$1,200.00	
Utilities					\$13,150
Curb inlet	1	ea	\$3,000.00	\$3,000.00	
Fire hydrant assembly	1	ea	\$8,000.00	\$8,000.00	
Adjust water valve to grade	1	ea	\$500.00	\$500.00	
8" water pipe	55	lf	\$30.00	\$1,650.00	
Electrical/Joint Utility					\$109,800
2" Conduit	650	lf	\$40.00	\$26,000.00	
4" Conduit	135	lf	\$60.00	\$8,100.00	
No. 5 Pull Box (service)	5	ea	\$600.00	\$3,000.00	
No. 6 Pull Box	2	ea	\$600.00	\$1,200.00	
Wiring	1	ls	\$17,000.00	\$17,000.00	
Street Luminaire	3	ea	\$1,500.00	\$4,500.00	
AT&T vault	1	ea	\$5,000.00	\$5,000.00	
Traffic Signal Modifications	1	LS	\$45,000.00	\$45,000.00	
Striping and Signage					\$1,375
Signage and Striping	550	lf	\$2.50	\$1,375.00	
General Site					\$216,210
6" AC over 16" AB	8,100	sf	\$20.00	\$162,000.00	
4" PCC over 4" AB	2,650	sf	\$13.00	\$34,450.00	
Curb and Gutter - Type 1	500	lf	\$30.00	\$15,000.00	
Vertical Curb - Type 2	20	lf	\$20.00	\$400.00	
Handicap Ramp	1	ea	\$4,000.00	\$4,000.00	
Truncated Domes	12	sf	\$30.00	\$360.00	
Total					\$380,810

NOTES: 1. IT IS RECOGNIZED THAT STANTEC HAS NO CONTROL OVER THE COSTS OF MATERIALS, EQUIPMENT, LABOR, OR THE CONTRACTOR'S METHOD OF DETERMINING BID PRICES. PRICES WILL VARY FROM ANY OPINION OF PROBABLE CONSTRUCTION COSTS.

Attachment: Improvement Agreement [Revision 1] (2884 : Improvement Agreement for BlueWave Express Carwash)

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

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and **BW Morgan Hill, LLC, a California Limited Liability Company** (hereinafter designated as "principal") have entered into an Improvement Agreement:

BW Morgan Hill, LLC, a California Limited Liability Company
APN: 764-10-008 18625 Monterey Road

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20_____, and identified as project **BlueWave Express Car Wash**, is hereby referred to and made a part hereof; and

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

Now, therefore, we, the principal and _____, as surety, are held and firmly bound unto the City of Morgan Hill, hereinafter called ("City"), in the penal sum of **Three Hundred Eighty Thousand Eight Hundred Ten dollars (\$380,810)** lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

License No.: _____

Address: _____

Telephone No.: _____

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

Name of non-resident agent: _____

Non-resident agent's office address: _____

Telephone No.: _____

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement

Performance Bond

Page 1 of 3

Version: December 2017

Attachment: Improvement Agreement [Revision 1] (2884 : Improvement Agreement for BlueWave Express Carwash)

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

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

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

Executed this _____ day of _____ 20 ____ .

Principal

Principal

By: _____
Surety

By: _____
Attorney-in Fact

By: _____
California Resident Agent

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

APPROVED:

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney
Date: _____

(Acknowledgment on following page.)

Performance Bond
Page 2 of 3
Version: December 2017

Attachment: Improvement Agreement [Revision 1] (2884 : Improvement Agreement for BlueWave Express Carwash)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Performance Bond
Page 3 of 3
Version: December 2017

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

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and **BW Morgan Hill, LLC, a California Limited Liability Company** (hereinafter designated as "the principal") have entered into an Improvement Agreement:

BW Morgan Hill, LLC, a California Limited Liability Company
APN: 764-10-008 18625 Monterey Road

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20_____, and identified as project **BlueWave Express Car Wash**, is hereby referred to and made a part hereof; and

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

Now, therefore, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto City and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of **Three Hundred Eighty Thousand Eight Hundred Ten dollars (\$380,810)**, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

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

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

The Surety's office is located at _____,
 Telephone No. _____; the Surety is licensed to do business in the State of California; and

Labor and Material Bond

Page 1 of 3

Version: December 2017

Attachment: Improvement Agreement [Revision 1] (2884 : Improvement Agreement for BlueWave Express Carwash)

the California Insurance Agent's License No., address, and telephone number as follows:

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

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

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

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

Executed this _____ day of _____ 20 ____ .

 Principal

 Principal

By: _____
 Surety

By: _____
 Attorney-in Fact

By: _____
 California Resident Agent

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

APPROVED:

 Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
 Donald A. Larkin, City Attorney
 Date: _____

(Acknowledgment on following page.)

Labor and Material Bond

Page 2 of 3

Version: December 2017

Attachment: Improvement Agreement [Revision 1] (2884 : Improvement Agreement for BlueWave Express Carwash)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Labor and Material Bond

Page 3 of 3

Version: December 2017

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

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California (hereinafter designated as “City”), and **BW Morgan Hill, LLC, a California Limited Liability Company** (hereinafter designated as “Principal”) have entered into an Improvement Agreement (hereinafter “Agreement”):

BW Morgan Hill, LLC, a California Limited Liability Company
APN: 764-10-008 18625 Monterey Road

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter “Improvements”), which said Agreement, dated _____, 20____, and identified as project **BlueWave Express Car Wash**, is hereby referred to and made a part hereof; and

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

Now, therefore, we, the Principal and _____ as Surety, are held and firmly bound unto the City of Morgan Hill in the penal sum of **One Hundred Ninety Thousand Four Hundred Five dollars (\$190,405)** for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

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

Warranty Bond
Page 1 of 3
Version: April 2019

Attachment: Improvement Agreement [Revision 1] (2884 : Improvement Agreement for BlueWave Express Carwash)

bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

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

Attn: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

Email: _____

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

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

SURETY:

Principal:

Date: _____

Date: _____

s/ _____

s/ _____

Name: _____

Name: _____

Title: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____

Date: _____

Donald A. Larkin, City Attorney

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Warranty Bond
Page 3 of 3
Version: April 2019



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

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

APPROVE GENERATOR MAINTENANCE SERVICES AGREEMENT

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer a three year agreement with Odyssey Power Corporation in the not-to-exceed amount of \$225,000 for annual, preventive maintenance, and emergency repair and rentals for the City's 28 standby generators.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure

GUIDING DOCUMENTS

Public Safety Master Plan
Water System Master Plan

REPORT NARRATIVE:

The City's fleet of generators provides electrical power backup for well sites, booster stations, water storage tanks, sewer lift stations, and other City facilities. Maintaining the constant readiness of these generators requires annual servicing, ongoing repair, parts (as needed), preventive maintenance, rentals for equipment downtime, and a three-year rotational servicing schedule.

A Request for Proposals (RFP) was distributed in October 2020 to select a service provider for maintenance, repair, and emergency servicing for the City's 28 standby generators. The service provider is responsible for furnishing all the labor, machine shop work, field work, shop and field welding, miscellaneous repair, travel time, and expenses necessary to provide generator routine annual service, preventive maintenance, emergency repair, and rentals for generator downtime. The RFP was advertised in both the Morgan Hill Times and the San Jose Mercury News. Additionally, it was posted to the City's website and Public Purchase website.

The City received three proposals for the work which were carefully reviewed by an evaluation panel. The resulting weighted scores from the panel are as follows:

	Weighted Score Results			
Generator Maintenance Services FY21-23				
		CD & Power	Odyssey Power	Edward R. Bacon
1. <u>Experience and Qualifications</u> of the contractor in general as well as the project manager and other key individuals. Provided licenses, safety record, and a statement of qualifications.				
POINTS 25		20.0	20.7	21.7
2. <u>Capability</u> to perform necessary tasks, resolve problems, warranty, timeliness of repairs. Includes description of electronic reporting capability, response to emergency repairs, and efficient annual and PM3 schedule.				
POINTS 35		25.3	31.7	25.0
3. <u>References and Quality</u> of proposal including compliance with proposal requirements				
POINTS 15		11.7	14.0	11.7
4. <u>Fee Schedule</u> forms. Cost breakdown makes sense. Lowest cost.				
POINTS 25		20.0	18.3	0.0
OVERALL SCORE		77.0	84.7	58.4

Odyssey Power received the highest weighted overall score. Therefore, staff recommends City Council's approval of a three-year agreement for Generator Maintenance Services with Odyssey Power Corporation for the City's fleet of 28 standby generators.

COMMUNITY ENGAGEMENT: N/A

Since maintenance of the City's facility, water, and wastewater generators is a regular operational function of the City, no efforts were made to inform the community about this proposed project.

ALTERNATIVE ACTIONS:

They City Council could choose to reject all proposals and reissue an RFP. This is not recommended as it would leave the City without service for a period of time and is not likely to result in any cost savings. Generators are required to provide back-up power to water and wastewater facilities as well as City facilities in the event of a power outage and are necessary for the provision of essential services to the community. Ongoing maintenance and repair are crucial in assuring the generators are functioning properly at all times.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On October 4, 2017, Council approved an agreement with Got Power, Inc for generator maintenance services in the amount of \$119,475 which was later amended on April 15, 2020 to a total of \$144,475 for additional contract expenses.

FISCAL/RESOURCE IMPACT:

The three-year agreement with a not-to-exceed amount of \$225,000 is subject to future years appropriations, of which, \$111,480 is for routine annual services, \$96,450 for 3-year rotational preventative maintenance, and remaining \$17,070 for unforeseen emergency repairs and/or generator rentals. Funds for this agreement are budgeted for in the specific areas the generators service: Water Operations (61%, Fund 650), Sewer Operations (25%, Fund 640), and Building Maintenance (14%, Fund 740); no further appropriation of funds is necessary.

CEQA (California Environmental Quality Act)**Categorical Exemption**

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

LINKS/ATTACHMENTS:

1. Odyssey Power Agreement

MAINTENANCE SERVICE AGREEMENT ODYSSEY POWER CORPORATION

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2023 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be Generator Maintenance Services as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$225,000.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed two hundred twenty-five thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination,

Attachment: Odyssey Power Agreement [Revision 2] (2929 : Approve Generator Maintenance Services Agreement)

SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this Agreement, in whole or in part, on behalf of CITY.

- 5.1. **Non-Appropriations.** Notwithstanding anything contained in this Agreement to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for CITY for any reason whatsoever in any fiscal year, for payments due under this Agreement, CITY will immediately notify SERVICE PROVIDER of such occurrence, and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for CITY or are otherwise available for payments.

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

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

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

- 8.1. **Insurance Types and Amounts.**

- 8.1.1. Commercial General Liability (CGL). SERVICE PROVIDER shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.2. Automobile Liability. SERVICE PROVIDER shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if SERVICE PROVIDER does not own automobiles, then SERVICE PROVIDER shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.3. Workers' Compensation Insurance and Employer's Liability. SERVICE PROVIDER shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If SERVICE PROVIDER is self-insured, SERVICE PROVIDER shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- 8.1.4. Pollution (Environmental) Liability. If the performance of SERVICE PROVIDER's work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, SERVICE PROVIDER shall procure and maintain Pollution Liability covering the SERVICE PROVIDER'S liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.5. Professional Liability.
- 8.1.5.1. If the performance of SERVICE PROVIDER's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), SERVICE PROVIDER shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if SERVICE PROVIDER maintains a claims-made policy, SERVICE PROVIDER shall provide

written evidence of such insurance to CITY for at least five (5) years after the completion of work performed under this Agreement.

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

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

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

8.2.1. General Liability and pollution liability (when pollution liability applies).

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

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

8.2.1.3. insurance shall be primary non-contributing.

8.2.2. Workers Compensation.

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

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

8.4. **Certificates**. SERVICE PROVIDER shall furnish CITY with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action,

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

Certificate Holder address:

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

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

10. **Compliance with Law.**

- 10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- 10.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
- 10.4. Compliance with Wage and Hour Laws: SERVICE PROVIDER, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal

Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

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

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

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

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

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

11. **Independent Contractor.** SERVICE PROVIDER is an independent contractor and not an agent or employee of CITY.
12. **Confidentiality.** All data, documents, or other information received by SERVICE PROVIDER from CITY or prepared in connection with SERVICE PROVIDER'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by SERVICE PROVIDER without prior written consent by CITY.

13. **Conflict of Interest and Reporting.** SERVICE PROVIDER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

14. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of SERVICE PROVIDER is as follows:

Odyssey Power Corporation
625 N Shepard Street
Anaheim, CA 92806

Address of CITY is as follows:

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

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

16. **Service Provider's Proposal.** If applicable, this Agreement shall include SERVICE PROVIDER'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

17. **Maintenance of Records.**

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

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

17.3. **Ownership of Work Product.** All documents or other information developed or received by SERVICE PROVIDER for work performed under this Agreement shall be the property of CITY.

SERVICE PROVIDER shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

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

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

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

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

22. **Defense and Indemnification.**

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

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

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

22.4. **Right to Offset.** CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (22) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

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

27. **Binding Agreement.** Notwithstanding the provisions of Section 20 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

//

//

[Signatures on Next Page]

Attachment: Odyssey Power Agreement [Revision 2] (2029 : Approve Generator Maintenance Services Agreement)

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Bigelow
 Print Name

 Christina J. Turner
 Print Name

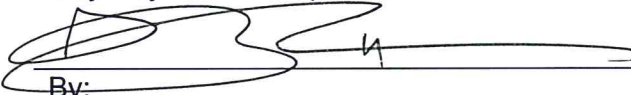
Date: _____

Date: _____

APPROVED AS TO FORM:

Odyssey Power Corporation

 City Attorney

By: 

 Donald A. Larkin
 Print Name

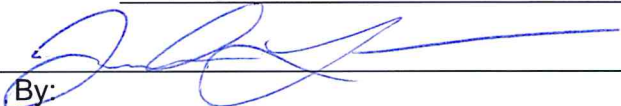
 Michael Pallera, CEO

Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: _____

Date: 11/16/2020

By: 

 Joshua Linehan. CFO / COO

Print Name and Title of Signer.

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

Date: 11/16/2020

 793476

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

 1000005860

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

Expiration Date(s) 04/30/2021

Expiration Date(s) 06/30/2021

Seal:

U:\Legal Forms\Consultant Agreements\City Maintenance Service Agreement.Docx

Attachment: Odyssey Power Agreement [Revision 2] (2929 : Approve Generator Maintenance Services Agreement)

EXHIBIT A SCOPE OF SERVICES

The scope of this contract is to provide routine, preventive, and emergency maintenance and repairs to the City of Morgan Hill's 28 generators at different location throughout the city. The contractor will be responsible for furnishing any and all necessary parts, labor, machine shop work, field work, shop and field welding, miscellaneous repair, travel time, expenses, and equipment necessary to do the work required.

Routine Annual Service:

Routine annual service is performed once a year on each City generator listed on the first two pages of exhibit B and shall include the following services:

1. **ENGINE LUBRICATING SYSTEM**
 - A. Check oil level and top off
 - B. Check oil pressure using unit mounted gauge
 - C. Check engine for unusual oil leaks
2. **FUEL SYSTEM**
 - A. Check fuel pressure (if equipped)
 - B. Inspect fuel system for leaks
 - C. Check day tank fuel level & main tank (gage only)
3. **INTAKE SYSTEM**
 - A. Check all hoses and connections
 - B. Visually check air cleaner
4. **GOVERNOR**
 - A. Check all linkages & ball joints (if applicable)
 - B. Check oil in governor (if applicable)
 - C. Check any unusual oil/fuel leakage
5. **COOLING SYSTEM**
 - A. Check coolant level & inhibitor content, top off
 - B. Check temperature of jacket water heater
 - C. Check condition of all belts, hoses and connections
6. **ENGINE ELECTRICAL STARTING SYSTEM**
 - A. Check battery cap vents (lead acid only)
 - B. Check battery water levels & adj. (lead acid only)
 - C. Visually check batteries & connections
 - D. Check battery charging system for correct operation
adjust as needed
7. **GENERATOR**
 - A. Check generator & instruments under bldg. load (if possible)
 - B. Check general appearance of air screen
8. **ENGINE CONTROLS**

- A. Check generator and instruments under bldg. load (if possible)
- B. Check general appearance

9. GENERAL

- A. Visually check engine mounts
- B. Visually check complete unit

10. GENERATOR SWITCHGEAR & EMERGENCY SOURCE FEEDERS

- A. Operate generator circuit breaker manually at time of visit (if possible)

11. RUNNING TEST

A. BEFORE STARTING ENGINE:

- Check engine oil level and coolant level.
- Check block heater-will maintain coolant temperature of about 90 degrees F in the block. Check fuel level in storage tank.
- Check battery water level and top as necessary.
- Check battery terminals for corrosion and connections for tightness (lead acid).

B. WITH ENGINE RUNNING:

- Check oil pressure.
- Check fuel pressure.
- Check oil level and add oil as required. Check RPM (frequency).
- Check generated voltage.
- Check for leaks of unusual noises.

C. AFTER STOPPING ENGINE:

- Check/verify all switches are in proper positions for automatic start. Check fuel level in tank.
- Record battery charger volts, check for proper operation. Remove, clean and reinstall all battery connections (lead acid). Inspect generator for cleanliness.
- Drain crankcase oil and replace with new oil. Remove and replace oil and fuel filters.
- Inspect air filter(s) and replace as required.
- Start engine and load with contractor supplied resistive load bank. Run under load for at least one hour.
- Check generator output. Take oil sample for analysis.

12. REPORTING:

- A. Provide the following reports for each generator to the Utilities Division in electronic form (Word, Excel, or PDF). Handwritten reports will not be accepted:
 - Service report – report must include the following:
 - a. Work order number, date, employee name
 - b. Generator ID number, manufacturer, model, serial number, location
 - c. Status of all items and details on list 1-11 above
 - d. Any action items needed if status is not normal
 - Load test - with full interpretation of results
 - Oil Analysis – with full interpretation of results
- B. Advise customer of any/all unusual situations or potential problems which will require further attention.
- C. Advise when main fuel tank is below 3/4 full.

Routine annual maintenance and repair services shall be performed on normal workdays defined as non-holiday Mondays through Thursdays, 7:00 AM through 3:30 PM. The City prefers scheduling these services in the months of October through December. Invoices for annual maintenance will not be paid until all reports (above #12. Reporting) for the generator(s) being invoices are submitted to the City.

Preventive Maintenance Services:

Preventive Maintenance Service is a three-year rotational program (PM-3) in which the contractor shall include the following services on City generators per the rotational schedule on the third page of Exhibit B:

1. Replacement of fan and alternator drive belts
2. Replacement of engine cooling system hoses
3. Block heater hoses replaced with high temperature silicone hoses
4. Replacement of standard ethylene glycol coolant
5. Replacement of the batteries

PM-3 and routine annual maintenance shall be performed concurrently on those generators that are due for PM-3 maintenance in that year. Preventive maintenance and repair services shall be performed on normal workdays defined as non-holiday Mondays through Thursdays, 7:00 AM through 3:30 PM. The City prefers scheduling these services in the months of October through December.

Generator repair and emergency generator services:

Contractor shall provide on-call generator repair services on a time and material basis as needed. The City will authorize repair work by issuing task orders to the contractor with compensation according to rates on page 17, Exhibit B. Parts and supplies shall be itemized, and markups clearly noted on repair invoices.

Contractor shall provide 24-hour emergency repair services. The contractor shall provide the City with a current directory its emergency response personnel including phone numbers and emails and/or details on how to contact them on a 24 hour basis. The contractor shall keep the City informed of any changes in emergency response personnel and provide updated contact information.

Generator emergency repair and rental services shall be compensated on a time and material basis according to rates on page 17 and/or 18, Exhibit B. The City will authorize emergency work by issuing task orders to the contractor. Parts and supplies shall be itemized, and markups clearly noted on emergency repair invoices.

EXHIBIT B **SCHEDULE OF COMPENSATION COSTS**

Cost Schedule for Routine Annual Services

As described in the scope of work. The annual services cost per unit must include all parts, materials, field work, shop work, welding, labor, travel, mileage, and any other expenses required to do the work.

	UNIT #	LOCATION	ADDRESS	MANUFACTURER	MODEL	SERIAL #	YEAR	KW	FY21 Routine Annual Service Cost	FY22 Routine Annual Service Cost	FY23 Routine Annual Service Cost
1	W19016	PORTABLE TRAILER*	17002 Murphy Avenue Nordstrom Well*	Blue Star	VD150-02FT4	7008485967	2019	150	\$ 1,400. ⁰⁰	\$ 1,400. ⁰⁰	\$ 1,400. ⁰⁰
2	W17014	PORTABLE TRAILER*	1100 Diana Avenue Diana #3 Well*	Blue Star	VD150-02FT4	103507	2017	150	\$ 1,400. ⁰⁰	\$ 1,400. ⁰⁰	\$ 1,400. ⁰⁰
3	W16013	PORTABLE TRAILER*	1240 San Pedro Avenue San Pedro Well*	Blue Star	VD150-02FT4	L-10981	2016	150	\$ 1,400. ⁰⁰	\$ 1,400. ⁰⁰	\$ 1,400. ⁰⁰
4	W13007	PORTABLE TRAILER*	100 East Dunne Avenue Dunne # 1 & 2 Wells*	Doosan	G190	451800UCXE57	2013	190	\$ 1,585. ⁰⁰	\$ 1,585. ⁰⁰	\$ 1,585. ⁰⁰
5	W05020	HOLIDAY RESERVOIR	3100 Lakeview Court	Kohler	10ROZ	2037908	2005	10	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰
6	W06022	JACKSON BOOSTER	3482 White Oak Ct	Katolight	D200FRJ 4T2	106704-0405	2006	200	\$ 1,585. ⁰⁰	\$ 1,585. ⁰⁰	\$ 1,585. ⁰⁰
7	W16005	JACKSON RESERVOIR	16360 Oak Canyon Drive	Kohler	15OREOZJF	SGM32GT36	2016	150	\$ 1,400. ⁰⁰	\$ 1,400. ⁰⁰	\$ 1,400. ⁰⁰
8	W92008	E. DUNNE BOOSTER	2375 East Dunne Avenue	Catapillar	3412	81Z11841	1992	500	\$ 1,965. ⁰⁰	\$ 1,965. ⁰⁰	\$ 1,965. ⁰⁰
9	W15012	PORTABLE TRAILER*	200 Diana Avenue Diana #1 Well*	Magnum	6068HFG9SA	PE6068R054060	2015	150	\$ 1,400. ⁰⁰	\$ 1,400. ⁰⁰	\$ 1,400. ⁰⁰
10	W09023	PORTABLE TRAILER*	490 Llagas Road LlagasBooster*	Kohler	15OREOZJD	2259122	2009	150	\$ 1,400. ⁰⁰	\$ 1,400. ⁰⁰	\$ 1,400. ⁰⁰
11	W14011	PORTABLE TRAILER*	470 East Main Avenue Main Well*	Doosan	G190	461126UAYE57	2014	190	\$ 1,585. ⁰⁰	\$ 1,585. ⁰⁰	\$ 1,585. ⁰⁰
12	W19017	PORTABLE TRAILER*	105 Edes St Bus Yard*	Blue Star	VD 150-02FT4	7008495531	2019	150	\$ 1,400. ⁰⁰	\$ 1,400. ⁰⁰	\$ 1,400. ⁰⁰
13	W19024	PORTABLE TRAILER*	105 Edes Street Bus Yard*	Blue Star	VD 150-02FT4	7008499277	2019	150	\$ 1,400. ⁰⁰	\$ 1,400. ⁰⁰	\$ 1,400. ⁰⁰
14	S03006	C LIFT STATION	3272 Quial Lane	Kohler	80REOZJB	0768962	2003	80	\$ 1,100. ⁰⁰	\$ 1,100. ⁰⁰	\$ 1,100. ⁰⁰

15	S03018	B LIFT STATION	17558 Holiday Drive	Kohler	40RE0ZJB	0761654	2003	40	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰
16	S04019	I LIFT STATION	19160 Saffron Drive	Synergy	30JDA	00-210323-01	2004	30	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰
17	S06021	G LIFT STATION	18615 Monterey Road	Olympian	DP40P2	OLY00000KNPF358	2006	40	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰
18	S18025	J LIFT STATION	16035 Jackson Oaks Drive	Kohler	40RE0ZK4	33G3GMFN0007	2018	40	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰
19	S14009	PORTABLE TRAILER*	105 Edes Street Bus Yard*	Generac	MMG75D	1409119	2014	75	\$ 1,100. ⁰⁰	\$ 1,100. ⁰⁰	\$ 1,100. ⁰⁰
20	S15010	PORTABLE TRAILER*	105 Edes Street Bus Yard*	Magnum	4045HFG92	PE4045R089480	2015	75	\$ 1,100. ⁰⁰	\$ 1,100. ⁰⁰	\$ 1,100. ⁰⁰
21	S17003	PORTABLE TRAILER*	17670 Raccoon Court A Lift Station*	Grand Watts	TAD571VE	7005308517	2017	60	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰
22	SG035	WOODLAND COMM SITE	2275 Rolling Hills Drive	Generac	SG003SAG035	3001737818	2017	32	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰
23	B01002	EL TORO RESERVOIR	1305 West Dunne Avenue	Generac	1554330100	2062789	2001	45	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰
24	B89004	CITY HALL	17555 Peak Avenue	Catapillar	3408	78203200	1989	400	\$ 1,870. ⁰⁰	\$ 1,870. ⁰⁰	\$ 1,870. ⁰⁰
25	B85001	SCHOOL DIST/ CORP YAR	105 Edes Street	DMT	250 G CUMMINS	860280	1985	250	\$ 1,670. ⁰⁰	\$ 1,670. ⁰⁰	\$ 1,670. ⁰⁰
26	B99013	POLICE STATION	16200 Vineyard Boulevard	Generac	6063TK35R	06R0774364	1999	350	\$ 1,870. ⁰⁰	\$ 1,870. ⁰⁰	\$ 1,870. ⁰⁰
27	#813	FIRE STATION	2100 East Dunne Avenue	Generac	Engine# 67057 95A00415-S	2020473		50	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰
28	#822	FIRE STATION	18300 Old Monterey Road	Generac	95A004133-S	2022956		50	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰	\$ 1,060. ⁰⁰
* LOCATIONS CHANGE ON PORTABLE UNITS Annual Total									\$ 37,160. ⁰⁰	\$ 37,160. ⁰⁰	\$ 37,160. ⁰⁰
									Exhibit Total	\$ 11,480. ⁰⁰	\$ 11,480. ⁰⁰

COST SCHEDULE – PREVENTIVE MAINTENANCE (PM-3)

The Preventive Maintenance Service is a 3-year rotational program.
PM-3 Maintenance cost shall include all parts, materials, field work, shop work, welding, labor, travel, mileage, and any other expenses required to do the work.

*	FY 20/21	FY 21/22	FY 22/23
1	B01002	B85001	B89004
2	S03006	S03018	S04019
3	W17014	W05020	S06021
4	W92008	W06022	S15010
5	S14009	W09023	W19017
6	W13007	W16005	W16013
7	W14011	B99013	W19016
8	W15012	S17003	W19024
9	Fire #813	SG035	
10	Fire #822	S18025	

* See page 14 & 15 for a description of each generator

Annual Total for Fiscal Year 21	\$ 34,100. ⁰⁰
Annual Total for Fiscal Year 22	\$ 34,450. ⁰⁰
Annual Total for Fiscal Year 23	\$ 27,900. ⁰⁰
Total for PM-3	\$ 96,450. ⁰⁰

COST SCHEDULE - GENERATOR REPAIR

Labor and equipment costs associated with generator repair.

FIELD SERVICE	RATE
SUPERVISOR	\$ 145. ⁰⁰ /HOUR
SERVICEMAN AND TRUCK	\$ 145. ⁰⁰ /HOUR
SERVICEMAN/HELPER/TRUCK	\$ 145. ⁰⁰ /HOUR
TRVEL TIME	\$ 145. ⁰⁰ /HOUR
SHOP WORK	
SHOP LABOR	\$ 135. ⁰⁰ /HOUR
OVERTIME	
OVERTIME/MONDAY-FRIDAY	\$ 217.50 /HOUR
SATURDAY	\$ 217.50 /HOUR
SUNDAY	\$ 290. ⁰⁰ /HOUR
HOLIDAY	\$ 290. ⁰⁰ /HOUR
TRAVEL TIME	M-F = 217.50 \$S = 290. ⁰⁰ /HOUR
PARTS	
PERCENT MARK UP OVER COST	20 %

COST SCHEDULE - GENERATOR RENTAL*

Generator	Weekly Rates Through 2024
20 KW	\$ 2,390. ⁰⁰
36 KW	\$ 2,419. ⁰⁰
50 KW	\$ 2,923. ⁰⁰
60 KW	\$ 3,309. ⁰⁰
70 KW	\$ 3,309. ⁰⁰
80 KW	\$ 3,309. ⁰⁰
100 KW	\$ 3,309. ⁰⁰
150 KW	\$ 4,055. ⁰⁰
200 KW	\$ 4,702. ⁰⁰
250 KW	\$ 4,861. ⁰⁰
300 KW	\$ 5,418. ⁰⁰
350 KW	\$ 5,590. ⁰⁰
400 KW	\$ 6,708. ⁰⁰
EMERGENCY RESPONSE TIME = <u>4</u> /HOUR(S)	

* Rates shall include all costs to transport to and from the site and setup. The contractor shall confirm equipment and connection compatibility of rental generators with City facilities. Any modifications shall be compensated according to rates under generator repair.

EXHIBIT C SCHEDULE OF PERFORMANCE

Routine annual maintenance and repair services shall be performed on normal workdays defined as non-holiday Mondays through Thursdays, 7:00 AM through 3:30 PM. The City prefers scheduling these services in the months of October through December.

PM-3 and routine annual maintenance shall be performed concurrently on those generators that are due for PM-3 maintenance in that year. Preventive maintenance and repair services shall be performed on normal workdays defined as non-holiday Mondays through Thursdays, 7:00 AM through 3:30 PM. The City prefers scheduling these services in the months of October through December.

Contractor shall provide on-call generator repair services on a time and material basis as needed. The City will authorize repair work by issuing task orders to the contractor with compensation according to rates on page 17, Exhibit B. Parts and supplies shall be itemized, and markups clearly noted on repair invoices.

Generator emergency repair and rental services shall be compensated on a time and material basis according to rates on page 17 and/or 18, Exhibit B. The City will authorize emergency work by issuing task orders to the contractor. Parts and supplies shall be itemized, and markups clearly noted on emergency repair invoices.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

PREPARED BY: John Lang, Economic Development Manager
APPROVED BY: City Manager

APPROVE INCENTIVE AND FEE FREEZE AGREEMENTS FOR A NEW AUTOMOBILE DEALERSHIP

RECOMMENDATION(S)

1. Adopt resolution authorizing the City Manager to execute and administer an Incentive Agreement, consistent with the Auto Dealer Economic Development Strategy, with TSC Motors, Inc. for a new automobile dealership at the Auto Mall Planned Development Site on Condit Road;
2. Make findings of consistency with Section 53083(a)(6)(b) of the Government Code (AB 562); and
3. Direct the City Manager to execute an Impact Fee Freeze Agreement with TSC Motors, Inc. for the development of a 27,000 square foot new vehicle dealership to be located at 17085 Condit Road.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure

2020-2021 Strategic Priorities

Economic Development

Fiscal Sustainability

GUIDING DOCUMENTS

Economic Blueprint

REPORT NARRATIVE:

Incentive Agreement

In February 2002, the City Council authorized an auto dealer assistance program (Attachment 1) as part of an Auto Dealer Economic Development Strategy. The strategy sought to take a proactive role to identify and entitle appropriate locations for new auto dealerships, as well as marketing and attracting new car sales agencies to the City. A component of the "Strategy" offers auto dealers incentives to locate and or expand in Morgan Hill if it can be demonstrated that there is a need for assistance and a significant benefit to the community. Building partnerships with the private development community has always been at the core of the City's auto strategy to advance development plans.

In 2003, the City utilized this program to assist the Ford Store. The 2003 agreement with the Ford Store was satisfied in 2013. The Ford Store exceeded all previous sales tax expectations and remains one of Morgan Hill's top sales tax generators. In 2005,

Morgan Hill took decisive action to secure the City's future as a regional location for auto dealer sales by adopting a Planned Development Zone, pre-zoning and annexing 19.87 acres of land north of the Ford Store, along Condit Road to plan for future auto users. In 2013, the Ford Store was granted additional assistance to facilitate the acquisition of 2.53 acres to provide for the expansion of the facility. That expansion project was completed in early 2015.

In 2014, the Auto Incentive program was used to aide in the acquisition of land and facilitate the expansion of Honda of Morgan Hill. The incentive agreement from Honda of Morgan Hill has been assigned to Victory Honda of Morgan Hill under the contract terms and is currently in place. Honda had been exceeding estimated sales targets and thus received rebates through 2018.

In 2017, the Auto Incentive program was authorized to assist the future development of a Dodge, Chrysler and Jeep Dealership. Subsequently, the developer terminated their interest in the project.

The TSC Motors, Inc (Cardinale Auto Group) is purchasing the development entitlements along with the land that was initially purchased by Morgan Hill Real Estate LLC (Towbin Dodge). TSC Motors is under contract to bring a new Chrysler, Dodge, Jeep, and Ram dealership to Morgan Hill.

This memorandum requests the authority to execute an incentive agreement (Attachment 2 & 3) with the TSC Motors, Inc. to develop a 27,000 square foot new vehicle dealership that would share up to a maximum of \$1,300,000 of performance based sales tax revenue to offset a portion of the costs of impact fees, roadway and right of way off-site improvements, mitigation, and habitat conservation fees required of a new automobile agency in a greenfield location.

Because auto dealerships require so much land to store, display, and service their products, purchase inventory and trade-in stock, dealerships outside of huge population centers are very expensive to develop. Impact fees, the lack of improved roads, and agricultural mitigation costs severely restrict the feasibility of this use in Morgan Hill. Development at this location will provide additional benefits to the City with a partnership to build out non-existing curb, gutter, sidewalks and streetlights on both unimproved sides of Condit Road as well as facilitate extension of utilities and fire service. The City's Auto Dealer Strategy and the partnership it creates, makes the decision to locate in Morgan Hill possible.

New automobile dealerships are economic engines that support and sustain critical City services for years to come. TSC Motors will require an investment of about \$15 million to acquire and develop the site. The estimate for impact fees, offsite improvement construction, HCP fees, is \$1,300,000.

Consistent with the Auto Dealer Policy, proposed is an incentive agreement that includes:

- TSC Motors, Inc. would receive up to a maximum of \$1,300,000 over a twenty (20) year period in sales tax rebates. The tax sharing arrangement terminates at the end of twenty years regardless if the maximum of \$1,300,000 has been paid to the dealer.
- The City would share 50% of the sales tax revenue collected above \$75,000 for the first two years of operation based on total taxable sales of \$7.5 million.
- The City would share 50% of the sales tax revenue collected above \$105,000 for years 3 and 4 based on total taxable sales of \$10.5 million.
- The City would share 50% of the sale tax revenue collected above \$200,000 for year 5 and thereafter based on total taxable sales of \$20 million.
- The City would make payments twice a year. If the dealer did not exceed the baseline threshold for a year, it would not receive any payment for the year.
- In exchange for assistance, the dealer agrees to operate an automobile dealership for 20 years. In the event of default, the dealer would be required to reimburse the City per the agreement.

Similar to the transactions crafted for the developments of the Ford Store and Honda of Morgan Hill, and consistent with the Auto Dealer Policy, this incentive program provides a lower baseline amount in the initial years to allow the dealer to support the extraordinary costs of auto dealership construction and cement its business in Morgan Hill. The baseline amount for the subsequent years was established using average annual sales a dealership of similar brands in Northern California typically produces and adjusted, based upon dealership market expectation and past performance.

The baseline amount can reward the dealership for being better than average and creates an incentive for the dealer to far exceed \$20 million in sales each year.

Within Santa Clara County, Chrysler, Dodge and Jeep represent about 5 percent of the new car market share. According to the Silicon Valley Auto Dealers, Dodge and Jeep cars and light trucks are the preferred brands within the County.

Impact Fee Freeze

To create certainty for the operator/developer, staff is recommending the City Council also approve a Fee Freeze Agreement (Attachment 4) to lock development impact fees for the construction of a new vehicle dealership building for the operations of a new Dodge, Chrysler, Jeep and Ram Dealership prior to execution of construction permits. Consistent with the program guidelines approved by City Council on June 3, 2020, the Impact Fee Freeze Agreement will utilize the Fiscal Year (FY) 2016-17 development impact fee schedule through September 30, 2023. The developer will have until September 30, 2023 to apply for, and receive building permits, to benefit from the impact fee freeze program. The estimated development impact fees for the full development of the 4.75 acres, using the FY 2016-17 fee schedule, are \$678,300.

Analysis

Once fully operational, it is estimated that the new vehicle dealership building will conservatively generate between \$35,000 to \$85,000 annually in direct on-going property tax and sales tax revenue (post incentive rebate) to the City's General Fund.

Impact Fee Benefit to Developer

Impact Fee Schedule Year	2016-17	2020-21
Impact Fee Estimate	\$678,300	\$680,100
Potential Savings to Development		(\$1,800)

COMMUNITY ENGAGEMENT: Inform. The table below addresses the requirements set forth in the State of California AB 562 (Government Code 53083) for publication of information related to an economic development subsidy and public hearing.

Name/address of beneficiary of the subsidy:	TSC Motors, Inc 3239 Imjin Rd Marina, CA 93933
Start and end dates, schedule for the subsidy	The incentive agreement will not start any earlier than the first year after full operation. The subsidy will reimburse 50% of the sales tax revenue received by the City of Morgan Hill over an established baseline for the next twenty years or until \$1,300,000 has been paid, whichever comes first.
Describe the subsidy, estimated total amount of expenditure of public funds or revenue lost	The City will reimburse 50% of new sales tax revenue received from the new Chrysler/Dodge/Jeep dealership over an escalating baseline up to \$1,300,000 or twenty years which ever occurs first. The baseline for years one and two is \$7.5 million. The baseline for years three and four is \$10.5 million. The baseline for year five through twenty is \$20 million annually.
Statement of public purpose	Expand and enhance economic opportunities for businesses in the City, continue to expand the City's employment base, and continue to generate hereinafter defined Sales Tax that the City can utilize to fund general governmental services such as police, fire, street maintenance, and parks and recreation programs.
Projected Tax revenue	It is estimated that the investment into the property will increase property tax revenue

	received by the City by \$52,000 over 10 years. It is also anticipated that over the 20 years of the agreement the City will conservatively receive between \$680,000 to \$1.6 million in net sales tax revenue beyond the baseline revenue.
Estimated number of jobs created by the subsidy	It is estimated the dealership will employ between 30-40 employees when fully operational. Full time and part time occupations will range from managers, mechanics, service technicians, and salespeople.

ALTERNATIVE ACTIONS:

The alternative would be to not consider the agreements. However, the developer may not build which would mean the City would lose the opportunity to generate new tax revenues to the City's General Fund to be used for governmental services such as police, fire, streets, parks and recreation services.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

City Council has approved four incentive agreements under the Auto Dealer Economic Development Strategy.

In March 2004, City Council approved a development agreement with Morgan Hill Land, LLC (dba Ford Store Morgan Hill) to construct a new car dealership.

On September 11, 2013, City Council approved an incentive agreement with Morgan Hill Land, LLC for the expansion of the Ford Store Morgan Hill.

On July 2, 2014, City Council approved an incentive agreement with Theodore Stevens Revocable Trust Dated April 24, 2000 and Stavridis, Inc. (dba Honda of Morgan Hill) for the expansion of the Honda of Morgan Hill Store.

On January 25, 2017, City Council approved an incentive agreement with Morgan Hill Real Estate (Towbin Dodge) for the development of a Dodge, Chrysler, Jeep and Ram dealership. This project was terminated.

On July 15, 2020, City Council approved an incentive agreement with Ford Store of Morgan Hill for the development of a Dodge, Chrysler, Jeep and Ram Dealership. When that negotiation with the franchise terminated, Dodge/Chrysler awarded the dealership rights to Cardinale Group.

Impact Fee Freeze Program Past Actions

On June 21, 2017, City Council approved the Citywide Impact Fee Freeze Program establishing Fiscal Year 2016-17 Development Impact Fees as the basis for the three-

year term for any new commercial/industrial development project that enters into a Development Agreement for an Impact Fee Freeze approved by City Council.

On February 21, 2018, City Council made a minor adjustment to the Impact Fee Freeze Program by changing the agreement structure to an Impact Fee Freeze Agreement from a Development Agreement.

On June 3, 2020, City Council approved an impact fee freeze agreement with Applied Motion products which also included directing staff to come back with an amended impact fee freeze program for June 17, 2020.

On June 17, 2020, City Council granting a 60-day extension to the current Fee Freeze Program for commercial and industrial projects and asked staff to bring back the proposed program at the next meeting and add an annual review of the program in the guidelines.

On July 15, 2020, City Council approved a Fee Freeze Program for commercial and industrial projects.

FISCAL AND RESOURCE IMPACT:

Over a twenty-year period, the City may share up to \$1,300,000 in sales tax revenue with TSC Motors, Inc. Based upon straight-line revenue forecast for 20 years, the City would receive \$3.5 million in baseline sales tax revenue plus an additional net revenue of \$680,000 after rebates. After 20 years the City would receive the full 1% of sales tax revenue with no additional rebates.

CEQA (California Environmental Quality Act):

This incentive agreement is exempt from environmental review under Section 15061(b)(3) of the State CEQA Guidelines. The incentive agreement is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The incentive agreement will not result in any direct impact upon the physical environment. Any development that occurs in the future will be subject to development standards of the zone district and will undergo an independent analysis pursuant to the requirements of CEQA.

LINKS/ATTACHMENTS:

1. 2002 Auto Strategy
2. Resolution
3. Exhibit A-Incentive Agreement- TSC Motors
4. Impact Fee Freeze Agreement TSC Motors



CITY COUNCIL/REDEVELOPMENT AGENCY MEETING STAFF REPORT

MEETING DATE: February 27, 2002

TITLE: Auto Dealer Sites and Strategy

RECOMMENDED ACTIONS: 1) Approve List of Potential Sites; 2) Adopt Auto Dealer Strategy (the "Strategy"); and 3) Direct Staff to Implement the Strategy.

EXECUTIVE SUMMARY:

Council directed that staff identify a strategy to encourage establishment of additional car dealerships as part of a larger economic development effort.

An auto dealer can potentially generate between \$200,000 to \$750,000 in annual sales tax revenues to the City.

To develop the strategy, staff worked to research and inventory suitable sites (see Attachment 1). Staff also retained an automotive retail consultant, Mark Sumpf with the firm RX&D to review these sites, identify "what auto dealers want," and provide direction as to which potential auto corporations and dealerships to pursue. Mr Sumpf confirmed that auto dealers look for the following in searching for a site: freeway location, good visibility for their vehicle displays, good accessibility, proximity to other auto dealerships, proximity to populations with higher incomes, proximity to retail with good retail buying patterns, and the ability to obtain adequate signage.

The prospective sites have been grouped into three areas: the Dunne Avenue - Area A, Tennant Avenue - Area B, and Cochrane Road - Area C (see map, Attachment 2). Based on input from the consultant, we ranked the three areas from most to least desirable as follows: Dunne Avenue, Tennant Avenue, and Cochrane Road. Since there is current interest in an Area A (most desirable) site, we wanted to receive direction as to whether this area is acceptable. The interested dealership has indicated that this is the only Morgan Hill site in which it is currently interested because of the existing infrastructure and shorter entitlement processing times associated with the site (as compared with other well-situated sites within the City). As part of our strategy, staff recommends that we wait to see if the current interest results in a project before referring other dealers exclusively to Area A. With the existing Chevrolet dealer and a new dealer, we could have two major auto manufacturers in town, and, with this, a significant marketing tool by which to attract additional dealers. If the deal falls-through, staff recommends that we remain flexible and refer prospective dealers to both Areas A and B. The first auto dealer that commits to one of these two areas would most likely establish the area for future referrals and site selections.

The strategy also recommends incentives guidelines and a marketing approach to attract dealers. Staff believes financial incentives will be necessary to attract new dealerships to Morgan Hill, as the land cost exceeds most auto dealers ability to pay. Staff would return to the Agency for approval of specific packages. The detailed auto dealer strategy is contained in Attachment 3.

FISCAL IMPACT: Potential for substantial sales tax revenues which would be partially off-set by incentive packages

Attachments

G:\City Clerk\StaffReports\BA&HS\autodealerstrategy.wpd

Agenda Item # 11

Prepared By:

John Mitchell
BAHS Manager

Garrett J. J. J.
BAHS Director

Submitted By:

[Signature]
Executive Director

Attachment: 2002 Auto Strategy [Revision 1] (2923 : Agreements for a New Automobile Dealership on Condit Road)

ATTACHMENT 1

AREA	Site Location	Size in ac.	Entitlements Required	Estimated Public Improvement Costs*	Site Attributes	Site Constraints
A	4 NWC Dunne/101	11.46	General Plan Amendment Zoning Amendment Amend PDP/Guidelines for >1 dealer Environmental Review Site & Arch Possible lot merger Uniform sign program	\$300,000	1 dealer already exists Could hold 1-2 new dealers Near retail In the Redevelopment Project Area	Interior location Access to the site Required off-site improvements Required entitlements Multiple property owners Ability to obtain adequate signage Proximity to residential area
B	5 NWC Tennant/101	43.33	General Plan Amendment Zoning Amendment Precise Development Plan/Guidelines Environmental Review Site & Arch Possible lot merger Uniform sign program	\$1,200,000	Freeway location Great visibility from Hwy 101 Good access to site Could hold several dealerships Partly in Redevelopment Project Area	Required off-site improvements Required entitlements Multiple property owners Ability to obtain adequate signage Proximity to residential area Less than 10 miles from Gilroy
B	6 SWC Tennant/101	28.53	PDP/Guidelines Environmental Review Site & Arch Possible lot merger Uniform sign program	\$900,000	Freeway location Good access to site Could hold several dealerships Distance from residential area Sub-regional commercial site	Not all of site is visible from Hwy101 Required off-site improvements Required entitlements Multiple property owners Ability to obtain adequate signage Less than 10 miles from Gilroy

* Public Improvement estimates are for order of magnitude purposes

h:\joyce\automall\SiteComparisonCondense.xls

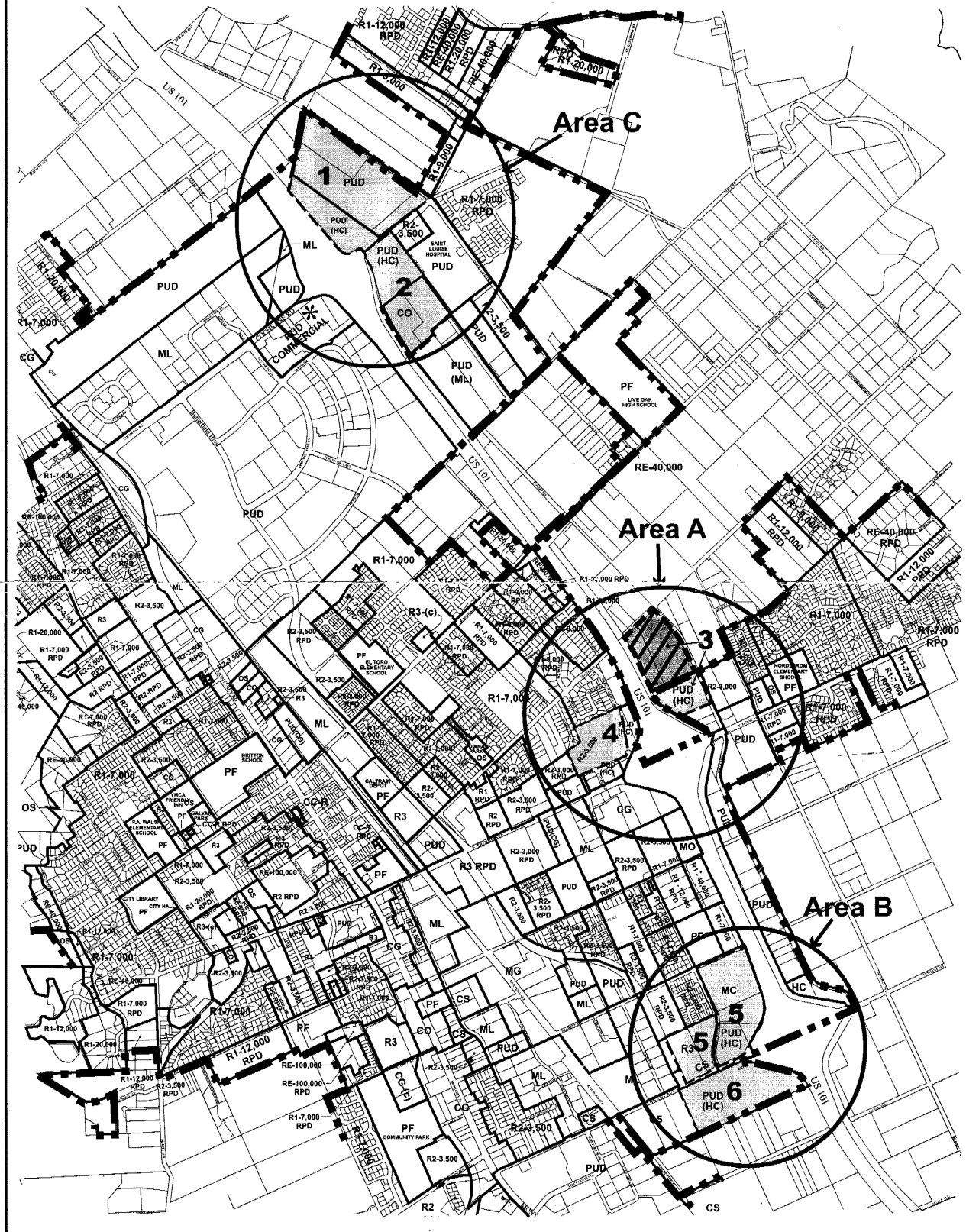
ATTACHMENT 1

STUDY ALTERNATIVES FOR AUTO DEALERS SITES
2/12/02

AREA	Site Location	Size in ac.	Entitlements Required	Estimated Public Improvement Costs*	Site Attributes	Site Constraints
C	1 NEC Cochrane/101	64.42	Precise Development Plan/Guidelines Environmental Review/possible EIR Site & Arch Possible lot merger Uniform sign program	\$2,400,000	Freeway location Good access to site Near retail Could hold several dealerships In the Redevelopment Project Area Distance from residential area Over 10 miles from Gilroy	Limited visibility from Hwy 101 Required off-site improvements Required entitlements On-site access Multiple property owners Ability to obtain adequate signage
C	2 SEC Cochrane/101	30.08	Zoning Amendment Precise Development Plan/Guidelines Environmental Review Site & Arch Possible lot merger Uniform sign program	\$1,000,000	Freeway location Good visibility from Hwy 101 Good access to site Near retail Could hold several dealerships Distance from residential area Over 10 miles from Gilroy Sub-regional commercial site	Required off-site improvements Required entitlements On-site access Multiple property owners Ability to obtain adequate signage
A	3 Condit, North of Holiday Inn	28.5	General Plan Amendment Zoning Amendment Precise Development Plan/Guidelines Environmental Review Urban Service Boundry Adjustment Annexation Site & Arch Possible lot merger Uniform sign program	\$1,000,000	Freeway location Great visibility from Hwy 101 Good access to site Near retail Could hold several dealerships	Required off-site improvements Required entitlements Multiple property owners Ability to obtain adequate signage Proximity to residential area Portion of site outside City limits

Study Alternatives for Auto Dealer Sites

City of Morgan Hill



 In the City Limits
 Outside City Limits
 - - - - - City Boundary

February 8, 201

AUTO DEALER STRATEGY
February 2002

Attachment 3

Area/Site Prioritization

1. Prioritize the three key areas best suited for auto dealers in the following rank order: 1) the Dunne Avenue area, 2) the Tennant Avenue area, and 3) the Cochrane Road area.
2. Because the Dunne Avenue area is the premier area for automotive retail and since a dealership has an offer pending, concentrate on attracting this dealership to the Dunne area.
3. Work with the property owners of the prospective sites to determine their interest in selling to/leasing to auto dealers.

Marketing

1. If the interested dealership commits, send out marketing packages on the Dunne area sites to target auto corporations and dealers who may want a second store.
 - A. Packages to include, but not limited to:
 - 1) Cover letter;
 - 2) Narrative about Morgan Hill;
 - 3) Describe and depict trade area;
 - 4) List key retailers in town;
 - 5) Demographics (5 and 10 mile radius);
 - 6) Aerial photo;
 - 7) Information about the location and site;
 - 8) Sell Morgan Hill as a growing, wealthy bedroom community; list all our attributes; if available insert newspaper article touting a new dealership coming to town; and
 - 9) Highlight the site attributes of the recommended site(s).
 - B. Target the following automotive corporations (recommended by Mark Sumpf):

Acura	BMW	Lexus	Toyota
Audi	Honda	Mercedes	Volvo
2. If the interested dealership does not commit, send marketing packages to the targeted corporations and recommend the Dunne area and/or the Tennant area; since the area is less than 10 miles from Gilroy, keep the Tennant area in mind as possible location for entry-level luxury vehicles (i.e., brands not already represented in Gilroy).
3. Once an auto dealer commits to a site, focus on attracting others to that area.

Incentives Guidelines

- 1 Incentive packages are evaluated on a case-by-case basis for each dealer requesting assistance. They could be provided through either rebate of City Sales Tax or possibly direct use of Redevelopment Agency funds. The preference would be to use Redevelopment Agency funds to assist a project. However, changes to California Redevelopment Law in 1994 made it very difficult for Redevelopment Agencies to provide assistance to auto dealers unless: A) the dealer is located on a previously developed site within the project area or, B) the improvements funded or constructed by the Redevelopment Agency would have been constructed regardless of the auto dealer project. (With reference to the recommended auto dealer sites: Site No. 4 and portions of Site No. 1 and No. 5 are within the project area. Since these sites have not been previously developed, direct Agency assistance would be precluded.).
2. The assistance package would be based on the specific needs of an individual site. The following guidelines establish the parameters by which initial proposals would be reviewed and assistance potentially granted:
 - A. Consider the dealer's need for assistance, using National Auto Dealer Association (NADA) standards to evaluate a dealer's ability to pay for land and development costs, and the reasonableness of proposed land transactions;
 - B. Establish a minimum baseline for sales/sales tax revenues, which is not lower than the average sales of a particular brand in Northern California; consider reducing the baseline in early years to account for start-up costs;
 - C. Rebate sales tax on a minimum 50% split above the determined baseline;
 - D. Spread-out assistance over time, e.g. 10-year period; and
 - E. Whenever possible, use Redevelopment Agency funds to install of-site improvements of benefit to the project area; if Agency funds cannot be used, consider use of sales tax and provide direct assistance as a reimbursement for off-site improvements.
3. The provision of incentives could be structured as one or more of the following:
 - A. A ground lease; or
 - B. Operating covenants for a specified period of time; or
 - C. Reimbursement for public improvements.
4. Incentives could be offered to the first three dealers choosing to locate within the targeted area. This threshold could be increased on the discretion of the City Council.

Annexation

Work with the property owners of 19+ acre site on Condit (Mushroom farm and adjacent parcel) to annex it into the City; select PUD zoning and limit to motor vehicle sales uses.

H:\JOYCE\AUTOMALL\AutoDealerStrategy.wpd

AUTO DEALER STRATEGY February 2002

Area/Site Prioritization

1. Prioritize the three key areas best suited for auto dealers in the following rank order: 1) the Dunne Avenue area, 2) the Tennant Avenue area, and 3) the Cochrane Road area
2. Because the Dunne Avenue area is the premier area for automotive retail and since Ford has an offer pending, concentrate on attracting Ford to the Dunne area.
3. Work with the property owners of the prospective sites to determine their interest in selling to/leasing to auto dealers

Marketing

1. If Ford commits, send out marketing packages on the Dunne area sites to target auto corporations and dealers who may want a second store.
 - A. Packages to include, but not limited to:
 - 1) Cover letter;
 - 2) Narrative about Morgan Hill;
 - 3) Describe and depict trade area;
 - 4) List key retailers in town;
 - 5) Demographics (5 and 10 mile radius);
 - 6) Aerial photo;
 - 7) Information about the location and site;
 - 8) Sell Morgan Hill as a growing, wealthy bedroom community; list all our attributes; if available insert newspaper article touting Ford coming to town; and
 - 9) Highlight the site attributes of the recommended site(s)
 - B. Target the following automotive corporations (recommended by Mark Sumpf):

Acura	BMW	Lexus	Toyota
Audi	Honda	Mercedes	Volvo
2. If Ford does not commit, send marketing packages to the targeted corporations and recommend the Dunne area and/or the Tennant area; since the area is less than 10 miles from Gilroy, keep the Tennant area in mind as possible location for entry-level luxury vehicles (i.e., brands not already represented in Gilroy).

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND ADMINISTER, THAT CERTAIN INCENTIVE AGREEMENT WITH TSC MOTORS INC, A CALIFORNIA CORPORATION, FOR THE CREATION OF A NEW AUTOMOBILE DEALERSHIP AT CONDIT ROAD, MORGAN HILL

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

WHEREAS, the reasons supporting the entrance of the City into that certain agreement described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled “Approve Incentive and Fee Freeze Agreements for a New Automobile Dealership” submitted for City Council consideration at its meeting of December 2, 2020, submitted to the City Council by the City Manager (the “Staff Report”), the contents of which Staff Report are incorporated herein by this reference; and

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

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

WHEREAS, existing law generally allows local governments to make their own decisions regarding local economic development matters; and

WHEREAS, the loss of redevelopment has left the City, as well as all cities within the State, with a loss of local resources to encourage economic development; and

WHEREAS, the City Council has made findings consistent with Section 53083 of the California Government Code Assembly Bill 562 (“AB 562”). AB 562, titled “Economic Development Subsidies: Review by Local Agencies”, which was codified on October 13, 2013 and went into effect on January 1, 2014, require each local agency, as defined, to provide specified information to the public before approving an economic development subsidy or assistance of \$100,000 or more, as defined, within its jurisdiction, and to review, hold hearings, and provide reports at specified intervals. Based upon the decision to terminate redevelopment statewide, the Governor and State Legislature recognized the necessity for local governments to encourage

employment and retain jobs and businesses by giving economic assistance to businesses and the importance of facilitating public input; and

WHEREAS, the Bradley-Burns Uniform Local Sales and Use Tax Law (California Revenue and Tax Code §7200 et seq.) applies to the sales of tangible personal property in which a percentage of California's sales and use tax rate is distributed back to the jurisdiction where sales were generated to support local general funds. For many jurisdictions, including the City, this amount is one percent (1%). Sales tax is payable to the City from the State Board of Equalization; and

WHEREAS, encouraging and developing other businesses in the City that are, or can be, key sources of sales tax revenue would diversify and increase revenue sources for the City's general fund, which supports public services provided by the City to its residents and local businesses; and

WHEREAS, the City Council desires to be proactive in retaining automobile dealerships that currently exist within the City, as well as encourage new automobile dealerships desiring to locate within the jurisdiction of the City to do so, by establishing an equitable economic incentive agreement ("Incentive Agreement") that will assist qualified dealerships.

WHEREAS, the City Council determines that the Incentive Agreement is consistent with the City's economic goals and strategies, is a matter of City-wide importance, is necessary for the preservation and protection of the public health, safety or welfare of the community, and is in accord with the public purposes and provisions of applicable State and local laws and requirements.

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

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

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

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

- a. That the Incentive Agreement with the TSC Motors, Inc., a California Corporation, for the development of a new automobile dealership substantially in the form attached hereto as Exhibit A and incorporated herein by this reference (the "Agreement") is hereby approved.
- b. That the City Manager is hereby delegated authority to and is authorized and directed to execute, and subsequently administer including the authority to terminate as necessary or appropriate, the Agreement substantially in the form

attached hereto as Exhibit A; provided, specifically, that the total amounts to be paid by City under the Agreement shall in no event exceed One Million Three Hundred Thousand Dollars (\$1,300,000).

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

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 2nd day of December 2020 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

IRMA TORREZ, City Clerk

∞ **CERTIFICATION** ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.20-0XX, adopted by the City Council at the meeting held on December 2, 2020.

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

DATE: _____

IRMA TORREZ, City Clerk

INCENTIVE AGREEMENT

This Incentive Agreement (hereafter "Agreement") is made and entered into as of the _____ day of December, 2020, (the "Effective Date") by and between the City of Morgan Hill, a municipal corporation ("City") and the TSC Motors, Inc., a California Corporation ("Developer").

RECITALS

WHEREAS, Developer is the legal or equitable owner of the property ("Property") governed by this agreement, located on approximately 9.24 acres, APN 728-17-035 (west side of Condit Road and north of east Dunne Avenue), in Morgan Hill, Santa Clara County, California, as more fully described in Exhibits A, B and C attached hereto and incorporated herein by reference; and,

WHEREAS, Developer has, or will be submitting an application for the following land use approvals ("Approvals") affecting the Property, with the stated intent of building a facility intended for use as an automobile dealership and consisting of approximately twenty seven thousand (27,000) square feet (the "Project"), which is to be situated on approximately four and a half (4.75) acres; and,

WHEREAS, Developer is willing, pursuant to the terms of this Agreement, to make expenditures and provide benefits to the City, including, without limitation, construction of off-site improvements as provided under the Conditions of Approval for the Project.; and,

WHEREAS, in recognition of the benefits to be conferred upon the City from development of the Property, both economic and through improvement of infrastructure, the City is willing to assist Developer by the provision of economic assistance as provided under this Agreement; and,

WHEREAS, in consideration for the benefits conferred upon it by this Agreement, Developer agrees to enter into a covenant regarding the operation of its business, for a specific duration; and,

WHEREAS, the purpose of this Agreement is to facilitate the implementation of the principles outlined above, realizing the public benefits to City and private benefits to Developer described in these Recitals, because the development of the Project requires a major investment by the Developer and the City in public facilities, substantial investment in on-site and off-site improvements, dedications of land, participation in other programs for public benefit and purposes, and substantial commitments of the resources to achieve both private benefits of the Project for the Developer and the public purposes and benefits of the Project for the City; and,

WHEREAS, the willingness of the City to enter into this Agreement is a material inducement to Developer to implement the Project and but for which the Project would not be feasible, and Developer proposes to enter into this Agreement in order to obtain assurance from the City regarding the timing and extent of the economic assistance outlined above; and,

NOW, THEREFORE, in consideration of the mutual promises, obligations and covenants herein contained, the City and the Developer agree as follows:

AGREEMENT

1. Interest of Developer. Authority to Enter into Agreement. The Developer, and each person signing on behalf of Developer, represents that the Developer or its principals holds all legal or equitable interests in the Property, and that no other entities or individuals hold a legal or equitable interests in this Property; or Developer is authorized to enter into this Agreement on behalf of those entities or individuals and bind them under this Agreement. Each of the City, and those persons signing on the City's behalf, below, represent that the City is authorized to enter into this Agreement and bind the City under this Agreement.
2. Term. The term of this Agreement shall commence on the Effective Date and extend until the twentieth (20th) anniversary of the Effective Date. This Agreement is subject to termination as otherwise set forth in this Agreement.
3. Development of Project. The Developer will develop the Project to completion, and commence business transactions, including the sale and servicing of motor vehicles

(new and used), from the Property, within eighteen (18) months from the Effective Date, the date upon which sales commence shall constitute the "Operation Commencement Date", subject to extension in the event of litigation which is a direct causation of delay in the development of the Property or the commencement of sales and which is not attributable to the Developer.

4. Further Review/Exercise of Discretion. Developer acknowledges that the existing land use regulations contemplate further review of elements or portions of the Project by the City, including but not limited to design review and potential CEQA analysis not caused by the City's actions. This Agreement shall not be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit discretion of the City or any of its officers, officials or employees exercising their discretion with regard to rules, regulations, ordinances or laws, including the mitigation measures identified in the adopted negative declaration for the Project; provided, however, that in no event shall Developer's vested right to develop and construct the Project in accordance with this Agreement and the Development Plan be limited or abridged, nor shall the provisions of this Agreement be limited or adversely affected. In addition, changes in rules, regulations or policies of the City which occur after the Effective Date, including but not limited to those which govern architectural design, landscaping, public improvements, or construction standards, shall apply as though they were in effect as of the Enactment Date. The City also retains the authority to take the following actions: adopt and apply property transfer taxes, excise taxes, and/or utility taxes; uphold the right of the voters to act by initiative or referendum, but only to the extent that the initiative or referendum does not affect or interfere with the vested rights acquired by Developer as stated pursuant to Section 3 of this Agreement, except that this Agreement itself is subject to referendum; impose traffic mitigation fees adopted by the regional transportation agency; and/or take other action not expressly prohibited by the terms or provisions of this Agreement. This Agreement shall not prevent the City from applying its rules, regulations and policies, or from conditioning future Project development approval on rules, regulations and policies which do not conflict with the terms of the Development Plan or this Agreement.

5. Development Fees, Exactions and Dedications.

5.1. Development Processing Fees, Exactions. The City shall be entitled to impose on a City-wide basis development fees, special assessments, special taxes, exactions and dedications, which are payable due to the development, build-out, occupancy and use of the Property which are in effect at the time the building permits are actually issued rather than those effective as of the Effective Date. Developer shall be subject to the normal and customary fees then in effect in City at the time such fees are assessed or are to be paid, provided that such fees have general applicability on a City-wide basis and are prospective only.

5.2. Dedications. Developer shall irrevocably offer to dedicate to City, upon request by the City, all portions of the Property designated in the conditions of approval for the Project (as counter-signed by the Developer; the "Conditions of Approval") for public easements, streets or public areas.

5.3. Contribution to Costs of Facilities and Services. Developer agrees to contribute to the costs of public facilities and services as required to mitigate the impacts of the development of the Property as provided in the Conditions of Approval. Developer recognizes and agrees that, but for Developer's contributions to mitigate the impacts arising as a result of development entitlements granted pursuant to this Agreement, the City would not and could not approve the development of the Property as provided by this Agreement. City's approval of development of the Property is in reliance upon and in consideration of Developer's agreement to make such contributions toward the cost of public improvements and public services as provided to mitigate the impacts of development of the Property all as provided under the Conditions of Approval.

5.4. Reimbursement for Agreement Expenses of City. Developer agrees to reimburse City for reasonable and actual expenses, including but not limited to staff overtime expenses incurred in processing, review, approval, inspection and completion of the Project, which are over and above fees paid

by Developer as an applicant, for costs incurred by City relating to this Agreement, including recording fees and publishing fees an allowance of \$5,000.00 in lieu of payment for staff services, consultant costs or attorneys' fees. The reimbursement shall be paid to City within thirty (30) days of submission of an itemized bill to Developer for such expenses.

6. Use of Property. Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to the Property or any part thereof, that during construction and thereafter for a period of twenty (20) years from the recording of the Certificate of Completion, Developer, its successors and assigns, shall devote the Property to use as a retail automobile dealership use under franchise of Chrysler, Dodge, Jeep, or Ram, or another manufacturer mutually acceptable to the City and the Developer; provided that this Agreement shall not be construed to limit introduction of additional product lines on the Property by Developer or its successors. If Developer materially breaches the requirements of this section, and, as a result thereof, is in default under this Agreement, Developer shall be required to reimburse the City for any and all expenses and financial assistance, with interest calculated from the date of payment by the City to developer, and City may, in its discretion, terminate this Agreement

7. Economic Assistance to Developer.

- 7.1. Findings of Need. The City has found and determined there is a need for certain financial assistance to assist Developer in order to render the Project economically feasible. Extensive improvements to the Property will be required in order to render development of the Property possible. As a result of these economic and financial burdens, development of the Property is not economically feasible unless financial assistance is provided. Developer has stated that it is unwilling to develop the Property unless financial assistance is provided. The City has further determined, based upon its review of the projected economics of the Project for the Developer, that the Project would more than likely not be feasible and would more than likely not be accomplished without the financial participation of the City under this

Agreement.

- 7.2. Benefits of Development to the Community. The City has determined that the development of the Property will provide social and economic benefits to the community. Specifically, the proposed development of the Property will provide a source of employment and creation of jobs within the community. In addition, the proposed development of the Property will generate needed additional sales and property tax revenues to the City and other public agencies. The proposed development of the Property will enable needed capital projects to be completed, and provide funds for maintenance and operations of the public facilities, including but not limited to police facilities, which will improve the health, safety and welfare of the community, improve the economic conditions of the community and provide for the public safety and convenience. The Developer will make good faith efforts to hire Morgan Hill residents and use Morgan Hill vendors and suppliers in its activities pursuant to this Agreement. The Project will further identify the Property and area within its vicinity as commercial destinations and will improve an entryway to the Project Area.
- 7.3. Economic Assistance: Joint and Several Obligation. Commencing as of the Operation Commencement Date and continuing until end of the quarter (for sales tax reporting purposes) which follows the Twentieth (20th) anniversary of the Operation Commencement Date (the end of which quarter shall constitute the "Final Payment Accrual Date"), the City shall make payments to the Developer in an amount determined by the taxable sales actually generated by the Property and operations thereon, up to a total of One Million Three Hundred Thousand Dollars (\$1,300,000) (the "Total Assistance Amount"). The payments shall be determined and made based on the taxable sales generated from the Property and operations thereon and the tax revenue collected by the City from the Property and operations thereon. For purposes of this Section 7.3, the following shall be treated as revenues attributable to taxable sales from the Property and shall be countable for the benefit of the Developer: (i) sales tax revenues collected by the City from the

Property or operations thereon. The City shall make payment to the Developer for taxable sales over the "Baseline Amount" and in accordance with Table A-"Payment Schedule" as defined below. Within sixty days after the end of the second and fourth fiscal quarters of operation, Developer shall submit to the City Manager bona fide documentation demonstrating to the City's satisfaction that the particular amount of sales taxes paid, and stating those which qualify for the rebate program. Any rebate amount shall be paid upon verification by the City's Finance Director of receipt of the sales tax revenue. Payments shall be made by the City within one hundred fifty (150) calendar days following the end of the second and fourth quarters for which sales taxes are reported; provided that unless and until the Baseline Amount has been reached, no payments shall be required to be made in respect to the current Year of Operation.

"Baseline amount" is defined as Seven Million Five Hundred Thousand Dollars (\$7,500,000) for the first and Second "Year of Operation" (as defined to mean the first full four-quarter period following the Operation Commencement Date for which sales taxes are reported by the Developer); Ten Million Five Hundred Thousand Dollars (\$10,500,000) for the third and fourth Year of Operations; and, Twenty Million Dollars (\$20,000,000) for each Year of Operation thereafter. The following Table A illustrates how the payments to the Developer would be calculated:

TABLE A-Payment Schedule

Baseline Amount in Taxable Sales	Baseline Amount in Tax Revenue Collected by the City attributed to Taxable Sales	Calculation of payment
\$7,500,000 for the 1 st and	\$75,000	50% times each tax

2 nd Year of Operations		revenue dollar collected above \$75,000 for the First 2 years of Operation
\$10,500,000 for 3 rd and 4 th year of operation	\$105,000	50% times each tax revenue dollar collected above \$105,000 for the Year of Operations 3 and 4
\$20,000,000 for each year of Operation thereafter	\$200,000	50% times each tax revenue dollar collected above \$200,000 for Year 5 to the end of the term

For example, if in the first Year of Operation the Developer generates Ten Million Dollars (\$10,000,000) in taxable sales and prior to the payment date the City collects One Hundred Thousand Dollars (\$100,000) in tax revenue attributable to the taxable sales, the City shall pay the Developer Twelve Thousand Five Hundred Dollars (\$12,500) per the calculation in the above Table A for the first Year of Operation. In the third year of operation, if the Developer generates Fourteen Million Dollars (\$14,000,000) in taxable sales and the City collects One Hundred and Forty Thousand Dollars (\$140,000) in tax revenue attributed to the taxable sales, the City shall pay the Developer Seventeen Thousand Five hundred dollars (\$17,500) per the calculation in the above Table A for that Year of Operation.

If the Total Assistance Amount has been paid to the Developer prior to the Final Payment Accrual Date, no further sums shall be due and owing from the City, and the rebate agreement shall cease.

7.4 Reporting Obligations. Within sixty (60) days after the end of the second and fourth fiscal quarters of operation of the Project, Developer shall submit to the City Manager bona fide documentation demonstrating to the City's satisfaction the particular amount of sales taxes were in fact paid and which qualify for the

rebate program.

8. Cooperation in Implementation. Upon satisfactory completion by Developer of all required preliminary actions provided in the Development Plan, and payment of required processing fees, if any, City shall proceed in a reasonable and expeditious manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and development of the Property in accordance with the Development Plan, including the following actions: processing and checking all maps, plans, land use and architectural review permits, building plans and specifications, and other plans relating to development of the Property. The City shall also reasonably cooperate with Developer in Developer's efforts to obtain such permits and approvals as may be required from other agencies with jurisdiction over the Project.
9. Drainage, Water System, Sewer, Road, Traffic and Other Public Improvements. Developer agrees to construct the public improvements as required under the Conditions of Approval, including but not limited to full frontage improvements along Condit. Such public improvements shall be submitted for approval and constructed in accordance with the City's standard improvement agreement requirements, including but not limited to insurance, bond and indemnification requirements. Developer agrees that it is not entitled to any reimbursement by the City for such improvements unless otherwise stated in the City's improvement agreement with the Developer.
10. Landscape and Maintenance. Developer shall landscape and maintain the Property as provided under the Landscape and Maintenance Agreement between the City and the Developer.
11. Default; Effect Thereof; Waiver.
 - 11.1. Default. Failure by either party to perform any material term or provision of this Agreement shall constitute a default, provided that the Party alleging the default shall have given the other Party advance written notice and thirty (30) days within which to cure the condition, or, if the nature is such that it cannot be cured within that time, the party receiving notice shall not be in default if the allegedly defaulting Party commences to perform its

obligations within the thirty (30) days period and diligently prosecutes the cure toward completion. Written notice shall specify in detail the nature of the obligation to be performed by the Party receiving notice.

- 11.2. Remedies. It is acknowledged by the Parties that the financial obligations of the City under this Agreement are limited to those amounts provided in Section 7.3 of this Agreement and the City would not have entered into this Agreement if it were liable for damages under or with respect to this Agreement in excess of that portion of the Total Assistance Amount not yet required to be paid to the Developer. City shall not be liable in damages to Developer in excess of such remaining portion of the Total Assistance Amount not yet required to be paid, or to any assignee, transferee, or any other person, and Developer covenants not to sue for or claim damages in excess of such remaining portion of the Total Assistance Amount not yet required to be paid. Upon Developer's material default, City shall be entitled to initiate legal proceedings to specifically enforce this Agreement or terminate it. City may terminate this Agreement, upon notice and an opportunity to cure as provided in Section 11.1, due to uncured default without legal action.
- 11.3. Default by Developer. City, may, in its discretion, refuse to issue a building permit for any structure within the Property, if Developer has materially failed or refused to complete any requirement applicable to the building permit as provided under the Conditions of Approval. This remedy shall be in addition to any other remedies provided for by this Agreement.
- 11.4. Effect of Default. In the event of Default by Developer pursuant to this provision, all obligations of the Parties shall terminate with the exception of Developer's obligation to defend, indemnify and hold harmless the City, its officers, agents and employees, and Developer's obligations under any Improvement Agreements executed with the City for the Project shall be governed by such Improvement Agreements, if any. No termination shall prevent Developer from completing those portions of the Project in which it

has a vested right to do so as defined by law independent of this Agreement, but the City may take any action permitted by law to prevent, stop or correct any violation of law occurring during and after construction, and neither Developer or any tenant thereof shall occupy any portion of the Project, or any building not authorized by a certificate of occupancy.

11.5. Waiver. Failure by either Party to invoke the default or termination provisions in this Agreement shall not waive that Party's right to insist upon performance of any obligation by the other Party in the future.

12. Estoppel Certificate. Either Party may, at any time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (a) this Agreement is in full force and effect and constitutes a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments or modifications, and (c) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A Party receiving a written request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the Parties. The City Manager of the City shall be authorized to execute any certificate requested by Developer.

13. Mortgagee Protection.

13.1. Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement or a Memorandum thereof, including the lien for any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or

otherwise.

- 13.2. Mortgagee Not Obligated. City, upon receipt by City of a written request from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of Developer under this Agreement, provided that the failure of Developer to pay any taxes or assessments is cured by the Mortgagee prior to such succession.
- 13.3. Notice of Default to Mortgagee. If City receives notice from a Mortgagee requesting a copy of any notice of default given Developer and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed an event of default. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed set forth in the City's notice.
- 13.4 Certification Requested by Mortgagee(s). The City shall not unreasonably refuse to provide certifications if requested to do so by one or more Mortgagees so long as the terms of this Agreement are not materially altered thereby, and Developer is not in default under any term of this Agreement.
13. Severability. The unenforceability, invalidity or illegality of any provision, covenant, condition or term of this Agreement which is not material shall not render the material provisions unenforceable, invalid or illegal.
14. Relationship of City and Developer. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by City and Developer and that Developer is an independent contractor and not an agent or employee of City. All persons employed or utilized by Developer in connection with this Agreement are employees of Developer and shall not be considered employees or agents of City in any respect. The Parties declare that the Project is a private development, and hereby renounce the existence of any form of joint venture, association or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City

and Developer joint venturers, agents, associates, or partners.

15. Amendment or Termination. City and Developer, by mutual agreement may terminate or amend the terms of this Agreement, and the amendment or termination shall be accomplished in the manner provided under California law for the enactment of Incentive Agreement Amendments.
16. Transfers and Assignments. Excepting for Developer's rights to receive payments under Section 7.3 hereof ("Payment Rights") and the assignment, pledge or hypothecation thereof by Developer from time to time at Developer's election ("Assignment of Payment Rights"), neither party hereto shall assign or transfer any of its interests, rights, or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Should Developer assign any of its interest, rights or obligations under this Agreement, it shall nonetheless remain liable for performance of the obligations for installation of public improvements and payment of fees. During the Term of the Agreement, Developer shall provide City with written notice of transfer of title (not including leases or ground leases) to the Property within sixty (60) days following each transfer. Each successor in interest to Developer shall be bound by all of the terms and provisions applicable to the portion of the Property acquired by it. This Agreement shall be binding upon and inure to the benefit of the Parties' successors, assigns and legal representatives. The only exceptions to these requirements for obtaining the City's consent are: (a) the Assignment of Payment Rights, and (b) the sale or lease of a subdivided parcel of the Property (i) upon which all public improvements are completed, all applicable fees paid, and all landscaping as required by the Conditions of Approval have been installed; or (ii) which is being sold or transferred to an affiliated or related company or entity of Developer, which is defined as a legal entity which is owned at least fifty percent (50%) by Developer, or which has as a majority of its general partners a majority of the general partners of Developer.
17. Agreement Runs with the Land. The terms of this Agreement and the Development Plan are legislative in nature, and apply to the Property as regulatory ordinances. All of the provisions, rights, terms, covenants, and obligations contained in this

Agreement shall run with the land, be binding upon, and inure to the benefit of, the Parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever.

18. Indemnification. Developer agrees to indemnify and hold harmless City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs and liability for any injury or property damage resulting from the performance under this Agreement by the Developer, its contractors, subcontractors, agents, or employees, including but not limited to liabilities for failure to comply with applicable laws. This provision is intended to be broadly construed and extends to, but is not limited to, any challenge to the validity of this Agreement or its passage, or approval by the City, City Council, Planning Commission or other advisory body.
20. Construction. This agreement is prepared and reviewed by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.
21. Insurance. During the term of this Agreement, Developer shall purchase and maintain in full force and effect the following insurance policies: (1) commercial general liability insurance; (2) comprehensive automobile insurance (bodily injury and property damage) with respect to employees and vehicles assigned to performance of work under this Agreement; (3) workers' compensation, employer's liability if required by law. Such policies shall have the limits of coverage and endorsements as set forth in Exhibit D attached to this Agreement. The scope and form of each respective insurance coverage shall be subject to approval of the City Attorney. The City must approve all insurance coverages and carriers prior to Developer's commencement of construction activities on the Project. The City will promptly review coverages as submitted by or on behalf of the Developer.
22. Force Majeure. Performance by either party shall not be deemed to be in default where delays or defaults are directly due to war, insurrection, strikes, lockouts, walkouts, riots, heavy floods, earthquakes, fires, casualties, acts of God,

governmental entities other than City, or enactment of superseding state or federal laws or regulations. City and Developer shall promptly notify the other Party of any delay hereunder.

23. Nondiscrimination. Developer shall not discriminate, in any way, against any person on the basis of race, color, national origin, gender, sexual orientation, age, creed, religion or disability in connection with or related to the performance of this Agreement.

24. Notices. All notices required or provided for under this Agreement shall be in writing and delivered (a) in person, (b) sent by certified mail, postage prepaid, (c) sent by overnight delivery, or (d) sent via facsimile.

Notices required to be given to the City shall be given to:

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

With a copy to:

City Clerk
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037-4128

Notices required to be given to Developer shall be addressed as follows:

TSC Motors, Inc.
3239 Imjin Road
Marina, CA 93933
Phone: 800-807-0336

Party may change its address by giving notice in writing to the other Party as specified in this provision. Notices shall be deemed given and received upon the earlier of

personal delivery, or if mailed, upon the expiration of forty-eight (48) hours after being deposited in the United States Mail or on the delivery date or attempted delivery date shown on the return receipt, air bill or facsimile.

21. Duplicate Originals; Entire Understanding; Headings; Further Documents. This Agreement may be executed in duplicate originals, each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the Parties and supersedes all prior negotiations and agreements between the Parties. The headings in this Agreement are for convenience only, and shall not be used as an aid in interpreting the terms hereof. The Parties shall take all other actions and execute and deliver all other documents necessary or convenient to carry out the terms hereof and to fulfill the purposes and intent of this Agreement.
22. Exhibits. The following documents are referred to in this Agreement and are attached hereto and incorporated herein as though set forth in full;

Exhibit A,B,C-Legal Descriptions and Maps
23. Recording of Incentive Agreement. Amendment or Cancellation. Within ten (10) days after all Parties have executed this Agreement, the City Clerk shall submit this Agreement for recording with the County Recorder assuming the Developer has acquired fee ownership of the Property. If the Parties or their successors-in-interest amend or cancel the Agreement, or if the City terminates or modifies the Agreement for failure of the Developer to comply in good faith with the terms or conditions of the Agreement, the City Clerk shall timely submit the notice of such action for recording action with the County Recorder.
24. No Third-Party Beneficiary. This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party, and no third party shall have any claim or right of action hereunder for any cause whatsoever.
25. Governing Law; Legal Action. This Agreement shall be governed by the law of the State of California. All Legal Action regarding this Incentive Agreement shall be filed in the Superior Court of the County of Santa Clara, State of California.
26. Dispute Resolution. Any controversies between Developer and City regarding the

construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days after a written request of one party invoking mediation is served on the other party. The parties may agree on one mediator. If they cannot, the party demanding mediation shall request the Superior Court of the County of Santa Clara to appoint a mediator. The mediation shall not exceed eight (8) hours, unless an extension of time is mutually agreed to by both parties. The costs of mediation shall be borne equally by both parties. Mediation under this section is a condition precedent to filing an action in any court.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as follows:

CITY OF MORGAN HILL		TSC Motors, Inc
By:		By:
City Manager		
APPROVED AS TO FORM:		ATTEST
By:		By:
City Attorney		City Clerk

Exhibit "A"
Legal Description-Parcel B
(Certificate of Compliance for Lot Line Adjustment)

All that certain real property situated in the County of Santa Clara, State of California and being a portion of Parcel 1 and a portion of Parcel 2, said parcels as shown upon the Parcel Map for Lot Line Adjustment, recorded in Book 871 of Maps, Pages 14 through 16, on April 18, 2014, at the Office of the Recorder of Santa Clara County, and being more particularly described as follows:

Beginning at the northerly corner of Parcel 3 of said map, said point lying in the southwesterly line of Condit Road (a 60' wide public street), thence along said line of said street, N25°28'14"W, a distance of 335.52 feet; thence leaving said street, S64°31'46"W, a distance of 782.40 feet to the northeasterly line of Santa Clara Valley Water District, (said line as described in Director's Deed, Document No. 5336791, recorded July 14, 1976 at the said County Records), to the point of curve of a non-tangent curve to the right, of which the radius point lies S62°18'09"W, a radial distance of 6,000 feet; thence northeasterly along the arc, through a central angle of 03°12'17", a distance of 335.59 feet to the westerly corner of said Parcel 3, of which the radius point lies S65°30'26"W, a radial distance of 6,000.00 feet; thence leaving said District line, N64°31'46"E, a distance of 778.74 feet to the POINT OF BEGINNING, containing 261,361 square feet or 6.000 acres, more or less.

END OF DESCRIPTION.

See Exhibit "C" attached hereto and made a part hereof.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.



Harinder Singla, PLS 8347

Expires: 12/31/2017

8-09-16
Date

Prepared by the firm of MH engineering Company, Morgan Hill, CA

K:\2016\216073LLA-Parcel B.doc

Attachment: Exhibit A-Incentive Agreement- TSC Motors [Revision 4] (2923 : Agreements for a New Automobile Dealership on Condit Road)

Exhibit "B"
Legal Description-Parcel A
(Certificate of Compliance for Lot Line Adjustment)

All that certain real property situated in the County of Santa Clara, State of California and being a portion of Parcel 1 and a portion of Parcel 2, said parcels as shown upon the Parcel Map for Lot Line Adjustment, recorded in Book 871 of Maps, Pages 14 through 16, on April 18, 2014, at the Office of the Recorder of Santa Clara County, and being more particularly described as follows:

Being all of Parcel 1 and all of Parcel 2 of said map, EXCEPTING therefrom the following 6.000 acres.

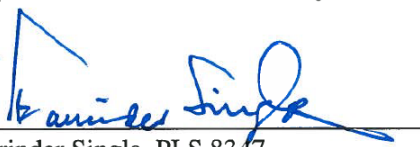
Beginning at the northerly corner of Parcel 3 of said map, said point lying in the southwesterly line of Condit Road (a 60' wide public street), thence along said line of said street, N25°28'14"W, a distance of 335.52 feet; thence leaving said street, S64°31'46"W, a distance of 782.40 feet to the northeasterly line of Santa Clara Valley Water District, (said line as described in Director's Deed, Document No. 5336791, recorded July 14, 1976 at the said County Recorders), to the point of curve of a non-tangent curve to the right, of which the radius point lies S62°18'09"W, a radial distance of 6,000 feet; thence northeasterly along the arc, through a central angle of 03°12'17", a distance of 335.59 feet to the westerly corner of said Parcel 3, of which the radius point lies S65°30'26"W, a radial distance of 6,000.00 feet; thence leaving said District line, N64°31'46"E, a distance of 778.74 feet to the POINT OF BEGINNING.

The resulting Parcel A contains 496,664 square feet or 11.402 acres, more or less.

END OF DESCRIPTION.

See Exhibit "C" attached hereto and made a part hereof.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.


 Harinder Singla, PLS 8347

Expires: 12/31/2017


 Date

Prepared by the firm of MH engineering Company, Morgan Hill, CA

Attachment: Exhibit A-Incentive Agreement- TSC Motors [Revision 4] (2923 : Agreements for a New Automobile Dealership on Condit Road)



IMPACT FEE FREEZE AGREEMENT

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

TSC MOTORS, INC

Attachment: Impact Fee Freeze Agreement TSC Motors [Revision 2] (2923 : Agreements for a New Automobile Dealership on Condit Road)

**IMPACT FEE FREEZE AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
TSC MOTORS, INC**

This Impact Fee Freeze Agreement (the "Agreement") is entered into as of _____, 2020, by TSC Motors, Inc, a California Corporation and its successors and assigns (the "Developer") and the City of Morgan Hill, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), with reference to the following facts and purposes:

RECITALS

A. Pursuant to the authority of Morgan Hill Municipal Code Sections 3.56.095, 12.02.115, the City has established an Impact Fee Freeze Program (the "Program") to freeze Development Impact Fees to the Fiscal Year 2016-2017 Fee Schedule for new commercial/industrial construction.

B. Developer owns certain real property in the City described in the attached Exhibit A, the street address of 17085 Conduit Road, (the "Subject Property") upon which improvements are to be made for a new commercial business (the "Project").

C On ____ 2020, the City Council of the City granted a request of the Developer to be a Program participant with respect to locking in Development Impact Fees at the Fiscal Year 2016-2017 Impact Fee Schedule in the attached Exhibit B.

D. Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in annual changes to Development Impact Fees, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Impact Fee Program was adopted.

ARTICLE 1

ADMINISTRATION

1.01 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

(1) **"Existing City Laws"** shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.

(2) **"Impact Fees"** shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 et seq.

(3) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

(4) **"New City Laws"** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes **"Legal Effect"** after the Effective Date of this Agreement, and that applies City wide.

(5) **"Project Approvals"** mean, collectively, the Project's existing approvals and the Subsequent Approvals.

(6) **"Property"** shall mean that certain real property consisting of approximately 9.25 acres located within the City, as more particularly described and shown on **Exhibit A** to this Agreement, and also defined as the Subject Property in the Recitals hereto.

(7) **"Subsequent Approvals" and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law.

1.02 **Term.**

The term ("**Term**") of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated, modified or extended as provided in this Agreement) until the earliest of (1) the issuance of a certification of occupancy for the Project or (2) November 30, 2023.

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, "**Applicable Law**" shall mean all of the items listed below in this Section 2.01. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

(1) All the provisions, terms and conditions of this Agreement.

(2) The Existing Approvals. Developer hereby waives any legal or equitable right to challenge administratively or judicially any Existing Approvals including conditions of those Existing Approvals. Such waiver includes any requirements for notice, acts of protest and/or right to litigation pursuant to the Mitigation Fee Act and/or any other applicable law.

(3) The Subsequent Approvals, provided such Subsequent Approvals are:

- (i) In compliance with all controlling California law;
- (ii) Mutually agreed to by the Parties; and
- (iii) Duly enacted by City.

(4) The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.

(5) Any "New City Laws" Developer is subject to under this Agreement; for example, as provided in, but not limited to, Section 2.05. Additionally, any New City Laws to which Developer elects to be subject pursuant to Section 2.05(d).

(b) The Parties acknowledge that the Subsequent Approvals may be processed in stages and therefore one or more Subsequent Approvals may be adopted and approved before other Subsequent Approvals needed for development of the Project are adopted and approved by City.

(c) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

2.02 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Project (and the Developer who is the owner of same). Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Impact Fees. As part of the Project's sole and exclusive obligation (and the Developer's as the owner of same) to cover Project Mitigation, Developer shall pay all Impact Fees as described in Exhibit B at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code; however, the payment, if any, of the Storm Drain Impact Fee and Storm Drain Frontage Charge shall be determined by separate agreement between the Parties.

(c) Processing Fees. The Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, environmental studies required under CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Project (including Developer as owner of same). Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.03 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.04 Timing of Development.

Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes, as these exist on the Effective Date. In the event Developer fails to comply with the above permit issuance and beginning construction by November 30, 2023 the Impact Fee Freeze Program shall expire.

2.05 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development.

(b) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay

construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals and the Subsequent Approvals (as and when they are issued);

(5) Limit the processing of Subsequent Approvals.

(c) If City determines that it has the right under this Agreement to impose/apply a New City Law on the Property/Project, it shall send written notice to Developer of that City determination ("**Notice of New City Law**"). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law ("**Objection to New City Law**"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law ("**City Response**") within thirty (30) days of receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the "**Meet and Confer Period**") with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (*e.g.*, City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regard to all other areas of City (excluding the Project).

(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations under this Agreement.

(e) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State

or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level) ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute concerning property located in a flood hazard zone (Gov. Code § 65865.5), or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. For any Subsequent Approvals necessary for the Project, this Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, and later included into this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including proper Planning and Zoning Law and CEQA compliance), have secured approval of the Parties, and are adopted/approved by City, which shall retain all lawful discretion in this regard. That public review process is ongoing, and following the City's adoption of this Agreement, that public review process shall continue. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law.

(b) Upon submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall use its best efforts to promptly commence and diligently complete all steps necessary to acting on the requested Subsequent Approvals, including, but not limited to, (i) the holding of any and all required public hearings and notice for such public hearings, and (ii) the granting of the requested approval to the extent that it is consistent with Applicable Law.

3.02 Significant Actions by Third Parties Necessary to Implement the Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Administrative Amendments.

(a) Upon the written request of Developer for an amendment or modification of this Agreement or a Project Approval, the City Manager or her designee shall determine: (1) whether the requested amendment or modification is minor; and (2) whether the requested amendment or modification is consistent with this Agreement and the Applicable Law. If the City Manager or her designee finds that the proposed amendment or modification is both minor and consistent with this Agreement and the Applicable Law, and provided further that the Project and the Developer are otherwise in compliance with all agreements and approvals related to the project, the City Manager or her designee may approve the proposed amendment or modification without notice. Such minor amendments or modifications approved pursuant to this Section shall not constitute subsequent discretionary approvals triggering further CEQA review. Any minor amendment must be made in writing signed by the City Manager (and approved by the City Attorney) of the City and by the Developer.

(b) For the purpose of this Agreement, a “minor amendment” shall not include any of the following:

- (i) Any material amendment or modification, or elimination of provisions required pursuant to the Morgan Hill Municipal Code or by California law, including provisions relating to: (1) the duration or term of this Agreement, (2) the permitted uses of the subject property, (3) the density or intensity of uses, (4) the maximum height and size of proposed buildings, (5) provisions for reservation or dedication of land for public purposes, (6) general location of the uses or proposed buildings or (7) the relation of the project to adjacent properties; or
- (ii) Any material amendment or modification, or elimination of provisions set forth in Article 2 of this Agreement.

3.04 Amendments.

Any request by Developer for an amendment or modification to this Agreement or a Project Approval that is determined to be not minor by the City Manager or her designee shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved.

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Resolution of Disputes.

(a) In the event either Party is in default under the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action under this Agreement, any City Council determination under this Agreement shall be deemed a final agency action.

(c) The Parties agree to meet and confer regarding any dispute, in an effort to agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

4.02 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.03 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review under CEQA ("**Third Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(b) City shall have the option to defend such Third Party Challenge or to tender the complete defense of such Third Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City's attorneys fees and costs (including related court costs).

(c) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorneys fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.04 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.04(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.05 Assignment.

Developer may assign its rights and obligations under this Agreement to third-parties who apply to purchase or construct a portion or all of the Project with no additional fees or costs to Developer or Assignee so long as the uses are allowed and/or proposal remains consistent with the uses currently allowed for the subject property or as otherwise allowed in the future.

4.06 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.02, or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Requirements of Development Agreement Statute. The permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law. As Subsequent Approvals are adopted and therefore become part of the Applicable Law, the Subsequent Approvals will refine the permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced under or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the Project. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(f) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be

that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(g) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective Party as follows:

If to City: City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7259
Fax: (408) 779-3117

With a Copy To: City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7271
Fax: (408) 779-1592

If to Developer: TSC Motors, Inc..
3239 Imjin Road
Marina, CA 93933
Phone: 800-807-0336

Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(h) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(i) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California.

(j) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties; however, the payment, if any, of the Storm Drain Impact Fee and Storm Drain Frontage Charge shall be determined by separate agreement between the Parties

(k) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(l) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(m) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Lot on Which Project is to be Located.

Exhibit B 2016/2017 Impact Fee Schedule

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

s/ _____

Christina J. Turner
City Manager

Date: _____

Attest:

s/ _____

Deputy City Clerk

Approved as to Form:

s/ _____

Donald A. Larkin
City Attorney
Date: _____

DEVELOPER:

TSC Motors, Inc

s/ _____

Name/Title [print]

Corporate entities must provide a second signature:

s/ _____

Name/Title [print]

Date: _____

EXHIBIT A

Exhibit "A"
Legal Description-Parcel B
(Certificate of Compliance for Lot Line Adjustment)

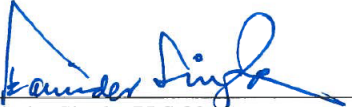
All that certain real property situated in the County of Santa Clara, State of California and being a portion of Parcel 1 and a portion of Parcel 2, said parcels as shown upon the Parcel Map for Lot Line Adjustment, recorded in Book 871 of Maps, Pages 14 through 16, on April 18, 2014, at the Office of the Recorder of Santa Clara County, and being more particularly described as follows:

Beginning at the northerly corner of Parcel 3 of said map, said point lying in the southwesterly line of Condit Road (a 60' wide public street), thence along said line of said street, N25°28'14"W, a distance of 335.52 feet; thence leaving said street, S64°31'46"W, a distance of 782.40 feet to the northeasterly line of Santa Clara Valley Water District, (said line as described in Director's Deed, Document No. 5336791, recorded July 14, 1976 at the said County Records), to the point of curve of a non-tangent curve to the right, of which the radius point lies S62°18'09"W, a radial distance of 6,000 feet; thence northeasterly along the arc, through a central angle of 03°12'17", a distance of 335.59 feet to the westerly corner of said Parcel 3, of which the radius point lies S65°30'26"W, a radial distance of 6,000.00 feet; thence leaving said District line, N64°31'46"E, a distance of 778.74 feet to the POINT OF BEGINNING, containing 261,361 square feet or 6.000 acres, more or less.

END OF DESCRIPTION.

See Exhibit "C" attached hereto and made a part hereof.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.


 Harinder Singla, PLS 8347
 Expires: 12/31/2017

8-09-16
 Date

Prepared by the firm of MH engineering Company, Morgan Hill, CA

K:\2016\216073LLA-Parcel B.doc

Exhibit "B"
Legal Description-Parcel A
(Certificate of Compliance for Lot Line Adjustment)

All that certain real property situated in the County of Santa Clara, State of California and being a portion of Parcel 1 and a portion of Parcel 2, said parcels as shown upon the Parcel Map for Lot Line Adjustment, recorded in Book 871 of Maps, Pages 14 through 16, on April 18, 2014, at the Office of the Recorder of Santa Clara County, and being more particularly described as follows:

Being all of Parcel 1 and all of Parcel 2 of said map, EXCEPTING therefrom the following 6.000 acres.

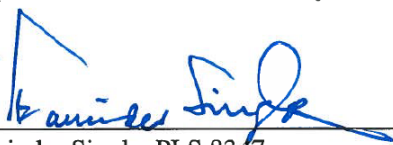
Beginning at the northerly corner of Parcel 3 of said map, said point lying in the southwesterly line of Condit Road (a 60' wide public street), thence along said line of said street, N25°28'14"W, a distance of 335.52 feet; thence leaving said street, S64°31'46"W, a distance of 782.40 feet to the northeasterly line of Santa Clara Valley Water District, (said line as described in Director's Deed, Document No. 5336791, recorded July 14, 1976 at the said County Recorders), to the point of curve of a non-tangent curve to the right, of which the radius point lies S62°18'09"W, a radial distance of 6,000 feet; thence northeasterly along the arc, through a central angle of 03°12'17", a distance of 335.59 feet to the westerly corner of said Parcel 3, of which the radius point lies S65°30'26"W, a radial distance of 6,000.00 feet; thence leaving said District line, N64°31'46"E, a distance of 778.74 feet to the POINT OF BEGINNING.

The resulting Parcel A contains 496,664 square feet or 11.402 acres, more or less.

END OF DESCRIPTION.

See Exhibit "C" attached hereto and made a part hereof.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.


 Harinder Singla, PLS 8347
 Expires: 12/31/2017


 Date

Prepared by the firm of MH engineering Company, Morgan Hill, CA

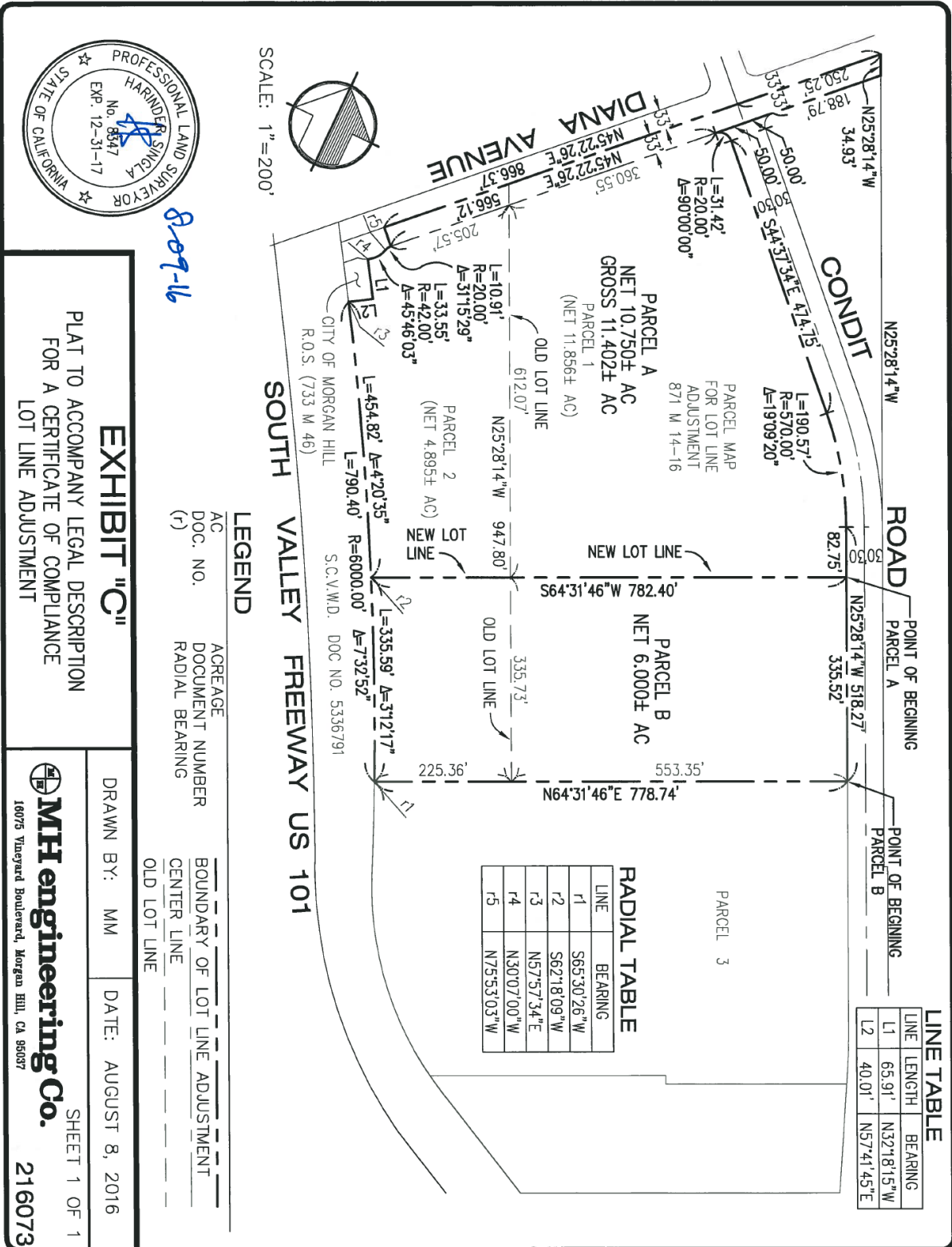


EXHIBIT B
2016-2017 Impact Fee Schedule



CITY OF MORGAN HILL PUBLIC WORKS DEPARTMENT

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

FEE SCHEDULE: 07.01.2016

DATE _____

TRACT / APN _____

ADDRESS / LOT _____

Auto Dealership
PROJECT DESCRIPTION _____

PER RESOLUTION 5902,
EFFECTIVE JULY 1, 2006
AND PER RESOLUTION 5592,
INCREASED JANUARY 15, 2009
AND PER RESOLUTION 6082,
EFFECTIVE FEBRUARY 5, 2007
**SEE BACK PAGE FOR ADDITIONAL FEE
RESOLUTIONS

FEE SCHEDULE EXPIRATION DATE _____

NAME _____

MAILING ADDRESS _____

CITY, STATE, ZIP CODE _____

PHONE NUMBER _____

NOTES:

1. PRESSURE REGULATORS ARE REQUIRED ON ALL WATER SERVICES.
2. BACKFLOW PREVENTORS ARE REQUIRED ON ALL NON-RESIDENTIAL WATER SERVICES & FIRE SPRINKLER SERVICES. BACKFLOW INSPECTION FEE SHALL BE PAID PRIOR TO INSPECTION.
3. MULTI-FAMILY IS DEFINED AS ANY UNIT WITH TWO BEDROOMS OR LESS.
SINGLE FAMILY IS DEFINED AS ANY UNIT WITH 3 BEDROOMS OR MORE.

☐ **THIS FEE SCHEDULE IS ESTIMATE ONLY**

CALCULATED BY _____

CHECKED BY _____

BUILDING PERMIT # _____

DATE BLD PERMIT ISSUED _____

SEWER IMPACT FEES WITHIN RDA BOUNDARY

CHECK APPLICABLE SCENARIO BELOW

☐ **COMMERCIAL OR INDUSTRIAL WITHIN RDA BOUNDARY**

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

☐ **RESIDENTIAL PROJECTS WITHIN RDCA DOWNTOWN AREA**

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

☒ **NOT IN RDA AREA BOUNDARY**

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

☐ **COMMERCIAL OR INDUSTRIAL SHELL**

**RDA SEWER ALLOCATION
COMPLETED BY:**

(write initials below)

version 07.01.16 Auto Dealership

Attachment: Impact Fee Freeze Agreement TSC Motors [Revision 2] (2923 : Agreements for a New Automobile Dealership on Condit Road)

WATER FEES:**1. METER DEPOSIT: 650-37672**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1"	\$468	x	0	=	\$0
1 1/2"	\$1,434	x	0	=	\$0
2"	\$1,619	x	0	=	\$0
3" or larger-Time & Material + Meter Cost				=	\$0

METER CREDITS

\$0 x 0 = \$0

SUBTOTAL = \$0**2. BACKFLOW CONST. INSPECTION: 650-37859**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

\$62 x 0 Each = \$0

3. WATER FRONTAGE CHARGE: 650-37663

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$66	x	0	LF	=	\$0
2 Sides	\$37	x	0	LF	=	\$0

4. WATER IMPACT FEE: 651-37648

(Auth: Res. #5592 approved 08.21.02, Increased 01.15.16)

a) Residential						
\$3,624 /DU	x	0	DU	=	\$0	
(Single Family)						
\$3,269 /DU	x	0	DU	=	\$0	
(Multi Family)						

b) Auto Dealership						
(Includes Landscape Service)						
\$10,288 /AC	x	0	AC	=	\$0	

WATER CREDITS

\$0 x 0 = \$0

SUBTOTAL = \$0**WATER FEE TOTALS = \$0****5. ENGINEERING & INSPECTION FEE: 206-38734**

(Minimum \$500.00):

(Authority: Res. #5902 approved 05.04.05, Updated 07.01.09)

ENGINEERING ESTIMATE:					\$0
DATE ENGINEERING EST. SUBMITTED:					
% APPLIES TO ENGINEER'S ESTIMATE					
13.3%	\$1	to	\$100,000	=	\$0
11.8%	\$100,001	to	\$200,000	=	\$0
10.3%	\$200,001	to	\$500,000	=	\$0
8.8%	OVER		\$500,000	=	\$0
ENGINEERING FEE				=	\$0
DEPOSIT PAID				=	\$0

ENGINEERING FEE TOTAL = \$0**5A. LONG RANGE PLANNING FEE: 207-37912**

LONG RANGE PLANNING FEE (15% of E&I) = \$0

SEWER FEES:**6. SEWER FRONTAGE CHARGE: 640-37663**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$66	/LF	x	0	LF	=	\$0
2 Sides	\$37	/LF	x	0	LF	=	\$0

7. SEWER IMPACT FEE: 641-37648

(Auth: Res. #6082 approved 02.05.07 & Res. #5592 approved 08.21.02, Increased 01.15.16).

a) Residential						
\$14,183 /DU	x	0	DU	=	\$0	
(Single Family)						
\$12,004 /DU	x	0	DU	=	\$0	
(Multi Family)						
b) Auto Dealership						
\$48.56 /GPD	x	0	GPD	=	\$0	
\$48.56 /GPD	x	0	GPD	=	\$0	

SEWER CREDITS

\$0 x 0 = \$0

RDA ASSUMED SEWER OBLIGATION

\$14,183 /DU	x	0	DU	=	\$0
(Single Family)					
\$12,004 /DU	x	0	DU	=	\$0
(Multi Family)					
\$48.56 /GPD	x	0	GPD	=	\$0
(Commercial & Industrial)					

SUBTOTAL = \$0**SEWER FEE TOTALS = \$0****STORM DRAIN FEES:****8. STORM DRAIN FRONTAGE CHARGE: 304-37663**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$108	/LF	x	0	LF	=	\$0
2 Sides	\$53	/LF	x	0	LF	=	\$0

9. STORM DRAIN IMPACT FEE: 303-37648

(Auth: Res. #5592 approved 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)

\$3,847 /DU	x	0	DU	=	\$0
(Single Family)					
\$2,001 /DU	x	0	DU	=	\$0
(Multi Family)					
\$52,373 /ACRE	x	0	AC	=	\$0
(Auto Dealership)					
\$30,505 /ACRE	x	0	AC	=	\$0
(Industrial)					

STORM CREDITS

\$0 x 0 = \$0

SUBTOTAL = \$0**STORM DRAIN FEE TOTALS = \$0**

10. UNDERGROUNDING UTILITIES: 350-37649

(Auth: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$681	x	0	LF	=	\$0
2 Sides	\$343	x	0	LF	=	\$0

11a. PARK IMPACT FEE: 301-37648

(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)

\$5,378 /DU	x	0	DU	=	\$0
(Single Family - Sub)					
\$3,910 /DU	x	0	DU	=	\$0
(Single Family - No Sub)					
\$5,181 /DU	x	0	DU	=	\$0
(Multi Family - Sub)					
\$3,771 /DU	x	0	DU	=	\$0
(Multi Family - No Sub)					

11b. PARK MAINTENANCE DEV. FEE: 302-37649

\$0	x	0	DU	=	\$0
-----	---	---	----	---	-----

PARK CREDITS

\$0	x	0		=	\$0
-----	---	---	--	---	-----

PARK FEE TOTAL = \$0**12. TRAFFIC IMPACT FEE: 309-37648**(Auth: Res. #15-152 approved 06.17.15 &
Res. #5592 approved 08.21.02, Increased 01.15.16)

\$1,863 /DU	x	0	DU	=	\$0
(Single Family)					
\$1,155 /DU	x	0	DU	=	\$0
(Multi Family)					
\$1,863 /PHT	x	0	PHT	=	\$0
(Auto Dealership)					
\$1,863 /PHT	x	0	PHT	=	\$0
(Industrial)					

TRAFFIC CREDITS

\$0	x	0		=	\$0
-----	---	---	--	---	-----

TRAFFIC FEE TOTAL = \$0**13. LIBRARY IMPACT FEE: 348-37648**

(Auth: Res. #5837 appr'd 09.01.04, Amdd by Res. 6326 4.28.10, Increased 01.15.16)

\$1,974 /DU	x	0	DU	=	\$0
(Single Family)					
\$1,902 /DU	x	0	DU	=	\$0
(Multi Family)					

LIBRARY CREDITS

\$0	x	0		=	\$0
-----	---	---	--	---	-----

LIBRARY FEE TOTAL = \$0**14. BURROWING OWL MITIGATION: 232-38145**

(Authority: Res. #5765 approved 01.21.04, Increased 07.01.16)

\$200 /DU		0	DU	=	\$0
(Residential)					
\$1,395 /AC		0	AC	=	\$0
(Commercial/Industrial)					

15a. MAP CHECK FEE: 206-38716

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

PARCEL MAP:	\$3,805	=	\$0
TRACT MAP:	\$5,667	=	\$0

16. POLICE IMPACT FEE: 311-37648

(Auth: Res. #5686 appr'd 06.18.03, Amdd by Res. 6326 4.28.10, Increased 01.15.16)

\$767 /DU	x	0	DU	=	\$0
(Single Family)					
\$741 /DU	x	0	DU	=	\$0
(Multi Family)					
\$664 /ACRE	x	0	AC	=	\$0
(Auto Dealership)					
\$2,333 /ACRE	x	0	AC	=	\$0
(Industrial)					

POLICE CREDITS

\$0	x	0		=	\$0
-----	---	---	--	---	-----

POLICE FEE TOTAL = \$0**17. FIRE IMPACT FEE: 313-37648**

(Auth: Res. #6671 approved 07.17.13, Increased 01.15.16)

\$118 /DU	x	0	DU	=	\$0
(Single Family)					
\$112 /DU	x	0	DU	=	\$0
(Multi Family)					
\$507 /ACRE	x	0	AC	=	\$0
(Auto Dealership)					
\$1,550 /ACRE	x	0	AC	=	\$0
(Industrial)					

FIRE CREDITS

\$0	x	0		=	\$0
-----	---	---	--	---	-----

FIRE FEE TOTAL = \$0**18. PUBLIC FACILITIES IMPACT FEE: 347-37648**

(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)

\$512 /DU	x	0	DU	=	\$0
(Single Family)					
\$493 /DU	x	0	DU	=	\$0
(Multi Family)					
\$452 /ACRE	x	0	AC	=	\$0
(Auto Dealership)					
\$1,579 /ACRE	x	0	AC	=	\$0
(Industrial)					

PUBLIC FACILITIES CREDITS

\$0	x	0		=	\$0
-----	---	---	--	---	-----

PUBLIC FACILITIES FEE TOTAL = \$0**20. COMMNTY/REC CTRS IMPACT FEE: 360-37648**

(Auth: Res. #15-152 appr'd 8.17.15, increased 01.15.16)

\$3,663 /DU	x	0	DU	=	\$0
(Single Family)					
\$3,213 /DU	x	0	DU	=	\$0
(Multi Family)					

PUBLIC FACILITIES CREDITS

\$0	x	0		=	\$0
-----	---	---	--	---	-----

PUBLIC FACILITIES FEE TOTAL = \$0



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

PREPARED BY: Maria Angeles, Senior Civil Engineer

APPROVED BY: City Manager

APPROVE AMENDED AND RESTATED IMPROVEMENT AGREEMENT WITH MONUMENT LAND COMPANY LLC AND ACCEPT PUBLIC IMPROVEMENTS AT THE INTERSECTION OF MONTEREY ROAD AND COCHRANE ROAD

RECOMMENDATION(S)

1. Approve an Amended and Restated Improvement Agreement with Monument Land Company LLC Relating to Reimbursement for Right-of-Way Improvements Constructed for City by Developer/Property Owner;
2. Authorize the City Manager to execute the Amended and Restated Improvement Agreement;
3. Authorize the recordation of the Amended and Restated Improvement Agreement;
4. Adopt resolution amending the Fiscal Year 2020-21 budget to appropriate \$191,145 from Local Drainage (303), Local Drainage – Non AB1600 (304), Sewer Operations (640), Water Operations (650), and Water Impact (651) funds to reimburse the Developer for the public improvements at the intersection of Monterey Road and Cochrane Road;
5. Accept the Public Improvements at the intersection of Monterey Road and Cochrane Road;
6. Authorize the City Engineer to sign a Notice of Completion; and
7. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

REPORT NARRATIVE:

The developer/property owner, Monument Land Company LLC, entered into an Improvement Agreement with the City to install improvements at the intersection of Monterey Road and Cochrane Road. The Improvement Agreement facilitated construction of a combination of improvements required of the approved development of a 55,000 sq. ft. Office/Industrial building (Cochrane-Monument Land Company Project; Planning File No. SR2019-0023) located at 440 & 480 Cochrane Circle and additional improvements requested by the City to reconstruct the Monterey Road/Cochrane Road intersection to comply with the objectives of Complete Streets and Vision Zero. A map with the schematic intersection improvements is attached (Attachment 1).

The Agreement contemplated the simultaneous construction of the Office/Industrial building that will become the new headquarters for TechCon Construction. The agreement requested that the developer make all the improvements with the City agreeing to reimburse for those non-development related modifications via a combination of cash payment and credits against project impact fee obligations. Traffic, Storm Drain and Water Impact fees as well as storm and sewer frontage charges in the amount of \$475,695 were to be credited, meaning, in lieu of paying the fees, the work will be performed by the developer. The total credit and cash for the project is not to exceed \$800,000.

Due to unforeseen circumstances for the developer, there is now some uncertainty related to the timing of the building construction, and the developer has requested the City reimburse the developer for all City-sponsored right-of-way improvements that have been completed. The developer would then be required to pay the impact fees and other related fees at the time of building permit issuance and when construction occurs, which is when those fees are normally due. With either arrangement, the long-term impact to the City's funds will not be impacted. Staff recommends that City Council authorize the City Manager to execute and record an Amended and Restated Improvement Agreement (Attachment 2) on behalf of the City.

The intersection/right-of-way improvements have been completed (Attachment 3) in accordance with the requirements of the Improvement Agreement and as specifically set forth in the plans and specifications approved by the City. The new intersection has enhanced pedestrian safety in line with the City's Vision Zero Policy. The value of the public improvements (including streets and other infrastructure) being reimbursed to the developer is \$515,450.

COMMUNITY ENGAGEMENT: N/A

This request for an amended and restated agreement has come from the developer and taken directly to the City Council.

ALTERNATIVE ACTIONS:

The City Council could choose to not approve the amended and restated agreement. This is not recommended as there is no long-term negative impact to supporting this request.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On October 2, 2019, the Council was asked to provide preliminary feedback on whether the City should pursue the reconfiguration of the intersection. The Council consensus was to pursue the reconfiguration due to the safety benefit and cost saving benefit of partnering with the private office/industrial development (Cochrane-Monument Land Company Project).

On April 22, 2020, Council approved the Improvement Agreement with Monument Land Company LLC and adopted the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the private office/industrial development (Cochrane-Monument Land Company Project).

FISCAL AND RESOURCE IMPACT:

The construction and design costs, in the amount of \$515,450, that is the obligation of the City will be reimbursed to the developer from the various City funds outlined below:

\$324,305	School Pedestrian Safety Fund (355)
\$40,680	Water Fund (650)
\$32,400	Sewer Fund (640)
\$35,518	Local Drainage Fund/Non AB1600) (304)
\$36,994	Water Impact Fund (651)
\$45,553	Local Drainage Impact (303)

Related budget amendment resolution and scorecard is included for Council adoption (Attachment 4). The budget scorecard indicates appropriating all funds (\$191,145) outlined above except the School Pedestrian Safety Fund (355), which was previously allocated for this project.

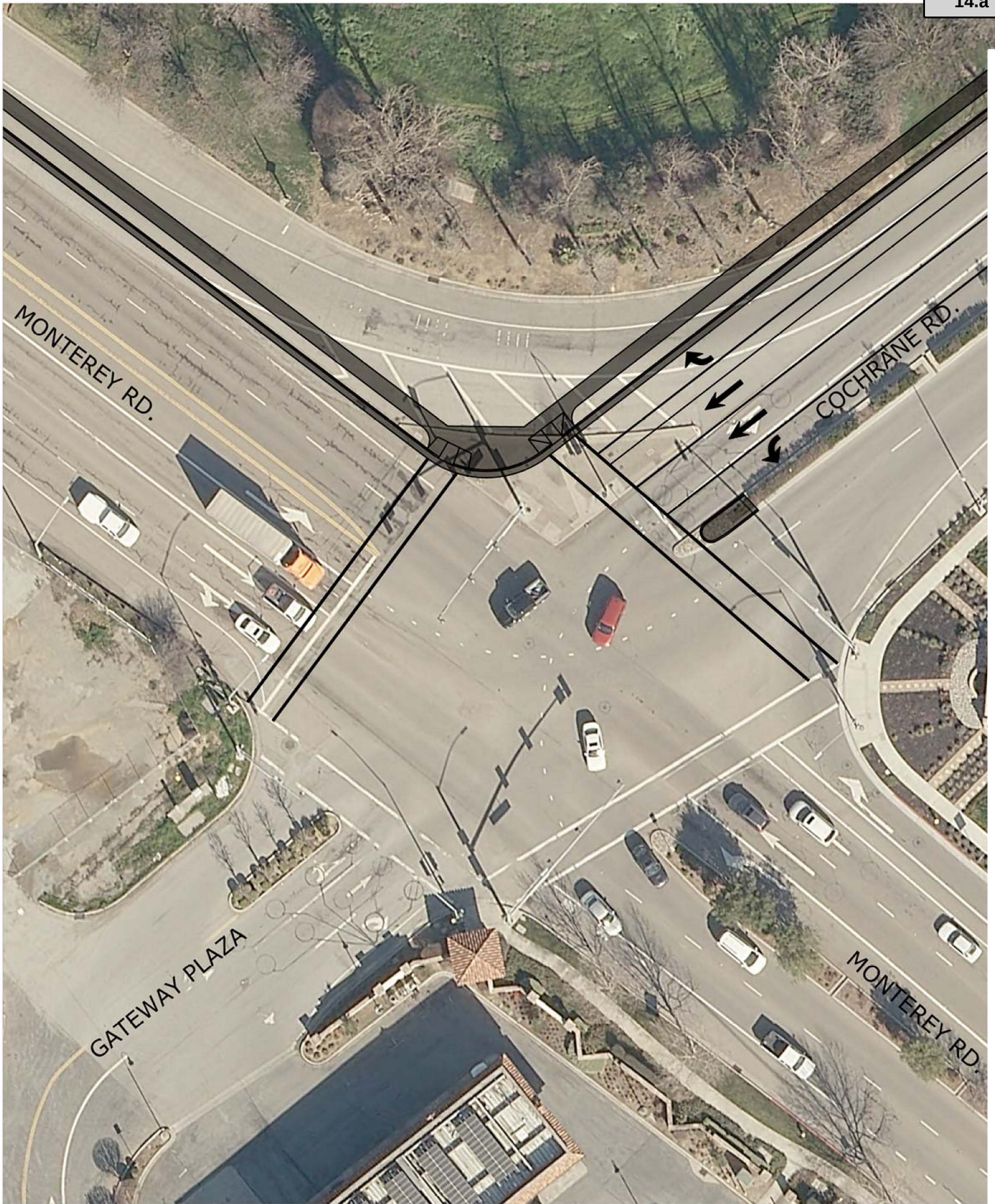
Staff costs for processing the Improvement Agreement amendment and public improvement acceptance are paid from the development processing fees collected from the developer.

CEQA (California Environmental Quality Act):

A Mitigated Negative Declaration was adopted on April 22, 2020 (Cochrane-Monument Land Company Project).

LINKS/ATTACHMENTS:

1. Map and Schematic Intersection Improvements
2. Amended and Restated Improvement Agreement Monument Land Company, LLC
3. Notice of Completion
4. Resolution and Scorecards



Attachment: Map and Schematic Intersection Improvements (2926 : Amendment to Monument Land Company LLC Improvement Agreement)



Public Works

MAP AND SCHEMATIC INTERSECTION IMPROVEMENTS NORTHEAST CORNER OF MONTEREY RD. AND COCHRANE RD.



Packet Pg. 286

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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

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

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

AMENDED AND RESTATED IMPROVEMENT AGREEMENT

Monument Land Company, LLC, a California Limited Liability Company
440 & 480 Cochrane Circle
APNs: 726-34-016 & 726-34-017
Monterey Road / Cochrane Road Intersection Remodel

THIS AGREEMENT is made on this ____ day of _____, 20__, by the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and MONUMENT LAND COMPANY LLC, a California Limited Liability Company ("PROPERTY OWNER"). Collectively, CITY and PROPERTY OWNER may be referred to as the "Parties."

RECITALS

The following Recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Morgan Hill Municipal Code Chapter 12.02 and supersedes and replaces the agreement previously entered into by the Parties as recorded on November __, 2020 at Document Number _____, and the Parties agree that this Amended and Restated Agreement represents the entire understanding and agreement between the Parties relating to the Development or any part thereof.
2. PROPERTY OWNER has filed a 2019 Development Application and supporting documents on the property with the address of **440 & 480 Cochrane Circle**, and the **APNs: 726-34-016 & 726-34-017** having the development name of **TechCon Construction, Inc. Commercial Office Development** ("Development").
3. PROPERTY OWNER is required by the terms of the Morgan Hill Municipal Code to improve all streets, highways, or public areas which are part of the Development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer.
4. CITY has long-standing plans to cause reconstructive modifications to the public improvements bordered by the Development to meet the CITY objectives for Complete Streets and Vision Zero compliance.

5. CITY and PROPERTY OWNER mutually agree that as a condition of approval of the Development Permit, as described on said permit, that certain improvements be installed for the benefit of the CITY by PROPERTY OWNER as shown on the fully executed Development Improvement Plans entitled **Monterey Road/ Cochrane Road Intersection Remodel** ("City Improvements"), on file with CITY and incorporated herein by this reference. These City Improvements are in addition to those required for the Development ("Development Improvements"), and the CITY and PROPERTY OWNER agree that it is more cost-effective and expedient to have both the City Improvements and the Development Improvements (collectively, "Improvements") constructed concurrently.
6. PROPERTY OWNER was unable to complete, prior to the issuance of the Development Permit, all of the Improvements required by CITY to the satisfaction of the City Engineer.
7. To assure CITY that PROPERTY OWNER will complete all the work and Improvements required for the Development as well as the City Improvements requested, and to provide for the terms for reimbursement by the CITY to the PROPERTY OWNER for the City Improvements, the parties have entered into this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** The term of this Agreement shall be six (6) months from the date of issuance of the Development Permit ("Term") unless extended by written agreement.
2. **Improvements.** PROPERTY OWNER agrees to construct the Improvements in a good and workmanlike manner in accordance with the plans and documents filed with and approved by CITY in conjunction with the Development, all of which are incorporated herein by reference. Development Improvements shall be completed, constructed and installed at PROPERTY OWNER's sole expense. The cost of City Improvements shall be reimbursed by CITY to PROPERTY OWNER.
3. **Rights-of-Way.** Except as otherwise provided by this Agreement, CITY can hold without acceptance or recordation all lands, rights-of-way, and easements offered for dedication. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with the Government Code. All such offers may be accepted and recorded by CITY in its sole discretion at any later date without further notice to PROPERTY OWNER as provided by law. By way of explanation only, it is the current intention of CITY to accept all or part of the irrevocable offers to dedicate upon acceptance of the Improvements called for in this Agreement.
4. **Improvements: Time Limits.** PROPERTY OWNER agrees to cause all Improvements to be made and constructed to comply with all requirements of Morgan Hill Municipal Code Chapter 12.02, according to the improvement plans for the Development approved by the City Engineer and including any changes or alteration in the Improvements required by the City Engineer. The Improvements shall be completed utilizing CITY standards and specifications. PROPERTY OWNER agrees to complete the Improvements prior to the expiration of this Agreement, or the issuance of the certificate of occupancy, whichever is earlier; provided however, the City Manager may extend the deadline for completion by not more than six (6) months at his or her reasonable discretion and determination that granting the extension will not be

detrimental to the public welfare. No extension of this deadline for completion shall be made except upon the basis of a written application made by PROPERTY OWNER stating fully the ground for the application and the facts relied upon for an extension.

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

In the event that PROPERTY OWNER shall fail to complete the Development Improvements within the time provided by this Agreement, CITY may in its sole discretion and in addition to any other remedy provided in this Agreement or by law, enter upon the Development and complete the Improvements and recover the full cost and expense of construction from PROPERTY OWNER, PROPERTY OWNER's successors and assigns, PROPERTY OWNER's Performance/Labor & Material Bonds associated with this Development, or from the then owner of the Development, and/or place a lien upon the Development property for the cost and expense. Any and all CITY costs shall include but not be limited to administrative and attorney costs. CITY shall not reimburse PROPERTY OWNER for any City Improvements not constructed per the Improvement Plans.

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

6. **Bond Requirements.** To secure the performance of Improvements required under this Agreement and to ensure full payment to all persons furnishing or supplying labor or materials for each Improvement required, PROPERTY OWNER shall provide to CITY concurrently with the execution of this Agreement, payment and performance bonds. Each bond is in the amount of the estimated cost of City Improvements being constructed on property not controlled by CITY, in the estimated amount of \$475,695 as determined by the City Engineer. A performance bond to secure faithful performance of this Agreement as required by Section 12.02.160 of the Morgan Hill Municipal Code for performance shall be provided in substantially the form set forth in Exhibit B. A payment bond to secure full payment to all persons furnishing or supplying labor or materials as required by Section 12.02.160 of the Morgan Hill Municipal Code for labor and materials shall be provided in substantially the form set forth in Exhibit C. PROPERTY OWNER shall provide an additional guarantee and warranty security (in substantially the form set forth in Exhibit D) of fifty (50%) percent of the above amount of cost of construction of the Improvements not located on City-controlled property to guarantee and warranty the Improvements for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, as required by Section 12.02.170 of the Morgan Hill Municipal Code.

City Improvements and the City Engineer's Estimated Costs of Improvements as of April 15, 2020 are

attached hereto as Exhibit "A". The estimated costs of the Development Improvements are not included in Exhibit A, and are to be constructed as otherwise required by this Agreement and the Morgan Hill Municipal Code.

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

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

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

8. **Duty to Warn.** PROPERTY OWNER shall give adequate warning to the public of each and every dangerous condition which may exist in the Improvements, and will take all reasonable actions to protect the public from any dangerous condition.

9. **Warranty.** PROPERTY OWNER guarantees and warrants the Improvements required by this Agreement and agrees to remedy any defects in the Improvements arising from faulty or defective materials or construction occurring within twelve (12) months after acceptance by CITY of said Improvements. Following notice, PROPERTY OWNER shall, without delay or cost to CITY, repair, replace, or reconstruct any defective or unsatisfactory portion of Improvements. CITY may, at its sole option, perform the repair or replacement itself if PROPERTY OWNER has failed to commence repair within twenty (20) days after CITY has mailed written notice to PROPERTY OWNER. In such event, PROPERTY OWNER agrees to pay the cost of repair and replacement, plus 15%, by CITY; and CITY may recover such costs as a lien against the Development. CITY may proceed immediately to make repairs should an emergency arise without waiving its rights of recovery against PROPERTY OWNER.

10. **Failure of Performance.** In addition to the other remedies provided by this Agreement, CITY shall have recourse to the security given. In the event that CITY seeks recourse against any security, CITY shall have recourse against PROPERTY OWNER for any and all amounts necessary to complete the obligation. All administrative costs, including attorneys' fees shall be a proper charge against the security and PROPERTY OWNER pursuant to Government Code. The right of CITY to draw upon or utilize the security is additional and not in lieu of any other remedy available to CITY at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Improvements, and therefore, CITY damages for PROPERTY OWNER's default shall be measured by the cost of completing the required Improvements.

11. **Certificate of Occupancy.** PROPERTY OWNER understands that CITY will expect completion, to the satisfaction of CITY, of specific public improvements as well as private utility

improvements prior to CITY Approval of a Certificate of Occupancy for any building on the Development property. The specific improvements shall include activation of all public utilities (water, sewer, storm drain); activation of all private utilities (electric, gas, phone) except for cable; street lights turn-on request filed with P G & E; and full street improvements (curb-gutter and paving with/without final lift) from existing public street to building under consideration for Certificate of Occupancy. PROPERTY OWNER, furthermore, agrees to so inform successor in lot interest should lot be transferred to another party prior to CITY acceptance of public improvements.

12. **Final Toxic Report.** Where applicable, PROPERTY OWNER hereby agrees to furnish the City Attorney with a copy of the Final Toxic Report issued by the appropriate licensed consultant on the proposed Development. This report must be received prior to final acceptance of on-site improvements and issuance of certificate of occupancy.

13. **Public Improvements Fee Schedule.** PROPERTY OWNER shall pay the following sums in cash to CITY pursuant to the provisions of Resolution 1383 and any amendments thereto. These sums shall be paid to CITY at the time of issuance of the Development Permit, and shall be in accordance with the Department of Public Works Fee Schedule attached hereto demonstrating a current Total Fee Obligation of **\$509,400**. All Fees are estimated and may be increased by CITY subject to current resolutions and ordinances. These fees are subject to a minimum annual revision. PROPERTY OWNER consents to increases in these fees. This Agreement shall not be construed to fix or freeze fees as of any point prior to issuance of Development Permits.

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

14. **Reimbursements**

(a) Upon completion and acceptance of the public improvements, CITY will reimburse the PROPERTY OWNER for the actual costs associated with the completion of the public improvements involving the reconfiguration of the Monterey Road and Cochrane Road intersection initiated by the CITY ("Reimbursable Improvements"). The PROPERTY OWNER shall be reimbursed the design/engineering consultant costs, bonding and insurance costs for constructing the following public improvements:

(1) Reconfiguration of the Monterey Road and Cochrane Road intersection, except for the frontage improvements attributable to the private development as defined in this Improvement Agreement which includes the public sidewalk, park strip landscaping and private bio-swale to be constructed in the vacated street right-of-way. The total credit/reimbursement amount as agreed to by the Parties is \$515,450.

(b) The CITY shall reimburse the PROPERTY OWNER subject to the following terms and conditions:

(1) The CITY shall reimburse the PROPERTY OWNER in for the actual City Improvements costs total amount of \$515,450.

(2) The PROPERTY OWNER shall keep records with complete and correct entries of all construction costs related to the improvements, including cancelled checks or other proof of payment. These records shall be made available to the CITY for review prior to any reimbursement. Payment shall be made within 30 days of acceptance of public improvements by the City.

15. **Insurance Requirements.**

Commencement of Improvements. Before beginning construction of the improvements, PROPERTY OWNER is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of PROPERTY OWNER and its subcontractors relating to or arising from the performance of work associated with the Improvements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by CITY. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or “umbrella” policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by City. Coverages may be provided by PROPERTY OWNER's General Contractor if PROPERTY OWNER is not directly insuring such exposures under an “Owners and Contractors Protective Liability Policy (OCP)” on which CITY would be an additional insured. If PROPERTY OWNER will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then PROPERTY OWNER may opt to have all coverages provided by PROPERTY OWNER's General Contractor, provided that a written contract is executed between PROPERTY OWNER and the General Contractor whereby the written contract specifically required General Contractor to fulfill all of the City insurance requirements as outlined in this Agreement, including all endorsements in favor of the City. Verification of the written contract must be provided to City upon request. If PROPERTY OWNER fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement, CITY may, at its sole discretion, purchase such coverage at PROPERTY OWNER's expense and deduct the cost from payments due to PROPERTY OWNER, assess payment against Development, or terminate the Agreement for default. Any deductibles or self-insured retentions must be declared to and approved by City. PROPERTY OWNER further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to PROPERTY OWNER, at any time as deemed necessary to protect the interests of CITY.

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

(1) Commercial General Liability Insurance (“CGL”): PROPERTY OWNER shall maintain CGL and shall include coverage for liability arising from PROPERTY OWNER's or its subcontractor's acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars

(\$5,000,000.00) combined single limit each occurrence and either a general aggregate limit of ten million dollars (\$10,000,000.00) or a general aggregate limit of five million dollars (\$5,000,000) as applied on a “per project” or “per location” basis, or (ii) the maximum amount of such insurance available to PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

- a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.
- b. CGL policy must include blanket contractual and completed operations.
- c. CGL policy will apply as though separate policies have been issued to each insured (“separation of insureds”).

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

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

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

greater.

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

(1) ALL Policies:

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

(2) ALL policies except Workers Compensation:

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

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

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

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

Certificate Holder address:

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

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

17. **Non-Discrimination.** PROPERTY OWNER covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.

18. **Independent Contractor.** It is agreed to that PROPERTY OWNER shall act and be an independent contractor, and not an agent or employee of CITY.

19. **Compliance with Law.** PROPERTY OWNER shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

20. **Right to Inspect and Inspection Fees.** PROPERTY OWNER shall at all times maintain proper facilities and provide safe access for inspection for CITY and its employees to all parts of the Improvements. PROPERTY OWNER shall pay and reimburse CITY for all expenses incurred by CITY for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. CITY Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.

21. **Conflict of Interest and Reporting.** PROPERTY OWNER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

22. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed addresses. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

a. Address of PROPERTY OWNER is as follows:

MONUMENT LAND COMPANY LLC
16200 Vineyard Blvd., Suite 100
Morgan Hill CA 95037

Address of CITY is as follows:

With a copy to:

City Engineer
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

City Clerk
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

23. **PROPERTY OWNER'S Representations.** This Agreement shall include application or items submitted by PROPERTY OWNER to CITY'S Planning Department, Building Department, Planning Commission, and City Council. In the event of any inconsistency between their representations and this Agreement, this Agreement shall govern.

24. **Licenses, Permits and Fees.** PROPERTY OWNER shall obtain a CITY Business License, all

permits, and licenses as may be required by this Agreement.

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

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

27. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement nor any portion shall be assigned by PROPERTY OWNER without prior written consent of CITY.

28. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

29. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

30. **Indemnification.** PROPERTY OWNER agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by PROPERTY OWNER, PROPERTY OWNER'S agents, officers, employees, subcontractors, or independent contractors hired by PROPERTY OWNER. The only exception to PROPERTY OWNER'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by PROPERTY OWNER.

31. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written agreement executed by CITY and PROPERTY OWNER.

32. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Santa Clara County Superior Court.

33. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

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

35. **Agreement Runs With the Land.** This Agreement shall inure to the benefit of, and be binding

upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the issuance of the Development Permit and shall constitute a covenant running with the land and an equitable servitude upon the Development real property.

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

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

ATTEST:

THE CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Date: _____

Christina J. Turner, City Manager

Date: _____

APPROVED AS TO FORM:

Monument Land Company, LLC
"PROPERTY OWNER"

Donald A. Larkin, City Attorney

Date: _____

By:

Title: _____

Date: _____

By:

Title: _____

Date: _____

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

State of **California**

County of **Santa Clara**

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

State of **California**

County of **Santa Clara**

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Client: **City of Morgan Hill****EXHIBIT A**Location: **Monterey and Cochrane Intersection**

Est. No. 2

0

Est. by: Paul Swing

Date: April 15, 2020

File: 0

Area (s.f.): 0

BUDGET
COST BREAKDOWN

CSI CODE	CSI CODE DESCRIPTION	COST	ITEM DESCRIPTION
DIRECT COSTS			
20100	SURVEY & LAYOUT	\$20,000.00	
20500	DEMOLITION	\$189,744.00	grind and offhaul or demo and remove. Nothing left on site
20700	CONCRETE SAWCUT	\$2,148.00	
20800	ASBESTOS REMOVAL	\$0.00	Existing pipe to remain in place, no abatement
21000	DEWATERING	\$0.00	No dewatering or lime treating included
22000	EARTHWORK	\$10,000.00	SWPPP only in this line item No grading figured
23000	A.C. PAVING AND STRIPING	\$83,265.00	6" on 12 base for new and 2" grind and overlay tie in
25000	SITE CONCRETE	\$15,180.00	curb and gutter only - no sidewalk figured. Sidewalk off project site is not part of scope
26000	STORM DRAINAGE	\$32,700.00	no bioswale included in project scope
130000	STREET LIGHT / SIGNAL CONSTRUCTION	\$178,000.00	Traffic control is 25k, relocate boxes 8k, signals 145k
153000	FIRE PROTECTION	\$0.00	Testing fees by city
154000	WATER MAIN	\$28,900.00	No fire hydrants, old main to stay in place, 2 new valves
160000	ELECTRICAL	\$0.00	No relocation of PGE utilities
167400	COMMUNICATION CABLING	\$0.00	No relocation of communication utilities.
	SUB-TOTAL	\$559,937.00	
GENERAL CONDITIONS			
11000	PROJECT SUPERINTENDENT	\$9,000.00	Super hours reduced Per City working direct with subs
11000	PROJECT MANAGER	\$12,000.00	PM hours reduced Per City working direct with subs
11000	PROJECT ENGINEER	\$7,200.00	Administrative expense
12000	TEMPORARY FACILITIES	\$800.00	toilet only - no temp fence (cost was eliminated per Scott)
14000	SUPPLIES & SERVICES	\$3,500.00	Special inspection, water test, no Asbestos abatement
15000	EQUIPMENT	\$6,000.00	small tools & supplies, fuel, misc. equipment rentals
17000	CLEAN UP	\$11,250.00	progressive & final clean up and dump fees
OTHER FEES			
18000	DESIGN FEES	\$81,300.00	MHE, RJA, Earth Systems (already under contract)
19000	CITY FEES	\$0.00	
19920	PERFORMANCE BOND to 400k	\$10,364.81	bonding to \$400,000
19930	GENERAL LIABILITY INSURANCE	\$10,520.28	excludes course of construction insurance
19940	CONSTRUCTION CONTINGENCY	\$71,187.21	10% Figured
19950	OVERHEAD & PROFIT	\$78,305.93	10% Figured
	TOTAL >>>>	\$881,365.22	
		\$790,178.01	

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

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and **Monument Land Company LLC, a California Limited Liability Company** (hereinafter designated as "principal") have entered into an Improvement Agreement:

Monument Land Company LLC, a California Limited Liability Company
APNs: 726-34-016 & 726-34-017
Monterey Road / Cochrane Road Intersection Remodel

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20____, and identified as project **Monterey Road / Cochrane Road Intersection Remodel**, is hereby referred to and made a part hereof; and

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

Now, therefore, we, the principal and _____, as surety, are held and firmly bound unto the City of Morgan Hill, hereinafter called ("City"), in the penal sum of **Four Hundred Seventy Five Thousand Six Hundred Ninety Five & 00/100 dollars (\$475,695.00)** lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

License No.: _____

Address: _____

Telephone No.: _____

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

Name of non-resident agent: _____

Non-resident agent's office address: _____

Telephone No.: _____

The condition of this obligation is such that if the above bounded principal, his or its heirs,

Performance Bond
 Page 1 of 3
 Version: December 2017

executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

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

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

Executed this _____ day of _____ 20 ____ .
[form document – do not execute]

[form document – do not execute]

Principal

Principal

By: *[form document – do not execute]*
 Surety

By: *[form document – do not execute]*
 Attorney-in Fact

By: *[form document – do not execute]*
 California Resident Agent

By: *[form document – do not execute]*
 Non-resident Agent - Attorney-in-Fact

APPROVED:

[form document – do not execute]

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: *[form document – do not execute]*
 Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

Performance Bond
 Page 2 of 3
 Version: December 2017

Attachment: Amended and Restated Improvement Agreement Monument Land Company, LLC [Revision 1] (2926 : Amendment to Monument

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Performance Bond
Page 3 of 3
Version: December 2017

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

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and **Monument Land Company LLC, a California Limited Liability Company** (hereinafter designated as "the principal") have entered into an Improvement Agreement:

Monument Land Company LLC, a California Limited Liability Company
APNs: 726-34-016 & 726-34-017
Monterey Road / Cochrane Road Intersection Remodel

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20____, and identified as **Monterey Road / Cochrane Road Intersection Remodel**, is hereby referred to and made a part hereof; and

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

Now, therefore, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto City and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of **Four Hundred Seventy Five Thousand Six Hundred Ninety Five & 00/100 dollars (\$475,695.00)**, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

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

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

The Surety's office is located at _____,

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

Attachment: Amended and Restated Improvement Agreement Monument Land Company, LLC [Revision 1] (2926 : Amendment to Monument

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

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

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

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

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

Executed this _____ day of _____ 20 ____ .

[form document – do not execute]

Principal

[form document – do not execute]

Principal

By: *[form document – do not execute]*
 Surety

By: *[form document – do not execute]*
 Attorney-in Fact

By: *[form document – do not execute]*
 California Resident Agent

By: *[form document – do not execute]*
 Non-resident Agent - Attorney-in-Fact

APPROVED:

[form document – do not execute]

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: *[form document – do not execute]*
 Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

Labor and Material Bond

Page 2 of 3

Version: December 2017

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California (hereinafter designated as "City"), and **Monument Land Company LLC, a California Limited Liability Company** (hereinafter designated as "Principal") have entered into an Improvement Agreement (hereinafter "Agreement"):

Monument Land Company LLC, a California Limited Liability Company
APNs: 726-34-016 & 726-34-017
Monterey Road / Cochrane Road Intersection Remodel

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

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

Now, therefore, we, the Principal and _____ as Surety, are held and firmly bound unto the City of Morgan Hill in the penal sum of **Two Hundred Thirty Seven Thousand Eight Hundred Forty Eight & 00/100 dollars (\$237,848.00)** for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

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

Warranty Bond
Page 1 of 3
Version: April 2019

Attachment: Amended and Restated Improvement Agreement Monument Land Company, LLC [Revision 1] (2926 : Amendment to Monument

bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

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

Attn: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

Email: _____

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

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

SURETY:

Principal:

Date: _____

Date: _____

[form document – do not execute]
s/ _____

[form document – do not execute]
s/ _____

Name: _____

Name: _____

Title: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

[form document – do not execute]
By: _____
Donald A. Larkin, City Attorney

Date: _____

Warranty Bond
Page 2 of 3
Version: April 2019

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Warranty Bond
Page 3 of 3
Version: April 2019



CITY OF MORGAN HILL PUBLIC WORKS DEPARTMENT

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

FEE SCHEDULE: 01.15.2020

PROJECT INFO

TRACT # / APN: 726-34-016 & -017

ADDRESS / LOT: _____

PROJECT DESC: Commercial Office (TechCon Construction, Inc.)

APPLICANT INFO

APPLICANT NAME: Monument Land Company, LLC

MAILING ADDRESS: _____

CITY, STATE, ZIP: _____

PHONE NUMBER: _____

☐ THIS FEE SCHEDULE IS ESTIMATE ONLY

DATE PREPARED: 4/16/2020

EXPIRATION DATE: _____

CALCULATED BY: MBA

CHECKED BY: _____

BUILDING PERMIT #: N/A

BLD PERMIT ISS. DATE: N/A

SEWER IMPACT FEES WITHIN RDA BOUNDARY

CHECK APPLICABLE SCENARIO BELOW

• COMMERCIAL OR INDUSTRIAL WITHIN RDA BOUNDARY

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

• RESIDENTIAL PROJECTS WITHIN RDCE DOWNTOWN AREA

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

• NOT IN RDA AREA BOUNDARY

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

☐ COMMERCIAL OR INDUSTRIAL SHELL

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

1. METER DEPOSIT: 650-37672 Subtotal: TBD

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

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

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

\$68 x 0 Each = \$0

3a. WATER FRONTAGE CHARGE: 650-37663 Subtotal: \$40,680

1 Side	\$73	x	<u>0</u>	LF	= \$0
2 Sides	\$40	x	<u>1,017</u>	LF	= \$40,680

3b. SEWER FRONTAGE CHARGE: 640-37663 Subtotal: \$32,400

1 Side	\$73	x	<u>0</u>	LF	= \$0
2 Sides	\$40	x	<u>810</u>	LF	= \$32,400

3c. STORM FRONTAGE CHARGE: 304-37663 Subtotal: \$35,518

1 Side	\$120	x	<u>0</u>	LF	= \$0
2 Sides	\$59	x	<u>602</u>	LF	= \$35,518

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

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

4. WATER IMPACT FEI (Fee shown below based on 7/1/2019 Fee Schedule per Improvement Agreement) **651-37648** Subtotal: **\$36,994**

Single Family	\$3,913	/DU	x	0	DU	=	\$0
Multi Family	\$3,531	/DU	x	0	DU	=	\$0
Senior/Downtown	\$3,531	/DU	x	0	DU	=	\$0
Commercial	\$11,109	/AC	x	0	AC	=	\$0
Industrial	\$11,109	/AC	x	0	AC	=	\$0
Office	\$11,076	/AC	x	3.34	AC	=	\$36,994
Auto Dealership	\$11,109	/AC	x	0	AC	=	\$0
Hotel	\$11,109	/AC	x	0	AC	=	\$0

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

5. SEWER IMPACT FEI (Fee shown below based on 7/1/2019 Fee Schedule per Improvement Agreement) **641-37648** Subtotal: **\$0**

Single Family	\$15,315	/DU	x	0	DU	=	\$0
Multi Family	\$12,962	/DU	x	0	DU	=	\$0
Senior/Downtown	\$12,962	/DU	x	0	DU	=	\$0
Commercial	\$52.44	/GPD	x	0	GPD	=	\$0
Industrial	\$52.28	/GPD	x	1,553	GPD	=	\$81,191
Office	\$52.28	/GPD	x	3,063	GPD	=	\$160,134
Auto Dealership	\$50.43	/GPD	x	0	GPD	=	\$0
Hotel	\$50.43	/GPD	x	0	GPD	=	\$0

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

RDA SEWER CREDIT	Single Family	\$15,315	/DU	x	0	DU	=	\$0
	Multi Family	\$12,962	/DU	x	0	DU	=	\$0
	Commercial	\$52.44	/GPD	x	0	GPD	=	\$0
	Industrial	\$52.28	/GPD	x	1,553	GPD	=	-\$81,191
	Office	\$52.28	/GPD	x	3,063	GPD	=	-\$160,134
	Auto Dealership	\$50.43	/GPD	x	0	GPD	=	\$0
	Hotel	\$50.43	/GPD	x	0	GPD	=	\$0

6. STORM DRAIN IMPACT FEE: (Fee shown below based on 7/1/2019 Fee Schedule per Improv. Agr.) **303-37648** Subtotal: **\$150,654**

	Single Family	\$1,941	/DU	x	0	DU	=	\$0
>1,200 SF	Multi Family	\$1,105	/DU	x	0	DU	=	\$0
< 1,200 SF	Multi Family	\$514	/DU	x	0	DU	=	\$0
>1,200 SF	Senior/Downtown	\$1,105	/DU	x	0	DU	=	\$0
< 1,200 SF	Senior/Downtown	\$514	/DU	x	0	DU	=	\$0
	Commercial	\$21,018	/ACRE	x	0	AC	=	\$0
	Industrial	\$15,475	/ACRE	x	0	AC	=	\$0
	Office	\$45,106	/ACRE	x	3.34	AC	=	\$150,654
	Auto Dealership	\$12,018	/ACRE	x	0	AC	=	\$0
	Hotel	\$311	/ROOM	x	0	RM	=	\$0

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

7. TRAFFIC IMPACT FEE: (Fee shown below based on 7/1/2019 Fee Schedule per Improv. Agr.) **309-37648** Subtotal: **\$179,448**

	Single Family	\$3,373	/DU	x	0	DU	=	\$0
>1,200 SF	Multi Family	\$2,090	/DU	x	0	DU	=	\$0
< 1,200 SF	Multi Family	\$1,316	/DU	x	0	DU	=	\$0
>1,200 SF	Senior/Downtown	\$2,090	/DU	x	0	DU	=	\$0
< 1,200 SF	Senior/Downtown	\$1,316	/DU	x	0	DU	=	\$0
	Secondary DU	TBD	/DU	x	0	DU	=	\$0
	Commercial	\$3,373	/PHT	x	0	PHT	=	\$0
	Industrial	\$2,005	/PHT	x	38.8	PHT	=	\$77,794
	Office	\$2,005	/PHT	x	50.7	PHT	=	\$101,654
	Auto Dealership	\$3,373	/PHT	x	0	PHT	=	\$0
	Hotel	\$3,373	/PHT	x	0	PHT	=	\$0

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

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

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

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

8a. PARK MAINTENANCE DEV. FEE: **302-37649** Subtotal: \$0

\$0 / x 0 EAC = \$0

9. PUBLIC FACILITIES IMPACT FEE: *(Fee shown below based on 7/1/2019 Fee Schedule per Improv. Agr.)* **347-37648** Subtotal: **\$4,820**

Single Family	\$553	/DU	x	0	DU	=	\$0
Multi Family	\$532	/DU	x	0	DU	=	\$0
Senior/Downtown	\$365	/DU	x	0	DU	=	\$0
Secondary DU	TBD	/DU	x	0	DU	=	\$0
Commercial	\$1,218	/ACRE	x	0	AC	=	\$0
Industrial	\$1,705	/ACRE	x	0	AC	=	\$0
Office	\$1,443	/ACRE	x	3.34	AC	=	\$4,820
Auto Dealership	\$488	/ACRE	x	0	AC	=	\$0
Hotel	\$14	/ROOM	x	0	RM	=	\$0

PUBLIC FACILITIES CREDITS \$0 /ACRE x 0 /AC = \$0

10. LIBRARY IMPACT FEE: **348-37648** Subtotal: \$0

Single Family	\$2,132	/DU	x	0	DU	=	\$0
Multi Family	\$2,054	/DU	x	0	DU	=	\$0
Senior/Downtown/SDU	\$1,406	/DU	x	0	DU	=	\$0
Secondary DU	TBD	/DU	x	0	DU	=	\$0

LIBRARY CREDITS \$0 / x 0 / = \$0

11. COMMNTY/REC CNTRS IMPACT FEE: **360-37648** Subtotal: \$0

Single Family	\$3,955	/DU	x	0	DU	=	\$0
Multi Family	\$3,470	/DU	x	0	DU	=	\$0
Senior/Downtown	\$2,619	/DU	x	0	DU	=	\$0
Secondary DU	TBD	/DU	x	0	DU	=	\$0

COMMNTY/REC CNTRS CREDITS \$0 / x 0 / = \$0

12. POLICE & FIRE IMPACT FEES: *(Fee shown below based on 7/1/2019 Fee Schedule per Improv. Agr.)* **311-37648** Subtotal: **\$13,918**

POLICE:	Office	\$2,145	/ACRE	x	3.34	AC	=	\$7,164
FIRE:	Office	\$2,022	/ACRE	x	3.34	AC	=	\$6,753

POLICE & FIRE CREDITS \$0 /ACRE x 0 /AC = \$0

13. ENGINEERING & INSPECTION FEE: **206-38734** Subtotal: \$0

ENGR ESTIMATE:		13.3%	\$1	to	\$100,000	=	\$0
ENGR EST. DATE:		11.8%	\$100,001	to	\$200,000	=	\$0
		10.3%	\$200,001	to	\$500,000	=	\$0
		8.8%	OVER		\$500,000	=	\$0
DEPOSIT PAID						=	\$0

14. LONG RANGE PLANNING FEE: **207-37912** Subtotal: \$0

LONG RANGE PLANNING FEE (15% of E&I) = \$0

15. GIS FEE: **206-37913** Subtotal: \$0

GIS/TECHNOLOGY FEE (5% of E&I) = \$0

16. MAP CHECK FEE: **206-38716** Subtotal: **\$5,752**

PARCEL MAP:	\$5,752	=	\$5,752
TRACT MAP:	\$9,184	=	\$0

17. BURROWING OWL MITIGATION: **232-38145** Subtotal: **\$5,180**

Single Family	\$222	/DU	x	0	DU	=	\$0
Multi Family	\$222	/DU	x	0	DU	=	\$0
Secondary DU	TBD	/DU	x	0	DU	=	\$0
Commercial	\$1,551	/AC	x	3.34	AC	=	\$5,180
Industrial	\$1,551	/AC	x	0	AC	=	\$0

18. OTHER FEES: Subtotal: **\$4,037**

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

TOTAL FEES DUE: \$509,400

Notes & Comments:

THIS FEE SCHEDULE DOES NOT INCLUDE A METER DEPOSIT. APPLICABLE METER FEE TO BE DETERMINED AT BUILDING PERMIT STAGE

PORTIONS OF THE PUBLIC IMPROVEMENTS ASSOCIATED WITH THE REDESIGN OF THE MONTEREY ROAD AND COCHRANE ROAD INTERSECTION THAT WILL BE COMPLETED BY THE DEVELOPER SHALL BE REIMBURSED UNDER THE TERMS OF THIS PROJECT'S IMPROVEMENT AGREEMENT.

THE STREET VACATION REVIEW FEE (\$3,636) AND ENGINEERING & INSPECTION FEE (\$15,951) DUE FOR THIS PROJECT WILL BE CHARGED INTERNALLY TO THE APPLICABLE PW FUNDS.

Two new buildings on two adjacent vacant parcels.

Lot 1: APN: 726-34-016 **Lot 2:** APN: 726-34-017

Coefficients:

Commercial Office: traffic = 1.49 pht/1000 sf, sewer = 0.093 gpd/sf

Per E20 memo: Industrial shell: traffic = 1.30 pht/1000 sf, sewer = 0.060 gpd/sf

Traffic:

Lot 2: Industrial = (19,848 sf) (1.30 pht / 1000sf) = 25.8 PHT Office = (34,037 sf) (1.49 pht / 1000sf) = 50.7 PHT

Lot 1: Industrial = (10,028 sf)(1.30 pht / 1000sf) = 13 PHT total Ind: 25.8 + 13 = 38.8 PHT

Sewer:

Lot 2: Industrial = (16,352 sf) (0.060 gpd/sf) = 981 gpd Office = (32,936 sf) (0.093 gpd/sf) = 3,063 gpd

Lot 1: Industrial = (9,535 sf)(0.060 gpd/sf) = 572 gpd total Ind: 981 + 572 = 1,553 gpd

Record at the Request of
and When Recorded Mail to:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Record at No Fee Pursuant to
Government Code Section 27383

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN, pursuant to Civil Code Section 9204, that:

- 1) On **April 22, 2020**, the City of Morgan Hill, a Municipal Corporation, entered into a contract with **Monument Land Company LLC** for the **Monterey Road/Cochrane Road Intersection Remodel Project** located at the intersection of Monterey Road and Cochrane Road, Morgan Hill, California.
- 2) The owner of the project's public improvements is the City of Morgan Hill, a Municipal Corporation, located at 17575 Peak Avenue, Morgan Hill, CA 95037
- 3) The contractor is **Monument Land Company LLC, 16200 Vineyard Boulevard, Suite 100, Morgan Hill, CA 95037.**
- 4) The surety is **The Ohio Casualty Insurance Company.**
- 5) The project was completed on November 20, 2020 and accepted by the City Council of the City of Morgan Hill on **December 2, 2020.**

CITY OF MORGAN HILL, a Municipal Corporation

By _____
Scott Creer
City Engineer

I, the undersigned, declare that I am the City Engineer for the City of Morgan Hill. I have read the forgoing Notice of Completion and know and understand the contents thereof and that the facts stated therein are true and correct. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, at Morgan Hill, California.

Scott Creer
City Engineer

Attachment: Notice of Completion [Revision 2] (2926 : Amendment to Monument Land Company LLC Improvement Agreement)

RESOLUTION NO.**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2020-21 BUDGET IN THE LOCAL DRAINAGE (FUND NO. 303), LOCAL DRAINAGE – NON AB1600 (FUND NO. 304), SEWER OPERATIONS (FUND NO. 640), WATER OPERATIONS (FUND NO. 650), AND WATER IMPACT (FUND NO. 651), TO APPROPRIATE \$191,145 FOR MONTEREY ROAD AND COCHRANE ROAD INTERSECTION IMPROVEMENTS**

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

WHEREAS, the reasons supporting the entrance of the City into that certain Amended and Restated Improvement Agreement described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Approve Amended and Restated Improvement Agreement With Monument Land Company LLC and Accept Public Improvements at the Intersection of Monterey Road and Cochrane Road" submitted for City Council consideration at its meeting of December 2, 2020, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Year 2020-21, as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

WHEREAS, the activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970 because organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment are exempted from environmental review under Section 15061(b)(3) of the State CEQA Guidelines; and

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

continued or deferred consideration of this Resolution, and on such date the City Council conducted a duly noticed public meeting at which the City Council provided members of the public an opportunity to comment and be heard and considered any and all testimony and other evidence provided in connection with the adoption of this Resolution; and

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

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

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

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

- a. That the City's previously adopted Fiscal Year 2020-21 Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and
- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2020-21 Budget of City.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 2nd day of December 2020 by the following vote:

AYES: **COUNCIL MEMBERS:**

NOES: **COUNCIL MEMBERS:**

ABSTAIN: **COUNCIL MEMBERS:**

ABSENT: **COUNCIL MEMBERS:**

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

IRMA TORREZ, City Clerk

∞ **CERTIFICATION** ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 20-XX adopted by the City Council at the meeting held on the 2nd day of December 2020.

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

DATE: _____

Irma Torrez, CITY CLERK

AGENDA BUDGET SCORECARD

FISCAL YEAR 2020-21

ADJUSTMENT #

009

FUND:

DEPARTMENT:

OBJECT:

303	Drainage Impact Fund
8052	Local Drainage
86360	CONSTRUCTION

AGENDA DATE:

AGENDA ITEM TITLE:

12/02/20
Monterey/Cochrane Expansion and Realignment

	07/01/20 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/21 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	12,765,782	1,693,351	7,233,369	7,225,764
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		-	45,553	(45,553)
RESULT OF RECOMMENDED ACTION	<u>12,765,782</u>	<u>1,693,351</u>	<u>7,278,922</u>	<u>7,180,211</u>

AGENDA BUDGET SCORECARD

FISCAL YEAR 2020-21

ADJUSTMENT #

010

FUND:

DEPARTMENT:

OBJECT:

304	Drainage-Non AB1600 Fund
8060	Local Drainage/Non AB1600
86360	CONSTRUCTION

AGENDA DATE:

AGENDA ITEM TITLE:

12/02/20
Monterey/Cochrane Expansion and Realignment

	07/01/20 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/21 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	1,445,963	130,122	847,644	728,441
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	49,789	36,729	13,060
RECOMMENDED ACTION		-	35,518	(35,518)
RESULT OF RECOMMENDED ACTION	<u>1,445,963</u>	<u>179,911</u>	<u>919,891</u>	<u>705,983</u>

AGENDA BUDGET SCORECARD**FISCAL YEAR 2020-21****ADJUSTMENT #**

011

FUND:

640 Sewer Operations Fund

DEPARTMENT:

5900 Sewer Operations

OBJECT:

86360 CONSTRUCTION

AGENDA DATE:

12/02/20

AGENDA ITEM TITLE:

Monterey/Cochrane Expansion and Realignment

	07/01/20 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/21 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	3,165,292	13,276,826	13,319,581	3,122,537
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		-	32,400	(32,400)
RESULT OF RECOMMENDED ACTION	<u>3,165,292</u>	<u>13,276,826</u>	<u>13,351,981</u>	<u>3,090,137</u>

AGENDA BUDGET SCORECARD

FISCAL YEAR 2020-21

ADJUSTMENT #

012

FUND:

650 Water Operations Fund

DEPARTMENT:

5710 Water Operations

OBJECT:

86360 CONSTRUCTION

AGENDA DATE:

12/02/20

AGENDA ITEM TITLE:

Monterey/Cochrane Expansion and Realignment

	07/01/20 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/21 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	3,878,448	15,643,352	15,599,521	3,922,279
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		-	40,680	(40,680)
RESULT OF RECOMMENDED ACTION	<u>3,878,448</u>	<u>15,643,352</u>	<u>15,640,201</u>	<u>3,881,599</u>

AGENDA BUDGET SCORECARD

FISCAL YEAR 2020-21

ADJUSTMENT #

013

FUND:

DEPARTMENT:

OBJECT:

651	Water Impact Fund
8110	Water Capital Expansion
86360	CONSTRUCTION

AGENDA DATE:

AGENDA ITEM TITLE:

12/02/20
Monterey/Cochrane Expansion and Realignment

	07/01/20 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/21 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	2,780,694	1,752,164	1,027,523	3,505,335
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		-	36,994	(36,994)
RESULT OF RECOMMENDED ACTION	<u>2,780,694</u>	<u>1,752,164</u>	<u>1,064,517</u>	<u>3,468,341</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

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

APPROVE PURCHASE OF FEE TITLE LAND AND A PUBLIC SERVICE EASEMENT FOR HALE AVENUE EXTENSION PROJECT

RECOMMENDATION(S)

1. Approve the purchase of Fee Title Land and a Public Service Easement of portions of APN 764-16-028 for a total amount of \$94,000 plus escrow and closing costs from the Morgan Hill Unified School District for the Hale Avenue Extension Project; and
2. Authorize the City Manager to execute all documents and make minor modifications as necessary in order to complete the transaction.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure

2020-2021 Strategic Priorities

Fiscal Sustainability
Transportation

GUIDING DOCUMENTS

Bikeways
Trails
Parks
and Recreation Masterplan
Morgan Hill 2035 General Plan

REPORT NARRATIVE:

The Hale Avenue Extension project is a significant and long planned transportation improvement for the City of Morgan Hill. It has been included and identified in the City's General Plan since 1969 as a north/south arterial street for the west side of the community.

At the City Council meeting on November 18, 2020, the City Council awarded the Hale Extension construction contract and approved the cost sharing agreement with Valley Water for the Upper Llagas Creek Flood Control Project, which includes the Hale Avenue Phase 2 road improvements between Warren and 300 feet north of the West Main Avenue and Hale Avenue intersection.

In order to accommodate the proposed intersection improvements for Phase 2 of the Hale Extension project, a public service easement and street right-of-way are needed from the property located on the northeast corner of the intersection (Attachment 1) which is owned by the Morgan Hill Unified School District (former a VTA park & ride lot). The Public Service Easement (Attachment 2) allows for the undergrounding of overhead

electric, cable, and telephone lines, while the right-of-way acquisition will allow for the widening of West Main Avenue to allow for a dedicated right turn lane from westbound Main Avenue to northbound Hale Avenue.

COMMUNITY ENGAGEMENT: Inform

Significant engagement has occurred over the last decade as it relates to the Hale Avenue Extension Project. Projects of this size require long term decisions be made for the future of Morgan Hill. The City's General Plan Updates and the Environmental Impact Report for this project both included significant engagement that set the framework for developing a funding strategy and the planning documents. Most recently, the City Council approved the funding for the project in June 2020. Also, City staff held a Town Hall meeting on June 11, 2020, to specifically discuss the Hale Avenue Extension. The City's Hale Avenue Project webpage (Attachment 3) provides significant project background on the history of the project and its intended purpose.

ALTERNATIVE ACTIONS:

City Council could elect to not approve the fee title and/or easement purchases. If not approved, the overhead to underground conversion would not be possible and Main Avenue would forgo widening to include a right turn pocket to Hale Avenue.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- In 1969, the City Council added the Hale Avenue Extension Project to the City's General Plan
- The Hale Extension Project is first programmed into the Capital Improvement Program in 2010-11 fiscal year
- The City Council included the Roadway in the General Plan Circulation Element in February 2010
- The City Council meeting on community engagement and moving forward in February 2011
- The City Council community meeting for intersection design in August 2011
- Public Meeting on Draft EIR was held on June 8, 2016
- The City Council approved design contract with Mark Thomas on January 18, 2017
- The City Council certified the EIR and adopted a Plan Line on August 23, 2017
- The City Council approved Tran property purchase on December 6, 2017
- The City Council approved Giancola property purchase on December 6, 2017
- The City Council approved Howard property purchase on January 17, 2018
- The City Council approved a first amendment with Mark Thomas for design on April 18, 2018
- The City Council adopted the Fiscal Year 2018-19 through 2023-24 Capital Improvement Program Budget, including the Hale Avenue Extension Project
- The City Council approved Kerr property purchase on July 18, 2018
- The City Council approved a property conveyance with the County on August 22, 2018
- The City Council adopted a resolution of necessity to acquire property from PG&E on September 5, 2018

- The City Council approved Garcia property purchase on October 3, 2018
- The City Council adopted a relocation plan for the project on October 17, 2018
- The City Council approved Betpolice property purchase on February 20, 2019
- The City Council approved a second amendment with Mark Thomas on April 17, 2019
- The City Council approved a third amendment with Mark Thomas on December 18, 2019
- The City Council approved the funding agreement with the Valley Transportation Authority on June 17, 2020 for the Hale Avenue Extension project
- The City Council awarded the Hale Avenue Extension Project on November 18, 2020.
- The City Council approved a cost share agreement with Valley Water for the Hale Extension project and flood control improvements on November 18, 2020.

FISCAL AND RESOURCE IMPACT:

The total authorization needed for this acquisition is \$94,000 plus escrow and closing costs. The project is included in the adopted CIP program and will receive \$16.5 million in Measure B monies which will be applied to the construction portion of the project. Additionally, funding of \$2 million for storm system expansion is also allocated for this project for a total of \$18.5 million. Thus, there are sufficient funds for this acquisition.

CEQA (California Environmental Quality Act): Project

An Environmental Impact Report (EIR) was certified for the Hale Avenue Extension and Santa Teresa Corridor Widening and Realignment Project in accordance with the California Environmental Quality Act (CEQA).

LINKS/ATTACHMENTS:

1. Project Location Map
2. MHUSD Property Purchase Agreement - Final
3. Hale Avenue Extension Project Webpage (weblink)



Attachment: Project Location Map (2924 : Purchase Land from MHUSD for Hale Avenue)



**Engineering and Utilities Department
CIP Engineering Division**

Document Path: G:\R-14\PROJ\Agustin\GIS\Hale Ave Project Location Map PHASE 2.mxd

Project Location Map For Hale Avenue Phase 2 Improvements



0 150 300 600 900 1,200

Packet Pg. 325

City of Morgan Hill
PROPERTY PURCHASE AGREEMENT

This Property Purchase Agreement (the "Agreement") is between Morgan Hill Unified School District ("DISTRICT" or "GRANTOR") and the City of Morgan Hill, a municipal corporation ("CITY" or "GRANTEE"). GRANTOR and GRANTEE may collectively be referred to as Parties.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed by the Parties as follows:

1. Entire Agreement

The Parties have herein set forth the whole of their agreement. GRANTOR agrees to sell and GRANTEE agrees to purchase certain land described in Exhibits A and B, being a portion of property in Santa Clara County APN 764-16-028 (PROJECT PROPERTY) for use by GRANTEE on the Hale Avenue Extension Project (PROJECT). Specifically, GRANTOR agrees to grant fee title and a Public Service Easement (PSE), on the terms and conditions set forth in this Agreement. The form of the Grant Deed is as depicted in Exhibit C, and the Public Utility Easement as depicted in Exhibit D. The performance of this Agreement constitutes the entire consideration for the Deed(s) and shall relieve CITY of all further obligations or claims due to the location, grade, construction or operation of the proposed public improvement.

2. Public Purpose

CITY and GRANTOR acknowledge and agree that the GRANTOR'S property being acquired by CITY is for public use and is necessary for the construction, operation and maintenance of the Hale Avenue Extension Project, a public project.

3. Delivery of Documents

Prior to or concurrently with the execution of this Agreement, GRANTOR shall execute and deliver the Grant Deed and the Public Service Easement (PSE) suitable for recordation to the Old Republic Title Company ("ORTC") located at 17485 Monterey Road #101, Morgan Hill, CA 95037, conveying from GRANTOR to CITY a fee simple title as indicated in Exhibit A and a PSE as indicated in Exhibit B, incorporated herein by this reference, covering the property particularly described therein, collectively the PROJECT PROPERTY. GRANTOR agrees to execute all other documents necessary to complete the transaction transferring project property from GRANTOR to GRANTEE. Delivery in the manner described is solely for the convenience of the Parties. GRANTEE shall not be deemed to have accepted delivery of the Grant Deed or PSE until such time as the Grant Deed and PSE are approved and accepted by the City Council of the City of Morgan Hill. GRANTOR hereby authorizes CITY to prepare and file escrow instructions in accordance with this Agreement on behalf of both Parties.

4. Purchase Price and Title

A. The purchase price for the fee title is \$68,000.00 and the purchase price for the PSE is \$26,000.00, for a total of \$94,000.00. CITY shall pay the sum of Ninety Four Thousand Dollars (\$94,000.00) for the Project Property identified in Exhibits "A" and "B" attached hereto and made a part hereof, to ORTC, for the account of the GRANTOR, conditioned upon the PROJECT PROPERTY vesting in CITY free and clear of all liens, leases, encumbrances (recorded or unrecorded), title defects, assessments and taxes except any exceptions to title which are acceptable to CITY

as said exceptions are identified in the title report relating to the PROJECT PROPERTY issued by the above Title Company. Clearing of any title exceptions not acceptable to CITY is the responsibility of GRANTOR.

- B. CITY shall pay all escrow, recording and title insurance charges, if any, incurred in this transaction.
- C. Prior to the close of escrow, CITY shall have the authority to deduct and pay from the amount shown in Clause 4A herein any amount necessary to satisfy any liens, bond demands and delinquent taxes due, together with penalties and interest thereon, and/or delinquent and unpaid non delinquent taxes and assessments, which may have become a lien at the close of escrow. No taxes are expected to be due as GRANTOR is a public entity. If owing, taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code if unpaid at the close of escrow. Close of escrow for this transaction shall be contingent upon the title company receiving deeds of reconveyance from any deed of trust or mortgage holder trustees and beneficiaries.

5. Improvements

Except as may be otherwise provided herein, the purchase price for the PROJECT PROPERTY includes compensation for any and all improvements.

6. Permission to Enter Grantor's Property and Right of Possession

Upon execution of this Agreement by the Parties, permission is hereby granted by GRANTOR to CITY or its authorized agent(s) to enter on the PROJECT PROPERTY to commence work on the PROJECT. It is agreed and confirmed by the Parties hereto that, notwithstanding the other provisions in this Agreement, the right of possession and use of the PROJECT PROPERTY by CITY, and/or its designees or assignees, including the right to remove and dispose of improvements, and install and connect utilities, shall commence on the execution of this Agreement by the Parties.

7. City Performed Work

All work done under this Agreement shall conform to all applicable building, fire and sanitary laws, ordinances, and regulations relating to such work, and shall be done in a good and workmanlike manner. All structures, improvements or other facilities, when removed, and relocated, or reconstructed by CITY, shall be left in as good condition as found.

8. Hazardous Wastes

The acquisition price of the PROJECT PROPERTY being acquired in this transaction reflects the fair market value of the PROJECT PROPERTY without the presence of contamination. If the PROJECT PROPERTY being acquired is found to be contaminated by the presence of hazardous waste which requires mitigation under Federal or State law, the CITY may elect to recover its clean-up costs from those who caused or contributed to the contamination. GRANTOR shall further indemnify, defend, save and hold harmless the CITY from any and all claims, costs and liability, including reasonable attorney's fees, for any damage, injury or death to persons or property arising directly or indirectly from or connected with the existence of toxic or hazardous material on the

PROJECT PROPERTY, save and except claims, costs or litigation arising through the sole willful misconduct of the CITY, its agents or employees.

9. Binding on Successors and Assigns

This Agreement shall be binding on and inure to the benefit of the respective heirs, successors and assigns of the Parties to this Agreement.

10. No Leases

GRANTOR warrants that there are no oral or written leases on all or any portion of the PROJECT PROPERTY exceeding a period of one month, and GRANTOR further agrees to hold CITY harmless and reimburse CITY for any and all of its losses and expenses occasioned by reason of any lease of said PROJECT PROPERTY held by any tenant of GRANTOR for a period exceeding one month.

11. Release of Claims

GRANTOR, for itself, its agents, assigns, successors in interest, and any related or affiliated entities, hereby fully releases and discharges CITY, its agents, employees, officers, directors, divisions, attorneys, accountants, insurers, successors, and other representatives, and any and all related or affiliated private or public agencies or entities, from any and all causes of action, actions, judgments, liens, indebtedness, obligations, losses, claims, damages, liabilities and demands, including without limitation any claim arising out of or pertaining, directly or indirectly, to the acquisition of the PROJECT PROPERTY described in this Agreement and the construction of any improvements thereon, including without limitation, inverse condemnation, nuisance, severance damages, relocation benefits, reestablishment benefits, the cost or value of any equipment or fixtures, attorneys' fees and costs, loss of goodwill, construction-related dust, noise, traffic and other related construction activity, and lost rentals or business associated with construction of any improvements, and any other types of related losses or damages.

GRANTOR acknowledges that it may hereafter discover facts or law different from, or in addition to that which it now believes to be true with respect to his/her release of claims as set forth in this Agreement, and understands that by executing this Agreement it is waiving any rights of claims for any other or future benefits or damages to which it might be entitled which are not specifically exempted herein. In giving this release, GRANTOR expressly waives the protection of Civil Code Section 1542, which statute provides as follows:

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

12. Approval of City Council

GRANTOR understands that this Agreement is subject to the approval of City Council. Further, that this Agreement shall have no force or effect unless and until said CITY approval has been obtained.

13. Authority to Sign

GRANTOR and the signatories represent and warrant that the signatories to this Agreement are authorized to enter into this Agreement to convey real property and that no other authorizations are required to implement this Agreement on behalf of GRANTOR.

14. Integrity of Property

Except as otherwise provided herein or by express written permission granted by CITY, GRANTOR shall not, after the date of execution of this Agreement and the close of escrow, alienate, lien, encumber or other transfer of the PROJECT PROPERTY or any portion thereof or allow the same to occur, cause or allow any physical changes on the PROJECT PROPERTY, or enter into any lease or contract with respect to the Project Property or any portion thereof which would survive the close of escrow and impair CITY's use of the PROJECT PROPERTY. GRANTOR shall maintain the PROJECT PROPERTY in its current condition and shall make, at GRANTOR's expense, all repairs necessary to maintain the PROJECT PROPERTY in such condition.

15. Casualty or Loss

If, prior to the close of escrow, GRANTOR becomes aware that all or any material portion of the PROJECT PROPERTY has been destroyed, or substantially damaged, GRANTOR shall promptly give CITY written notice of the event, and CITY, at its option, may, on or before the close of escrow, elect to terminate this Agreement by giving GRANTOR written notice of termination, in which event the Parties shall be relieved and released of and from any further duties, obligations, rights, or liabilities hereunder. If CITY elects to complete the transactions contemplated in this Agreement, the Agreement shall remain in full force and effect and the purchase contemplated herein shall be consummated with no further adjustment or modification, and at the close of escrow, GRANTOR shall assign, transfer, and set over to CITY all of the right, title, and interest of GRANTOR in and to any insurance proceeds resulting from any casualty or any awards that have been or may thereafter be made. Such set over may be made at close of escrow by crediting the amounts of any such proceeds and/or awards against the amounts by CITY for the property acquisition under this Agreement.

16. Counterparts Signature

This Agreement may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one agreement.

17. Specific Performance and Other Remedies

The Parties understand that the interests and rights being conveyed by this Agreement are unique and for that reason, among others, the Parties will be irreparably damaged in the event that this Agreement is not specifically enforced. Accordingly, in the event of

any controversy concerning the obligations under this Agreement, such obligation shall be enforceable by a decree of specific performance or by injunction. Such remedies and all other rights and remedies set forth herein shall be cumulative and not exclusive, and shall be in addition to any and all other remedies which the Parties may have hereunder at law or in equity.

18. Severability.

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being impaired or invalidated in any way.

19. Governing Law and Venue.

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

20. Notices

All notices and demands shall be given in writing either by personal service or by registered or certified mail, postage prepaid, and return receipt requested. Notice shall be considered given when mailed. Notices shall be addressed as shown below for each party:

City of Morgan Hill
Development Services Center
David Gittleson, P.E.
17575 Peak Avenue
Morgan Hill, CA 95037

Morgan Hill Unified School District
15600 Concord Circle
Morgan Hill, CA 95037

21. Independent Legal Advice

Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first written herein below.

CITY:

City of Morgan Hill
A Municipal Corporation

BY: _____
Christina Turner

Title: City Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Donald Larkin

Title: City Attorney

Date: _____

GRANTOR:

Morgan Hill Unified School District

By: _____
Steve Betando

Title: Superintendent

Date: _____

By: _____

Title:

Date: _____

Attachment: MHUSD Property Purchase Agreement - Final [Revision 1] (2024 : Purchase Land from MHUSD for Hale Avenue)

EXHIBIT "A"
LEGAL DESCRIPTION
AND PLAT FOR FEE TITLE

Attachment: MHUSD Property Purchase Agreement - Final [Revision 1] (2024 : Purchase Land from MHUSD for Hale Avenue)

EXHIBIT "A"
LEGAL DESCRIPTION

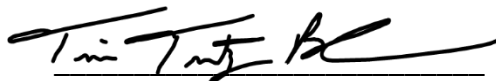
All that real property situate in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of Lot 30, as shown on that certain Map entitled "MCGRATH ADDITION TO MORGAN HILL", filled September 2, 1893 in Book H of Maps, Page 3, also being a portion of the land described in that certain GRANT DEED, recorded February 5, 2019 as Document Number 24109979, Santa Clara County Records, more particularly described as follows:

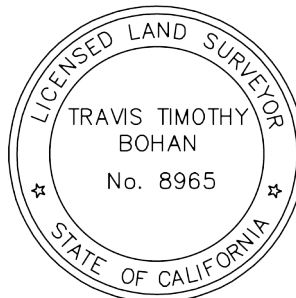
Beginning at the Southwest corner of said Lot 30; thence along the westerly line of said Lot 30, North 34°08'11" West, a distance of 27.11 feet; thence leaving said westerly line, South 78°56'25" East, a distance of 21.29 feet to a line parallel with and lying 12.00 feet northwesterly of the southeasterly line of said Lot 30; thence along said parallel line, North 55°51'26" East, 122.30 feet; thence leaving said parallel line, South 34°08'11" East, 12.00 feet to a point on said southeasterly line; thence along said southeasterly line, South 55°51'26" West, 137.30 feet to the **Point of Beginning**.

Containing 1,761 square feet or 0.04 acres, more or less.

Assessor's Parcel Number: 764-16-028

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.


Travis Timothy Bohan, LS 8965



09/04/2020
Date

LEGEND

- POB POINT OF BEGINNING
 ○ DIMENSION POINT
 AREA TO BE ACQUIRED

LINE TABLE

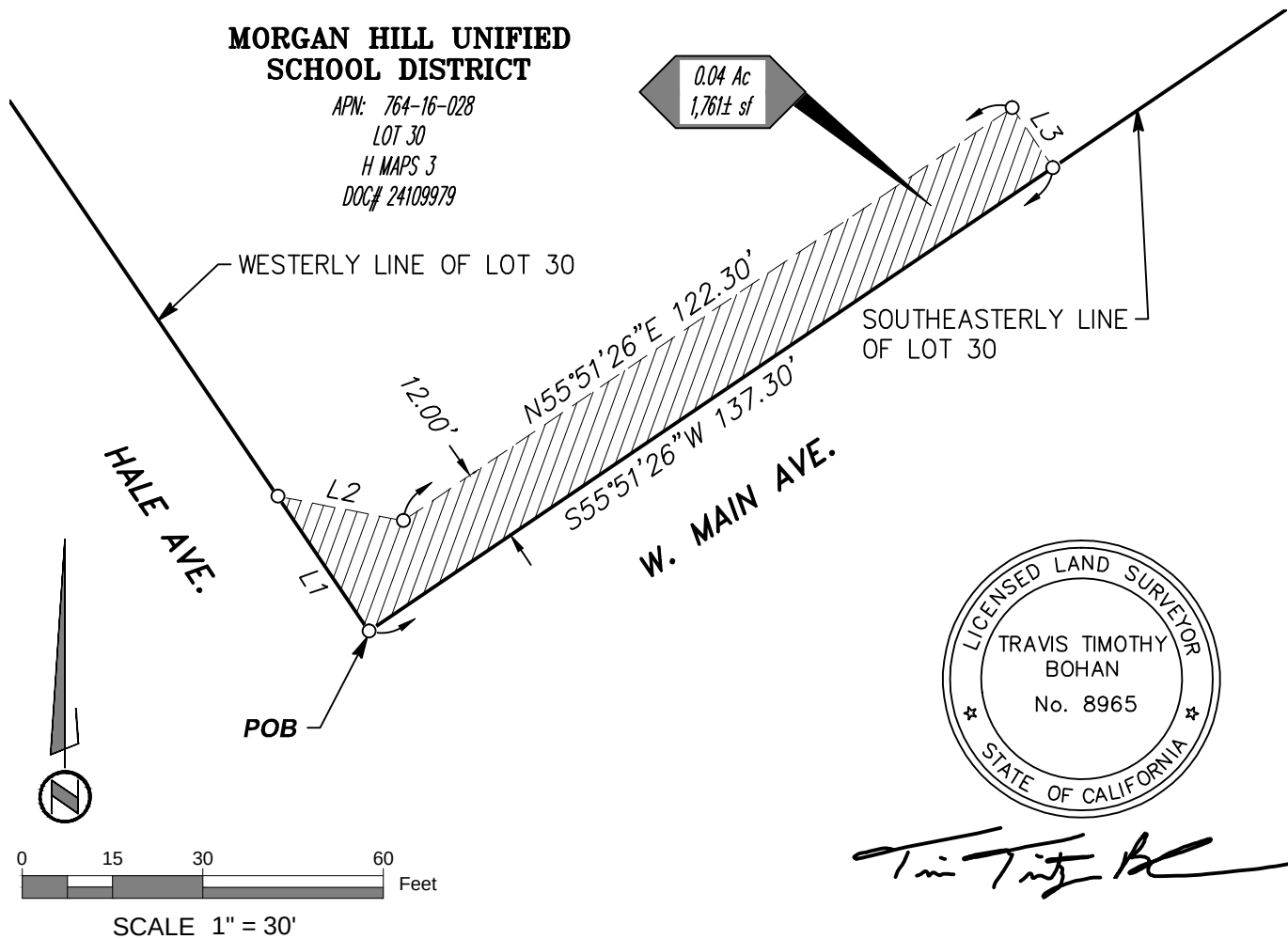
L1 N34°08'11"W 27.11'

L2 S78°56'25"E 21.29'

L3 S34°08'11"E 12.00'

**MORGAN HILL UNIFIED
SCHOOL DISTRICT**

APN: 764-16-028
 LOT 30
 H MAPS 3
 DOC# 24109979



SHEET 1 OF 1

**MARK THOMAS**

Scale: 1" = 30'
 Date Sep. 2020
 Drawn By AD
 Checked By TTB

**Exhibit A
FEE**

APN 764-16-028
 Plat to Accompany Legal Description
 In the City of Morgan Hill,
 Santa Clara County, California



GRANTOR: Morgan Hill Unified School District

APN: 764-16-028

EXHIBIT "B"

LEGAL DESCRIPTION
AND PLAT FOR PUBLIC SERVICE
EASEMENT

Attachment: MHUSD Property Purchase Agreement - Final [Revision 1] (2024 : Purchase Land from MHUSD for Hale Avenue)

EXHIBIT "B"
LEGAL DESCRIPTION

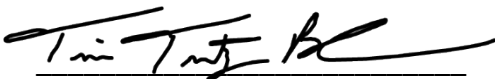
All that real property situate in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of Lot 30, as shown on that certain Map entitled "MCGRATH ADDITION TO MORGAN HILL", filled September 2, 1893 in Book H of Maps, Page 3, also being a portion of the land described in that certain GRANT DEED, recorded February 5, 2019 as Document Number 24109979, Santa Clara County Records, more particularly described as follows:

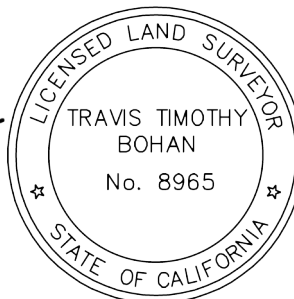
Commencing at the Southwest corner of said Lot 30; thence along the westerly line of said Lot 30, North 34°08'11" West, a distance of 62.97 feet to the **Point of Beginning**; thence continuing along said westerly line, North 34°08'11" West, a distance of 93.76 feet; thence leaving said westerly line, South 38°59'00" East, a distance of 78.11 feet; thence South 47°04'35" East, a distance of 68.64 feet; thence South 55°51'26" West, a distance of 6.97 feet; thence North 78°56'25" West, a distance of 6.07 feet; thence North 47°04'35" West, a distance of 47.88 feet to a point on said westerly line, and the **Point of Beginning**.

Containing 907 square feet or 0.02 acres, more or less.

Assessor's Parcel Number: 764-16-028

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.


Travis Timothy Bohan, LS 8965



10/30/2020

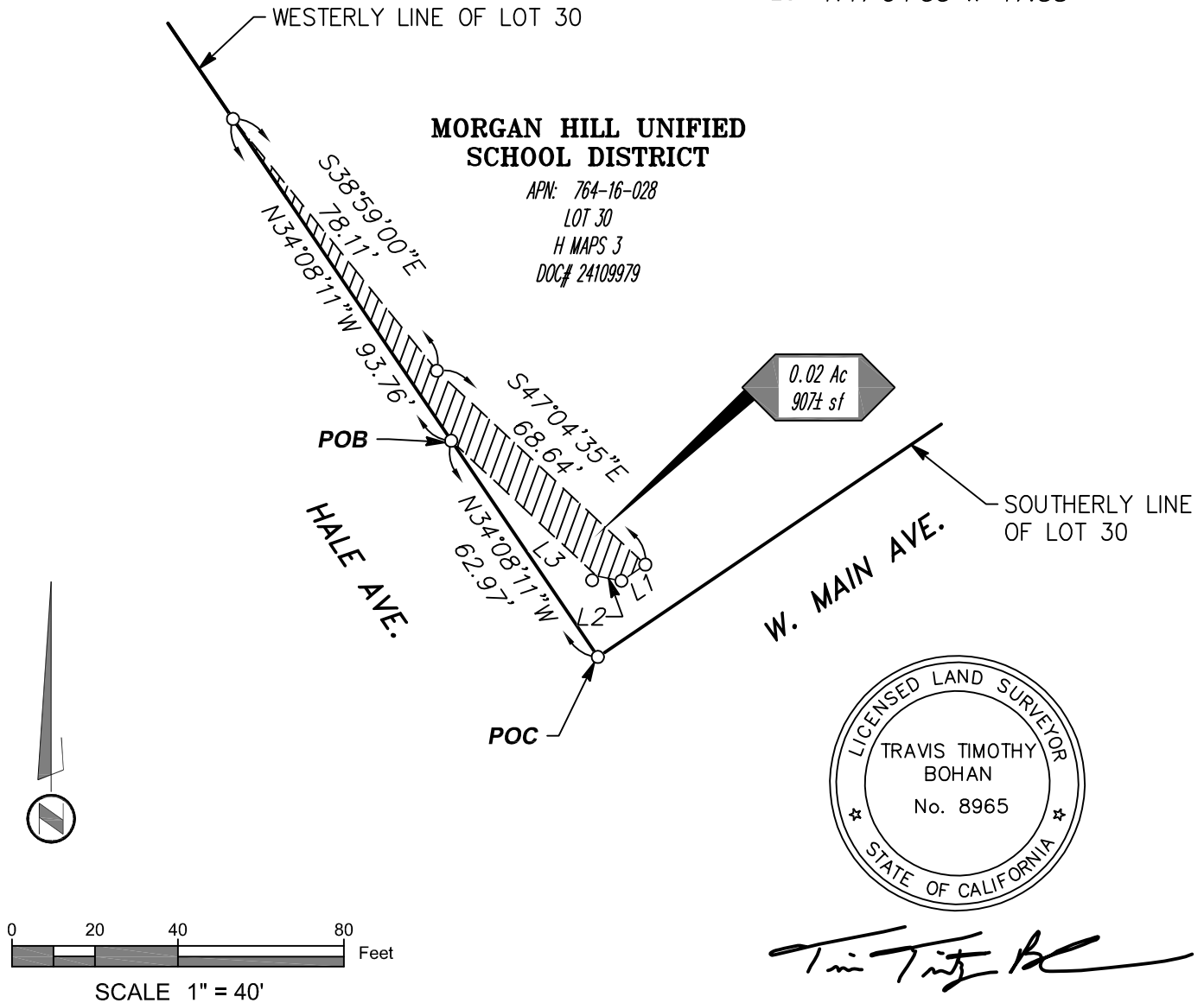
Date

LEGEND

POC POINT OF COMMENCEMENT
 POB POINT OF BEGINNING
 ○ DIMENSION POINT
 [Hatched Box] PUBLIC SERVICE EASEMENT

LINE TABLE

L1 S55°51'26"W 6.97'
 L2 N78°56'25"W 6.07'
 L3 N47°04'35"W 47.88'



SHEET 1 OF 1

**MARK THOMAS**

Scale: 1" = 40'
 Date October 2020
 Drawn By AD
 Checked By TTB

Exhibit B
PUBLIC SERVICE EASEMENT
 APN 764-16-028
 Plat to Accompany Legal Description
 In the City of Morgan Hill,
 Santa Clara County, California



RECORDING REQUESTED BY:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

WHEN RECORDED MAIL TO:

City Clerk's Office
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037-4128

Attn: City Clerk

SPACE ABOVE FOR RECORDER'S USE

APN: 764-16-028 Portion

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383 and §6103, and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922 (Governmental Agency acquiring title).

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

MORGAN HILL UNIFIED SCHOOL DISTRICT (GRANTOR), HEREBY GRANT(S) TO

CITY OF MORGAN HILL, A MUNICIPAL CORPORATION, (GRANTEE)

That certain property in the County of Santa Clara, State of California, more particularly described in Exhibits "A" attached hereto and by this reference incorporated herein.

Morgan Hill Unified School District

By: _____
Steve Betando, Superintendent

Date: _____

NOTARY ACKNOWLEDGMENT ATTACHED

Attachment: MHUSD Property Purchase Agreement - Final [Revision 1] (2024 : Purchase Land from MHUSD for Hale Avenue)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS MY HAND AND OFFICIAL SEAL the day and year first above written.

NOTARY PUBLIC

Attachment: MHUSD Property Purchase Agreement - Final [Revision 1] (2024 : Purchase Land from MHUSD for Hale Avenue)

EXHIBIT "A"
LEGAL DESCRIPTION

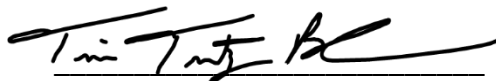
All that real property situate in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of Lot 30, as shown on that certain Map entitled "MCGRATH ADDITION TO MORGAN HILL", filled September 2, 1893 in Book H of Maps, Page 3, also being a portion of the land described in that certain GRANT DEED, recorded February 5, 2019 as Document Number 24109979, Santa Clara County Records, more particularly described as follows:

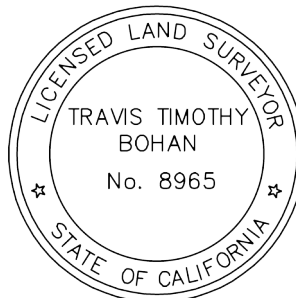
Beginning at the Southwest corner of said Lot 30; thence along the westerly line of said Lot 30, North 34°08'11" West, a distance of 27.11 feet; thence leaving said westerly line, South 78°56'25" East, a distance of 21.29 feet to a line parallel with and lying 12.00 feet northwesterly of the southeasterly line of said Lot 30; thence along said parallel line, North 55°51'26" East, 122.30 feet; thence leaving said parallel line, South 34°08'11" East, 12.00 feet to a point on said southeasterly line; thence along said southeasterly line, South 55°51'26" West, 137.30 feet to the **Point of Beginning**.

Containing 1,761 square feet or 0.04 acres, more or less.

Assessor's Parcel Number: 764-16-028

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.


Travis Timothy Bohan, LS 8965



09/04/2020
Date

LEGEND

- POB POINT OF BEGINNING
 ○ DIMENSION POINT
 AREA TO BE ACQUIRED

LINE TABLE

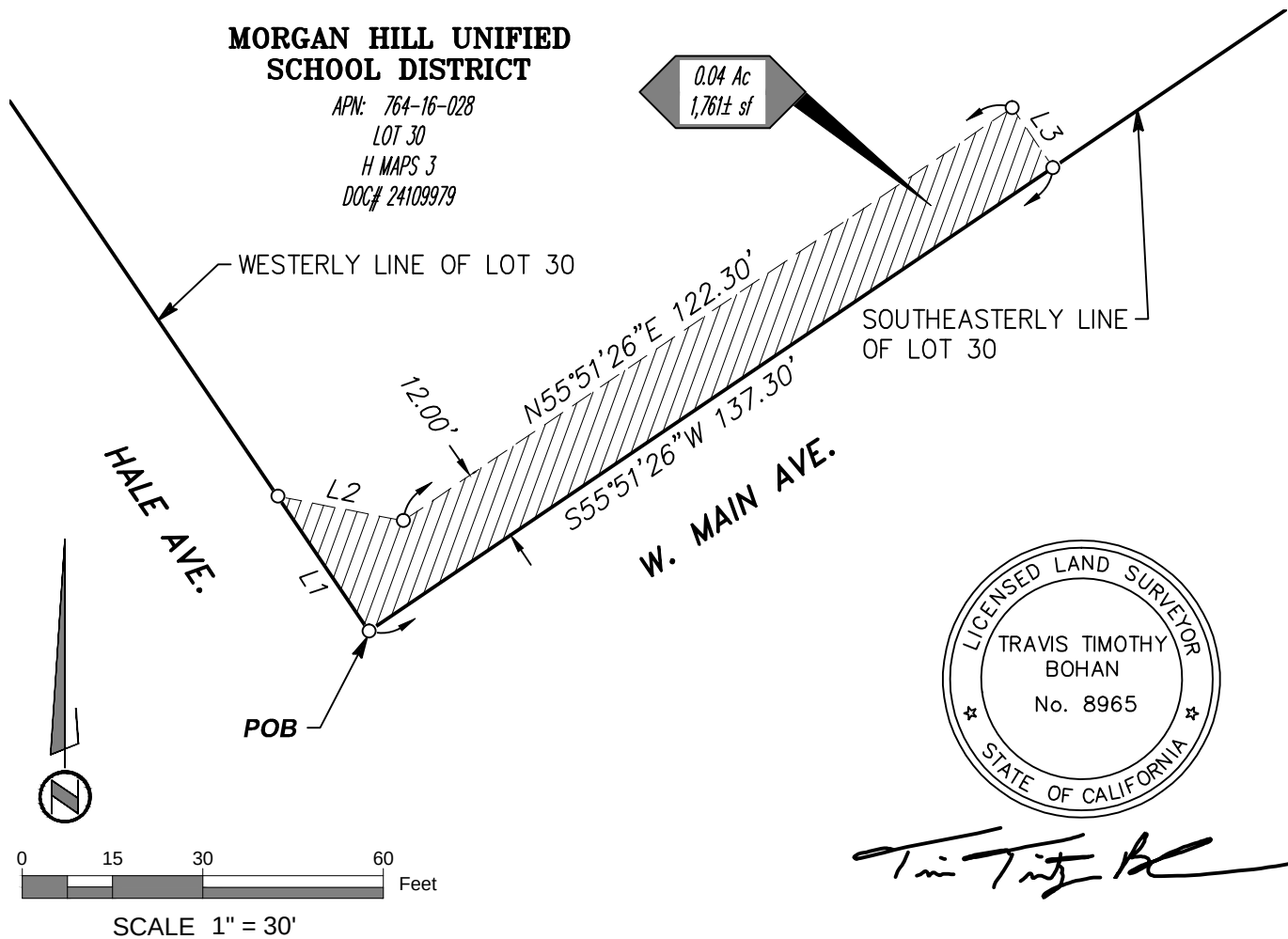
L1 N34°08'11"W 27.11'

L2 S78°56'25"E 21.29'

L3 S34°08'11"E 12.00'

**MORGAN HILL UNIFIED
SCHOOL DISTRICT**

APN: 764-16-028
 LOT 30
 H MAPS 3
 DOC# 24109979



SHEET 1 OF 1

**MARK THOMAS**

Scale: 1" = 30'
 Date Sep. 2020
 Drawn By AD
 Checked By TTB

**Exhibit A
FEE**

APN 764-16-028
 Plat to Accompany Legal Description
 In the City of Morgan Hill,
 Santa Clara County, California



RECORDING REQUESTED BY:

CITY OF MORGAN HILL

WHEN RECORDED MAIL DOCUMENT TO:

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

RECORD AT NO FEE
PER GOVERNMENT CODE SECTION 6103 & 27383
APN: 764-06-028 Portion

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT OF PUBLIC SERVICE EASEMENT

Northeast Corner of West Main Ave. and Hale Ave.

Morgan Hill Unified School District hereby **GRANT** to the **CITY OF MORGAN HILL**, a Municipal Corporation of the State of California, an easement for public use, a public service easement for any and all public service facilities, including but not limited to electric, gas, telephone, cable TV, water, storm drainage, sanitary sewers, etc., and all appurtenances thereto, with the right to enter upon the easement at any time for the purposes of installation, construction, repair and maintenance thereof, under, over, on and across the real property hereinafter described.

SEE EXHIBITS "A" AND "B"

ATTACHED HERETO AND MADE A PART HEREOF

Owner(s): Morgan Hill Unified School District

By: Steve Betando, Superintendent

Date

NOTARY ACKNOWLEDGMENT ATTACHED

Attachment: MHUSD Property Purchase Agreement - Final [Revision 1] (2024 : Purchase Land from MHUSD for Hale Avenue)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS MY HAND AND OFFICIAL SEAL the day and year first above written.

NOTARY PUBLIC

Attachment: MHUSD Property Purchase Agreement - Final [Revision 1] (2024 : Purchase Land from MHUSD for Hale Avenue)

EXHIBIT "A"
LEGAL DESCRIPTION

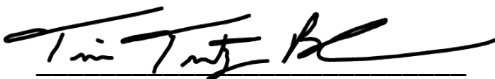
All that real property situate in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of Lot 30, as shown on that certain Map entitled "MCGRATH ADDITION TO MORGAN HILL", filled September 2, 1893 in Book H of Maps, Page 3, also being a portion of the land described in that certain GRANT DEED, recorded February 5, 2019 as Document Number 24109979, Santa Clara County Records, more particularly described as follows:

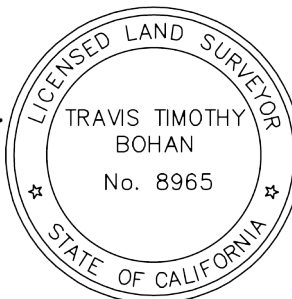
Commencing at the Southwest corner of said Lot 30; thence along the westerly line of said Lot 30, North 34°08'11" West, a distance of 62.97 feet to the **Point of Beginning**; thence continuing along said westerly line, North 34°08'11" West, a distance of 93.76 feet; thence leaving said westerly line, South 38°59'00" East, a distance of 78.11 feet; thence South 47°04'35" East, a distance of 68.64 feet; thence South 55°51'26" West, a distance of 6.97 feet; thence North 78°56'25" West, a distance of 6.07 feet; thence North 47°04'35" West, a distance of 47.88 feet to a point on said westerly line, and the **Point of Beginning**.

Containing 907 square feet or 0.02 acres, more or less.

Assessor's Parcel Number: 764-16-028

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.


Travis Timothy Bohan, LS 8965



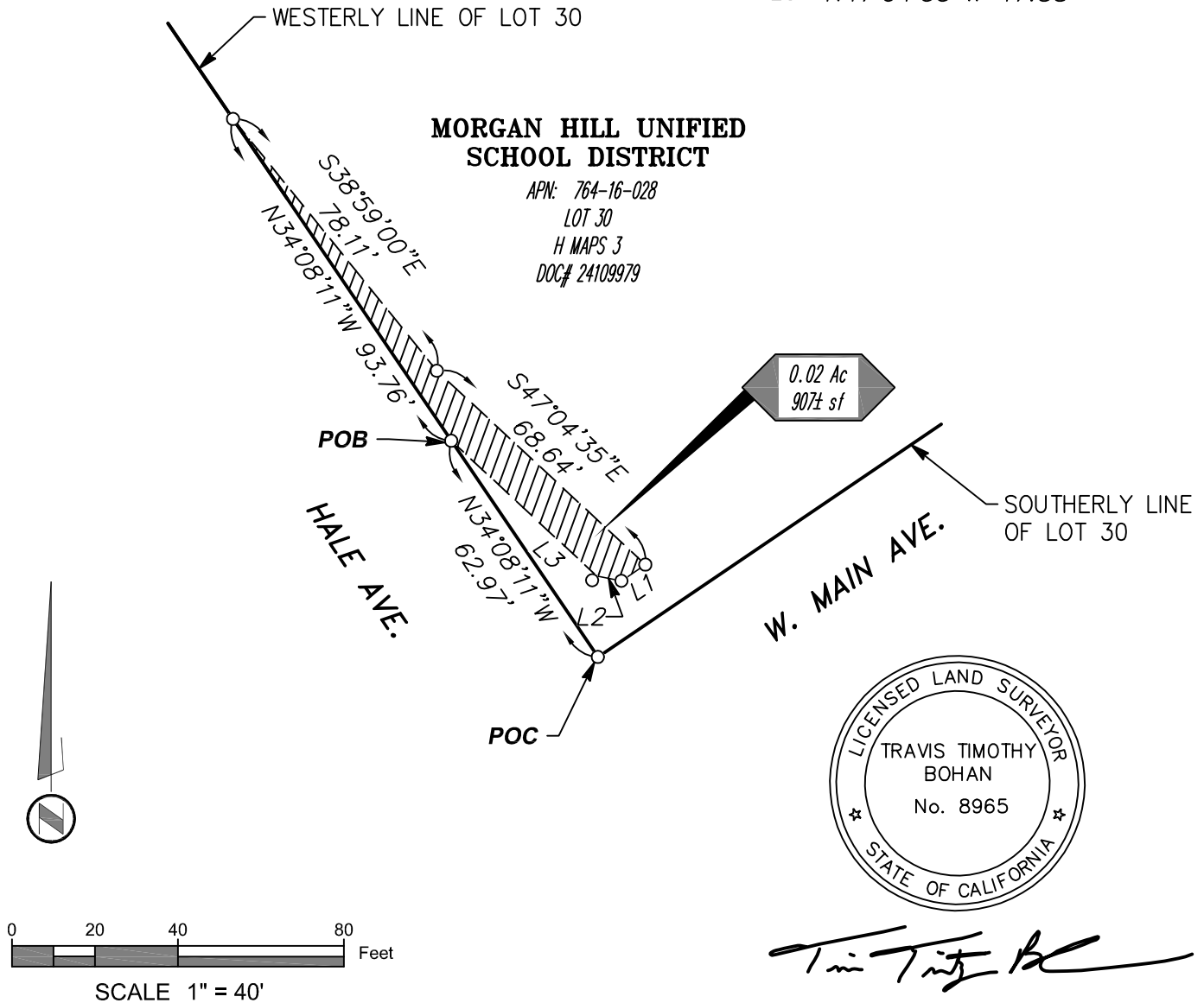
10/30/2020
Date

LEGEND

POC POINT OF COMMENCEMENT
 POB POINT OF BEGINNING
 ○ DIMENSION POINT
 [Hatched Box] PUBLIC SERVICE EASEMENT

LINE TABLE

L1 S55°51'26"W 6.97'
 L2 N78°56'25"W 6.07'
 L3 N47°04'35"W 47.88'



SHEET 1 OF 1

**MARK THOMAS**

Scale: 1" = 40'
 Date October 2020
 Drawn By AD
 Checked By TTB

Exhibit B
PUBLIC SERVICE EASEMENT
 APN 764-16-028
 Plat to Accompany Legal Description
 In the City of Morgan Hill,
 Santa Clara County, California



DRAFT



Meeting Minutes Joint Morgan Hill Financing Authority/City Council

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

Wednesday, November 18, 2020 7:00 pm

Virtual Meeting

AMENDED AGENDA

MEETING GUIDELINES

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

CALL TO ORDER

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

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	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

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

Minutes Acceptance: Minutes of Nov 18, 2020 7:00 PM (CONSENT CALENDAR)

PRESENTATIONS

YAC PRESENTATION- ASSET #34- CULTURAL COMPETENCE

CITY MANAGER'S REPORT

CITY MANAGER'S REPORT SUPPLEMENT- DEVELOPMENT PROJECTS

City Manager Christina Turner spoke to the evening's supplements and presentations.

COVID Update

Over the past weeks it has become clear that we are in the midst of another significant spike in COVID-19 cases. The State has moved our County to the purple tier, the most restrictive tier in the State's Blueprint for a Safer Economy. These changes went into effect yesterday, November 17th. It is imperative that we come together as a community and continue the safe practices that we know help stop the spread of this deadly virus. The County is urging us to remind the community of some of these things, wearing a proper face mask or facial covering at all times when in public, maintaining social distancing of at least six feet, and limiting contact with people outside of our household. The impacts with this tier include the closure of indoor dining, which was already planned for Santa Clara County with the assumption that we were moving into the red tier. In addition, it involves the closure of all indoor activities associated with gyms, museums, aquariums, places of worship, as well as movie theaters. Shopping malls and all retail establishments must reduce to a maximum of 25% and grocery stores are at 50%. We sent a letter to all of our businesses with this information, urging them to reach out to their vendors as well.

Upcoming Council Meetings

December 2, 2020 Virtual Regular Council Meeting

December 9, 2020 Virtual Ceremonial meeting to recognize departing members and welcome new members

December 16, 2020 Virtual Regular Council Meeting

Christina Turner summarized the supplement on Development Projects.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin had no report.

PUBLIC COMMENT

PUBLIC COMMENT SUPPLEMENT

Public comment opened at 7:22 pm. The following people were called to speak:

Don Little

Brian Faircloth

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

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

MORGAN HILL FINANCING AUTHORITY MEETING

CONSENT CALENDAR

1. ADOPT RESOLUTION AUTHORIZING INVESTMENT OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND (LAIF)

Recommendation:

Adopt resolution of the Morgan Hill Financing Authority authorizing investment of monies in the local agency investment fund (LAIF).

MOTION:

Approving the recommended action.

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

OTHER BUSINESS

2. ADOPT RESOLUTION OF THE MORGAN HILL FINANCING AUTHORITY AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF A SERIES OF ITS SEWER REVENUE BONDS, APPROVING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE, AN INSTALLMENT PURCHASE AGREEMENT, A BOND PURCHASE AGREEMENT, AND A PRELIMINARY OFFICIAL STATEMENT; AND AUTHORIZING CERTAIN OTHER MATTERS RELATING THERETO

Recommendation:

1. Adopt resolution authorizing the execution of an installment purchase agreement to provide financing of the City's anticipated projects through the sale of \$20 million in sewer revenue bonds; and
2. Authorize the Chief Administrative Officer to execute all related documents for the sale of the sewer revenue bonds.

Finance Director Dat Nguyen provided the report.

Public comment opened at 7:34 pm.

There being no requests to speak, public comment closed.

MOTION:

Approving the recommended actions.

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

CITY COUNCIL MEETING

CONSENT CALENDAR

MOTION:

Approving consent calendar items 6 through 11 and 13 through 15.

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

3. ITEM PULLED FOR DISCUSSION

4. ITEM PULLED FOR DISCUSSION

5. ITEM PULLED FOR DISCUSSION

6. APPROVE AGREEMENT WITH BURKE, WILLIAMS & SORENSEN FOR AFFORDABLE HOUSING LEGAL SERVICES

Recommendation:

Authorize the City Attorney to execute and administer a Consultant Agreement with Burke Williams & Sorensen, LLP (BWS) for Housing Program legal services through June 30, 2022, in an amount not to exceed \$75,000.

7. APPROVE FINAL MAP FOR EIGHT LOT SUBDIVISION AT SAN SEBASTIAN PHASE 2D - TRACT NO. 10529

Recommendation:

1. Approve the Final Map;
2. Authorize the City Manager to execute a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney; and
3. Authorize the recordation of the Final Map and the Stormwater BMP Operation and Maintenance Agreement.

8. APPROVE FINAL MAP FOR TWO LOT SUBDIVISION AT SAN SEBASTIAN PHASE 3 - TRACT NO. 10534

Recommendation:

1. Approve the Final Map; and
2. Authorize the recordation of the Final Map.

9. APPROVE THE FINAL MAP, AND AGREEMENTS FOR SUBDIVISION IMPROVEMENTS AND STORMWATER BEST-MANAGEMENT-PRACTICES OPERATION AND MAINTENANCE FOR ANDALUSIA - TRACT NO. 10521

Recommendation:

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with MH Andalusia 2020 Inc.;
3. Authorize the City Manager to execute a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney; and
4. Authorize the recordation of the Final Map, Subdivision Improvements Agreement, and the Stormwater BMP Operation and Maintenance Agreement.

10. APPROVE THE OCTOBER 28, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

11. APPROVE THE NOVEMBER 4, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

12. ITEM PULLED FOR DISCUSSION

13. AWARD PHASE 1 OF HALE AVENUE EXTENSION PROJECT TO DESILVA GATES CONSTRUCTION

Recommendation:

1. Approve the Hale Avenue Extension Project plans and specifications;
2. Award contract to DeSilva Gates Construction for the Hale Avenue Extension Project in the amount of \$14,174,174;
3. Authorize expenditure of construction contingency funds not to exceed \$1,417,417; and
4. Authorize the City Manager to execute and administer the construction contract with DeSilva Gates Construction pending review and approval by the City Attorney's office.

14. APPROVE COST SHARE AGREEMENT WITH VALLEY WATER FOR THE HALE AVENUE EXTENSION PROJECT AND FLOOD CONTROL IMPROVEMENTS

Recommendation:

1. Authorize the City Manager to execute and administer a cost share agreement with Valley Water for the construction of the Hale Avenue Extension Project south of Warren Avenue and improvements supporting the Upper Llagas Creek Flood Control Project for up to \$3.5 million; and
2. Authorize the City Manager to make minor modifications to the agreement as necessary with approval of the City Attorney.

15. RECEIVE REPORT REGARDING SILICON VALLEY COMMUNITY FOUNDATION 2020 CENSUS OUTREACH GRANT ACTIVITIES AND OUTCOMES

Recommendation:

Minutes Acceptance: Minutes of Nov 18, 2020 7:00 PM (CONSENT CALENDAR)

Receive Report.

ITEMS PULLED FOR DISCUSSION

3. CAMPAIGN CONTRIBUTION LIMITS

Recommendation:

Adopt resolution accepting the State of California's campaign contribution limits for local campaigns as set forth in the provisions of AB 571.

Public comment opened at 7:46 pm. The following people were called to speak:

Brian Faircloth

Armando Benavides

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

MOTION:

Mayor Pro Tem Martinez Beltran moved to not adopt the resolution as presented and to direct staff to bring more information back at a future meeting.

RESULT: LACK OF SECONDER

MOTION:

Council Member Carr moved to adopt the recommended campaign contribution limits and limiting the personal loan contribution amount to \$4700.

RESULT: LACK OF SECONDER

MOTION:

Approving the recommended action.

RESULT: ADOPTED [4 TO 1]
MOVER: Rene Spring, Council Member
SECONDER: John McKay, Council Member
AYES: Constantine, Martinez Beltran, McKay, Spring
NAYS: Carr

4. ADOPT ORDINANCE 2317 INDUSTRIAL ORDINANCE

Recommendation:

Waive the reading, adopt Ordinance No. 2317, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

Public comment opened at 8:09 pm.

Joe Baranowski was called to speak.

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

MOTION:

Approving the recommended action.

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

Minutes Acceptance: Minutes of Nov 18, 2020 7:00 PM (CONSENT CALENDAR)

5. ADOPT ORDINANCE 2318 LILLIAN COMMONS

Recommendation:

Waive the reading, adopt Ordinance No. 2318, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

Development Services Director Jennifer Carman provided a presentation and report.

Public comment opened at 8:38 pm.

Joe Baranowski was called to speak.

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

MOTION:

Approving the recommended action.

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

The meeting recessed 8:54 pm and reconvened at 9:00 pm.

12. JANITORIAL SERVICES AGREEMENT

Recommendation:

1. Deny bid protest and appeal filed by JLP Maintenance;
2. Award a two-year service agreement to Firato Service Company, Inc. in the amount of \$874,332; and
3. Authorize the City Manager to execute and administer the service agreement with Firato Service Company, Inc.

Program Administrator Anthony Eulo provided the report.

Public comment opened at 9:06 pm.

There being no requests to speak, public comment closed.

MOTION:

Approving the recommended actions.

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

OTHER BUSINESS

16. ADOPT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE EXECUTION AND DELIVERY OF AN INSTALLMENT PURCHASE AGREEMENT, A BOND PURCHASE AGREEMENT, A PRELIMINARY OFFICIAL STATEMENT, A CONTINUING DISCLOSURE CERTIFICATE; AND AUTHORIZING CERTAIN OTHER MATTERS RELATING THERETO

Recommendation:

1. Adopt resolution authorizing the execution of an installment purchase agreement to provide financing of the City's anticipated projects through the sale of \$20 million in sewer revenue bonds; and
2. Authorize City Manager to execute all related documents with the sale of the sewer revenue bonds.

Finance Director Dat Nguyen provided the report.

Public comment opened at 9:18 pm.

There being no requests to speak, public comment closed.

MOTION:

Approving the recommended actions.

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

FUTURE COUNCIL INITIATED AGENDA ITEMS

Mayor Pro Tem Martinez Beltran would like a discussion regarding equity.

Mayor Pro Tem Martinez Beltran would like a discussion regarding RFP criteria specific to women owned and minority owned businesses.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:20 pm.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

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

DELEGATE THE COMPLETION AND ACCEPTANCE AUTHORITY OF PUBLIC IMPROVEMENTS MADE SUBJECT TO CITY COUNCIL APPROVED IMPROVEMENT AGREEMENTS FROM THE CITY COUNCIL TO THE CITY ENGINEER

RECOMMENDATION(S)

Delegate the completion and acceptance authority of public improvements made subject to the City Council approved Improvement Agreements from the City Council to the City Engineer.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

Periodically staff bring action items before the City Council related to acceptance of improvement projects made pursuant to City Council approved improvement agreements. Staff believe there is an opportunity to streamline the process and create efficiency in the workflow by delegating the authority to the City Engineer.

Morgan Hill practice has been that private developments, requiring improvements in the Public Right of Way (ROW), execute a Council approved "Improvements Agreement," and similarly receive City Council acceptance at completion of those improvements. It is recommended that the City Council formally delegate the acceptance authority, which routinely is scheduled as a consent item, to the City Engineer, who is responsible for inspecting the improvements and representing to the City Council that those improvements meet all City Standards and are in condition to accept. At the completion of the project and acceptance, developers are required to post a performance bond to guaranty the improvements for one year. At this time, insurance requirements cease, construction bonds are released, and a map is executed. It is the City Engineer who signs and stamps the maps which permanently record new public right of way modifications.

Most cities delegate this action to the City Engineer. City Council acceptance has been City practice for many years, but direct Council approval is not required. It however creates more paperwork to place this on the consent agenda as well as timing delays for the release of bonds for the developers. The City Council legally could not choose to deny acceptance if improvements meet all standards and conditions and therefor there

are no practical alternatives for the Council other than acceptance. For this reason, it is recommended that the City Council formally delegate the acceptance authority to the City Engineer for private development projects.

COMMUNITY ENGAGEMENT: Inform

This staff report serves to inform the community of the recommended delegation.

ALTERNATIVE ACTIONS:

The City Council could decide to not move forward with the delegation.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

This delegation is anticipated to result in cost and time savings for the professional staff that are involved in preparing and reviewing the agenda item for acceptance of improvements by the City Council. This delegation would create workflow efficiency and allow staff to utilize the time savings on other priority tasks.

CEQA (California Environmental Quality Act):

Not a Project, as this is an organizational or administrative activity of governments that will not result in direct or indirect physical changes in the environment.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

PREPARED BY: Dat Nguyen, Finance Director

APPROVED BY: City Manager

RECEIVE MONTHLY BUDGET UPDATE AND OCTOBER 2020 FINANCIAL AND INVESTMENT REPORTS

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure

Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Community Engagement and Messaging

Fiscal Sustainability

REPORT NARRATIVE:

As part of the City Council's expectation to maintain a high level of transparency and to be responsible stewards of public funds, staff is providing this monthly budget update, along with the September 2020 financial and investment reports (Attachment 1 and 2).

October 2020 Financial Report

The Revenue and Expense Summary through October 2020 is included on the first page of the monthly financial report (Attachment 2). Overall, General Fund revenues total \$6.3 million or about 16% of the budget as some of the major revenue categories are received later in the fiscal year. Expenditures, including encumbrances, amounted to \$14.6 million or 33% of the budget.

Budget Update

There has been no material change to the City's major revenue categories for the General Fund since the last budget update on October 21, 2020. However, the outlook for the City's sales tax and recreation services revenues may be negatively impacted by the State decision to move the Santa Clara County into the Purple Tier (Tier One – Widespread transmission), the most restrictive tier in the State's "Blueprint for a Safer Economy". What this means is that indoor dining and recreation services, just to name a few, which were just allowed to open with a limited capacity, are no longer allowed. Staff's earlier projection for recreation services of additional net loss of approximately \$1.6 million in the worst-case scenario is becoming more of a reality. As for sales tax, we are remaining hopeful that this will have little or no material impact to our sales tax consultant's estimate for the year of about \$9.7 million.

As for Transient Occupancy Tax (TOT), the trend continues to show a slow improvement as occupancy rates in some hotels have reached the pre-pandemic level of 70 percent range as of October from the low of 20 percent in April. However, the rise in occupancy rate is offset by the lower average daily rate resulting in lower TOT. The hotel industry continues to be one of the most impacted from the health issue that began escalating in mid-February and is expected to be one of the last industries to recover.

COMMUNITY ENGAGEMENT: Inform

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

ALTERNATIVE ACTIONS:

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

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the financial and investment report for each month. At the September 16, 2015 meeting, City Council recommended monthly financial and investment reports be agendaized under the Consent Agenda, and quarterly financial and investment reports be presented to City Council as an "Other Business" item. Beginning in FY 2020-21, budget reports are presented to the Council monthly.

FISCAL AND RESOURCE IMPACT:

The preparation of the report is a part of the Finance workplan. Staff does not recommend any budget adjustments at this time.

CEQA (California Environmental Quality Act):

Not a Project.

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

LINKS/ATTACHMENTS:

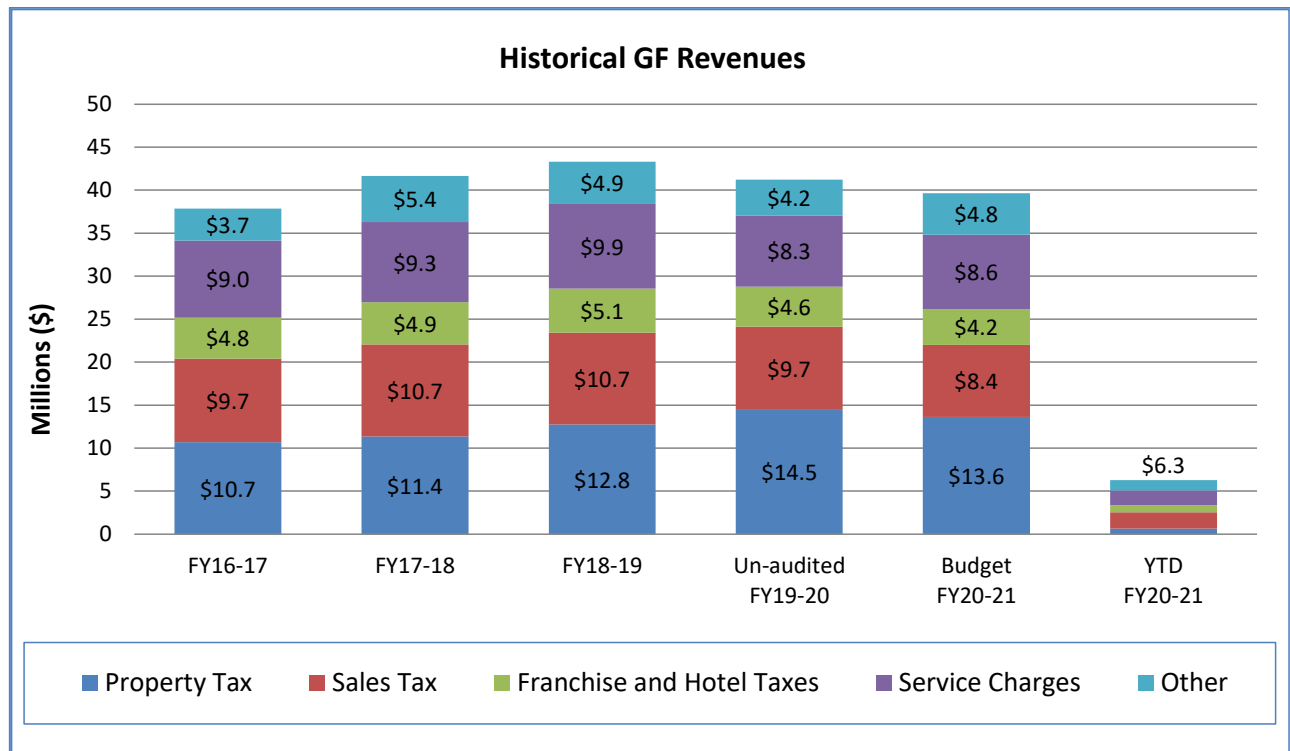
1. October 2020 Financial Statement Analysis
2. October 2020 Financial and Investment Report



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2020-21
FOR THE MONTH ENDED OCTOBER 2020 – 33% OF YEAR COMPLETE

- **General Fund** – Revenues through October totaled \$6.3 million, or about 16% of the budgeted revenues as some of the major revenue categories such as property tax are received later in the fiscal year. With respect to the property tax revenue forecast, the most recent County’s estimate projected Morgan Hill property tax revenue, excluding the property transfer tax and excess Educational Revenue Augmentation Fund (ERAF), at \$13.4 million for the fiscal year 2020-21, which matches City’s budgeted amount. The preliminary estimate of the City’s excess ERAF is approximately \$1.7 million versus \$250,000 budgeted. The County’s estimate of City’s excess ERAF amount is subject to State Controller’s Office adjustment which is not known until December 2020. Excess ERAF is the money that is returned to the cities, counties, and special districts after schools reach their state-mandated thresholds. Property tax is the largest source of Morgan Hill’s General Fund revenue. However, it accounts for only 34% of the approximately \$39.6 million General Fund revenue. Although property tax tends to be a more predictable revenue source, other major revenue categories such as sales tax and transient occupancy tax, which account for a large portion of the City’s General Fund revenue, are more volatile and tend to fluctuate more with swings in the economy.

The chart below shows historical General Fund revenues by major revenue category from FY16-17 through FY18-19 Actual, Un-audited FY19-20, FY20-21 Budget, and YTD as of October 31, 2020.

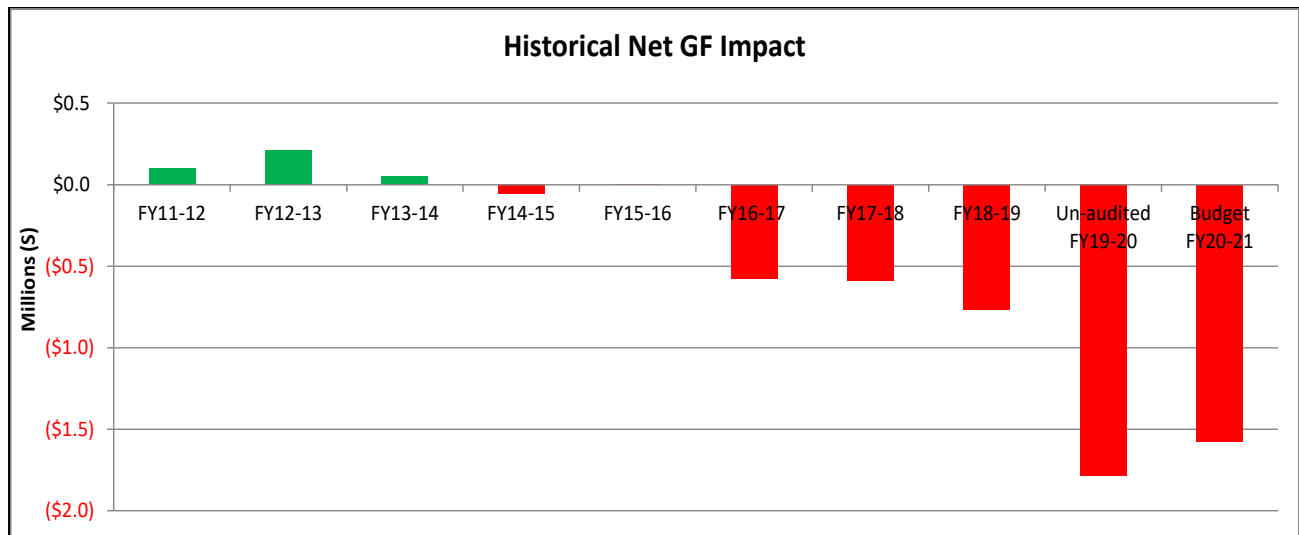


General Fund expenditures and encumbrances as of October 31, 2020 totaled \$14.6 million, of which approximately \$1.8 million is attributable to outstanding encumbrances.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2020-21
FOR THE MONTH ENDED OCTOBER 2020 – 33% OF YEAR COMPLETE

- **Community Services** - The Community Services Department's recreation operations, as reflected in the schedule presented on page 4 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$1.9 million as of October 31, 2020. The large operating loss for recreation operations reflect the continued closure of indoor recreation facilities since March 2020 due to shelter-in-place order as a result of coronavirus pandemic. The indoor recreation facilities just begun to open with a very limited capacity in recent weeks, however, with the County moving into the Purple Tier (Tier One), which is most restrictive, indoor recreation facilities would need to be closed again.



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

- **Development Services Fund** – Revenues received through October 31, 2020 totaled approximately \$1.9 million. Expenditures, including encumbrances, totaled \$2.0 million. The fund is projected to borrow \$1.0 million from the General Fund for the current fiscal year. Staff is currently engaging a consultant to conduct a comprehensive fee study to update the current fees which were developed about five years ago.
- **Debt Service Funds** – Expenditures through the first quarter totaled \$532,020. The debt service for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued, and are budgeted for in the months delineated in the underlying bond documents. The General Fund's portion of the annual debt service payments is approximately \$200,000, less than one percent of the General Fund's budgeted revenues.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2020-21
FOR THE MONTH ENDED OCTOBER 2020 – 33% OF YEAR COMPLETE

- **Wastewater Operations** – Revenues from Sewer Operations through the first quarter ending October 31, 2020 totaled \$3.3 million. Expenditures and outstanding encumbrances totaled \$4.3 million or 32% of the budget. The table below shows historical Sewer Operations revenues and expenditures from FY16-17 through FY18-19 Actual, Un-audited FY19-20, FY20-21 Budget, and YTD as of October 31, 2020.

(amount in millions)	FY16-17	FY17-18	FY18-19	Un-audited FY19-20	Budget FY20-21	YTD FY20-21
Revenues	9.7	10.3	11.4	11.9	13.3	3.3
Expenditures	9.8	10.8	11.4	12.3	13.3	4.3
Operating Margin	(0.1)	(0.5)	-	(0.4)	-	(1.0)
Operating Margin without Encumbrances	(0.0)	(0.3)	0.4	(0.1)	-	(0.7)

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through the first quarter ending October 31, 2020 totaled \$5.0 million. Water Operations expenditures, including outstanding encumbrances, totaled \$6.0 million. Without the encumbrances, however, the expenditures amounted to \$4.8 million. The table below shows Water Operations revenues and expenditures from FY16-17 through FY18-19 Actual, Un-audited FY19-20, FY20-21 Budget, and YTD as of October 31, 2020.

(amount in millions)	FY16-17	FY17-18	FY18-19	Un-audited FY19-20	Budget FY20-21	YTD FY20-21
Revenues	10.9	13.0	14.2	15.3	15.6	5.0
Expenditures	11.2	12.1	14.3	16.4	15.6	6.0
Operating Margin	(0.3)	0.9	(0.1)	(1.1)	-	(1.0)
Operating Margin without Encumbrances	(0.1)	1.4	0.8	(0.1)	-	0.2

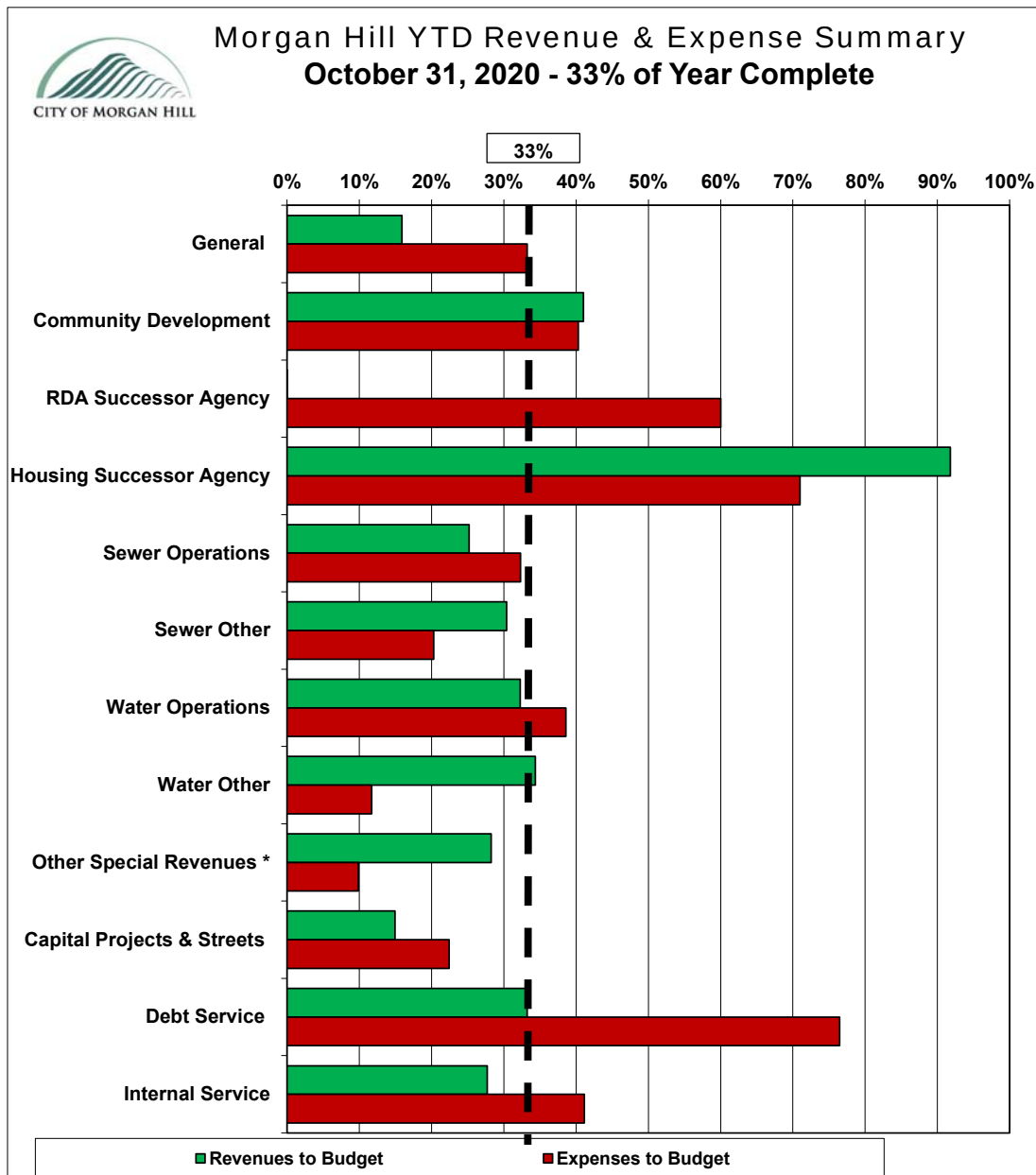
- **Investments** – Two securities were purchased, and two securities were called during the month of October 2020. Total interest earnings received on investments were \$19,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
October 31, 2020 - 33% of Year Complete



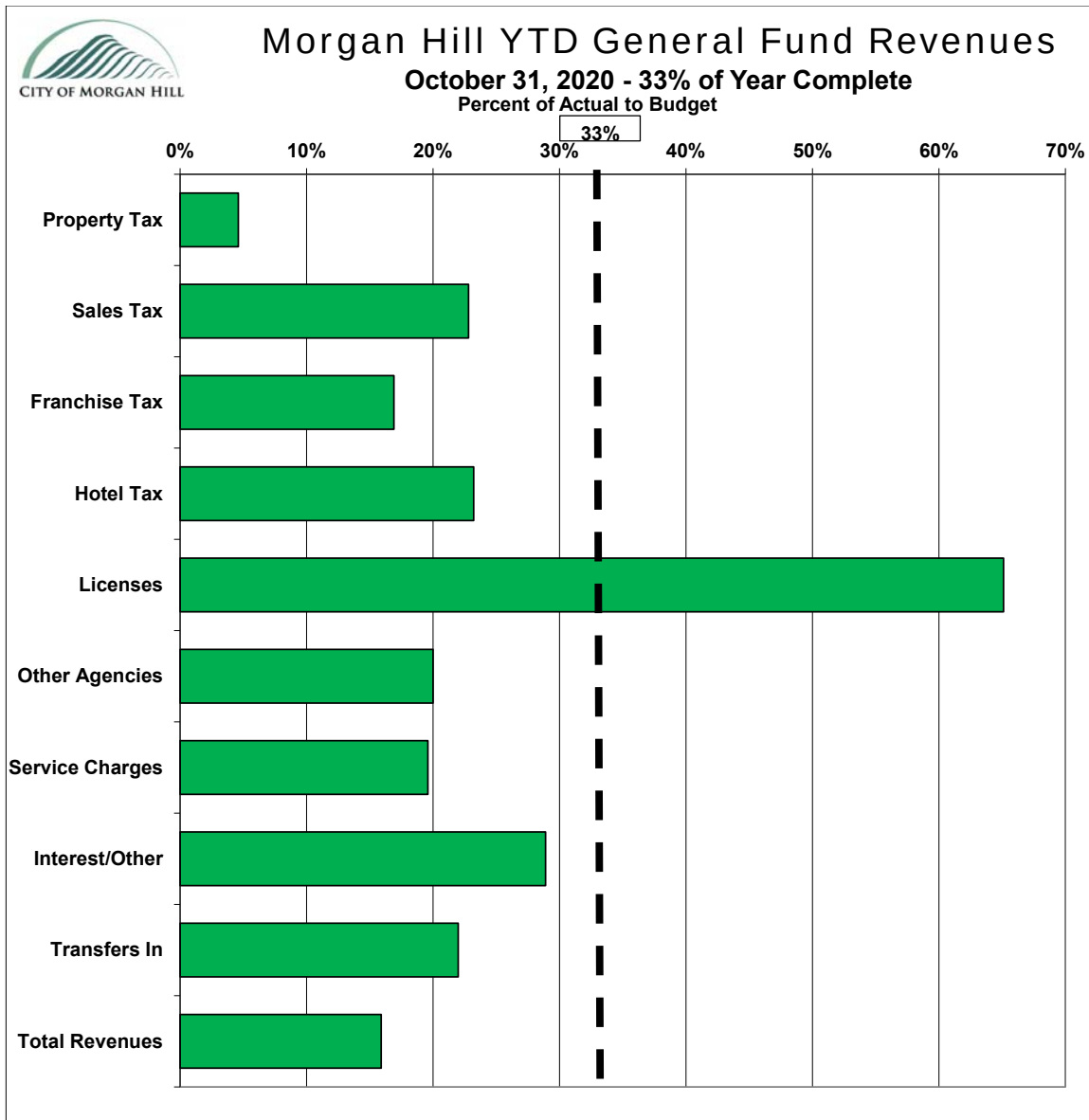
CITY OF MORGAN HILL

Prepared by:
FINANCE DIVISION

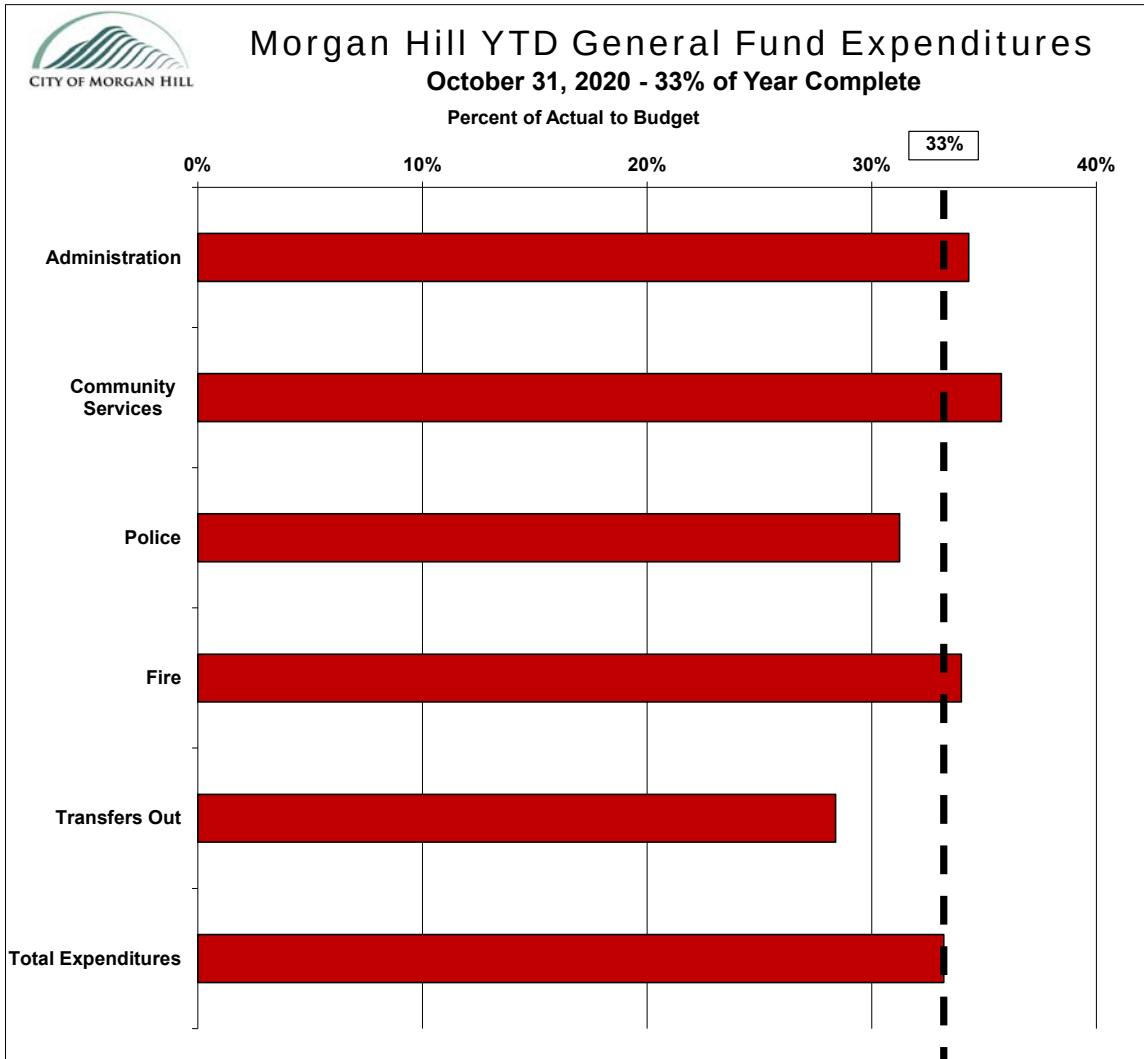


FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 6,295,481	16%	\$ 14,620,324	33%
Community Development	1,946,420	41%	1,960,100	40%
RDA Successor Agency	2,175	0%	4,161,700	60%
Housing Successor Agency	195,568	92%	706,113	71%
Sewer Operations	3,340,576	25%	4,304,419	32%
Sewer Other	3,324,037	30%	5,234,185	20%
Water Operations	5,043,107	32%	6,015,441	39%
Water Other	2,295,312	34%	572,651	12%
Other Special Revenues *	1,047,005	28%	472,848	10%
Capital Projects & Streets	4,542,631	15%	14,738,190	22%
Debt Service	231,473	33%	532,020	76%
Internal Service	3,255,654	28%	5,215,951	41%
TOTAL FOR ALL FUNDS	\$ 31,519,438	22%	\$ 58,533,941	29%

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



REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$ 13,640,000	\$ 630,547	5%	\$ 603,337	5%
Sales Tax	8,370,868	1,908,048	23%	2,405,367	-21%
Franchise Tax	2,351,000	398,094	17%	400,776	-1%
Hotel Tax	1,819,000	422,384	23%	773,111	-45%
Licenses	185,444	120,661	65%	124,715	-3%
Other Agencies	529,943	106,020	20%	77,011	38%
Service Charges	8,632,432	1,694,783	20%	3,646,475	-54%
Interest/Other	1,619,336	468,660	29%	444,638	5%
Transfers In	2,483,580	546,284	22%	584,305	-7%
TOTAL REVENUES	\$ 39,631,603	\$ 6,295,481	16%	\$ 9,059,737	-31%



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 4,526,087	\$ 1,553,053	34%	\$ 1,571,440	-1%
Community Services	12,794,868	4,576,711	36%	5,241,843	-13%
Police	17,717,266	5,534,648	31%	5,555,030	0%
Fire	7,162,540	2,435,084	34%	2,495,000	-2%
Transfers Out	1,834,702	520,828	28%	715,332	-27%
TOTAL EXPENDITURES	\$ 44,035,462	\$ 14,620,324	33%	\$ 15,578,644	-6%

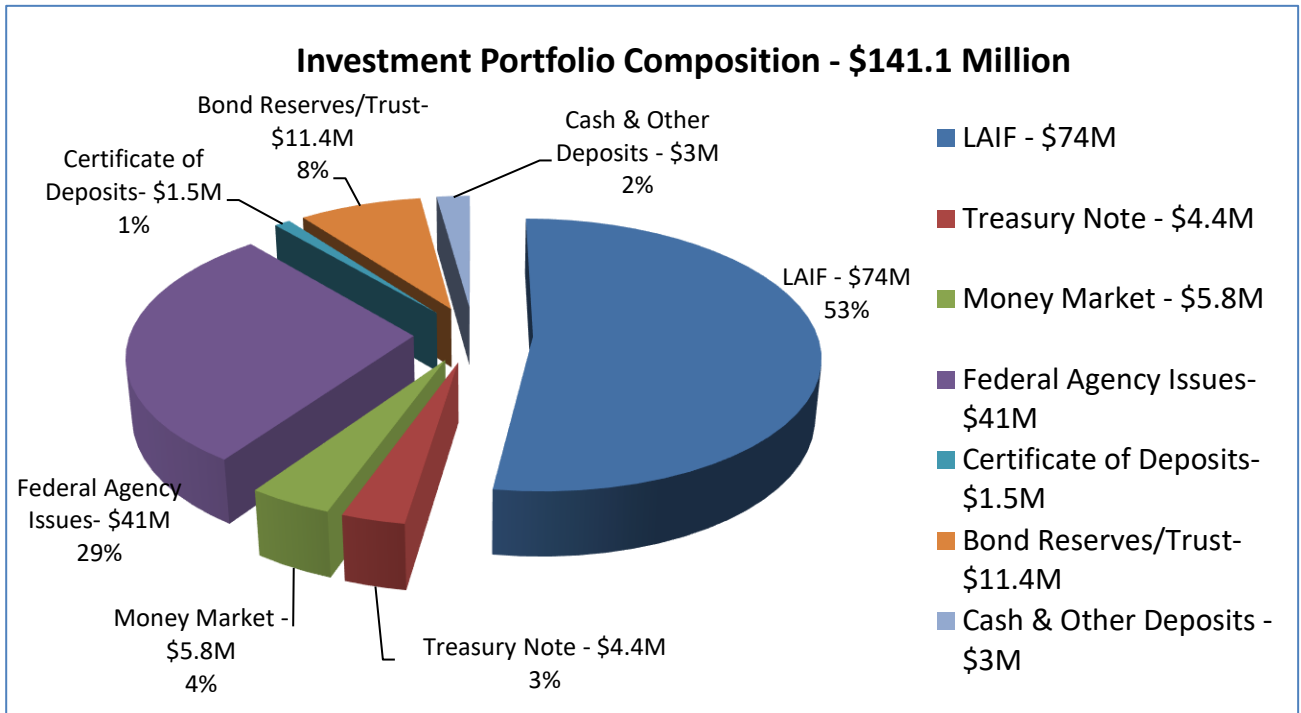


**City of Morgan Hill
Recreation Report - Fiscal Year 2020-21
For the Month and Four Months Ended October 31, 2020
33% of Year Complete**

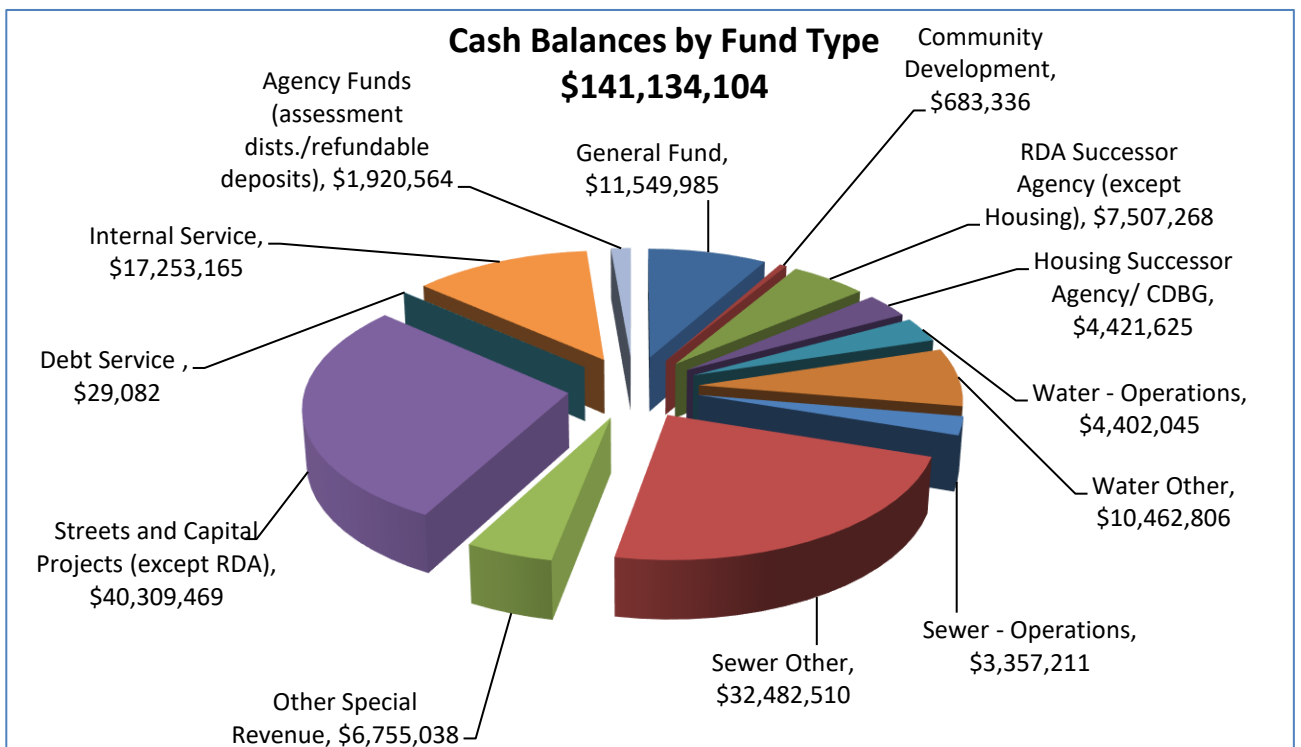
	<u>Budget</u>	<u>October 2020</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 5,068,448	\$ 248,597	\$ 908,571	
Facility Rentals	696,431	2,339	78,039	
Community Services	104,460	7,218	4,082	
Transfers in	75,000	6,250	25,000	
Total Revenues	<u>\$ 5,944,339</u>	<u>\$ 264,404</u>	<u>\$ 1,015,692</u>	17%
Less: Expenditures				
Membership & Program Services	\$ 5,675,307	\$ 293,164	\$ 1,454,469	
Facility Rentals	1,236,339	78,756	317,488	
Community Services	609,834	32,264	131,320	
Total Expenditures	<u>\$ 7,521,481</u>	<u>\$ 404,182</u>	<u>\$ 1,903,276</u>	25%
Net Impact without encumbrances	<u>\$ (1,577,142)</u>	<u>\$ (139,779)</u>	<u>\$ (887,584)</u>	
Encumbrances	-	-	1,050,125	
Net Impact with encumbrances	<u>\$ (1,577,142)</u>	<u>\$ (139,779)</u>	<u>\$ (1,937,709)</u>	

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

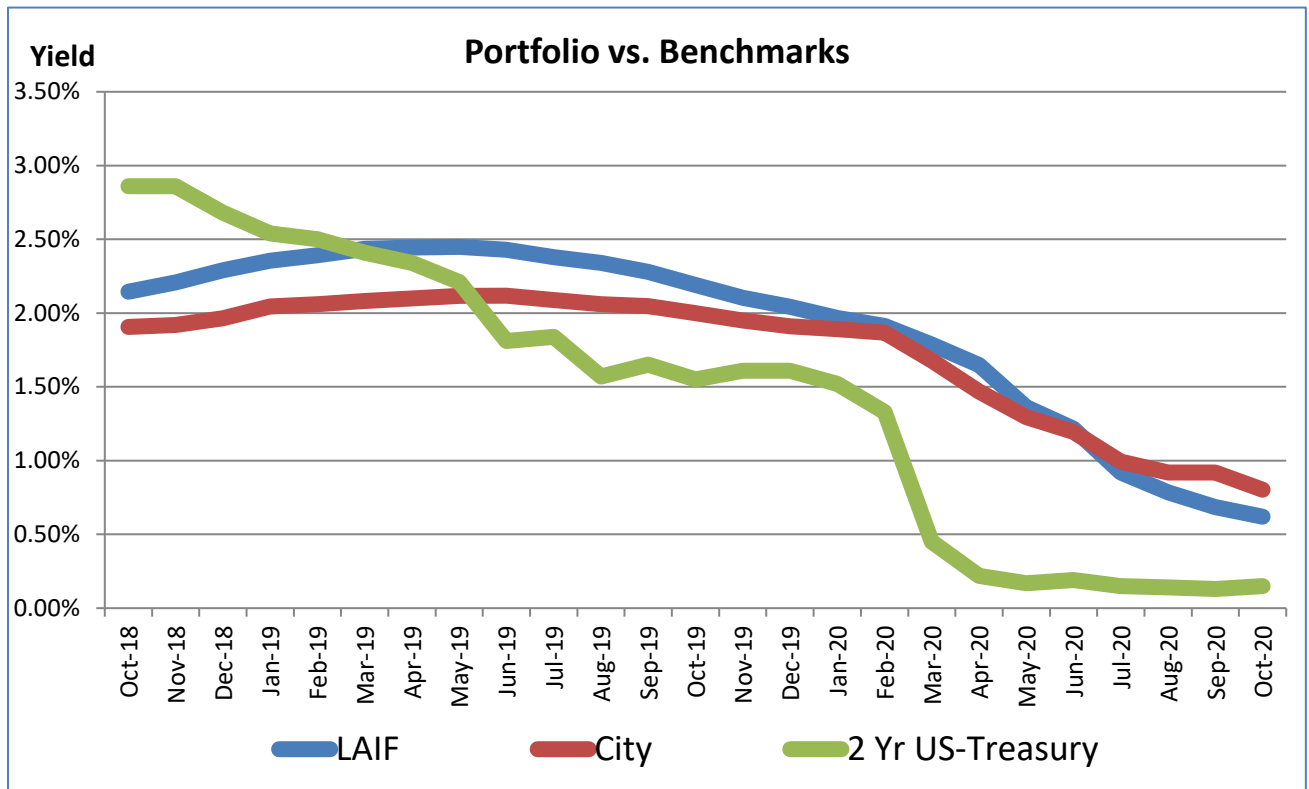
The following are the snapshots of City's investment portfolio as of October 31, 2020. The first chart shows the portfolio composition by investment type:



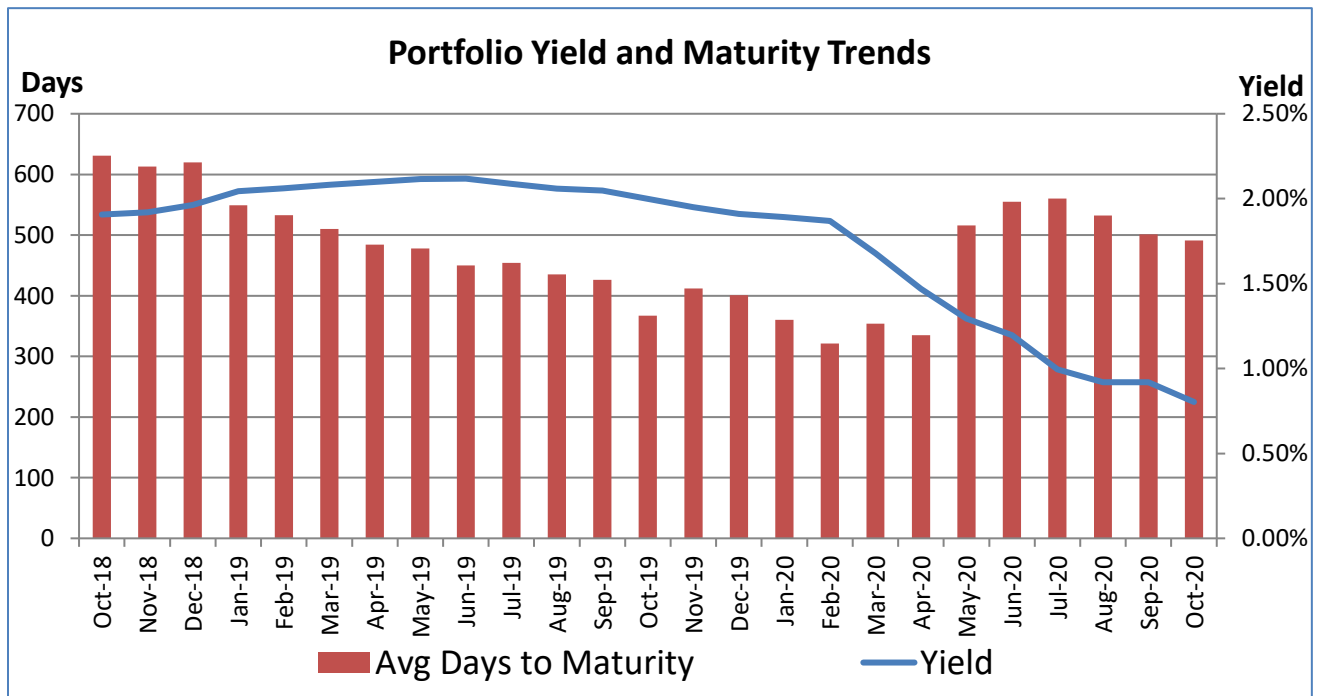
The chart below shows cash balances by fund type reconciled to City's financial system:



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



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





City of Morgan Hill
Investment Portfolio Detail
As of October 31, 2020

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 73,970,226	52.41%	\$ 74,274,579	0.62%		
City Managed							
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	2.83%	4,040,880	1.40%	2/25/2021	8/25/2021
Treasury Note	4/30/2018	4,375,693	3.28%	4,643,775	2.73%	3/31/2023	3/31/2023
Fed Farm Credit BKS	11/5/2019	3,000,000	2.13%	3,000,480	2.00%	11/5/2020	11/5/2024
Fed Farm Credit BKS	12/13/2019	2,998,767	2.12%	3,003,600	1.90%	12/27/2020	11/27/2024
Fed Farm Credit BKS	3/17/2020	3,000,000	2.13%	3,009,060	1.13%	3/17/2021	3/17/2025
Fed Farm Credit BKS	3/24/2020	2,000,000	1.42%	2,004,640	1.00%	3/24/2021	3/24/2023
Fed Farm Credit BKS	3/25/2020	3,000,000	2.13%	3,006,300	1.20%	3/25/2021	3/25/2025
Fed Farm Credit BKS	4/8/2020	2,000,000	1.42%	2,003,200	0.88%	4/8/2021	4/8/2024
Fed Natn'l Mortgage Assn	5/12/2020	2,000,000	1.42%	2,000,080	0.50%	11/5/2020	5/5/2023
Fed Home Loan Mortgage	5/14/2020	3,000,680	2.13%	3,000,060	0.82%	11/5/2020	5/5/2025
Fed Home Loan Mortgage	5/19/2020	2,000,000	1.42%	2,000,120	0.82%	11/19/2020	5/19/2025
Fed Farm Credit BKS	5/20/2020	3,000,000	2.13%	2,986,620	0.72%	2/20/2021	2/20/2025
Fed Farm Credit BKS	5/27/2020	2,000,000	1.42%	2,003,460	0.73%	11/27/2020	5/27/2025
Fed Home Loan Mortgage	5/28/2020	2,000,000	1.42%	2,000,140	0.80%	11/27/2020	5/27/2025
Fed Home Loan Mortgage	6/3/2020	2,000,000	1.42%	1,997,920	0.60%	12/3/2020	12/3/2024
Fed Home Loan Mortgage	6/11/2020	1,000,000	0.71%	1,000,230	0.80%	12/11/2020	6/11/2025
Fed Home Loan Mortgage	10/20/2020	2,000,000	1.42%	1,996,160	0.60%	4/20/2021	10/20/2025
Fed Home Loan Mortgage	10/27/2020	2,000,000	1.42%	1,990,840	0.63%	4/27/2021	10/27/2025
CD - Goldman Sachs Bank USA	5/13/2020	250,000	0.18%	251,533	0.50%	5/13/2022	5/13/2022
CD - Woori America Bank	5/13/2020	250,000	0.18%	250,323	0.30%	5/13/2021	5/13/2021
CD - Safra Nat'l Bank	5/14/2020	250,000	0.18%	250,390	0.35%	5/13/2021	5/13/2021
CD - State Bank of India	5/14/2020	250,000	0.18%	250,460	0.40%	5/14/2021	5/14/2021
CD - American Nat'l Bank	5/20/2020	250,000	0.18%	251,160	0.40%	5/20/2022	5/20/2022
CD - JP Morgan Chase Bank	5/29/2020	250,000	0.18%	250,193	1.15%	11/29/2020	5/29/2025
Sub Total/Average		\$ 46,875,140	33.39%	\$ 47,191,623	1.18%		
Money Market		\$ 5,801,324	4.11%	\$ 5,801,324	0.02%		
Total City Managed/Average		\$ 126,646,689	89.91%	\$ 127,267,525	0.80%		
Bond Reserve Accounts - Held By Trustees		\$ 8,025,727	5.69%	\$ 8,025,727			
Cash/Deposits		\$ 3,074,283	2.18%	\$ 3,074,283			
PARS Trust		\$ 3,387,404	2.40%	\$ 3,982,778			
GRAND TOTAL/AVERAGE		\$ 141,134,104	100%	\$ 142,350,314			

Attachment: October 2020 Financial and Investment Report [Revision 1] (2928 : Monthly Budget Update and October 2020 Financial and



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF OCTOBER 31, 2020
FOR THE FISCAL YEAR OF 2020-21

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	0.62%	\$ 73,970,226	52.41%	\$ 74,274,579
Federal Issues	All Funds Pooled	1.08%	40,999,447	29.05%	41,043,790
US Treasury Notes	All Funds Pooled	2.73%	4,375,693	3.10%	4,643,775
Certificate of Deposits	All Funds Pooled	0.52%	1,500,000	1.06%	1,504,058
Dreyfus Treas Cash Management Acct	All Funds Pooled	0.02%	5,801,324	4.11%	5,801,324
	SUBTOTAL		\$ 126,646,689	89.74%	\$ 127,267,525
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility	Debt Service	0.05%	0	0.00%	0
Blackrock Liq Fund	Debt Service	0.05%	0	0.00%	0
Zions Bank - MH Police Facility Lease Revenue Bonds	Debt Service	0.05%	0	0.00%	0
Blackrock Liq Fund	Debt Service	0.05%	0	0.00%	0
BNY - RDA Bonds	Successor Fund	0.01%	7,508,066	5.32%	7,508,066
Dreyfus Cash Mgmt 521	Successor Fund	0.01%	7,508,066	5.32%	7,508,066
Zions Bank - MH Ranch 2015	Agency Fund	0.05%	255,194	0.18%	255,194
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	0.05%	255,194	0.18%	255,194
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015	Agency Fund	0.05%	262,467	0.19%	262,467
Blackrock Liquidity Temp Fund-2015	Agency Fund	0.05%	262,467	0.19%	262,467
	SUBTOTAL		8,025,727	5.69%	8,025,727
Other Cash/Deposits					
General Checking	All Funds		3,037,171	2.15%	3,037,171
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		7,112	0.01%	7,112
PARS - OPEB Trust	General Fund		2,187,404	1.55%	2,585,243
PARS - PENSION Trust	General Fund		1,200,000	0.85%	1,397,535
	SUBTOTAL		6,461,687	4.58%	7,057,061
Total Cash and Investments			\$ 141,134,104	100.00%	\$ 142,350,314

CASH ACTIVITY SUMMARY
FY 2020-21

Fund Type	Unaudited 07/1/20 Balance	Change in Cash Balance	10/31/2020 Balance
General Fund	\$ 16,809,776	\$ (5,259,791)	\$ 11,549,985
Community Development	1,019,761	(336,426)	683,336
RDA Successor Agency (except Housing)	11,874,571	(4,367,303)	7,507,268
Housing Successor Agency/ CDBG	3,781,789	639,836	4,421,625
Water - Operations	3,811,893	590,152	4,402,045
Water Other	8,571,690	1,891,116	10,462,806
Sewer - Operations	2,704,048	653,164	3,357,211
Sewer Other	32,517,838	(35,328)	32,482,510
Other Special Revenue	6,195,467	559,571	6,755,038
Streets and Capital Projects (except RDA)	41,850,266	(1,540,797)	40,309,469
Debt Service	228,203	(199,120)	29,082
Internal Service	17,734,147	(480,982)	17,253,165
Agency Funds (assessment dists./refundable deposits)	2,599,108	(678,544)	1,920,564
Total	\$ 149,698,556	\$ (8,564,452)	\$ 141,134,104

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

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

Prepared by:

Gina Nazareno, Senior Accountant

Approved by:

Reviewed by:

Dat Nguyen, Finance Director

David Clink, Treasurer



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2020-21
For The Four Months Ended October 31, 2020
33% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
TAXES							
Property Tax - Secured/Unsecured	\$ 11,354,000	\$ 11,354,000	\$ 572,656	5%	\$ 569,730	\$ 2,926	1%
Property Tax - RPTTF Residual Distribution	2,144,000	2,144,000	-	n/a	-	-	n/a
Property Tax - Supplemental Roll	142,000	142,000	57,892	41%	33,608	24,284	72%
Sales Tax	8,027,793	8,027,793	1,878,680	23%	2,346,820	(468,140)	-20%
Public Safety Sales Tax	343,075	343,075	29,368	9%	58,548	(29,180)	-50%
Transient Occupancy Taxes	1,819,000	1,819,000	422,384	23%	773,111	(350,727)	-45%
Franchise (Refuse, Cable, PG&E)	2,351,000	2,351,000	398,094	17%	400,776	(2,683)	-1%
Property Transfer Tax	436,000	436,000	168,068	39%	143,921	24,147	17%
TOTAL TAXES	26,616,868	26,616,868	3,527,141	13%	4,326,513	(799,372)	-18%
LICENSES/PERMITS							
Business License	154,500	154,500	118,053	76%	119,370	(1,316)	-1%
Other Permits	30,944	30,944	2,608	8%	5,345	(2,737)	-51%
TOTAL LICENSES/PERMITS	185,444	185,444	120,661	65%	124,715	(4,053)	-3%
FINES AND PENALTIES							
Parking Enforcement	8,000	8,000	1,676	21%	1,348	328	24%
Bails & Fines	73,645	73,645	7,035	10%	11,750	(4,715)	-40%
Administrative Citations	10,079	10,079	8,200	81%	13,866	(5,666)	-41%
TOTAL FINES AND PENALTIES	91,724	91,724	16,911	18%	26,964	(10,053)	-37%
OTHER AGENCIES							
Motor Vehicle in-Lieu	25,392	25,392	6,286	25%	-	6,286	n/a
Other Revenue - Other Agencies	529,943	529,943	106,020	20%	77,011	29,008	38%
TOTAL OTHER AGENCIES	555,335	555,335	112,306	20%	77,011	35,294	46%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	30,428	30,428	16,338	54%	3,821	12,517	328%
Business License Application Review	37,080	37,080	14,134	38%	13,354	780	6%
Membership Services & Rec Programs	5,068,448	5,068,448	908,571	18%	2,330,965	(1,422,393)	-61%
Facility Rentals	696,431	696,431	78,039	11%	357,973	(279,934)	-78%
Community Services	104,460	104,460	4,082	4%	16,927	(12,845)	-76%
General Administration Overhead	1,780,917	1,780,917	593,624	33%	597,140	(3,516)	-1%
Other Charges Current Services	914,668	914,668	79,995	9%	326,295	(246,301)	-75%
TOTAL CURRENT SERVICES	8,632,432	8,632,432	1,694,783	20%	3,646,475	(1,951,692)	-54%
OTHER REVENUE							
Use of money/property	816,362	816,362	118,788	15%	181,879	(63,091)	-35%
Other Revenues	249,858	249,858	158,607	63%	91,874	66,733	73%
TOTAL OTHER REVENUE	1,066,220	1,066,220	277,394	26%	273,753	3,642	1%
TRANSFERS IN							
One Time Transfer	225,000	225,000	68,328	30%	59,996	8,332	14%
Public Safety Facilities Fund	25,000	25,000	-	n/a	92,415	(92,415)	-100%
Supplemental Law Enforcement Fund	100,000	100,000	-	n/a	-	-	n/a
Fire Impact	-	-	-	n/a	25,000	(25,000)	-100%
Streets	699,706	699,706	-	n/a	138,995	(138,995)	-100%
Park Maintenance	650,000	650,000	216,668	33%	-	216,668	n/a
Police Impact	-	-	-	0%	8,332	(8,332)	-100%
Sewer Operations	354,437	354,437	118,144	33%	117,284	860	1%
Water Operations	354,437	354,437	118,144	33%	117,284	860	1%
Park Development	75,000	75,000	25,000	33%	25,000	-	n/a
TOTAL TRANSFERS IN	2,483,580	2,483,580	546,284	22%	584,305	(38,021)	-7%
TOTAL GENERAL FUND	39,631,603	39,631,603	6,295,481	16%	9,059,737	(2,764,256)	-31%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	698,292	698,292	189,654	27%	245,971	(56,317)	-23%
Interest / Other Revenue/Other Charges	1,414	1,414	288	20%	782	(494)	-63%
202 STREET MAINTENANCE	699,706	699,706	189,942	27%	246,753	(56,811)	-23%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2020-21
For The Four Months Ended October 31, 2020
33% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
SPECIAL REVENUE FUNDS							
205 SUPPLEMENTAL LAW ENFORCEMENT FUND							
Interest Income	842	842	347	41%	599	(252)	-42%
Police Grant/SLEF/JAG	100,000	100,000	65,060	65%	64,281	779	1%
205 SUPPLEMENTAL LAW ENFORCEMENT FUND	100,842	100,842	65,407	65%	64,880	527	1%
206 DEVELOPMENT SERVICES							
Building Fees	2,162,357	2,162,357	884,863	41%	1,145,286	(260,423)	-23%
Planning Fees	743,344	743,344	496,394	67%	315,509	180,884	57%
Engineering Fees	708,809	708,809	195,995	28%	67,740	128,255	189%
Other Revenue/Current Charges	1,133,225	1,133,225	369,168	33%	14,171	354,997	2505%
206 DEVELOPMENT SERVICES	4,747,735	4,747,735	1,946,420	41%	1,542,706	403,713	26%
207 LONG RANGE PLANNING	677,026	677,026	226,045	33%	247,433	(21,388)	-9%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	3,111	3,111	154	5%	370	(216)	-58%
215 and 216 HCD BLOCK GRANT	3,111	3,111	154	5%	370	(216)	-58%
225 ASSET SEIZURE	1,893	1,893	338	18%	16,603	(16,265)	-98%
229 LIGHTING AND LANDSCAPE	191,075	191,075	358	0%	792	(434)	-55%
230 COMMUNITY FACILITIES DISTRICT	1,216	1,216	143	12%	339	(196)	-58%
232 ENVIRONMENTAL PROGRAMS	446,843	446,843	168,441	38%	150,100	18,340	12%
234 MOBILE HOME PARK RENT STAB.	742	742	3,572	481%	1,350	2,222	165%
235 SENIOR HOUSING	3,793	3,793	553	15%	1,330	(777)	-58%
236 HOUSING MITIGATION	2,248,764	2,248,764	496,037	22%	587,502	(91,465)	-16%
237 BEGIN	-	-	302	n/a	-	302	n/a
238 CAL HOMES	-	-	80,964	n/a	-	80,964	n/a
240 EMPLOYEE ASSISTANCE	29,068	29,068	4,370	15%	6,351	(1,981)	-31%
247 ENVIRONMENT REMEDIATION	2,400	2,400	322	13%	780	(457)	-59%
250 COMH-SUCCESSOR AGENCY-MHRDA	7,112,060	7,112,060	2,175	0%	4,307,811	(4,305,636)	-100%
255 HOUSING SUCCESSOR AGENCY	213,057	213,057	195,568	92%	159,574	35,995	23%
TOTAL SPECIAL REVENUE FUNDS	16,479,332	16,479,332	3,381,111	21%	7,334,675	(3,953,565)	-54%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	2,384,665	2,384,665	1,027,145	43%	441,313	585,833	133%
302 PARK MAINTENANCE	359,071	359,071	47,534	13%	139,819	(92,285)	-66%
303 LOCAL DRAINAGE	1,693,351	1,693,351	500,051	30%	63,807	436,243	684%
304 LOCAL DRAINAGE/NON AB1600	80,333	80,333	3,423	4%	9,084	(5,661)	-62%
306 AGRICULTURE & OPEN SPACE PRESERVATION	178,958	178,958	69,409	39%	544,809	(475,400)	-87%
308 STREET CIP	2,571,010	2,571,010	339,517	13%	641,549	(302,031)	-47%
309 TRAFFIC IMPACT	16,415,755	16,415,755	530,719	3%	665,446	(134,727)	-20%
311 POLICE IMPACT	-	-	142,708	n/a	80,393	62,315	78%
313 FIRE IMPACT	-	61,598	24,253	39%	55,485	(31,232)	-56%
315 PUBLIC SAFETY FACILITIES IMPACT	984,769	923,171	5,634	1%	-	5,634	n/a
346 PUBLIC FACILITIES NON-AB1600	611,297	611,297	416,896	68%	-	416,896	n/a
347 PUBLIC FACILITIES IMPACT	336,106	336,106	74,726	22%	96,124	(21,398)	-22%
348 LIBRARY	946,889	946,889	362,201	38%	137,283	224,918	164%
350 UNDERGROUNDING	12,817	12,817	2,295	18%	5,014	(2,719)	-54%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	591,721	591,721	232,550	39%	14,924	217,626	1458%
360 COMMUNITY/REC IMPACT FUND	1,498,683	1,498,683	573,627	38%	235,206	338,421	144%
375 QUIMBY FEE	1,072,238	1,072,238	-	n/a	-	-	n/a
TOTAL CAPITAL PROJECTS FUNDS	29,737,663	29,737,663	4,352,689	15%	3,130,257	1,222,432	39%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	312,272	312,272	103,731	33%	100,669	3,062	3%
441 POLICE FACILITY BOND	384,252	384,252	127,742	33%	190,279	(62,538)	-33%
TOTAL DEBT SERVICE FUNDS	696,524	696,524	231,473	33%	290,948	(59,476)	-20%

Attachment: October 2020 Financial and Investment Report [Revision 1] (2928 : Monthly Budget Update and October 2020 Financial and



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2020-21
For The Four Months Ended October 31, 2020
33% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 SEWER OPERATION							
Sewer Service Fees	12,972,441	12,972,441	3,266,762	25%	2,802,724	464,039	17%
Interest Income/Transfers	36,691	36,691	9,965	27%	27,870	(17,905)	-64%
Other Revenue/Current Charges	267,694	267,694	63,848	24%	78,648	(14,800)	-19%
640 SEWER OPERATION	13,276,826	13,276,826	3,340,576	25%	2,909,242	431,333	15%
641 SEWER EXPANSION							
Interest Income	215,876	215,876	52,975	25%	113,572	(60,597)	-53%
Development Impact Fee	6,225,545	6,225,545	1,785,341	29%	2,145,838	(360,497)	-17%
641 SEWER EXPANSION	6,441,421	6,441,421	1,838,316	29%	2,259,410	(421,094)	-19%
642 SEWER RATE STABILIZATION	44,423	44,423	6,354	14%	15,275	(8,921)	-58%
643 SEWER-CAPITAL PROJECT	4,455,944	4,455,944	1,479,367	33%	987,768	491,599	50%
TOTAL SEWER FUNDS	24,218,614	24,218,614	6,664,613	28%	6,171,696	492,917	8%
650 WATER OPERATION							
Water Sales	14,525,500	14,525,500	4,556,852	31%	4,045,060	511,792	13%
Meter Install & Service	24,600	24,600	48,700	198%	6,050	42,650	705%
Transfers-In / Interest Income	521,171	521,171	165,904	32%	166,508	(605)	0%
Other Revenue/Current Charges	572,081	572,081	271,651	47%	326,061	(54,411)	-17%
650 WATER OPERATION	15,643,352	15,643,352	5,043,107	32%	4,543,680	499,427	11%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	62,748	62,748	7,449	12%	15,126	(7,677)	-51%
Development Impact Fee	1,689,416	1,689,416	640,952	38%	385,469	255,483	66%
651 WATER EXPANSION	1,752,164	1,752,164	648,401	37%	400,596	247,805	62%
652 Water Rate Stabilization	65,904	65,904	20,947	32%	10,253	10,694	104%
653 Water Capital Project	4,863,152	4,863,152	1,625,964	33%	1,272,566	353,398	28%
TOTAL WATER FUNDS	22,324,572	22,324,572	7,338,418	33%	6,227,094	1,111,324	18%
TOTAL ENTERPRISE FUNDS	46,543,186	46,543,186	14,003,031	30%	12,398,790	1,604,241	13%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,850,422	1,850,422	628,918	34%	604,586	24,332	4%
740 BUILDING MAINTENANCE	3,486,066	3,486,066	1,142,467	33%	1,072,622	69,845	7%
741 BUILDING REPLACEMENT	726,251	726,251	226,885	31%	267,036	(40,151)	-15%
745 CIP ADMINISTRATION	1,721,606	1,721,606	161,263	9%	474,343	(313,080)	-66%
760 UNEMPLOYMENT INSURANCE	102,463	102,463	33,521	33%	820	32,701	3986%
770 WORKERS COMPENSATION	876,368	876,368	224,824	26%	280,932	(56,109)	-20%
790 EQUIPMENT REPLACEMENT	1,084,748	1,084,748	350,382	32%	420,495	(70,112)	-17%
791 EMPLOYEE BENEFITS	1,031,234	1,031,234	199,583	19%	263,645	(64,062)	-24%
795 GENERAL LIABILITY INSURANCE	877,248	877,248	287,811	33%	357,235	(69,424)	-19%
TOTAL INTERNAL SERVICE FUNDS	11,756,406	11,756,406	3,255,654	28%	3,741,715	(486,061)	-13%
TOTAL FOR ALL FUNDS	\$ 144,844,714	\$ 144,844,714	\$ 31,519,438	22%	\$ 35,956,122	\$ (4,436,684)	-12%



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2020-21
For the Month and Four Months Ended October 31, 2020
33% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRICE YTD
010 GENERAL FUND								
I. ADMINISTRATION								
	CITY COUNCIL	\$ 7,188	\$ 240,845	\$ 108,326	\$ -	\$ 108,326	45%	\$ 1,4
	CITY ATTORNEY	53,272	717,004	208,762	93,746	302,508	42%	21
	CITY MANAGER	41,473	504,773	155,874	-	155,874	31%	1,4
	HUMAN RESOURCES	48,638	674,377	206,644	-	206,644	31%	21
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	41,781	616,687	164,787	55,200	219,987	36%	11
	Elections	93,539	186,470	94,448	-	94,448	51%	-
	COUNCIL SVCS & RECORDS MGMT	135,320	803,157	259,235	55,200	314,435	39%	11
	FINANCE	102,386	1,585,931	437,414	27,852	465,266	29%	5
	TOTAL ADMINISTRATION	388,277	4,526,087	1,376,255	176,798	1,553,053	34%	1,4
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	293,164	5,675,307	1,454,469	966,186	2,420,654	43%	1,9
	Recreation Facility Rentals	78,756	1,236,339	317,488	-	317,488	26%	4
	Community Services	32,264	609,834	131,320	83,939	215,259	35%	11
	Park Maintenance	78,049	1,103,136	295,539	57,090	352,629	0%	-
	Environmental Services	15,558	314,680	59,320	-	59,320	19%	1
	Street Maintenance	184,216	2,411,237	586,223	45,358	631,581	26%	5
	Downtown Maintenance	13,551	271,270	56,425	61,132	117,557	43%	1
	Cable Television	1,724	23,156	6,788	-	6,788	29%	-
	COMMUNITY SERVICES	697,281	11,644,959	2,907,571	1,213,704	4,121,276	35%	3,3
	CODE COMPLIANCE	12,547	160,479	48,485	-	48,485	30%	4
	INFRASTRUCTURE PLANNING & CONGESTION MGMT	24,011	335,902	93,132	-	93,132	28%	1
	ECONOMIC DEVELOPMENT PROGRAMS	59,708	653,527	244,864	68,955	313,819	48%	21
	TOTAL COMMUNITY SERVICES	793,546	12,794,868	3,294,052	1,282,659	4,576,711	36%	3,6
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	107,918	1,373,018	475,068	56,310	531,379	39%	31
	Field Operations	686,818	8,536,170	2,541,194	209,127	2,750,321	32%	2,7
	Support Services	185,407	2,370,491	701,101	14,000	715,101	30%	7
	Emergency Services/Haz Mat	13,894	194,391	54,401	-	54,401	28%	1
	Special Operations	174,061	3,452,365	939,078	49,902	988,980	29%	7
	Dispatch Services	156,234	1,790,831	494,468	-	494,468	28%	5
	POLICE	1,324,333	17,717,266	5,205,309	329,339	5,534,648	31%	5,3
	FIRE	519,125	7,162,540	2,423,319	11,764	2,435,084	34%	2,4
	TOTAL PUBLIC SAFETY	1,843,458	24,879,806	7,628,628	341,103	7,969,732	32%	7,7
IV. TRANSFERS								
	Other	130,207	1,834,702	520,828	-	520,828	28%	7
	TOTAL TRANSFERS	130,207	1,834,702	520,828	-	520,828	28%	7
	TOTAL GENERAL FUND	3,155,488	44,035,462	12,819,763	1,800,560	14,620,324	33%	13,5

Attachment: October 2020 Financial and Investment Report [Revision 1] (2928 : Monthly Budget Update and October 2020 Financial and



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2020-21
 For the Month and Four Months Ended October 31, 2020
 33% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRICED YTD
SPECIAL REVENUE FUNDS								
202	STREET MAINTENANCE	352	703,934	1,408	-	1,408	0%	1,408
205	PUBLIC SAFETY/SUPP.LAW	589	107,069	2,356	-	2,356	2%	2,356
206	DEVELOPMENT SERVICES FUND							
	Planning	135,801	1,590,704	480,855	49,653	530,508	33%	61,111
	Building	175,159	2,114,110	627,051	18,031	645,083	31%	64,508
	Engineering	89,833	1,161,439	332,862	451,648	784,510	68%	41,111
206	DEVELOPMENT SERVICES FUND	400,792	4,866,253	1,440,768	519,332	1,960,100	40%	1,711,111
207	LONG RANGE PLANNING	85,362	1,523,735	302,556	313,138	615,694	40%	1,111,111
215/216	CDBG	447	5,365	1,788	-	1,788	33%	1,788
225	ASSET SEIZURE	-	-	-	-	-	n/a	-
229	LIGHTING AND LANDSCAPE	10,417	168,662	36,928	21,429	58,357	35%	10,417
230	COMMUNITY FACILITIES DISTRICT	1,286	36,418	8,063	-	8,063	22%	1,286
232	ENVIRONMENT PROGRAMS	26,791	420,519	112,748	27,269	140,016	33%	112,748
234	MOBILE HOME PARK	37	438	148	-	148	34%	148
236	HOUSING MITIGATION	63,676	2,494,568	(516,338)	157,424	(358,913)	-14%	1,011,111
237	BEGIN	-	-	-	-	-	n/a	-
240	EMPLOYEE ASSISTANCE	84	28,506	3,880	-	3,880	14%	3,880
247	ENVIRONMENTAL REMEDIATION	613	-	1,459	-	1,459	n/a	1,459
250	COMH-SUCCESSOR AGENCY-MHRDA	4	6,936,625	4,161,700	-	4,161,700	60%	4,161,700
255	HOUSING SUCCESSOR AGENCY	79,857	994,782	360,280	345,833	706,113	71%	345,833
TOTAL SPECIAL REVENUE FUNDS		670,307	18,286,873	5,917,743	1,384,426	7,302,169	40%	7,911,111
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	1,468,246	10,856,318	2,032,649	4,460,319	6,492,968	60%	2,032,649
302	PARK MAINTENANCE	58,643	748,230	221,144	25,014	246,158	33%	33,333
303	LOCAL DRAINAGE	111,429	7,233,369	151,152	65,487	216,639	3%	151,152
304	LOCAL DRAIN. NON-AB1600	29,912	810,915	33,205	128,404	161,608	20%	33,205
306	AGRICULTURE & OPEN SPACE PRESERVATION	2,228	132,691	8,912	35,956	44,868	34%	8,912
308	STREET CIP	174,733	6,132,529	180,449	3,318,636	3,499,085	57%	3,499,085
309	TRAFFIC IMPACT	115,911	32,689,024	618,664	28,231	646,895	2%	318,664
311	POLICE IMPACT	-	-	-	-	-	n/a	-
313	FIRE IMPACT	-	113,293	-	-	-	n/a	-
315	PUBLIC SAFETY FACILITIES IMPACT	19,525	231,008	78,100	-	78,100	34%	78,100
346	PUBLIC FAC.NON AB1600	14,494	330,590	141,596	42,975	184,571	56%	141,596
347	PUBLIC FACILITIES IMPACT	19,258	38,692	26,077	-	26,077	67%	26,077
348	LIBRARY IMPACT	257,817	1,732,111	455,913	190,066	645,978	37%	190,066
350	UNDERGROUNDING	92	1,107	368	-	368	33%	368
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	150,784	1,995,044	204,141	392,735	596,875	30%	192,735
360	COMM/REC CENTER IMPACT	464,994	1,954,607	1,100,529	796,062	1,896,590	97%	1,100,529
375	QUIMBY FEE	-	100,000	-	-	-	n/a	-
TOTAL CAPITAL PROJECTS FUNDS		2,888,067	65,099,526	5,252,898	9,483,884	14,736,782	23%	5,111,111
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	226,209	307,813	228,804	-	228,804	74%	228,804
441	POLICE FACILITY BOND DEBT	302,229	388,040	303,216	-	303,216	78%	303,216
TOTAL DEBT SERVICE FUNDS		528,438	695,853	532,020	-	532,020	76%	532,020

Attachment: October 2020 Financial and Investment Report [Revision 1] (2928 : Monthly Budget Update and October 2020 Financial and



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2020-21
 For the Month and Four Months Ended October 31, 2020
 33% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRICE YTD
ENTERPRISE FUNDS								
SEWER								
640	SEWER OPERATIONS	1,025,726	13,319,581	4,017,188	287,232	4,304,419	32%	3,3
641	SEWER CAPITAL EXPANSION	60,884	7,487,155	162,400	765,442	927,841	12%	2
642	SEWER RATE STABILIZATION	93	1,111	372	-	372	33%	
643	SEWER-CAPITAL PROJECTS	57,081	18,341,671	1,882,302	2,423,670	4,305,972	23%	1,8
TOTAL SEWER FUND(S)		1,143,784	39,149,519	6,062,261	3,476,343	9,538,605	24%	5,4
WATER								
	Water Operations	2,177,520	14,583,410	4,571,060	1,079,581	5,650,641	39%	4,0
	Utility Billing	62,086	863,064	257,874	37,744	295,619	34%	2
	Water Conservation	4,900	153,047	22,073	47,107	69,180	45%	
650	WATER OPERATIONS	2,244,506	15,599,521	4,851,008	1,164,432	6,015,441	39%	4,3
651	WATER CAPITAL EXPANSION	45,988	1,027,523	186,974	182,609	369,583	36%	4
652	WATER RATE STABILIZATION	30	362	120	-	120	33%	
653	WATER-CAPITAL PROJECTS	108,272	3,865,574	117,701	85,246	202,947	5%	
TOTAL WATER FUND(S)		2,398,796	20,492,981	5,155,804	1,432,288	6,588,091	32%	4,8
TOTAL ENTERPRISE FUNDS		3,542,580	59,642,500	11,218,065	4,908,631	16,126,696	27%	10,3
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	266,706	2,240,628	645,436	257,091	902,526	40%	5
740	BUILDING MAINTENANCE	179,436	3,450,173	740,951	240,004	980,955	28%	9
741	BUILDING REPLACEMENT	-	457,000	9,288	15,462	24,750	5%	1
745	CIP ADMINISTRATION	127,189	1,655,366	494,167	7,951	502,118	30%	5
760	UNEMPLOYMENT	(67,702)	75,000	(68,281)	-	(68,281)	-91%	
770	WORKERS COMPENSATION	10,849	860,729	455,069	-	455,069	53%	6
790	EQUIPMENT REPLACEMENT	106,581	1,863,653	271,550	1,016,617	1,288,167	69%	
791	EMPLOYEE BENEFITS FUND	33,906	625,000	67,589	-	67,589	11%	1
795	GEN. LIABILITY INSURANCE	15,230	1,457,651	1,063,058	-	1,063,058	73%	8
TOTAL INTERNAL SERVICE FUNDS		672,194	12,685,200	3,678,826	1,537,125	5,215,951	41%	3,8
REPORT TOTAL		\$ 11,457,073	\$ 200,445,415	\$ 39,419,315	\$ 19,114,626	\$ 58,533,941	29%	\$ 41,3

Attachment: October 2020 Financial and Investment Report [Revision 1] (2928 : Monthly Budget Update and October 2020 Financial and

		 City of Morgan Hill Fund Activity Summary - Fiscal Year 2020-21 For The Four Months Ended October 31, 2020 33% of Year Complete							
Fund No.	Fund	Un-audited Fund Balance 06-30-20	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved
010	GENERAL FUND	\$ 19,175,235	\$ 6,295,481	16%	\$ 12,819,763	29%	\$ (6,524,283)	\$ 1,800,560	\$ 10,850,392
TOTAL GENERAL FUND		\$ 19,175,235	\$ 6,295,481	16%	\$ 12,819,763	29%	\$ (6,524,283)	\$ 1,800,560	\$ 10,850,392
202	STREET MAINTENANCE	34,027	\$ 189,942	27%	\$ 1,408	30%	\$ 188,534	\$ -	\$ 222,561
205	PUBLIC SAFETY/SUPPL. LAW	144,643	65,407	65%	2,356	29%	63,051	-	207,694
206	DEVELOPMENT SERVICES	(24,043)	1,946,420	41%	1,440,768	30%	505,652	519,332	(37,723)
207	LONG RANGE PLANNING	1,250,193	226,045	33%	302,556	20%	(76,510)	313,138	860,545
215 / 216	CDBG	52,922	154	5%	1,788	33%	(1,634)	-	51,288
225	ASSET SEIZURE	142,239	338	18%	-	n/a	338	-	142,577
229	LIGHTING AND LANDSCAPE	163,636	358	0%	36,928	22%	(36,570)	21,429	105,637
230	COMMUNITY FACILITIES DISTRICT	126,360	143	12%	8,063	22%	(7,920)	-	118,440
232	ENVIRONMENTAL PROGRAMS	162,637	168,441	38%	112,748	27%	55,693	27,269	191,061
234	MOBILE HOME PK RENT STAB.	58,766	3,572	481%	148	34%	3,424	-	62,190
235	SENIOR HOUSING	232,360	553	15%	-	n/a	553	-	232,913
236	HOUSING MITIGATION	3,702,291	496,037	22%	(516,338)	-21%	1,012,375	157,424	4,557,241
237	BEGIN	-	302	n/a	-	n/a	302	-	302
240	EMPLOYEE ASSISTANCE	63,113	4,370	15%	3,880	14%	490	-	63,603
247	ENVIRONMENT REMEDIATION	136,785	322	13%	1,459	n/a	(1,137)	-	135,648
250	COMH-SUCCESSOR AGENCY-MHRDA	3,808,617	2,175	0%	4,161,700	60%	(4,159,525)	-	(350,908)
255	HOUSING SUCCESSOR AGENCY	4,538,622	195,568	92%	360,280	36%	(164,712)	345,833	4,028,077
260	PUBLIC ART	185	-	n/a	-	-	-	-	185
TOTAL SPECIAL REVENUE FUNDS		\$ 14,593,353	\$ 3,300,147	21%	\$ 5,917,743	32%	\$ (2,617,596)	\$ 1,384,426	\$ 10,591,331
301	PARK DEV. IMPACT FUND	\$ 3,569,152	\$ 1,027,145	43%	\$ 2,032,649	19%	\$ (1,005,504)	\$ 4,460,319	\$ (1,896,671)
302	PARK MAINTENANCE	3,411,843	47,534	13%	221,144	30%	(173,610)	25,014	3,213,219
303	LOCAL DRAINAGE	12,765,782	500,051	30%	151,152	2%	348,899	65,487	13,049,194
304	LOCAL DRAINAGE/NON-AB1600	1,445,963	3,423	4%	33,205	4%	(29,782)	128,404	1,287,778
306	AGRICULTURE AND OPEN SPACE PRESERV	6,620,492	69,409	39%	8,912	7%	60,497	35,956	6,645,032
308	STREET CIP	3,866,352	339,517	13%	180,449	3%	159,068	3,318,636	706,784
309	TRAFFIC IMPACT FUND	(430,089)	530,719	3%	618,664	2%	(87,944)	28,231	(546,265)
315	PUBLIC SAFETY FACILITIES IMPACT	3,452,398	5,634	1%	78,100	34%	(72,466)	-	3,379,932
346	PUBLIC FACILITIES NON-AB1600	392,026	416,896	68%	141,596	43%	275,300	42,975	624,351
347	PUBLIC FACILITIES IMPACT FUND	839,822	74,726	22%	26,077	67%	48,649	-	888,471
348	LIBRARY IMPACT FUND	1,680,413	362,201	38%	455,913	26%	(93,712)	190,066	1,396,636
350	UNDERGROUNDING	966,109	2,295	18%	368	33%	1,927	-	968,036
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	1,076,228	232,550	39%	204,141	10%	28,410	392,735	711,903
360	COMM/REC CTR IMPACT FUND	2,050,691	573,627	38%	1,100,529	56%	(526,902)	796,062	727,728
TOTAL CAPITAL PROJECT FUNDS		\$ 41,707,182	\$ 4,352,689	15%	\$ 5,252,898	8%	\$ (900,209)	\$ 9,483,884	\$ 31,323,088
420	CIVIC CENTER DEBT	\$ 154,609	\$ 103,731	33%	\$ 228,804	74%	\$ (125,073)	\$ -	\$ 29,536
441	POLICE FACILITY BOND DEBT	74,409	127,742	33%	303,216	78%	(175,474)	0	(101,065)
TOTAL DEBT SERVICE FUNDS		\$ 229,018	\$ 231,473	33%	\$ 532,020	76%	\$ (300,547)	\$ (0)	\$ (71,529)

City of Morgan Hill
Fund Activity Summary - Fiscal Year 2020-21
For The Four Months Ended October 31, 2020
33% of Year Complete

Fund No.	Fund	Un-audited Fund Balance 06-30-20	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved
640	SEWER OPERATIONS	\$ 3,165,292	\$ 3,340,576	25%	\$ 4,017,188	30%	\$ (676,612)	287,232	2,201,448
641	SEWER IMPACT FUND*	21,717,172	1,838,316	29%	162,400	2%	1,675,916	765,442	22,627,646
642	SEWER RATE STABILIZATION	2,667,854	6,354	14%	372	33%	5,982	-	2,673,836
643	SEWER-CAPITAL PROJECTS	9,246,526	1,479,367	33%	1,882,302	10%	(402,935)	2,423,670	6,419,921
650	WATER OPERATIONS	3,878,448	5,043,107	32%	4,851,008	31%	192,098	1,164,432	2,906,114
651	WATER IMPACT FUND*	2,780,694	648,401	37%	186,974	18%	461,427	182,609	3,059,511
652	WATER RATE STABILIZATION	2,790,499	20,947	32%	120	33%	20,827	-	2,811,326
653	WATER -CAPITAL PROJECT	4,226,388	1,625,964	33%	117,701	3%	1,508,263	85,246	5,649,405
TOTAL ENTERPRISE FUNDS		\$ 50,472,873	\$ 14,003,031	30%	\$ 11,218,065	19%	\$ 2,784,966	\$ 4,908,631	\$ 48,349,208
730	INFORMATION SERVICES	\$ 686,637	\$ 628,918	34%	\$ 645,436	29%	\$ (16,518)	\$ 257,091	\$ 413,029
740	BUILDING MAINTENANCE	415,856	1,142,467	33%	740,951	21%	401,516	240,004	577,368
741	BUILDING REPLACEMENT	3,042,909	226,885	31%	9,288	2%	217,598	15,462	3,245,045
745	CIP ENGINEERING	(108,085)	161,263	9%	494,167	30%	(332,904)	7,951	(448,940)
760	UNEMPLOYMENT	131,342	33,521	33%	(68,281)	-91%	101,802	-	233,144
770	WORKERS COMPENSATION	2,026,064	224,824	26%	455,069	53%	(230,246)	-	1,795,818
790	EQUIPMENT REPLACEMENT	5,816,846	350,382	32%	271,550	15%	78,832	1,046,617	4,849,061
791	EMPLOYEE BENEFITS FUNDS	6,548	199,583	19%	67,589	11%	131,994	-	138,542
795	GEN. LIABILITY INSURANCE	1,463,809	287,811	33%	1,063,058	73%	(775,247)	-	688,562
TOTAL INTERNAL SERVICE FUNDS		\$ 13,481,926	\$ 3,255,654	28%	\$ 3,678,826	29%	\$ (423,172)	\$ 1,567,125	\$ 11,491,629
SUMMARY BY FUND TYPE									
GENERAL FUND GROUP		\$ 19,175,235	\$ 6,295,481	16%	\$ 12,819,763	29%	\$ (6,524,283)	\$ 1,800,560	\$ 10,850,392
SPECIAL REVENUE GROUP		14,593,353	3,300,147	21%	5,917,743	32%	(2,617,596)	1,384,426	10,591,331
DEBT SERVICE GROUP		229,018	231,473	33%	532,020	76%	(300,547)	(0)	(71,529)
CAPITAL PROJECTS GROUP		41,707,182	4,352,689	15%	5,252,898	8%	(900,209)	9,483,884	31,323,088
ENTERPRISE GROUP		50,472,873	14,003,031	30%	11,218,065	19%	2,784,966	4,908,631	48,349,208
INTERNAL SERVICE GROUP		13,481,926	3,255,654	28%	3,678,826	29%	(423,172)	1,567,125	11,491,629
TOTAL ALL GROUPS		\$ 139,659,587	\$ 31,438,474	22%	\$ 39,419,315	20%	\$ (7,980,841)	\$ 19,144,626	\$ 112,534,120

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

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

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

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



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

PREPARED BY: Inga Alonzo, Management Analyst

APPROVED BY: City Manager

REJECT PROPOSALS FOR WATER WELL AND PUMP STATION REPAIRS, MAINTENANCE, AND REHABILITATION SERVICES AND REBID THE PROJECT

RECOMMENDATION(S)

1. Reject proposals for Water Well and Pump Station Repairs, Maintenance, and Rehabilitation Services per Municipal Code Section 3.04.170; and
2. Approve and authorize the City Manager to execute an amendment for the current service agreement with Salinas Pump for these services to extend the term to June 30, 2021 and increase the amount by \$240,000, to a new not-to-exceed amount of \$898,967.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Maintaining Infrastructure

GUIDING DOCUMENTS

Water System Master Plan

REPORT NARRATIVE:

The City of Morgan Hill operates 17 water wells and 10 booster stations to provide the City's municipal water needs. The City's wells are equipped with a combination of submersible and vertical turbine pumps, ranging in size from 40 to 150 horsepower. Pump depth ranges from 220 feet to 290 feet and pump columns range in size from 6 inches to 10 inches in diameter. The maintenance of these well pumps includes the removal and replacement of pumps, well casing removal, repairs and installations, water well video inspections, electric motor repairs, and a variety of replacement parts.

The booster stations contain 32 pumps ranging in size from 3 hp to 150 hp. Maintenance of this equipment includes repair and/or replacement of pumps and motors, valves, meters, and miscellaneous mechanical and electrical parts, and testing and calibration of the pump systems.

Proposals were solicited in October 2020 by the City and the project was advertised in both the Morgan Hill Times and the Mercury News. The Request for Proposals (RFP) was posted on Public Purchase and the City of Morgan Hill website. Staff is recommending the City Council reject all proposals received in response to the Water

Well and Pump Station Repairs, Maintenance, and Rehabilitation Services RFP and allow staff to rebid the project. The City of Morgan Hill Municipal Code Section 3.04.170 allows for the rejection of bids when doing so is deemed to be in the best interests of the City.

Three proposals were received. In reviewing the proposals, two of the three were deemed non-responsive. In one proposal much of the pricing section was not filled out and in another the pricing section was filled out incorrectly and the prevailing wage pricing was below Santa Clara County rates. The third proposal from Maggoria Brothers was reviewed by an evaluation panel and was given a mediocre weighted score of 73.5. Staff believes that in the best interest of the City and Utility System, the recommended course of action is to improve the RFP document and solicit competitive proposals from multiple vendors, before committing to a long-term agreement.

Given the staff recommendation to reject these proposals and re-bid the services, staff also recommends that the current agreement with Salinas Pump be extended from December 31, 2020 to June 30, 2021 with an increase of \$240,000 to cover rehabilitation work that is needed on two wells that were budgeted for fiscal year 2020-2021, Diana Well #4 and Main Well #1, and any other unforeseen repairs to other wells or pump stations. Salinas Pump has provided quality service to the City for several years. This work can only be done through the winter and early spring months when the water system is at the lowest level of use by the public. Should the City wait to award this work until the RFP is reissued and awarded then the rehabilitation work on the two wells would need to wait until next winter. This wait is not recommended as the rehabilitation work is needed at this time. This amendment will provide staff with the ability to get the needed well work for FY 2020-2021 done in a timely manner and afford staff the time to rebid these services for a three year contract starting July 1, 2021.

COMMUNITY ENGAGEMENT:

Since repair, maintenance, and rehab of wells and pump stations is a regular function of the City, no efforts were made to inform the community about this proposed project, other than advertising the RFP.

ALTERNATIVE ACTIONS:

City Council could decide to accept the proposal and contract with Maggoria Brothers.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On November 15, 2017, Council approved an agreement for \$275,000 with Salinas Pump for Water Well and Pump Services. A first amendment was approved for an increase of \$268,467 on November 7, 2018 after two wells needed emergency repairs and a second amendment was approved on September 16, 2020 for an increase of \$115,500 as the estimation to complete the agreement based on the previous three year agreement fell short of the actual cost of needed maintenance, repairs, and rehab for the current term of the agreement.

FISCAL AND RESOURCE IMPACT:

Sufficient funds are budgeted in the current biennial budget within Water System Replacement Fund (653), project 608020, for these services. No additional appropriations are required at this time.

CEQA (California Environmental Quality Act) Categorical Exemption.

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

LINKS/ATTACHMENTS:

1. Salinas Pump Co 3rd Amend

THIRD AMENDMENT TO AGREEMENT SALINAS PUMP COMPANY, INC.

This THIRD AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and SALINAS PUMP COMPANY, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of November 27, 2017, for services for a maximum compensation of Two Hundred Seventy-Five Thousand dollars (\$275,000.00) ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of November 20, 2018, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to Five Hundred Forty-Three Thousand Four Hundred Sixty-Seven and no/100 dollars (\$543,467.00).
4. The CITY and SERVICE PROVIDER entered into a "Second Amendment to Agreement" made as of September 28, 2020 under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to Six Hundred Fifty-Eight Thousand Nine Hundred Sixty-Seven and no/100 dollars (\$658,967.00). The MAINTENANCE SERVICE AGREEMENT, and the First, and Second amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from November 27, 2017, until June 30, 2021."

B. Paragraph 3 shall be amended and replaced in its entirety by the following:

"**Scope of Service.** The services to be performed by SERVICE PROVIDER shall be on-call water well and pump station repairs, maintenance and rehabilitation as further described in **Exhibit A** dated November 19, 2020."

///

///

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

"4.1. Amount. Compensation under this Agreement shall not exceed EIGHT HUNDRED NINETY-EIGHT THOUSAND NINE HUNDRED SIXTY-SEVEN AND NO/100 DOLLARS (\$898, 967.00) and shall be billed based on the rate and basis set forth in **Exhibit B**."

D. Paragraph 5.1 shall be added as follows:

"5.1 Non-appropriations. Notwithstanding anything contained in this Agreement to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for CITY for any reason whatsoever in any fiscal year, for payments due under this Agreement, CITY will immediately notify SERVICE PROVIDER of such occurrence, and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for CITY or are otherwise available for payments."

E. Paragraph 6. Shall be amended and replaced in its entirety by the following:

"6. Performance of Work.

"Performance of Work. SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the SERVICE PROVIDER's profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. SERVICE PROVIDER shall perform all work and services under this Agreement in conformance with the time schedule set forth on revised **Exhibit C** dated November 19, 2020, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. If SERVICE PROVIDER desires to leave or store any of SERVICE PROVIDER'S equipment at a CITY site while SERVICE PROVIDER is performing work or service pursuant to this Agreement, SERVICE PROVIDER will first obtain the consent of CITY's City Manager, or his/her delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at SERVICE PROVIDER's sole risk."

///

///

///

///

///

(Signatures on Next Page)

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, Deputy City Clerk

Date: _____

Christina J. Turner, City Manager

Date: _____

APPROVED AS TO FORM:

SALINAS PUMP COMPANY, INC.

Donald A. Larkin, City Attorney

Date: _____

By: Avron Thornton

Title: V.P.

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 11-24-2020

By: Kristi Thornton

Title: CFO, Secretary

Print Name and Title of Signer.

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

Date: 11-24-2020

EXHIBIT 1

SECOND AMENDMENT TO AGREEMENT
SALINAS PUMP COMPANY, INC.

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on 9/28/2020 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and SALINAS PUMP COMPANY, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This SECOND Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on September 16, 2020.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of November 27, 2017, for services for a maximum compensation of Two Hundred Seventy-Five Thousand and no/100 dollars (\$275,000.00) ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of November 20, 2018, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to Five Hundred Forty-Three Thousand, Four Hundred Sixty Seven and no/100 dollars (\$543,467.00). The MAINTENANCE SERVICE AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed SIX HUNDRED FIFTY-EIGHT THOUSAND, NINE HUNDRED SIXTY-SEVEN AND NO/100 DOLLARS (\$658,967.00) and shall be billed based on the rate and basis set forth in **Exhibit B.**"

B. Paragraph 8.2.2. shall be amended and replaced in its entirety by the following:

"8.2.2. **Workers Compensation.**

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

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

"10. **Compliance with Law.**

10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

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

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

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

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

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

COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

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

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

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

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

///

///

///

///

///

///

///

///

(Signatures on Next Page)

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

DocuSigned by:

Michelle Bigelow
 Michelle Bigelow, Deputy City Clerk
 Date: 9/29/2020

APPROVED AS TO FORM:

DocuSigned by:

Donald A. Larkin
 Donald A. Larkin, City Attorney
 Date: 9/22/2020

CITY OF MORGAN HILL

DocuSigned by:

Christina Turner
 Christina Turner, City Manager
 Date: 9/28/2020

SALINAS PUMP COMPANY, INC.

By: Aaron Thornton
 Title: VP
 Print Name and Title of Signer.
 If Corporate: Chairman, President or Vice President

Date: 8-19-2020
Kristi Thornton
 By: CFO
 Title: Kristi Thornton

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

Date: 8/19/2020

EXHIBIT 1

128-04-17-049

**FIRST AMENDMENT TO AGREEMENT
SALINAS PUMP COMPANY, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 11/20/18 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, SALINAS PUMP COMPANY, a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon approval of the City of Morgan Hill City Council on November 7, 2018.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of November 27, 2017, for services for a maximum compensation of TWO HUNDRED SEVENTY-FIVE THOUSAND DOLLARS AND NO/100 DOLLARS (\$275,000.00) ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached hereto as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

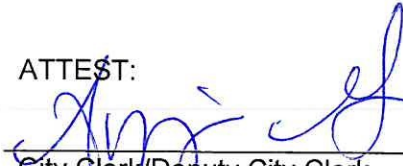
"4.1 **Amount.** Total compensation under this Agreement shall not exceed FIVE HUNDRED FORTY-THREE THOUSAND, FOUR HUNDRED SIXTY-SEVEN DOLLARS AND NO/100 DOLLARS (\$543,467.00) and shall be billed based on the rate and basis set forth in Exhibit "B" Schedule of Compensation Rates attached to the Maintenance Service Agreement made as of November 27, 2017.

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

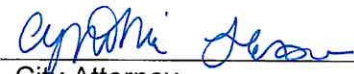
ATTEST:


 City Clerk/Deputy City Clerk

for Michelle Wilson
 Print Name

Date: 11/20/18

APPROVED AS TO FORM:


 City Attorney

for Donald A. Larkin
 Print Name

Date: 11-20-18

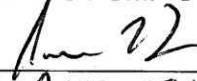
CITY OF MORGAN HILL


 City Manager

Christina J. Turner
 Print Name

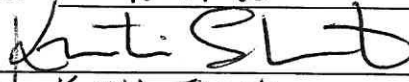
Date: 11/20/18

SALINAS PUMP COMPANY


 By: Aaron Thornton

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

Date: 10-17-18


 By: Kristi Thornton

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

Date: 10-17-18

12804-17-049

EXHIBIT 1

**MAINTENANCE SERVICE AGREEMENT
SALINAS PUMP COMPANY**

THIS AGREEMENT is entered into and becomes effective on 11/27/17 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Salinas Pump Company a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on November 15, 2017.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2020 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be On-Call Water Well and Pump Station Repairs, Maintenance and Rehabilitation as further described in Exhibit A.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$275,000.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Two-Hundred Seventy-Five Thousand dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to SERVICE PROVIDER during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product

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

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

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

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

8.1. **Insurance Types and Amounts.**

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

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

automobiles, then SERVICE PROVIDER shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

8.1.5. Professional Liability.

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

8.1.5.2. If the performance of SERVICE PROVIDER's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers, hardware engineers, or other systems consultants), SERVICE PROVIDER shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data

Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

8.2.1. **General Liability.**

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

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

8.2.1.3. insurance shall be primary non-contributing.

8.2.2. **Workers Compensation.**

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

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

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

Certificate Holder address:

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue

Morgan Hill, CA 95037

9. **Non-Liability of Officials and Employees of CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.
10. **Compliance with Law.**
- 10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- 10.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
11. **Independent Contractor.** SERVICE PROVIDER is an independent contractor and not an agent or employee of CITY.
12. **Confidentiality.** All data, documents, or other information received by SERVICE PROVIDER from CITY or prepared in connection with SERVICE PROVIDER'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by SERVICE PROVIDER without prior written consent by CITY.
13. **Conflict of Interest and Reporting.** SERVICE PROVIDER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
14. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of SERVICE PROVIDER is as follows:

Salinas Pump Company
21935 Rosehart Way

5
Updated: October 2016

Salinas, CA 93908

Address of CITY is as follows:

Engineering & Utilities Director	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

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

16. **Maintenance of Records.**

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

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

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

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

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

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

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

21. **Defense and Indemnification.**

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

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

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

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

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

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

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

24. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to,

California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

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

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

//

//

//

//

//

//

//

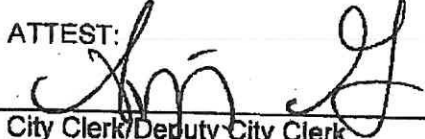
27. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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

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

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

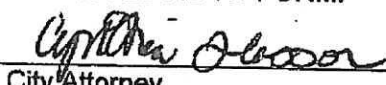
ATTEST:


City Clerk/Deputy City Clerk

 Michelle Wilson
Print Name

Date: 12/4/17

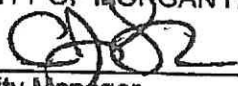
APPROVED AS TO FORM:


City Attorney

 Donald A. Larkin
Print Name

Date: 11-20-17

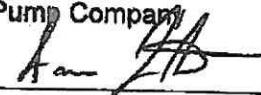
CITY OF MORGAN HILL


City Manager

Christina J. Turner
Print Name

Date: 11-27-17

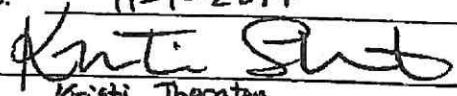
Salinas Pump Company


By: Aaron Thornton

Title: SVP

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

Date: 11-1-2017


By: Kristi Thornton

Title: Secretary

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

Date: 11-1-17

515945

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

Expiration Date(s)

Seal:

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

9
Updated: October 2016

EXHIBIT A SCOPE OF SERVICES

Task 1 Well Services

The City of Morgan Hill has 17 wells. The well equipment includes a combination of submersible and vertical turbine pumps; ranging in size from 40 to 150 horsepower. Pump depth range from 220 feet to 290 feet and pump columns range in size from 6 inches to 10 inches in diameter. The work includes well pump pulling and installations, water well rehabilitations, well casing removal, repairs and installations, water well video inspections, electric motor repairs, and repair services on various types of pumps and motors at various locations throughout the City. The Contractor shall provide all necessary heavy duty equipment, such as, but not limited to, drilling rig, pump rig, flatbed truck, boom truck, tractor trailer to complete the as requested including transportation to and from Contractor's facility to each City worksite.

Pump Removal/Installation and Servicing

The Contractor shall be qualified to perform water well pumps removal and installation. At the initial setup for pulling a well pump, the Contractor shall perform lockout/tagout of the electrical and hydraulic systems.

Well Video Survey Service

The Contractor shall perform water well video inspections using color video equipment with side scan and down-hole survey views. Videos shall be produced in electronic MP4 format in standard definition with a pixel resolution of 640 x 480 pixels or at higher resolutions. Ability to perform these surveys at higher resolutions will be given higher consideration.

The video survey unit shall simultaneously transpose the City's name, well name, footage and the date of inspection on the monitor screen and the video record. A footage counter/recorder shall read in feet and be accurate within 2 percent of the actual footage.

The video survey camera shall be capable of right angle or normal downhole viewing with a change in camera lens or mechanical movement of the camera. At the direction of the City, the Contractor must be able to provide right angle viewing to view any casing section in a direct elevation view.

Well Rehabilitation and Treatment Services

The Contractor shall be qualified to provide well rehabilitation and treatment services. Furnish all portable engine-driven pumps, necessary to perform well redevelopment and rehabilitation. Costs for temporary piping, sound proofing, and related equipment require approval by the Project Manager.

To perform these tasks, the Contractor shall have the capability to perform mineral analysis, chemical treatment, water quality testing, zone testing, well casing patches and similar casing repairs/improvements, and mechanical treatment on well casings. All chemicals used in treating wells shall be State approved for the purpose intended, must be National Sanitation Foundation (NSF) approved.

The Contractor's estimates shall include the typical type and concentration of chemicals (acids, inhibitors, polymers, neutralizers, etc.) to be used; the appropriate contact time for the chemicals; and the typical procedure for introducing, mixing, and neutralizing chemicals in the well. In addition, the name(s) and phone numbers of any company(ies) that will supply the treatment chemicals shall

10

Updated: October 2016

Attachment: Salinas Pump Co 3rd Amend (2930 : Reject Proposals for Water Well and Pump Station Repairs Maintenance, and Rehabilitation

be provided. Completed Material Safety Data Sheets (MSDS) for all chemicals used shall include the methods of mechanical treatment (dual swab, wire/nylon brush, sonar jetting, etc.).

Over the duration of this contract the City has scheduled to following well work items:

- FYE 18 – Dunne #2 and Main #2 Wells
- FYE 19 – Diana #3 and Nordstrom Wells
- FYE 20 – Diana #2 and Diana #4 Wells

Task 2 Pump Station Services

The City of Morgan Hill has 10 pump stations with approximately 32 pumps within the City limits maintained by City staff. There is a combination of pumps ranging in size from 3 hp to 150 hp. The pump stations are a combination of split case, close coupled and can turbine pumps. The City also utilizes Variable Frequency Drive motor systems at several of the stations. The City expects the following types of work will be performed under this task:

1. Repair and/or replacement of pumps and motor
2. Replacement of existing above ground and buried yard valves with new
3. manual and/or electric operated valves including all related piping and parts.
4. Repair/replacement of flow meters including all related piping and parts.
5. Replacement of pump and station control valves including all related piping
6. and parts.
7. Repair or replacement of auxiliary mechanical or electrical equipment. The City reserves the right to furnish replacement well or booster pump motors.
8. Electrical disconnect and hookup of repaired or replacement equipment.
9. Repairs or modifications of well heads as required.
10. Testing of parts, equipment, or material.
11. Measure, set, and recheck field pump impeller lateral settings and field
12. verification of pump and equipment operation.
13. Demolition or removal of existing structures

Over the duration of this contract the City has scheduled to following pump work items:

- FYE 18 – Replace 1 vertical turbine pump and 1 horizontal pump (based on annual condition assessment)
- FYE 19 – Replace 1 vertical turbine pump and 1 horizontal pump (based on annual condition assessment)
- FYE 20 – Replace 1 vertical turbine pump and 1 horizontal pump (based on annual condition assessment)

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

This is a time and materials agreement. See Attached Fee Schedules.

12
Updated: October 2016

EXHIBIT B **SCHEDULE OF COMPENSATION RATES**

FEE SCHEDULES

General Labor and Equipment Rates

Labor Fees

Classification	Prevailing Wage (PW) Hourly Rate	PW- Overtime Rate (OT)	PW Double Time (DT) Rate	Contractor Mark-Up In Percentage	Fully Burdened Rate	Fully Burdened OT Rate	Fully Burdened DT Rate
Laborers-On site							
General Foreman	12.70	19.05	25.40	246	88.00	132.00	176.00
Foreman	12.70	19.05	25.40	246	88.00	132.00	176.00
Crew Leader	12.70	19.05	25.40	246	88.00	132.00	176.00
Crew Member	10.50	15.75	21.00	319	88.00	132.00	176.00
Welder	23.19	34.78	46.38	89.7	88.00	132.00	176.00
Equipment Operator	12.70	19.05	25.40	246	88.00	132.00	176.00
Laborers-In Your Shop							
General Foreman							
Foreman	SAME AS ABOVE						
Crew Leader							
Crew Member							
Welder							

Equipment Fees

DESCRIPTION	MAKE/MODEL /YEAR	HOURLY RATE	OVERTIME RATE	LOCATION AFTER HOURS
Pump or Well Rig	FORD/F650/2004	50.00	75.00	Salinas
Crane (15-20 Ton Size)	Various	350.00	525.00	
Back Hoe	JCB	195.00	292.50	
Dump Truck (12 Yard Minimum)	FORD/F750/2015	175.00	262.50	
Pick-up Truck	FORD/F350/2016	30.00	45.00	

Parts Mark-up Fee

Percentage mark-up to supply parts as needed	% <u>38</u>
--	-------------

Billing Rates for Various Tasks (prevailing wages apply)**General Pump Pulling and Installation**

Mobilization & Demobilization

\$2500 LS

Two (2) men, rig, and service truck

\$256 /hr

Each additional employee

\$ 88 /hr**Well Rehabilitation**

Mobilization & Demobilization

\$2850 LS

Aqua Clear PFD Method (Estimated Hours:)

Two (2) men comb. Rig service truck/Chemical trailer

\$299 /hrBore Blast Method (Estimated Hours: Varies)Two (2) men comb. Rig service truck/Bore blast trailer/Nitrogen gas \$400 /hr**Well Repair**

Well Tear Down & Inspection

Two (2) men comb. Rig service truck

\$ 291 /hrRebuild Bowl (Estimated Hours: 36)\$ 88 /hr**Well Cleanout Work**

Cable tool method (wire brush)

Two (2) men comb. Rig service truck

\$ 291 /hr**Airlift Method**

Two (2) men, rig and service truck

\$ 291 /hr

Air compressor charge

\$ 185 /hr

Large Crane: 40-ton with two (2) men

\$ 450 /hr

Smaller Cranes

One (1) man and hydraulic crane - 5-ton \$266 /hr
 One (1) man and hydraulic crane - 8-ton \$266 /hr
 One (1) man and rotary crane - 10-ton \$266 /hr

Field Service

One (1) man and delivery truck \$118 /hr
 One (1) man and service truck \$118 /hr
 Two (2) men and service truck \$206 /hr
 Two (2) men and welding truck \$206 /hr
 Electrician \$98 /hr

Shop Labor

General shop labor \$85 /hr
 Premium shop labor \$88 /hr
 Machine shop labor \$88 /hr
 Metal spray labor \$88 /hr
 Welding shop labor \$88 /hr

Closed Circuit Well Television with electronic MP4 copies \$1450 LS

Wire brush, Bail Well, or Swab rental \$291 /hr

NPDES Compliance

(Baker Tanks, Neutralizing Equip. Lab Fees, fabrication) \$9030 LS

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

All regular work is to be completed yearly on an on-call as needed basis.

24 hour Emergency service will be on an on-call basis.

Over the duration of this contract the City has scheduled to following well work items:

- **FYE 18 – Dunne #2 and Main #2 Wells**
- **FYE 19 – Diana #3 and Nordstrom Wells**
- **FYE 20 – Diana #2 and Diana #4 Wells**

Over the duration of this contract the City has scheduled to following pump work items:

- **FYE 18 – Replace 1 vertical turbine pump and 1 horizontal pump (based on annual condition assessment)**
- **FYE 19 – Replace 1 vertical turbine pump and 1 horizontal pump (based on annual condition assessment)**
- **FYE 20 – Replace 1 vertical turbine pump and 1 horizontal pump (based on annual condition assessment)**

Certificate Of Completion

Envelope Id: 18EE69D9C24A44D98AF429BF228231FF

Status: Completed

Subject: Please DocuSign: Salinas Pump Company Inc.

Source Envelope:

Document Pages: 22

Signatures: 3

Envelope Originator:

Certificate Pages: 5

Initials: 0

City Clerk's Office

AutoNav: Enabled

cityclerk@morganhill.ca.gov

Envelopeld Stamping: Enabled

IP Address: 97.86.143.219

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Record Tracking

Status: Original

Holder: City Clerk's Office

Location: DocuSign

9/21/2020 2:22:34 PM

cityclerk@morganhill.ca.gov

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: City of Morgan Hill

Location: DocuSign

Signer Events

Donald Larkin

donald.larkin@morganhill.ca.gov

Security Level: Email, Account Authentication
(None)

Signature

DocuSigned by:



45E6F0273EA2464...

Signature Adoption: Pre-selected Style

Using IP Address: 68.186.51.61

Timestamp

Sent: 9/21/2020 2:25:21 PM

Viewed: 9/22/2020 7:57:11 AM

Signed: 9/22/2020 7:57:21 AM

Electronic Record and Signature Disclosure:

Accepted: 9/22/2020 7:57:11 AM

ID: a14ab7ab-0202-45a4-b36d-c8386730ec2d

Christina Turner

christina.turner@morganhill.ca.gov

City Manager

Security Level: Email, Account Authentication
(None)

DocuSigned by:



6D0198AF549944D...

Signature Adoption: Pre-selected Style

Using IP Address: 68.189.101.36

Sent: 9/22/2020 7:57:35 AM

Resent: 9/28/2020 7:06:31 AM

Viewed: 9/28/2020 8:09:31 PM

Signed: 9/28/2020 8:13:28 PM

Electronic Record and Signature Disclosure:

Accepted: 9/28/2020 8:09:31 PM

ID: fd9b9603-37fc-42c9-922e-8c7bb298b789

Michelle Bigelow

michelle.bigelow@morganhill.ca.gov

Council Services & Records Manager

City of Morgan Hill

Security Level: Email, Account Authentication
(None)

DocuSigned by:



C0FCB7EABA7C4C8...

Signature Adoption: Pre-selected Style

Using IP Address: 75.140.153.194

Sent: 9/28/2020 8:13:42 PM

Viewed: 9/29/2020 8:34:44 AM

Signed: 9/29/2020 8:34:44 AM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events	Status	Timestamp
City Clerk's Office cityclerk@morganhill.ca.gov City Clerk City of Morgan Hill Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 9/29/2020 8:34:58 AM Resent: 9/29/2020 8:35:03 AM
Inga Alonzo inga.alonzo@morganhill.ca.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 9/29/2020 8:34:59 AM Viewed: 9/29/2020 8:36:50 AM
Chris Ghione chris.ghione@morganhill.ca.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 9/29/2020 8:35:01 AM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	9/29/2020 8:35:01 AM
Certified Delivered	Security Checked	9/29/2020 8:35:01 AM
Signing Complete	Security Checked	9/29/2020 8:35:01 AM
Completed	Security Checked	9/29/2020 8:35:01 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Morgan Hill (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Morgan Hill:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: michelle.bigelow@morganhill.ca.gov

To advise City of Morgan Hill of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at michelle.bigelow@morganhill.ca.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from City of Morgan Hill

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Morgan Hill

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify City of Morgan Hill as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Morgan Hill during the course of your relationship with City of Morgan Hill.

REVISED EXHIBIT A**DATED NOVEMBER 19, 2020****SCOPE OF SERVICES****Task 1 Well Services**

The City of Morgan Hill has 17 wells. The well equipment includes a combination of submersible and vertical turbine pumps; ranging in size from 40 to 150 horsepower. Pump depth range from 220 feet to 290 feet and pump columns range in size from 6 inches to 10 inches in diameter. The work includes well pump pulling and installations, water well rehabilitations, well casing removal, repairs and installations, water well video inspections, electric motor repairs, and repair services on various types of pumps and motors at various locations throughout the City. The Contractor shall provide all necessary heavy duty equipment, such as, but not limited to, drilling rig, pump rig, flatbed truck, boom truck, tractor trailer to complete the as requested including transportation to and from Contractor's facility to each City worksite.

Pump Removal/Installation and Servicing

The Contractor shall be qualified to perform water well pumps removal and installation. At the initial setup for pulling a well pump, the Contractor shall perform lockout/tagout of the electrical and hydraulic systems.

Well Video Survey Service

The Contractor shall perform water well video inspections using color video equipment with side scan and down-hole survey views. Videos shall be produced in electronic MP4 format in standard definition with a pixel resolution of 640 x 480 pixels or at higher resolutions. Ability to perform these surveys at higher resolutions will be given higher consideration.

The video survey unit shall simultaneously transpose the City's name, well name, footage and the date of inspection on the monitor screen and the video record. A footage counter/recorder shall read in feet and be accurate within 2 percent of the actual footage.

The video survey camera shall be capable of right angle or normal downhole viewing with a change in camera lens or mechanical movement of the camera. At the direction of the City, the Contractor must be able to provide right angle viewing to view any casing section in a direct elevation view.

Well Rehabilitation and Treatment Services

The Contractor shall be qualified to provide well rehabilitation and treatment services. Furnish all portable engine-driven pumps, necessary to perform well redevelopment and rehabilitation. Costs for temporary piping, sound proofing, and related equipment require approval by the Project Manager.

To perform these tasks, the Contractor shall have the capability to perform mineral analysis, chemical treatment, water quality testing, zone testing, well casing patches and similar casing repairs/improvements, and mechanical treatment on well casings. All chemicals used in treating wells shall be State approved for the purpose intended, must be National Sanitation Foundation (NSF) approved.

The Contractor's estimates shall include the typical type and concentration of chemicals (acids, inhibitors, polymers, neutralizers, etc.) to be/used; the appropriate contact time for the chemicals; and the typical procedure for introducing, mixing, and neutralizing chemicals in the well. In addition, the name(s) and phone numbers of any company(ies) that will supply the treatment chemicals shall

10
Updated: October 2018

be provided. Completed Material Safety Data Sheets (MSDS) for all chemicals used shall include the methods of mechanical treatment (dual swab, wire/nylon brush, sonar jetting, etc.).

Over the duration of this contract the City has scheduled to following well work items:

- FYE 18 – Dunne #2 and Main #2 Wells
- FYE 19 – Diana #3 and Nordstrom Wells
- FYE 20 – Diana #2 and Diana #4 Wells
- FYE 21 – Diana #1 and Main #1 Wells

Task 2 Pump Station Services

The City of Morgan Hill has 10 pump stations with approximately 32 pumps within the City limits maintained by City staff. There is a combination of pumps ranging in size from 3 hp to 150 hp. The pump stations are a combination of split case, close coupled and can turbine pumps. The City also utilizes Variable Frequency Drive motor systems at several of the stations. The City expects the following types of work will be performed under this task:

1. Repair and/or replacement of pumps and motor
2. Replacement of existing above ground and buried yard valves with new
3. manual and/or electric operated valves including all related piping and parts.
4. Repair/replacement of flow meters including all related piping and parts.
5. Replacement of pump and station control valves including all related piping
6. and parts.
7. Repair or replacement of auxiliary mechanical or electrical equipment. The City reserves the right to furnish replacement well or booster pump motors.
8. Electrical disconnect and hookup of repaired or replacement equipment.
9. Repairs or modifications of well heads as required.
10. Testing of parts, equipment, or material.
11. Measure, set, and recheck field pump impeller lateral settings and field
12. verification of pump and equipment operation.
13. Demolition or removal of existing structures

Over the duration of this contract the City has scheduled to following pump work items:

- FYE 18 – Replace 1 vertical turbine pump and 1 horizontal pump (based on annual condition assessment)
- FYE 19 – Replace 1 vertical turbine pump and 1 horizontal pump (based on annual condition assessment)
- FYE 20 – Replace 1 vertical turbine pump and 1 horizontal pump (based on annual condition assessment)

FYE 21 – Replace 1 vertical turbine pump and 1 horizontal pump (based on annual condition assessment)

REVISED
EXHIBIT C Dated November 18, 2020
SCHEDULE OF PERFORMANCE

All regular work is to be completed yearly on an on-call as needed basis.

24 hour Emergency service will be on an on-call basis.

Over the duration of this contract the City has scheduled to following well work items:

- **FYE 18 – Dunne #2 and Main #2 Wells**
- **FYE 19 – Diana #3 and Nordstrom Wells**
- **FYE 20 – Diana #2 and Diana #4 Wells**

FYE 21 - Diana #1 and Main #1 Wells

Over the duration of this contract the City has scheduled to following pump work items:

- **FYE 18 – Replace 1 vertical turbine pump and 1 horizontal pump (based on annual condition assessment)**
- **FYE 19 – Replace 1 vertical turbine pump and 1 horizontal pump (based on annual condition assessment)**
- **FYE 20 – Replace 1 vertical turbine pump and 1 horizontal pump (based on annual condition assessment)**

FYE 21 - Replace 1 vertical turbine pump and 1 horizontal pump (based on annual condition assessment)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

PREPARED BY: Rebecca Garcia, Housing Manager
APPROVED BY: City Manager

APPROVE BEGIN PROGRAM GUIDELINES, AND ADOPT RESOLUTIONS TO JOIN CALIFORNIA COMMUNITY HOUSING AGENCY'S JOINT POWERS AGREEMENT AND ENDORSING THE SANTA CLARA COUNTY'S 2020 COMMUNITY PLAN TO END HOMELESSNESS

RECOMMENDATION(S)

1. Approve the BEGIN downpayment assistance guidelines;
2. Adopt resolution authorizing the City to become a member of the California Community Housing Agency JPA; supporting the California Community Housing Agency's Issuance of Tax-Exempt Bonds for the production, preservation, and protection of Middle-Income Rental Housing; and Authorizing the City Manager or Designee to enter into purchase option agreements with the California Community Housing Agency for middle-income rental housing created within City limits;
3. Adopt resolution endorsing the 2020 Community Plan to End Homelessness; and
4. Direct City Manager to return to City Council with the Morgan Hill Inclusionary Housing Ordinance (IHO) amended to require low, lower moderate- and moderate-income units in all new ownership developments.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

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

2020-2021 Strategic Priorities

Affordable Housing and Homelessness

GUIDING DOCUMENTS

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

Annually, the Housing Team provides an update on the various activities of the City's Affordable Housing Program. The Housing Workshop will provide a forum for that update and an opportunity to discuss policy issues raised by the Planning Commission and City Council over the past year regarding the Community's housing needs and requirements.

The City Council will hold a Housing Workshop prior to the regular City Council meeting

on December 2, 2020, and will receive the annual update from the Housing Team on various updates regarding the City's housing program and initiatives. The purpose of this report is for City Council to act on the recommendations discussed and outlined in the workshop including:

1. Adopting the BEGIN Program Guidelines (Attachment 1);
2. Adopting resolution to join The California Community Housing Agency (CalCHA) (Attachment 2);
3. Adopting resolution endorsing the Santa Clara County's Community Plan (Attachment 3); and
4. Direct City Manager to return to City Council with amendments to the Inclusionary Housing Ordinance to require low-income, lower moderate income as well as moderate income units in all new ownership housing developments.

For detailed in-depth discussion and narrative on action items, please see the separate staff report included for the Housing Workshop item.

COMMUNITY ENGAGEMENT: ENGAGE

The City Council will hold a workshop on Housing prior to taking action.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 17, 2015, the City Council adopted a resolution to support the Community Plan to End Homelessness in Santa Clara County.

On February 3, 2016, the Council adopted a resolution at the request of the County Housing Task Force to further affirm the City of Morgan Hill's commitment to affordable housing.

On April 5, 2017, the Council authorized \$50,000 of the Housing Fund to support two new homeless programs as a partial match to the County's larger Program, a Rapid Rehousing Rental Assistance Program and Homeless Outreach Caseworker program. Shortly after, this same action was further added to at the May 19, 2017 budget workshop where the Council authorized an additional \$25,000. As a result, \$50,000 went towards outreach workers and \$25,000 towards rental assistance.

May 2, 2018, City Council Meeting, discussed the Housing Accountability Act requirements, Morgan Hill's Regional Housing Needs Allocation (RHNA) housing goals. Additionally, the Council received a KMA report, "Strategy for Increasing the Supply of Affordable Housing."

July 18, 2018, City Council Meeting, introduced the Inclusionary Housing Ordinance and provided the Santa Clara County-wide report from the Civil Grand Jury. The Ordinance was subsequently adopted July 25, 2018 and effective August 25, 2018.

September 25, 2018, Planning Commission, presented BMR Development Standards.

September 26, 2018, City Council Meeting, introduced a range of New Housing Fees, BMR Guides, and BMR Development Standards, subsequently approved on October 17, 2018

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact in taking the recommended actions, as they are included in the Division's workplan.

CEQA (California Environmental Quality Act):

Not a Project-This is an informational report. Acceptance of the report will not have an impact on the environment.

LINKS/ATTACHMENTS:

1. Begin Re-Use guidelines MH Final Nov 2020
2. CalCHA - Resolution
3. Community Plan Resolution 2020

CITY OF MORGAN HILL

Begin Re-Use Program Guidelines

OCTOBER 2020 (Finalized 11.15.2020)

Purpose of the Program

The BEGIN Program is administered by the City of Morgan Hill and funded by the State of California Housing and Community Development Department. The Program is designed to make grants to qualifying cities to be used for down payment assistance in the form of deferred payment loans to qualifying first-time homebuyers of low and moderate income eligible households, purchasing newly constructed homes in a specific development project within the City of Morgan Hill limits.

1. Eligible uses of Funds:

BEGIN funds are project specific and may be used only for:

- a. The provision of permanent secondary mortgage assistance to first time homebuyers in connection with a new primary mortgage loan for the purchase of a principal place of residence located within the specific homeownership development project for which the City has received BEGIN funds.
- b. Self-help housing mortgage assistance
- c. Funds can be used to pay non-recurring closing costs

Eligibility Requirements for Program Participants and Property

1. General Requirements

- All applicants are required to be first time homebuyers. A first-time homebuyer is a low-or moderate-income household whose members have not owned a primary residence in the past three tax years. An exception is allowed for a "displaced homemaker" or a single parent who, while married, owned a home with his or her spouse. See Section 6 for a more detailed description of this requirement.
- All program applicants must submit evidence that they have completed an approved first-time homebuyer training course before their applications will be considered. Approved training courses are those certified by HUD, Fannie Mae or the online course offered by MGIC. On line approved class can be found at www.Hud.gov or www.housing.org
- Program applicants must submit a pre-approval letter from their first mortgage lender, and their loan application (1003 form) prior to the City's consideration for approval of their application.

2. Type of Residence and Maximum Loan Amount

Loan funds may be used to purchase the following types of residences for ownership purposes:

- Single family homes
- Duplexes, triplexes, four-plexes
- Condominiums and townhomes

- Manufactured housing on a permanent foundation.

All City-assisted homes must meet federal housing quality standards and all local City building codes in effect at the time of loan application or prior to funding.

Requirements for Residence

- The property must be located within Morgan Hill City limits.
- The initial maximum home sales price shall not exceed the price set by the City based on the amount that an eligible Household can afford under reasonable financing assumptions such as those set by the California Department of Housing and Community Development and the California Housing Finance Agency. In setting the initial sales price the City shall consider whether the price exceeds the annual maximum sales price published by the California Housing Finance Agency.
- The total amount of the loan shall **not** exceed \$50,000.
- The BEGIN loan shall be secured by the property or leasehold interest, as applicable.

3. Income Requirements

The combined household income of program participants shall not exceed limits established for moderate or low-income households, based on the number of persons in the household. The area median income limits (AMI) are published by the California Department of Housing and Community Development and are 80% of the AMI for low income, and 120% of AMI for moderate income. HCD does make minor adjustments to the income limits based on special circumstances and conditions. Once household size and gross income has been established and verified, the City will compare the information to the current BEGIN Program income limits to determine if the household is eligible to participate in the BEGIN loan program.

The website link to published income limits is:

<http://www.hcd.ca.gov/hpd/hrc/rep/state/inc2k6.pdf>

Calculating Gross Income

Household income may not exceed the income limit in effect at the time of application to the homebuyer program. Income is defined as the anticipated income earned from all household members age 18 years and above, calculated for the 12 month period following the date of determination of income. Income includes earnings from employment, government benefits, investments, and other cash-generating activities. The following methods will be used by City staff to calculate income.

- a. Income from employment for full-time applicants will be calculated from the applicant's most recent paystubs for the prior three months and projected forward at the same level of earnings for 12 consecutive months.

- b. For part-time hourly employees, the City will calculate the year-to-date income from the most recent paystubs for the prior three months and divide the earnings by the number of weeks covered through the year in order to find the average amount of weekly earnings. The weekly earnings will be multiplied by 52 and divided by 12 to calculate monthly gross income. If the year-to-date income covers less than three months in the current year, the City can request to include the average year-to-date earnings from the prior calendar year in addition to the current year.
- c. Income from overtime, commissions, ongoing stipends, shift differential pay, and other sources will be averaged (using year-to-date earnings) and included in the applicant's gross monthly income. Exceptions can be made for applicant's receiving one-time non-recurring bonuses or relocation benefits.
- d. Income that is pay in lieu of earnings, such as unemployment, worker's compensation, severance pay, and welfare assistance will be calculated. Although such payments may be excluded by the first mortgage lender for underwriting purposes, they shall be included in determining the applicant's eligibility for the City's program.
- e. Interest income from investments, such as saving accounts, stocks, bonds, money market, and certificate of deposit accounts, dividend income from mutual fund accounts, and other income-generating assets that are in excess of \$5,000 gross income will be included in the applicant's household income to include the greater of:
 - 1. The actual amount of income, if any, derived from all the net household assets
 - OR
 - 2. 2.5% (Passbook rate) of the value of all such assets
- f. Current monthly income payments from retirement accounts, (including social security and pensions), alimony, child-support, and other steady, ongoing sources will be included in the applicant's gross monthly household income calculation.
- g. All forms of Income from non-applicant spouses and other household members will be included in the gross monthly income calculation, regardless of the taxability of such income. They will be counted as part of the household to determine total household size.
- h. Income from seasonal and part-time jobs such as coaching, lecturing, test proctoring, etc. will be included in the city's definition of household income only when the applicant has been employed in the same line of work for at least two years and the work can reasonably be expected to continue into the future.
- i. Net income from the operation of a professional business, the production and/or sale of goods, or the provisions of a service as determined by calculating the average net income as reflected in the business' federal income-tax returns for the past three years.

Verifying Gross Income Calculations

- a. Income documentation that may not provide sufficient information will be verified with a VOE from an applicant's employer that is provided by the first mortgage lender to show the start date of employee, hourly pay or salary, average number of hours worked, overtime, tips and bonus income that is standard employee compensation.

- b. City staff and/or Administrator will compare the calculated gross annual income to the first mortgage lender's income calculation by comparing the information provided on the Uniform Residential Loan Application (commonly referred to as a 1003) that was prepared by the first mortgage lender and signed by the applicants.
- c. City staff will utilize a Gross Income Calculation Work Sheet to document the household total gross income and will submit the worksheet with the draw request for the household.

Self-Employed Borrowers

The following documents may be required to document income:

- a. A year-to-date profit/loss income statement prepared and signed by a Certified Public Accountant, with information covered through the last quarter
- b. A year-to-date balance sheet, prepared to reflect the financial position of the business at a specific point in time
- c. A signed letter of explanation regarding the applicant's anticipated gross household income over the next 12 months.
- d. Three years federal tax returns with 1099's.

4. Determining Household Size

Household size is determined by referencing the most recent federal tax returns and counting the family members identified on the tax return. Some households may include persons who are not counted as family members for the purpose of income limits and whose income, if any, is not considered when calculating gross income. Examples of household members that will NOT be counted are: foster children, unborn children and children being pursued for legal custody or adoption who are not currently living with the household. A child who is subject to a shared-custody agreement, in which the child resides with the household at least 50% of the time, can be counted.

Any non-applicant spouses or other household members who are documented on federal tax returns will be counted as household members

5. Occupancy Requirements

Borrower shall use the home purchased under this program as their primary residence. During the thirty years of the BEGIN loan the owner occupant shall not lease or rent out the subject property and shall occupy the property for no fewer than ten months per year. If the home is subject to a Resale Restriction Agreement with a qualified non-profit agency or the City of Morgan Hill the terms of primary residence and occupancy standards as established in that Agreement are to be in a priority position and would be subordinated by the City of Morgan Hill BEGIN deed of trust.

6. Qualification as a First-Time Homebuyer.

BEGIN Program Guidelines a "First-time homebuyer" means a borrower who has not owned a home or on title within the three-year period before the purchase of a home with BEGIN assistance, except for several exclusions:

- a. A displaced homemaker who, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse. A displaced homemaker is an

adult who has not, within the preceding two years, worked on a full-time basis as a member of the labor force for a consecutive twelve-month period and who has been unemployed or underemployed, experienced difficulty in obtaining or upgrading employment and worked primarily without remuneration to care for his or her home and family;

- b. A single parent who, while married, owned a home with his or her spouse or resided in a home owned by the spouse. A single parent is an individual who is unmarried or legally separated from a spouse and has one or more minor children for whom the individual has custody or joint custody or is pregnant; or
- c. An individual or individuals who owns or owned, as a principal residence during the three-year period before the purchase of a home with BEGIN assistance, a dwelling unit whose structure is:
 1. Not permanently affixed to a permanent foundation in accordance with local or state regulations; or
 2. Not in compliance with state, local or model building codes and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

Verification of a first time homebuyer status will require that the borrowers provide copies of their last three (3) years signed federal tax returns and credit report verifying that the borrower did not claim a principal residence deduction for mortgage interest or taxes on real property.

Acceptable alternative exhibits to document federal tax returns are:

- a. If the borrower filed the 1040 Long Form for the prior three years and cannot produce an original copy of the signed tax returns, then the borrower must request a copy of the returns from the IRS by completing a Form 4506-T for submittal via mail or fax, or Calling the IRS at 1-800-829-1040 and requesting a transcript to be mailed.
- b. If the Borrower has filed the short form 1040A or 1040EZ for the prior three years and cannot produce the signed returns, the City staff will accept a Return Transcript from the IRS verifying the filing status of the Borrower. The letter should confirm that the Borrower filed the 1040A or 1040 EZ for the years in question. The Borrower can request tax account information by completing a Form 4506-T and mailing or faxing it or use the IRS automated request system by phoning 1-800-829-1040 and following the instructions.

The information to be provided on IRS individual transcripts should include: (1) name and social security number; (2) type of return filed; (3) marital status; (4) tax shown on the return; (5) adjusted gross income (6) taxable income; (7) self-employment tax; and (8) number of exemptions. If the address on the tax returns filed is different than the Borrower's current address, the Borrower should also provide a written statement (signed by all Borrowers) indicating that the previous returns had been filed at a different address.

- c. In the event the Borrower was not obligated to file federal income tax returns for any of the preceding three years, it will be necessary for the Lender or City staff to obtain from the Borrower a completed and signed Applicant Income Tax Certification which is required in place of (a) or (b) above. This document is to be forwarded to the City staff with the BEGIN Loan Application and the Lender Initial Certification of Borrower Eligibility. The Applicant Income Tax Certification must be accompanied with documented proof of the reason for not filing taxes.

d. When an application is submitted during the period between January 1 and April 15, and the Borrower has not yet filed his/her Federal income tax return for the preceding year with the IRS, the City staff may rely on a certification from the Borrower that the Borrower is not entitled to claim deductions for taxes or interest on indebtedness with respect to property constituting his/her Principal Residence for the preceding calendar year. The certification must be included within the Applicant Income Tax Certification. All BEGIN loan applications do require that the Borrowers provide their W-2 or 1099 forms for each employed applicant for the proceeding year.

e. The City and Borrower are cautioned that in the above noted situations, a BEGIN loan commitment will be issued conditional upon receipt of substantiating documentation such as the prepared Federal Income Tax Return. The BEGIN loan may not be issued or funded at the time of close of escrow if the missing documentation has not been submitted and reviewed by City staff and or Administrator.

7. Debt-to-income Ratios

Housing costs

The housing payment or "front-end: debt-to-income ratio as it is commonly called, is calculated by dividing the total monthly housing payment by the applicant's gross monthly income.

Monthly payments for the following items are to be included when considering the monthly housing payment.

- a. Principal and interest payment on the first mortgage
- b. Real Estate taxes and local district assessments
- c. Hazard insurance premium
- d. Flood insurance premium
- e. Private Mortgage Insurance Premium, if applicable
- f. Monthly Homeowners' Association dues for condominiums and for homes located in planned unit developments (PUD)

The first ratio calculation should not exceed forty percent (40%) of the applicant's gross monthly income or lower than twenty-eight percent (28%).

Total Debt

The total debt-to-income ratio, or "back-end ratio" as it is commonly called, is calculated by adding together the total monthly payments of all existing long-term debt (debt with a remaining term of 10 or more months) and the total monthly housing payment and dividing that sum by the applicant's gross monthly income, as defined in Section 3.

The total monthly debt to be considered includes:

- a. the monthly housing payment as defined above

- b. Long-term installment debt beyond 10 months remaining to be paid
- c. Revolving accounts and lines of credit
- d. Alimony, child support or maintenance, if applicable.

Generally, the result of the second ratio calculation should not exceed forty-five percent (45%) of applicant's gross monthly income.

In setting and reviewing both the Housing costs and Total Debt ratios, the City and or Administrator will consider whether the debt ratio guidelines exceed any current published ratio guidelines by the California Housing Finance Agency.

Allowances for Higher Ratios

Some borrowers may qualify for first-mortgage financing at higher ratios than those cited above.

Recognizing that the financial circumstances of each homebuyer are unique and that there may be other factors besides debt-to-home ratios that reflect the borrower's ability and willingness to repay mortgage loans, the City may consider compensating factors when reviewing standard mortgage underwriting guidelines in approving higher ratios. Examples to be looked at include:

- If the applicant has met their housing obligations as well as all other debts that are equal to or greater than the proposed monthly housing costs for the property being purchased, there is a valid consideration to consider a lower score as acceptable.
- The applicant has demonstrated he/she is a limited user of credit and they show a history of being able to save money indicating they have more income to devote towards housing costs.
- When the applicant has substantial non-taxable income special consideration may be given to regular sources of income which will continue in the future to be "grossed up". Non-taxable income is worth more because the applicant does not have to pay taxes on it and is worth a fifteen percent 15% factor to be added to income for an increase in total income, to be used for loan underwriting calculations only.
- There will be no more than a five percent 5% increase in the prospective applicant's housing expense in the future

8. Credit History

Analyzing the Credit Report:

The applicant's first mortgage lender will provide a tri-merged credit report for each applicant for review by the City's BEGIN Coordinator to analyze the applicant's overall pattern of credit usage to determine their likelihood of repayment of their first mortgage in a timely manner;

- The credit report must be analyzed for consistency with loan applications as well as for complete credit account information from the credit reporting agency(ies)
- Generally, all applicants shall have a minimum 620 FICO credit score.

Exceptions for Lower Scores

Some borrowers may qualify for a first-mortgage with lower credit scores than cited above. Exceptions are on a case by case basis and may include applicants who have successfully completed an ACORN homeownership program, may not have an established credit history and have demonstrated the ability to make regular payments over a twelve month period by using non-standard documentation such as rent and utility records to establish alternative credit scoring.

If Lenders and applicants seeking City approval of lower credit scores should submit a written request and a letter of explanation to the HCD Coordinator as part of the applicant's loan application. The decision of the HCD Coordinator shall be final.

Loan Conditions and Terms

1. Review of Primary Lender's Loan Terms and Conditions

City staff or Administrator will review the term, interest rate, and conditions of the primary lender's loan to insure that the Program requirements are met;

- a. The interest rate must be reasonable in relation to the current market. A below-market-rate of interest and flexible underwriting terms as found in the state lending products are preferred.
- b. Mortgages may not include provisions for potential negative amortization, principal increases, deferred interest, balloon payments, adjustable rates and temporary buy downs where the future interest rate is not established.
- c. The terms of the first mortgage shall be for 30 years with a fixed rate.

2. Subordinate Financing Requirements

- a. No financing subordinate to the City's loan may have a balloon payment due prior to 30 years from the term of the subordinate loan
- b. All subordinate financing shall defer all principal and interest payments for the term of the BEGIN loan
- c. **Fees or charges for subordinate** financing shall be consistent with reasonable loan origination fees for first mortgage financing as determined by the City based on industry standards.
- d. Homebuyer mortgage assistance loans can be no more than 20% of the purchase price and must have a combined loan-to-value ratio not exceeding 100% of the sales price plus a maximum of up to 5% of the sales price to cover actual non-recurring closing costs.

3. Establishing Maximum Amount of BEGIN City Loans

The City will use the following method(s) for determining and/or approving the maximum downpayment assistance amounts.

- a. The maximum second mortgage amounts for City-assisted for sale projects will be determined by city staff, and will not exceed funding source maximum limits per program.

Downpayment assistance BEGIN loans will not exceed the limit of \$50,000. The Amount of the BEGIN loan shall be determined on a case-by-case basis by the City or Administrator in accordance with these established Guidelines and, when considered with other available financing and assistance, the minimum amount necessary to;

- a. Ensure affordable monthly housing costs as defined by the first mortgage lender (The first lender shall make the largest first mortgage loan amount possible given the ability of the Borrower to repay in order to keep the BEGIN loan amount at the minimum amount necessary).
- b. Exceptions to the limit of \$50,000. Maybe considered with City approval.

4. Loan to Value Limits

The Loan to Value (LTV) ratio for a BEGIN loan, when combined with all other indebtedness to be secured by the property, shall not exceed 100% of the sales price plus a maximum of up to 5% of the sales price to cover closing costs.

5. Interest Rate of BEGIN City Loans

The interest rate is fixed over the 30-year loan period:

- 1% for the 30 year term of the loan

6. Deferment Period for BEGIN City Loans

The maximum deferment period is thirty years. Within the thirty-year deferment period, borrowers may repay the principal amount without incurring an interest charge. After the thirty year deferment period, borrowers shall pay the City the balance of the principal and all accrued interest. Any and all principal and interest owed are due upon sale of the property, a refinance of the first mortgage, or maturity of the first mortgage loan, which ever occurs first. BEGIN loans are repayable when the property ceases to be owner-occupied if it occurs during the first five years..

7. Assumption of BEGIN City Loan

The BEGIN loans are assumable after the first five years of ownership by the first borrower, if the home is resold to an income qualifying household with a new note and deed of trust.

8. Repayment Program

If the City determines that repayment of the BEGIN loan at maturity date causes a hardship to the borrower, the City has two other options. They are:

Amend the note and deed to defer repayment of the amount due for up to an additional thirty years at 0% additional interest, this may be offered one time; OR

Convert the debt at loan maturity, including the original principal balance and all accrued interest, to an amortized loan, repayable in 15 years at 0% additional interest.

9. BEGIN City Loan Period

The loan period is 30 years. All principal and applicable interest must be paid at the end of the 30-year loan period. Borrowers may pay off the entire loan balance (principal and any applicable interest) at any time during the 30-year loan period without prepayment penalty.

Continued Eligibility throughout Application and Funding Processes

Applicants shall maintain eligibility throughout application and funding processes. Changes to income, number of persons in household, residing within the City limits, and inability to secure a primary mortgage that complies with Program Guidelines may affect household eligibility for funding. Applicants shall report any changes that may affect their program eligibility to the City when changes occur. The City may request updated paystubs or tax returns from applicant prior to disbursement of the loan.

Other BEGIN City Loan Requirements;

1. All City loans must be secured by the property through a deed of trust no more junior than second position. The City will subordinate its loan to state-funded downpayment assistance loans with a requirement to be in second position.
2. All borrowers must have a first mortgage loan
3. The City does not allow non-occupant or non-applicant co-signers to the City loans. Any individual listed on the loan application must occupy the City-assisted home as their primary residence.
4. The combined indebtedness of all loans, including other junior and senior loans, cannot exceed one hundred five percent (105%) of the sales price.
5. The City will require the assisted borrower to obtain title insurance that includes the amount of the City BEGIN loan at close of escrow.
6. Borrower must provide and maintain fire and floor (if property is located in a 100-year floodplain) insurance in an amount at least equal to the replacement value of the improvements. City must be named as an additional loss payee on the policy.

Loan Approval Process

Approval of loan applications for the Morgan Hill BEGIN Loan Program shall be subject to approval by the HCD Coordinator or their designee and shall remain in effect for **one hundred eighty (180) days** from the City's approval date.

Completed Loan Application Contents and Process

The City shall date and time stamp all completed loan applications received, prior to their consideration.

Each applicant shall submit to the City the following information and documents:

- City's BEGIN Loan Application Packet signed and dated where indicated;
- Copies of First Mortgage Lender's pre-approval letter and loan application (called a 1003) completed by applicants;
- Copies of all secondary loan applications and approvals from the lender, government agency or non-profit agency.
- Copy of First-Time Homebuyer Training Certificate (if applicant is a first-time homebuyer);
- Copy of a tri-merged credit report for each applicant that is dated within the last 30 days.
- Bank statements including savings, CDs, money market dividend income from mutual fund accounts for verification of applicant's assets
- Income verification documents
 - Three months of all verifiable income for all applicants (income statements or pay stubs)
 - Two years of federal tax filings and associated W-2s; and/ or prior year's W2 if application received during the first three (3) months of a calendar year.
 - Social Security Income (if applicable);
 - Retirement Income, e.g. annuity or pension (if applicable);
 - Three months of bank statements for all applicants.

If the application is approved, the City will issue a **BEGIN Approval Letter** to the applicants.

Method of Allocation of BEGIN funds

The City shall consider completed loan applications on a first-come, first-served basis as funds are available for eligible new home development. City shall only accept applications when accompanied by **ALL** documents required for the loan approval stage.

Loan Commitment Letter

If the loan is approved, the City will issue an Approval letter stating that the City will fund the BEGIN loan. The loan Approval letter shall remain in effect for a period of **one hundred eighty (180) days** from the date of loan approval.

Extension of Loan Commitment

The applicant may request, in writing, that the City extend its Loan Commitment. The letter must set forth the reasons for the request, such as a delay in construction of completion of the new home. If approved, the maximum time extension shall **NOT** exceed **sixty (60) additional days**. Only one extension shall be granted.

Promissory Note and Deed of Trust

In order to receive the Loan, Borrower will be required to execute a promissory note evidencing the loan and its terms. Borrower shall also sign a deed of trust securing the loan.

Title Insurance with City named as Beneficiary

Borrower shall obtain a title insurance policy listing the "City of Morgan Hill" as a beneficiary.

Lending Restrictions

The City **BEGIN** loan shall be subject to the first lender to secure its first mortgage on the property, such as the California Housing Finance Agency, to secure any financial assistance it may provide Buyer. The City BEGIN loan shall also be subject to a Resale Restriction Agreement between the City or an approved non-profit agency, and the borrower.

The City shall **NOT** fund BEGIN loans accompanied by the following first mortgage loans.

- Interest only mortgage loans
- First mortgage applications allowing undocumented income.
- Adjustable rate mortgage loans
- First mortgage applications allowing all calculated housing debt to exceed 40% and total debt to gross income ratios that exceed 45%.

Use of Funds

Loan funds shall be used for down payment assistance and non-recurring loan closing costs only. Use of loan funds for recurring closing costs associated with purchasing the home, repairs, room additions, remodeling, refinancing, or purchase of any non-real property is prohibited.

Loan Documentation

1. All BEGIN loans shall be accompanied by the following documents and provisions;
 - a. Promissory Note payable to the City in the principal amount of the loan and stating the terms and rate of interest.
 - b. Deed of Trust securing the Note; this deed shall be recorded and shall secure the City's financial interest in the property.
 - c. Other appropriate security instruments naming City as beneficiary (for instance, Resale Restriction Agreement between Borrower and City)
 - d. Request for Copy of Notice of Default
 - e. Escrow Instructions to Title Company

Disbursement of Funds

Upon receipt of the following documents, City staff may disburse approved loan funds into an escrow account as may be designated by the Seller (and approved by City):

- Executed purchase contract (signed by both seller and applicant);
- Appraisal prepared by an independent, State-licensed appraiser who has the knowledge and experience necessary to appraise residential property. The appraisal must have been completed not be more than 60 days from date of close of escrow.
- Signed BEGIN Program Deed of Trust; securing the Note.
- Signed BGIN Program Promissory Note;
- Initialed Truth in Lending Statement and other disclosure documents legally required;
- First Lender's Note and Deed of Trust;
- Copies of any new or updated applications or approvals provided by other assistance sources, such as the Mortgage Credit Certificate Program or California Housing and Finance Agency programs such as CHDAP and School Fee Assistance Grants; non profit downpayment assistance programs such as NeighborWorks and Santa Clara County Housing Trust, or state agencies such as Cal HOME and Joe Serna Farmworker Grant program.
- Updated pay stubs, tax returns that were not available at time of application
- Preliminary title report, escrow company, and escrow account number, escrow officer contact information including e-mail address;
- Buyer's Closing statement from escrow company; and
- Wiring instructions from the escrow company.

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE CITY TO BECOME AN ADDITIONAL MEMBER OF THE CALIFORNIA COMMUNITY HOUSING AGENCY (“CALCHA”); SUPPORTING CALCHA’S ISSUANCE OF TAX-EXEMPT BONDS FOR THE PRODUCTION, PRESERVATION AND PROTECTION OF ESSENTIAL MIDDLE-INCOME RENTAL HOUSING; AND AUTHORIZING THE CITY MANAGER AND OR HIS OR HERS DESIGNEE TO ENTER INTO PURCHASE OPTION AGREEMENTS WITH CALCHA FOR ESSENTIAL MIDDLE-INCOME RENTAL HOUSING CREATED WITHIN CITY LIMITS

WHEREAS, one of the primary goals of the City of Morgan Hill (the “City”) is to meet the growing housing needs of its residents by actively supporting the production, preservation and protection of market-rate and affordable rental housing for all; and

WHEREAS, no existing Federal, State or local subsidies, programs or motivations currently exist to meaningfully address the growing shortfall of protected middle-income rental housing; and

WHEREAS, CalCHA is a Joint Powers Authority created specifically to produce, preserve and protect quality affordable rental housing made available to California’s essential middle-income workforce; and

WHEREAS, CalCHA intends to acquire existing rental properties within City limits and restrict future occupancy to middle-income households earning no more than 120% of area median income; and

WHEREAS, CalCHA will avoid the displacement of existing residents, implement regulatory agreements restricting the incomes and rents of future residents, and impose caps on the annual rent increases of qualified middle-income households; and

WHEREAS, CalCHA will finance its acquisitions through the issuance of tax-exempt bonds, and in order for CalCHA to issue tax-exempt bonds in the City of Morgan Hill, the City must be an Additional Member of CalCHA; and

WHEREAS, the City proposes to become an Additional Member of CalCHA pursuant to Section 12 of the Joint Exercise of Powers Agreement Relating to the California Community Housing Agency; and

WHEREAS, subsequent to becoming an Additional Member of CalCHA, any existing rental housing within City limits which CalCHA intends to acquire and finance with tax-exempt bonds must receive support and approval from the City; and

WHEREAS the City proposes to support and approve CalCHA’s issuance of tax-exempt bonds for the acquisition of existing rental properties as a means towards the

Resolution. No. _____
Page 1 of 3

preservation and protection of essential middle-income rental housing within City limits; and

WHEREAS, CalCHA's issuance of tax-exempt bonds will provide public benefit through the production, preservation and protection of below-market-rate rental housing, as well as the granting of all surplus project revenues to the City; and

WHEREAS, pursuant to one or more purchase option agreements (the "Purchase Option Agreements"), between CalCHA and the City, CalCHA will grant the City the option, but never the obligation, to purchase each essential middle-income rental housing property commencing on the date fifteen (15) years after CalCHA's acquisition of such property; and

WHEREAS, the Purchase Option Agreements will additionally provide the City with all surplus project revenues from each essential middle-income rental housing property; and

WHEREAS, the City will maintain the option to exercise such Purchase Option Agreements for a period of fourteen (14) years following the commencement dates of the Purchase Option Agreements for each essential middle-income rental housing property; and

WHEREAS, the City proposes to authorize the City Manager and or her or his designee to enter into Purchase Option Agreements with CalCHA for all essential middle-income rental housing created within City limits.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morgan Hill hereby authorizes the City to become an Additional Member of CalCHA and authorizes City Manager and or his or her designee to execute the Joint Exercise of Powers Agreement Relating to the California Community Housing Agency, subject to approval as to form by the City Attorney.

BE IT FURTHER RESOLVED that the City Council of the City of Morgan Hill hereby supports and approves CalCHA's issuance of tax-exempt bonds as a means towards the production, preservation and protection of essential middle-income rental housing within City limits.

BE IT FURTHER RESOLVED that the City Council of the City of Morgan Hill hereby authorizes the City Manager and or her or his designee to enter into Purchase Option Agreements with CalCHA for all essential middle-income rental housing created within City limits, subject to approval as to form by the City Attorney.

IN CITY COUNCIL DULY PASSED this 2nd day of December 2020.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____ APPROVED: _____
City Clerk Mayor

APPROVED AS TO FORM:

City Attorney

Resolution. No. _____
Page 3 of 3

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF MORGAN HILL ENDORSING
THE COMMUNITY PLAN TO END HOMELESSNESS 2020-25

WHEREAS, nearly five years ago, the City Council adopted the Community Plan to End Homelessness in Santa Clara County (2015-2020) (“Community Plan”), with partners working collectively to, among other efforts, help households resolve their homelessness, increase the number of supportive housing units in Santa Clara County, increase temporary housing and emergency shelter capacity, and launch a new homelessness prevention system; and

WHEREAS, the Community Plan, which is driven by and adopted by the Santa Clara County Continuum of Care (“CoC”), is a planning requirement placed by the United States Department of Housing and Urban Development on CoC funding that provides a county-level roadmap to address homelessness and its root causes, with local jurisdictions tailoring the roadmap to meet local needs; and

WHEREAS, despite the substantial progress made in creating an innovative, coordinated, and more comprehensive supportive housing system, the housing crisis continues to grow nationally and locally; in 2019 9,706 found themselves homeless in County of Santa Clara, and the challenges in ending homelessness are compounded by the COVID-19 pandemic and its impacts on the economy and local budgets; and

WHEREAS, in June 2019, the City of Morgan Hill (“City”) together with Santa Clara County (“County”), Destination: Home, the City of San Jose and the City of Mountain View and non-profits, embarked on strategic planning and an extensive community engagement process to develop a new five-year Community Plan; and

WHEREAS, during the development of the new Community Plan, community feedback was sought to identify successes and challenges in the homeless system of care, and to collect innovative and inspiring ideas about how to address homelessness generally countywide, and specifically for certain subgroups such as youth and families; and

WHEREAS, this work resulted in the development of 14 strategies that fall into three focus areas: (1) Address the root causes of homelessness through system and policy change; (2) Expand homelessness prevention and housing programs to meet the need; and (3) Improve quality of life for unsheltered individuals and create healthy neighborhoods for all; and

WHEREAS, the Community Plan provides stakeholders with a common agenda that, if followed, will result in large collective impact, and endorsement of the new Community Plan will provide the City’s Administration the certainty to continue implementing urgent strategies during the COVID-19 public health crisis that also align with the Community Plan strategies;

Resolution. No. _____

Page 1 of 3

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MORGAN HILL THAT:

The City Council hereby endorses the Community Plan to End Homelessness 2020-25.

IN CITY COUNCIL DULY PASSED this 2nd day of December 2020.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____ APPROVED: _____
Irma Torres Rich Constantine
City Clerk Mayor

APPROVED AS TO FORM:

Donald Larkin
City Attorney

Resolution. No. _____
Page 2 of 3



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

PREPARED BY: John Lang, Economic Development Manager
APPROVED BY: City Manager

APPROVE SERVICE AGREEMENTS FOR BROADBAND SERVICES FOR THE CITY OF MORGAN HILL

RECOMMENDATION(S)

1. Authorize the City Manager and City Attorney to negotiate final terms and execute Master Services Agreement and Service Order with Wave Business Solutions, LLC for a period of 20 years in an amount not-to-exceed \$2,400,000 for a dark fiber lease for intranet connectivity between City facilities, and the installation of telecommunications conduit in the City; and
2. Authorize the inclusion of Monterey Road Conduit Construction Option and direct City Manager to apply and execute all related documents for the Economic Development Administration Infrastructure Grant.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure
Enhancing Diversity and Inclusiveness
Advancing Regional Initiatives

2020-2021 Strategic Priorities

Economic Development
Telecommunications

GUIDING DOCUMENTS

Economic Blueprint
Morgan Hill 2035 General Plan

POLICY CONSIDERATION:

Should the City Council invest general fund resources to build additional Broadband infrastructure?

Should the City Council direct staff to apply for a US Department of Commerce Economic Development Administration infrastructure grant to fund Broadband deployment through the Monterey Road Conduit Construction Option in Morgan Hill?

REPORT NARRATIVE:

Background

In December 2012, the City of Morgan Hill executed a 10-year settlement agreement with Charter Business (Spectrum) for use of fiber lines known as dark fiber for 10 years for intra-connectivity of City facilities. Dark fiber is dedicated fiber that allows connectivity between City Hall, Police Station, Centennial Recreation Center and Community and Cultural Center. The City is currently paying \$5,200 a month for its dark fiber lease that runs through December 31, 2022. The cost structure of the agreement

has inflators that increase the cost every two years, of which we are in the last cycle. In addition to the dark fiber lease, the City has an agreement with Spectrum and South Valley Internet for internet services.

The City of Morgan Hill began discussions with Charter in 2018 about the future of the dark fiber lease. As a result of those interactions, the City elected to move forward with a Request for Proposals (RFP) for broadband connectivity (Attachment 1).

The RFP for Broadband services specifically addresses: 1) the City's need as a customer, and 2) the potential to enhance broadband for businesses and residents through strategic City assets. The main objective was to cost effectively replace existing connectivity with comparable speeds. The RFP also included a secondary objective to add value to the community, if the cost was not prohibitive, by:

- Improving speed and availability of residential and mobile Internet access; and
- Bringing symmetrical gigabit access to the Morgan Hill business parks

On April 1, 2020, City staff presented the findings of the RFP process and the City Council authorized the City Manager to negotiate an agreement with Wave Broadband based upon their RFP submittal.

Services Agreement

Staff have spent the last few months finalizing negotiations with Wave on several aspects of the project. Discussions have included, path of travel, clarity on conduit ownership, permitting fees, lateral extensions into the community as well as how a future buildout could be eligible for US Department of Commerce Economic Development Administration Cares Act funding.

Below is a summary of the key points of the Master Service Agreement (MSA) (Attachment 2) and Service Order (Attachment 3) for Council consideration:

- Construction of two (2) conduit routes along portions of Cosmo, Monterey, San Pedro, Church, West 5th Street, Del Monte Avenue, Main Avenue and Peak Avenue (Schedule I in Service Order).
- Dark fiber connectivity in 1 of the conduits to be owned and operated by Wave Broadband (City leases for intra-connectivity between facilities)
- Construction of a 2-inch conduit to be owned and operated by City of Morgan Hill
- 20-year term Master Service Agreement (MSA) and Service Order
- Monthly re-occurring cost of \$10,000 for dark fiber service and conduit infrastructure buildout
- Total cost of agreement is \$2,400,000
- 1 gigabit (GB) connectivity between CCC, CRC, City Hall, OSC and AC
- 10 GB connectivity between City Hall and Police Station
- Incorporation of City owned conduit where applicable (Downtown, Corporation Yard)

- Construction of two (2) lateral extensions along San Pedro and Tenant Avenue to support connectivity to business areas to be owned and managed by Wave (Schedule H in Service Order).

The MSA and Service Order presents a \$2,400,000 investment over twenty years or an annual cost to the City of \$120,000. This monthly cost is greater than the existing contract with the current provider. However, at the end of the term, the City will own the conduit and will be better positioned to secure more favorable service agreements in the future. In anticipation for the need for greater investment in the Broadband services, the 2020-2021 adopted budget accounted for additional funds to support the added costs.

Monterey Road Conduit Construction Option

Responding to feedback from Council at the April 1, 2020 meeting about the desire to provide community benefit and impact, Wave has proposed building a lateral along Monterey Road that would provide benefit to other areas within the City as well as position the City to apply for a grant from the US Department of Commerce Economic Development Administration and potentially get reimbursed for 80% of the cost. Wave would construct and underground 12,922 feet of 2-inch conduit along Monterey Road, Main Avenue, and Tenant Avenue (see Section 9 of Service Order and Schedule J map). Wave would transfer ownership of the conduit to the City after the build. The City can then lease the conduit to a service provider to provide broadband to customers along the route.

The Option would be an add-on to the base contract with Wave for an additional \$1,549,531 and would cost the City an additional investment of \$309,906, which represents 20% of the total cost, which would be the matching fund requirement by the Economic Development Administration Cares Act grant. The cost of this option would be due and payable in two installments, first one in 30 days after exercising this option, and second within 30 days after provider completes and delivers the project. If directed by City Council to move forward, City staff would immediately apply for EDA grant funding in order to be able to determine whether the City would receive federal grant funds to support 80% of the project cost.

The City has 4 months after execution of the MSA and Service order to invoke or pass on this option. The 4-month window allows the City time to apply for and receive notice from the Economic Development Administration (EDA) about telecommunication grant funding eligibility. The EDA has informed City staff that municipal supported telecommunication (broadband) projects that demonstrate and support the creation and retention of private sector jobs are eligible for EDA infrastructure grants. The reason this specific option is eligible and consistent with EDA grant funding is the primary purpose in this option supports community broadband (City providing conduit and/or service for the community's benefit). The main business terms in the MSA are for the sole benefit of providing intra-connectivity between City facilities and therefore are not eligible for EDA grant funds.

If the City were to choose this Option, Wave would extend their network within the Concord Business Circle Business Park (Schedule L of Service Order) provided they

can obtain an easement across private property. This additional investment by Wave only occurs if the City exercises the Option.

COMMUNITY ENGAGEMENT: Collaborate

As part of the Council's Sustainable Morgan Hill, Telecommunications is a component of the Economic Development strategic priority. In particular, "The City will collaborate with the private sector to explore ways to provide fast, reliable access and wireless connectivity for residents and businesses. The 2016 Telecommunications Infrastructure (Attachment 4) and Economic Blueprint reports will be the foundation for continuing discussions with broadband providers, public utilities, and other infrastructure service providers in developing an implementation plan for growing our telecommunications infrastructure with private sector partnerships." As part of the City's need to ensure its own future connectivity, there is an opportunity to support additional investment by broadband providers into our business parks and residential neighborhoods through location of City strategic assets. The Broadband RFP specifically recognized this opportunity and called for responses that addressed these needs. During Phase II, respondents had questions about the opportunity for City investment and infrastructure. Dialog and feedback from the Phase II process rendered more comprehensive outcomes to the RFP.

The RFP was shared with all vendors known to the City, Civic Foundry and Joint Venture Silicon Valley's smart cities and wireless initiative partners.

ALTERNATIVE ACTIONS:

- The City Council could approve the MSA agreement without the Monterey Road add on. This option is not recommended until the results of the EDA application are received. However, if the Council feels the investment of \$309,906 in General Fund expenses is too significant then the Council should consider this alternative so that City staff time is not expended on the grant effort.
- The City could reject RFP response and re-open conversations with Spectrum on negotiating a new dark fiber lease effective January 1, 2023.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On December 5, 2012, City Council approved an agreement with Placeworks calling out a telecommunications report as part of the infrastructure analysis associated with the General Plan update.
- On February 17, 2016, City Council adopted its Priorities, Goals, and Strategies which included creating a Telecommunications Masterplan.
- On November 2, 2016, City Council discussed and accepted the Telecommunications Infrastructure report by Tellus Ventures Associates.
- On January 31, 2017, City Council adopted Sustainable Morgan Hill, identifying Telecommunications as a Strategic Priority for 2017.
- On April 19, 2017, City Council adopted the Economic Blueprint, including the priority to Create a Telecommunications Master Plan to Improve Access to Fiber.
- On July 26, 2017, City Council received a report on public private partnership models and approaches to expanding broadband connectivity.

- On January 26, 2018, staff provided an update to City Council on telecommunication activities through 2017 and work efforts for 2018 at the Annual Goal Setting meeting.
- On January 26, 2019, staff provided an update to City Council on telecommunication activities planned for 2019 at the Annual Goal Setting meeting.
- On April 1, 2020, City Council received results of the RFP and authorized the City Manager to negotiate services agreement with Wave.

FISCAL AND RESOURCE IMPACT:

The City's current annual cost for broadband intranet and internet connectivity is \$62,400 a year and is a lease model.

For Wave Broadband to provide dark fiber services and build/install conduit in Morgan Hill would be a total of \$2,400,000, spread over 20-years, or \$120,000 annually.

The difference between the annual cost of the current solution by Spectrum (\$62,400) and Wave Broadband's solution (\$120,000) is that Wave Broadband is providing connectivity to City facilities, connectivity opportunities for the community and is building a future network backbone to be turned over to the City at the end of the agreement.

The funding for this is currently appropriated in the Information Services Fund (730). Funding for the Information Services Fund is allocated from various City funds across the City including the General Fund, Enterprise Funds and Special Funds.

Should the EDA Grant be received, and the Monterey Road Conduit Construction Option be implemented, the City would be required to fund 20% of the Option's cost, approximately \$309,906. The only feasible funding source is the General Fund Reserve (010). While this would be a significant investment during difficult economic times, the opportunity for the investment of over a million dollars through grant funding would be too significant of a benefit to pass up. The potential appropriation and final decision for this investment would be brought back to the City Council within four months of execution of this agreement, which will also provide the City with further time to analyze the current financial situation.

CEQA (California Environmental Quality Act): Categorical Exemption

The activities described in this Staff Report are categorically exempt under the CEQA Guidelines, specifically pursuant to Section 15302 (c) Replacement or Reconstruction of existing utilities and Section 15303(d) New construction or conversion of small structures, as the subject work involves the addition and connections of conduits and broadband system components in existing improved right of way areas.

LINKS/ATTACHMENTS:

1. RFP 2019_Broadband_FINAL
2. City of Morgan Hill - Master Services Agreement
3. City of Morgan Hill - Dark Fiber Order
4. 2016 Telecommunication Infrastructure Report

5. CMH_BroadbandSrvs_Wave City Council Presentation



Request for Proposals (RFP) For Enhancing High Speed Broadband for City Facilities

The City of Morgan Hill is requesting proposals from qualified respondents to
provide

Enhanced High Speed Broadband for City Facilities in Morgan Hill
for the period beginning no later than January 1, 2023 to December 31, 2033.

**Phase I Vendor Proposals are due on Friday, July 19, 2019 at 4:30 p.m.
at City Hall located at
17575 Peak Avenue in Morgan Hill.**

REQUEST FOR PROPOSALS (RFP) INFORMATION

SECTION 1 – Introduction and Scope of Work
SECTION 2 – General Instructions and Information
SECTION 3 – Wage Theft Prevention
SECTION 4 - Attachments

SECTION 1: Introduction and Scope of Work

Background

The City of Morgan Hill (City) is located within the southern part of Santa Clara County, California, 10 miles south of San Jose and 10 miles north of Gilroy. Morgan Hill is nestled between the Diablo Mountain Range and the Santa Cruz Mountains, and has a rich history of farming and manufacturing. While Morgan Hill resembles Silicon Valley in its business mix, rich entrepreneurial spirit and thirst for innovation, the city's natural geography and open space make it a unique place. The City is 13 square miles, home to approximately 44,000 residents and 1,200

businesses employing approximately 16,000 people. Over 47% of households in Morgan Hill earn over \$100,000 a year. Over 70% of all employed residents travel more than 20 miles to work each day. Morgan Hill is best known for its superb quality of life with access to open space and abundant recreational amenities that give businesses, visitors, and residents alike a unique place within Silicon Valley to live, work, and recreate.

The City has made many thoughtful decisions and as a result is a leader in affordable housing production, open space preservation, water and agricultural land conservation, and environmental stewardship. Smart planning has resulted in state-of-the-art recreational facilities for residents and visitors, making Morgan Hill a sports/recreation destination. As a gateway to the Santa Clara Valley wine region, proximity to wineries, farms, cycling, golfing, swimming, and boating also make the area an ideal tourism destination. In recent years, the City has been developing a brand that promotes Morgan Hill as a healthy community with access to the outdoors and as a tourist destination. The recent success in the revitalization of the downtown is putting Morgan Hill on the map as a coveted neighborhood. In addition to the superb quality of life and access to wineries, farms and open space, the City of Morgan Hill is looking to elevate and market itself as an excellent place to do business.

With a strong advanced manufacturing and innovation base, along with land for new development, the City is looking to capture more business investment. The City approved an Economic Blueprint that identifies key industries for the City to promote long-term economic prosperity. These industries include retail, healthcare, innovation, manufacturing and tourism. High-speed broadband connectivity is a critical component in the success of these initiatives and the City seeks to engage in a public/private partnership that advances the state of broadband and improves reliability, affordability, and availability of high-speed broadband.

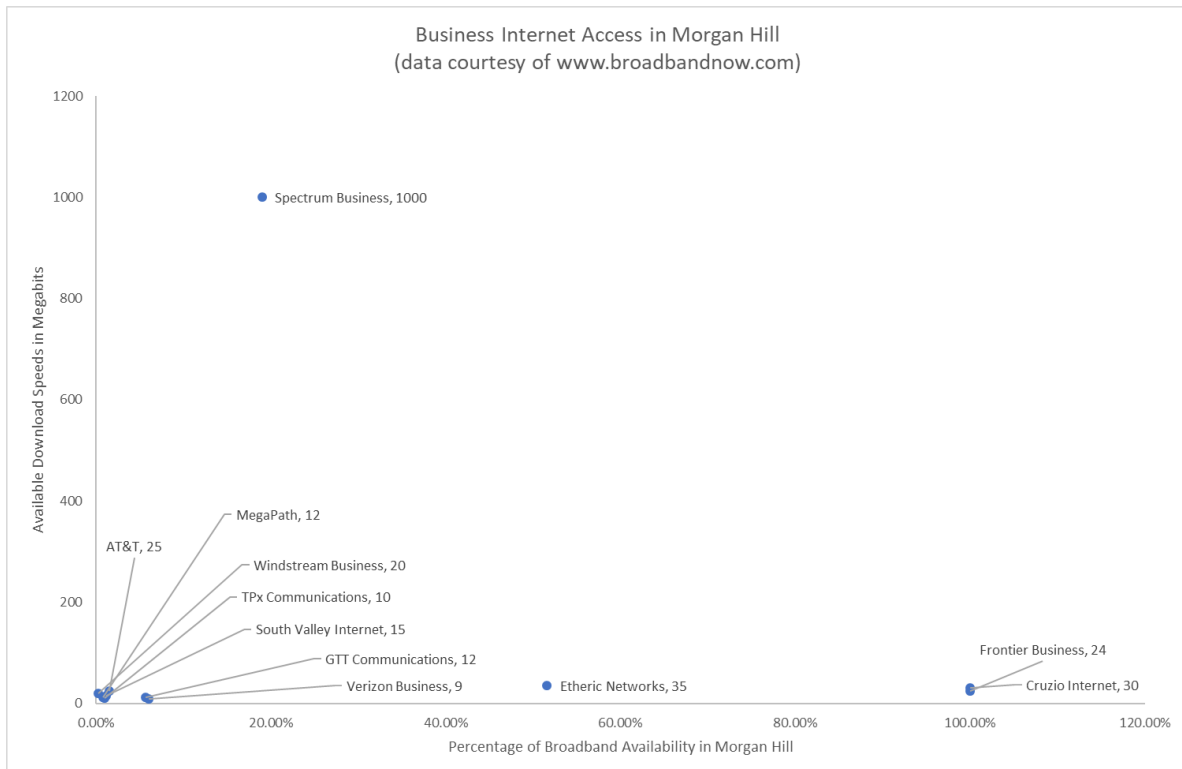
Introduction

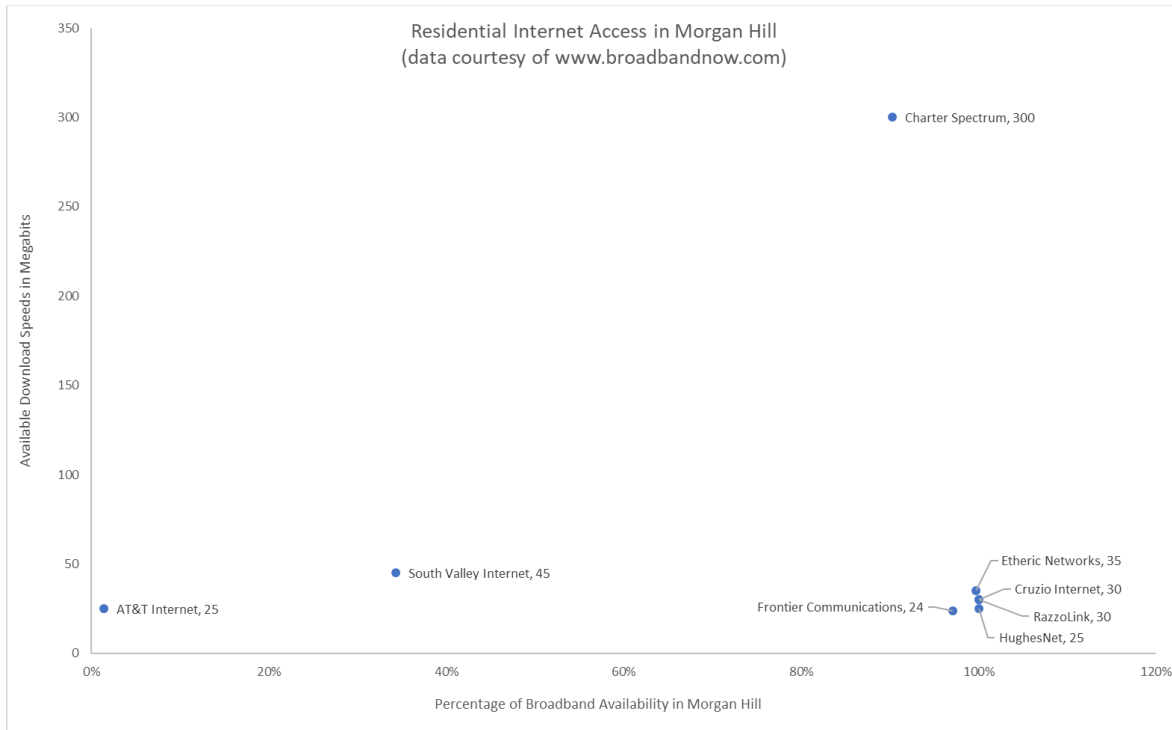
The City currently benefits from a dark fiber lease with Charter Communications (Charter) which is set to expire on December 31, 2022. Under this agreement the City receives dark fiber from Charter for connectivity between City facilities. While there is planning to address the expiration of this agreement and associated connectivity to city facilities, the City additionally seeks to maximize its public assets, potentially to the direct benefit of businesses and residents by expanding high-speed broadband offerings within the City limits. The City has identified the following priorities for connectivity:

1. City Facilities – Cost effectively replace existing connectivity at comparable speeds
2. Business Parks - Bring symmetrical gigabit access to the three business parks
3. Residential and Mobile – Improve speed and availability of residential and mobile Internet access

For the purpose of this RFP, the City of Morgan Hill views high-speed broadband connectivity similar to digital highways that nearly instantaneously connect residents to one another, their government, and to the world beyond the local geography. The City strongly believes that connectivity can address or resolve some of its most challenging issues such as addressing the opportunity gap by providing equal access to information. In addition, the City seeks to promote innovation, foster entrepreneurial activities, and strengthen economic growth by meeting immediate needs of its residents and businesses, and enabling the community for the future.

An estimated 88.4% of Morgan Hill households currently have access to the Internet, while 95.5% of households have computers according to the latest U.S. census of April 2010. According to Ookla, the average download speed over fixed broadband in the U.S. during Q2-Q3 2018 was 95.25 Mbps and the average upload speed was 32.88 Mbps. Below is a graph based on BroadbandNow.com which depicts the state of both residential and business internet access within Morgan Hill. While providers are constantly improving their networks the charts below are intended to provide an overview of the opportunity to improve high-speed broadband within the City of Morgan Hill.





At a macro level, the City recognizes that consumer and business trends dynamically change as computing continues to migrate from fixed to mobile, content consumption to content creation, and new and emerging technologies such as 4K streaming strain current bandwidth limits. These trends are reflected in the Cisco Visual Networking Index (VNI) for Forecasts and Trends, 2017-2022.

As a result, the City of Morgan Hill recognizes that symmetrical high-speed broadband is a vital part of its future. The City is interested in partnering with private sector providers to plan and execute a broadband strategy that serves their mutual customers, the residents, business and visitors of Morgan Hill. While the City recognizes that providers regularly plan to improve service offerings, it is the intent of this RFP to advance broadband connectivity in a more coordinated fashion.

RFP Goals and Objectives

The City recognizes the ambitious nature of this RFP and has developed a progressive RFP process that eliminates the burden of submitting voluminous RFP document responses for proposers. Rather, the City is interested in engaging proposers in a dialogue of how best to accomplish the following goals:

- To forge a strong collaborative relationship between the City and a private sector partner to plan and deploy symmetrical high-speed broadband access for City facilities, business parks, and residents
- To identify interested providers that the City can notify for dig-once opportunities for laying empty conduit

- To lower barriers for service providers to deploy new services or enhance existing broadband services
- To reduce the cost per megabit for symmetrical broadband services
- To leverage broadband connectivity as a foundation for future economic development

The City is incorporating strategies as discussed by Blair Levin, previous Director of the National Broadband Plan and Attorney for the Federal Communications Commission in “Achieving Bandwidth Abundance: The Three Policy Levers for Intensifying Broadband Competition.” These strategies include lowering the barrier to building broadband networks through leveraging Morgan Hill’s public assets, supporting business models that include incremental build-out, and generating customer demand to quickly achieve a return on capital investments.

Asset Utilization and Improvement

The City has assets that could potentially be leveraged by the provider at little or no incremental costs to improve the economics of deployment and operations. These may include:

- Physical Assets: Right-of-ways (ROWs), utility poles, conduit, buildings, etc.
- Information Assets: Maps, diagrams and other data regarding conduit, ducts, and other ROWs
- Process Improvements: Fast track permitting, low-cost inspection process, etc.

Flexibility to Accommodate New Business Models

The City is open to business models that include addressing connectivity in only portions of the City or in a phased approach if the approach allows for lower capital expenditures and monetizing the network more rapidly. However, the RFP evaluation will favor those proposals that take the most comprehensive approach to providing community connectivity (i.e. City facilities, business parks, and residential areas).

Demand Aggregation

Once the City selects a partner, both entities will collaborate on planning and deploying a broadband network including the identification of pertinent City and provider assets, and the areas of greatest demand within the city to minimize risk and maximize ROI.

The City intends that one of the outcomes of this RFP will be to codify a partnership that focuses on developing a high-speed broadband rollout plan to the goals outlined in this RFP below, working together with the selected proposer to

operationalize that plan. Proposers are encouraged to think broadly about leveraging infrastructure investments in both fixed (business and residential) and mobile (5G small cells, WiFi, etc.) broadband needs of the community as a mechanism to monetize their investments while meeting the needs of the community. The City encourages creativity in the proposer's approach and methodology with respect to developing a sustainable business model.

Connectivity Requirements

The City is aware that there are several fixed-wireless solutions available on the market that could connect City facilities very cost effectively. However, the City is interested in potentially identifying if its assets could be used in a broader context to deliver enhanced services to the community. The City may consider building fixed wireless solutions separate and apart from any agreement reached through this RFP if the terms are not favorable to the City for connecting city facilities together.

The City has very limited funds to achieve these goals and any investments from the City will be considered non-exclusive. However, the City does have a number of public assets that could assist providers in lowering the barrier to introducing new or expanding existing Internet services. As a result, the City seeks to incentivize private sector investment in its community through a public/private partnership. For its part, the City has already made significant strides in permitting costs, timelines and modernizing its pole attachment fees in preparation for this RFP. In addition, the City has a list of public assets located in Attachment A that proposers may consider in the planning efforts. To address the broader needs of the community, the following is a breakdown of land parcels in the City of Morgan Hill:

- Commercial/Industrial Parcels: 657
- Residential Parcels: 13,007
- Mixed Use (Could be residential or commercial): 675
- Other (Open Space/Public Facilities): 587

City Priorities

The City is interested in addressing connectivity in the following locations, prioritizing City facilities first, business parks next, and ultimately residential connections:

1. City Facilities (Primary Locations)

- Civic Center/City Hall, 17555 Peak Rd., Morgan Hill
- Police Department, 16200 Vineyard Blvd., Morgan Hill
- Corporate Yard, 100 Edes Court, Morgan Hill
- Recreation Center, 171 W. Edmundson Ave., Morgan Hill
- Aquatic Center, 16200 Condit Rd., Morgan Hill
- Community and Cultural Center, 17000 Monterey Rd., Morgan Hill

Key connectivity requirements:

- The connectivity between the Civic Center and Police Department should be 10 gigabits
- The connectivity to all other locations should be one gigabit to either the Civic Center or Police Department
- All connectivity within 24 Months

2. Business Parks

The City has three major business parks within the City limits that are in proximity to one another. The second priority is to provide up to one gigabit symmetrical service to customers of these business parks.

- Morgan Hill Ranch Business Park (existing)
- Madrone Business Park (existing)
- Concord Circle Business Park (proposed additional buildout)

The business park locations are shown in the map below: Key connectivity goals:

- Symmetrical gigabit Internet access to the three business parks within 24 months.

3. Residential Buildings

The City of Morgan Hill has 14,926 parcels of land spread over 12.88 square miles. With just over 44,000 residents, there remains a significant opportunity for broadband investments to meet future consumer demands.

Key connectivity goals:

- Symmetrical gigabit Internet access to residents within 36-60 months.

List of City Assets

<u>Latitude</u>	<u>Longitude</u>	<u>Description</u>
-121.625781	37.119316	OVERPASS Pullbox Southeast crossing of Highway 101 @ Tenant Avenue
-121.626706	37.118965	OVERPASS Pullbox Southwest crossing of Highway 101 @ Tenant Avenue
-121.6516984942479951	37.1511380791689021	COCHRANE WELL
-121.6737128944919988	37.1544372618048016	BURNETT WELL
-121.6568741847819979	37.1124162075872022	EDMUNDSON RESERVOIR
-121.6700452123200051	37.1186671989067989	EL TORO RESERVOIR
-121.6961628559119930	37.1227077150905984	WOODLAND RESERVOIR
-121.6929759272750005	37.1327573027504982	GLEN AYRE RESERVOIR
-121.6538296616139974	37.1265071420399977	NOB HILL RESERVOIR
-121.6830147418340005	37.1278337064790023	GLEN AYER BOOSTER
-121.6475141988999980	37.1355981335124028	MAIN WELL 1
-121.6270570618359983	37.1242870317675013	CONDIT WELL
-121.6480781248340008	37.1273991115839976	DIANA WELL 1
-121.6313839586189971	37.1405067879266966	DIANA WELL II
-121.6364083264339939	37.1152250202150995	TENNANT WELL
-121.6700704225600020	37.1366846834605013	LLAGAS BOOSTER
-121.6141328401359942	37.1386609847543028	JACKSON WELL 1
-121.6564236744320056	37.1021064219056029	ENCINO RESERVOIR
-121.6046295170079929	37.1516457955864965	HOLIDAY LAKE RES 1
-121.6044713980879948	37.1519334137606023	HOLIDAY LAKE RES 2
-121.5855404589420061	37.1403888057976985	HYDRO-PNEUM BOOSTER
-121.6283313866569955	37.1281271167809024	SAN PEDRO WELL
-121.6283839371370021	37.1339583695223965	NORDSTROM PARK WELL
-121.6421201916819967	37.1682236736635971	BOY'S RANCH 3
-121.6418388332759974	37.1681900162655978	BOY'S RANCH 2
-121.6500983035499956	37.1681716095293027	BOY'S RANCH II WELL
-121.6526087057410024	37.1682351579188008	BOY'S RANCH III WELL
-121.6547452337999999	37.1646814003304016	BOY'S RANCH I WELL
-121.6358909334850011	37.1371090665830010	DIANA WELL III
-121.6700956365330057	37.1366692342186013	LLAGAS BOOSTER
-121.6440145296469950	37.1315483979489969	DIANA WELL 4
-121.6529771566709996	37.1393141379395004	BUTTERFIELD WELL
-121.6552217207349997	37.1030073208422024	Encino Booster
-121.6552360685389971	37.1030039201681987	Encino Booster
-121.6667955597090014	37.1206079270528022	El Toro Booster
-121.5931503869989996	37.1460695967918966	JACKSON OAKS BOOSTER
-121.6076616311329985	37.1416812676667973	EAST DUNNE BOOSTER
-121.5854661126179934	37.1403048108476028	JACKSON OAKS RES
-121.6310799353310017	37.1322654211003993	DUNNE WELL 2
-121.6309901847189963	37.1321431804111981	DUNNE WELL 1
-121.6829287031190034	37.1255587864454029	LLAGAS RESERVOIR
-121.6627457720740040	37.1413347375174965	MHMAP83

Attachment: RFP 2019_Broadband_FINAL (2895 : Execute Service Agreements with Wave Broadband)

SECTION 2 – General Instructions and Evaluation Information

Proposal Submission. Deliver Phase I sealed proposals to the City of Morgan Hill Development Services Department, City Hall, 17575 Peak Avenue, Morgan Hill, California 95037, by the due date and time below. Proposals must be addressed to Economic Development, and labeled as **“Response to RFP for Enhancing High Speed Broadband for City Facilities.”**

Following receipt of Phase I Vendor proposals, City Staff will review all proposals on a pass/fail basis listed below. Phase I Vendors that pass the Phase I review will be invited to present as part of Phase II the week of July 29th. Proposals will not be publicly opened.

Phase II presentation will be evaluated based upon criteria listed below. Phase II Vendors with highest score will be invited to take part in Phase III.

Phase III written submittal will be due August 19th.

Respondents complete the following bid document and include them in the bid proposal package:

1) Wage Theft Prevention Bid Certification

The form is provided in Section 3. Incomplete proposals will not be considered.

Request for Proposal (RFP) Schedule.

Enhancing High Speed Broadband for City Facilities RFP Schedule	
RFP Release	June 17, 2019
Pre-Bidder's Conference City of Morgan Hill 17555 Peak Avenue, Morgan Hill West Conference Room 9 am -10 am	June 26, 2019
Vendor Questions Due	July 1, 2019
City to Post Answers	July 8, 2019
Phase I Vendor Proposals Due	July 19, 2019
Phase II Presentation & Dialogue	Week of July 29, 2019

Phase III Written Vendor Proposals Due	August 19, 2019
BAFO (if necessary)	August 28, 2019
Award of Contract	September 16, 2019

Contractor Selection Criteria.

Phase I – Experience

The City seeks a written submittal that outlines the experience and capabilities of the proposer as it relates to meeting to goals of this RFP. Proposers should be able to outline demonstrated experience delivering high-speed broadband to communities similar to Morgan Hill.

Evaluation Criteria:

- Experience deploying symmetrical gigabit service residents and businesses
- Experience deploying services described throughout this RFP in a sustainable manner
- Corporate overview that demonstrates fiscal stability and resources to invest in Morgan Hill

Phase I is a pass/fail evaluation.

Phase II - Capabilities

The City seeks to engage in a dialogue with proposers regarding backhaul infrastructure, point of presence, etc. and other assets proposers have that could benefit the City in achieving the goals of this RFP. In addition, the City wishes to engage in a dialogue regarding what city assets a proposer may wish to leverage to potentially build or expand their network. Finally, the City wishes to discuss specific policies and design standards for empty conduit in the ROW and new construction for commercial and residential homes that will benefit the community long-term.

Evaluation Criteria:

- Demonstrated approach that minimizes direct City funding (40%)
- Demonstrated assets such as mid-mile and last-mile or the willingness to invest in bringing those assets to address the immediate needs of Morgan Hill (40%)
- Demonstrated ability to engage in a partnership to assist the City in designing policies and standards to address long-term broadband connectivity (20%)

The most advantageous partnership strategies discussed will advance to the Phase III of the evaluation.

Phase III – Written Proposal

Those proposers that demonstrate the capability to engage in a partnership with the City in Phase II above will be invited to submit a plan that outlines how to achieve the City's priorities. The City will evaluate written proposals on the criteria below:

- Approach & Methodology (20%)
- Number of priorities achieved (i.e. City facilities, business parks, residential) (30%)
- Timeline(s) to implement each priority (20%)
- Costs to the City (30%)

Phase IV – Best and Final Offer (BAFO)

The City may optionally seek to clarify or normalize proposals with one or more providers.

The City reserves the right to reject all proposals.

License. The successful respondent will be required to obtain a City of Morgan Hill Business License.

City Representative. The designated City representative for this Request for Proposals (RFP) is John Lang, Economic Development Manager at john.lang@morganhill.ca.gov

Submittal of Written Questions regarding this RFP. All questions regarding this RFP must be submitted in writing to John Lang at john.lang@morganhill.ca.gov no later than **Monday, July 1st at 5:00 p.m.** The City will respond to all questions via an Addendum to be posted on the City's website no later than Monday, July 8th at 5:00 p.m.

Addenda. The City reserves the right to issue addenda prior to Bid Time. Any addenda issued prior to Bid Time shall constitute part of the Contract Documents.

City Assets: Access to any City assets as part of a proposal should be considered non-exclusive.

Permits. The Contractor shall obtain and pay for any necessary permits.

Taxes. The proposal price shall include all applicable federal, state and local taxes.

Bid Protest. Any bid protest must be in writing and received by the City Attorney's Office at 17575 Peak Avenue, Morgan Hill, CA, (Fax: (408) 779-1592), before 5:00

p.m. no later than two (2) working days following the Notice of Award/Notice of Intent to Award [**after bidders are notified of bid results via an e-mail**] (the “**Bid Protest Deadline**”) and must comply with the following requirements:

Only a bidder who has actually submitted a Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest.

The bid protest must contain a complete statement of the basis for the protest and all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the specific portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address and telephone number of the person representing the protesting bidder if different from the protesting bidder.

A copy of the protest and all supporting documents must also be transmitted by fax or by e-mail, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest

The protested bidder may submit a written response to the protest, provided the response is received by City before 5:00 p.m., within two (2) working days after the Bid Protest Deadline or after receipt of the bid protest, whichever is sooner (the “Response Deadline”). The response must include all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address and telephone number of the person representing the protested bidder if different from the protested bidder. Protested bidder must concurrently transmit a copy of the response and all supporting documents by fax or by e-mail, by or before the Response Deadline, to the protesting bidder and any other bidder who has reasonable prospect of receiving an award depending upon the outcome of the protest.

The procedure and time limits set forth in this section are mandatory and are the bidder’s sole and exclusive remedy in the event of bid protest. The bidder’s failure to comply with these procedures shall constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.

Rejection of Bids and Award of Contract. City reserves the right, acting in its sole discretion, to waive non-substantive bid irregularities, the right to accept or reject any and all bids, or to abandon the work entirely. City does reserve the right to select one more providers. Contract(s) will be awarded by City Council, if at all, within sixty (60) calendar days after conducting interviews on the basis of the bid most advantageous to the City.

Execution of Contract. Contractor selected through the RFP process will be expected to execute a formal Contract with the City of Morgan Hill for the provision of the requested service. Entering into contract with the City of Morgan Hill will require compliance with the Section 4 Attachments which includes insurance requirements and defense and indemnification. Submission of a signed proposal will be interpreted to mean respondent has agreed to all the terms and conditions set forth in the pages of this RFP. Contractor must submit any and all exceptions to this RFP with its proposal, clearly identifying the exception, including the page number and section number, as appropriate. Contractor should note that the submittal of an exception does not obligate the City to revise the terms of this RFP or any resulting agreement. The City will not consider any exceptions that are not identified in the proposal.

Insurance. If awarded the contract, the Contractor may need to procure and provide proof of the insurance coverage. If proposer's scope of work involves access to or entry upon a City-owned property or right of way by proposer and/or its contractors, agents, employees, or subcontractors, proposer must meet the City's insurance requirements as outlined in Section 4, "Insurance Requirements". If proposer's scope of work does not involve access to or entry upon a City-owned property or right of way by proposer and/or its contractors, agents, employees, or subcontractors, then the City's insurance requirements do not apply.

Indemnification: If awarded the contract, the Contractor will be requirement to agree to the defense and indemnification as outlined in Section 4, "Defense and Indemnification."

SECTION 3 REQUIREMENTS TO PHASE III PROPOSAL

1) Wage Theft Prevention Bid Certification

This document must be included in bid proposal package.

Attachment 1

Required Phase III Submission

Wage Theft Prevention Bid Certification

(To be executed by bidder and submitted with bid)

All Bidders are expected to have read and understand the “Wage Theft Prevention Policy” adopted on July 26, 2017. which can be found at <http://www.morgan-hill.ca.gov/1061/Council-Policy-by-Number>

The undersigned Bidder hereby certifies that Bidder and its principals have__, have not__ been found by a final court judgement or final administrative action of an investigatory agency to have violated federal, state or local wage and hour laws within the past five years from the date of the submitted bid or proposal. For each disclosed violation, the Bidder shall provide a copy of (i) the court order and judgment and/or final administrative decision; and (ii) documents demonstrating either that the order/judgment has been satisfied, or if the order/judgment has not been fully satisfied, a written and signed description of Bidder’s efforts to date to satisfy the order/judgment. The completed Certification shall be submitted by the Bidder to the City as a part of its bid or proposal. The City, at its sole discretion, may disqualify a bidder based on one or more disclosed judgments consistent with the criteria set forth in the Policy.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this certification is executed on _____ [date], at _____ [city], _____ [state].

s/_____

Print Name and Title

SECTION 4: Attachments

- 1) Insurance Requirements
- 2) Defense and Indemnification

Attachment 1

Insurance Requirements

The insurance requirements outlined herein represent the minimum types and amounts of insurance SERVICE PROVIDER will be required to provide to the City. Both the types and amounts of the insurance outlined herein are subject to change based upon the City's review of the SERVICE PROVIDER's final scope of work and the City's determination of the types and amounts of insurance needed to protect the interests of the City.

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

a.1. **Insurance Types and Amounts.**

a.1.1. **Commercial General Liability (CGL).** SERVICE PROVIDER shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

a.1.2. **Automobile Liability.** SERVICE PROVIDER shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if SERVICE PROVIDER does not own automobiles, then SERVICE PROVIDER shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for

Attachment 1

Insurance Requirements

property damage, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

a.1.3. Workers' Compensation Insurance and Employer's Liability. SERVICE PROVIDER shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If SERVICE PROVIDER is self-insured, SERVICE PROVIDER shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

a.2. Endorsements. SERVICE PROVIDER shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

a.2.1. General Liability.

1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;
2. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,
3. insurance shall be primary non-contributing.

a.2.2. Workers Compensation.

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

a.3. Qualification of Insurers. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or

Attachment 1

Insurance Requirements

otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.

- a.4. **Certificates.** SERVICE PROVIDER shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the SERVICE PROVIDER's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

Attachment 2

Defense and Indemnification

- a.1. Defense and Indemnification. SERVICE PROVIDER shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of an Agreement or the failure to comply with any obligations contained in an Agreement by SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- a.2. Exceptions. SERVICE PROVIDER is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.
- a.3. Not limited by insurance. The indemnity, defense and hold harmless provisions of an Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by SERVICE PROVIDER.
- a.4. Right to Offset. CITY shall have the right to offset against any compensation due SERVICE PROVIDER under an Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER's failure either to (i) pay taxes on amounts received pursuant to an Agreement or (ii) comply with applicable workers' compensation laws.

Interpretation. It is expressly understood and agreed that the obligation of the SERVICE PROVIDER to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of any Agreement

MASTER SERVICES AGREEMENT FOR ENTERPRISE SERVICES – GOVERNMENTAL CUSTOMER

This Master Services Agreement for Enterprise Services – Governmental Customer (this “**MSA**”) is entered into as of this ____ day of December, 2020 (the “**Effective Date**”), by and between WAVE BUSINESS SOLUTIONS, LLC, a Washington limited liability company, on behalf of itself and its Affiliates (collectively, “**Provider**”), and the CITY OF MORGAN HILL, a California municipal entity (“**Customer**”). For purposes of this MSA, the term “**Affiliate**” shall mean any other person which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the first person or any of its subsidiaries. Each of Provider and Customer may be referred to in this MSA as a “**Party**” and together as the “**Parties.**”

ARTICLE 1 – STRUCTURE OF AGREEMENT

1.1 Purpose of MSA. Provider and its Affiliates provide various facilities-based telecommunications services, including Ethernet transport, dedicated internet access, phone over fiber, dark fiber, and related services (as applicable, the “**Services**”). This MSA is neither an agreement to purchase nor a commitment to provide Services. The purpose of this MSA is to provide the general terms, conditions and framework within which Customer and its Affiliates may from time to time purchase Services from Provider and its Affiliates, pursuant to one or more “**Service Orders**,” as described in Section 1.2 below.

1.2 Service Orders. The purchase of Services shall be accomplished only through the negotiation and mutual execution and delivery of a Service Order memorializing the terms and conditions pursuant to which Provider shall provide the desired Services to Customer. Service Orders shall clearly specify the following: (i) the type of Service at issue (e.g., Internet access, data transport, VoIP, dark fiber, etc.); (ii) the location(s) at which the Service is to be provided (each, a “**Service Site**”); (iii) the initial term of the Service Order (the “**Initial Service Term**”); (iv) the pricing for the Service, including (a) the monthly recurring charges (“**MRC**”) for the Service, and (b) any non-recurring charges (“**NRC**”) associated with installation of the Service; and (v) any other terms or conditions specific to the particular Service Order. Each fully-executed Service Order shall be governed by and become part of this MSA, and this MSA together with all fully-executed Service Orders shall be collectively referred to as the “**Agreement.**” Depending on the location of the Service Site, in some instances Services may be provided by an Affiliate of Provider.

1.3 Additional Documents Comprising Agreement; Order of Precedence. If one or more Service Level Agreements are attached to this MSA as Exhibits (the “**SLA**”), the SLA constitutes a part of this MSA. Customer’s use of any Services purchased pursuant to the Agreement will also be governed by Provider’s Acceptable Use Policy for Commercial Services (the “**AUP**”) which is attached to this MSA as Exhibit C. Additional provisions that are applicable only to specific types of Services are contained in Provider’s Service-Specific Terms and Conditions (the “**Service-Specific T&Cs**”) which is attached to this MSA as Exhibit D. In the event of a conflict between the provisions of any of the foregoing documents, the documents shall have the following order of precedence unless expressly stated otherwise in a particular Service Order: (i) the main body of this MSA (including the SLA); (ii) the applicable Service Order; (iii) the AUP; and (iv) the Service-Specific T&Cs.

ARTICLE 2 – TERM AND RENEWAL

2.1 Term of MSA. The term of this MSA (the “**MSA Term**”) shall be for Twenty (20) years, commencing on the Effective Date and expiring on the date that is one day prior to the twentieth (20th) anniversary of the Effective Date. Notwithstanding the foregoing, so long as any one or more Service Orders entered into pursuant to this MSA remain in effect, this MSA shall not terminate with respect to said Service Orders but shall continue to govern same until the expiration or termination of said Service Orders.

2.2 Term of Service Orders. The Initial Service Term of each Service Order shall be as specified in the Service Order. Upon expiration of the Initial Service Term of a Service Order, unless either Party terminates the Service Order by giving written notice of termination to the other Party not less than thirty (30) days prior to the end of the Initial Service Term, the Service Order will automatically renew for successive periods of one (1) year (each, a “**Renewal Term**”). During any Renewal Term for a Service Order, either Party may terminate the Service Order at the end of the then-current Renewal Term by giving written notice of termination to the other Party not less than thirty (30) days prior to the end of the then-current Renewal Term. The total period of time a Service Order is in effect is referred to as the “**Service Term**” for the Service Order at issue.

ARTICLE 3 – INSTALLATION, TESTING, ACCEPTANCE AND USE

3.1 Service Site; Demarcation Points; Equipment. Unless a Service Site is within Provider's control, Customer shall provide Provider with access to the Service Site as and to the extent reasonably necessary for Provider to install, test, inspect and maintain the Service(s) ordered during the Service Term. Unless otherwise stated in a Service Order: (i) Provider shall be solely responsible for the provision, operation and maintenance of all equipment and facilities (the "**Provider Equipment**") necessary to connect Provider's network facilities to the Customer demarcation point(s) at the Service Site (the "**Demarcation Point(s)**"); and (ii) Customer shall be solely responsible for the provision, operation and maintenance of all equipment and facilities (the "**Customer Equipment**") from the Demarcation Point(s) to Customer's internal network. Unless a Service Site is within Provider's control, Customer shall be responsible for maintaining appropriate conditions at the Service Site, including HVAC, electrical power, and security. Title to the Provider Equipment shall at all times remain vested in Provider. Customer shall not re-arrange, disconnect, tamper with, attempt to repair, or otherwise interfere with the Provider Equipment, nor shall Customer permit any third party to do so.

3.2 Damages Caused by Provider. Provider shall, at its sole cost and expense and to the satisfaction of the Customer: (a) remove, repair or replace any of its Provider Equipment that are damaged; and/or (b) repair any damage to public right-of-way, City Property or other property, whether public or private, caused by Provider, its agents, employees or contractors in their actions relating to operation, repair or maintenance of Provider Equipment. If Provider does not remove, repair or replace such damage to Provider Equipment or to the public right-of-way, City Property or other property, the Customer shall have the option, upon 30 days' prior written notice to Provider, to perform or cause to be performed such removal, repair, or replacement on behalf of Provider and shall charge Provider for the reasonable costs incurred by the Customer. Upon the receipt of a demand for payment from the Customer, Provider shall within thirty (30) days of such receipt, reimburse the Customer for such costs. The terms of this provision shall survive the expiration, completion, or earlier termination of this MSA.

3.3 Access. Customer grants provider reasonable access to the Service Sites. Access shall be available to Provider, Provider's employees, and invitees, during normal business hours, except if an emergency occurs. It is anticipated, after installation of the Equipment is completed, that Provider shall require reasonable access once every month for the purpose of ordinary tuning of Provider's equipment and appropriate maintenance of the Equipment. For restricted areas, Provider shall provide at least 48 hours advanced notice to Customer to arrange for access. Customer shall notify Provider of all restricted areas.

3.4 Testing, Acceptance and Service Commencement Date. Provider shall use commercially reasonable efforts to install the Services consistent with Provider's usual and customary installation timeline, and shall endeavor to keep Customer regularly informed regarding installation progress. Provider shall notify Customer when a Service has been installed and is ready for testing and use. Customer may, at Customer's option, participate in Provider's final testing of the Service. For Services having a committed bandwidth, the committed information rate shall be measured at the Ethernet layer and includes the Ethernet frame itself. The Initial Service Term for the Service at issue shall commence on the date on which the Service has been installed, tested and is active and available for use by Customer (the "**Service Commencement Date**"). Customer shall have a period of eight (8) calendar days after the Service Commencement Date in which Customer may notify Provider that the Service at issue is not functioning properly. If Customer notifies Provider of problems with a Service pursuant to this Section 3.4, Provider shall investigate and correct same and the Service Commencement Date shall be revised to be the first calendar day after the date on which Provider has corrected the problems. Unless Customer delivers notification of problems to Provider within the time period set forth above, Customer shall be deemed to have accepted the Service at issue and to have confirmed that the Service has been installed and is functioning properly as of the Service Commencement Date. Provider shall take commercially reasonable steps to protect the Provider Equipment from damage, including vandalism.

3.5 No Sub-Licensing; Non-Compete. Except as otherwise provided in this Section 3.5, all Services provided to Customer pursuant to the Agreement are for the sole benefit of Customer, and Customer shall not grant to any third party the right to use any of the Services, regardless of whether such grant were to take the form of a license, sublicense, lease, sublease, or any other form. Notwithstanding the foregoing, Provider understands that Customer sometimes allows personnel from third party non-profit organizations and/or from other governmental entities to occupy and use space within Customer's premises. Provider expressly agrees that Customer may allow such third-party personnel to use any Services provided to Customer's premises

pursuant to this Agreement as though such personnel were Customer's own personnel. Additionally, Provider expressly agrees that Customer may use the Services to provide free public wi-fi access at public parks and/or at Customer's facilities. Customer covenants to Provider that Customer shall not use the Services for commercial purposes that are competitive with Provider's business (e.g., use the Services to sell Internet access services, point-to-point data transport services, VoIP services, etc., to third parties within Provider's service area).

ARTICLE 4 – PAYMENT AND BILLING

4.1 **Invoicing.** All amounts owed by Customer to Provider under the Agreement shall be collectively referred to as "**Fees.**" Provider shall begin billing Customer for the MRC applicable to a Service as of the Service Commencement Date. Invoices shall be delivered monthly, and shall be paid by Customer within thirty (30) days of receipt. Fixed Fees shall be billed in advance and usage-based Fees shall be billed in arrears. Fixed fees for any partial month shall be pro-rated. For Services having an NRC, unless otherwise stated in the Service Order, Provider shall invoice Customer for the NRC upon full-execution of the Service Order. Except for amounts disputed in good faith by Customer pursuant to Section 4.2 below, past due amounts shall bear interest in the amount of 1.5% per month, or the highest amount allowed by law, whichever is lower.

4.2 **Disputed Invoices.** If Customer in good faith disputes any portion of a Provider invoice, Customer shall pay the undisputed portion of the invoice and submit written notice to Provider regarding the disputed amount, which notice shall include documentation supporting the alleged billing error (each such notice, a "**Fee Dispute Notice**"). A Fee Dispute Notice must be submitted to Provider within thirty (30) days from the date the invoice at issue is received by Customer. Customer waives the right to dispute any Fees not disputed within such thirty (30) day period. The Parties shall negotiate in good faith to attempt to resolve any such disputes within sixty (60) days after Customer's delivery of the applicable Fee Dispute Notice. Fee disputes unresolved within that time period shall be resolved consistent with the provisions of Section 11.1.

4.3 **Applicable Taxes.** All charges for Services set forth in Service Orders are exclusive of Applicable Taxes (as defined below). Except for taxes based on Provider's net income or taxes for which Customer possesses a valid exemption certificate, Customer shall be responsible for payment of all applicable taxes and regulatory fees, however designated, that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, or other taxes, fees, assessments, duties, charges or surcharges, that are imposed on, incident to, or based upon the provision, sale, or use of the Service(s) (collectively "**Applicable Taxes**"). The Applicable Taxes will be individually identified on invoices. If Customer is entitled to an exemption from any Applicable Taxes, Customer is responsible for presenting Provider with a valid exemption certificate (in a form reasonably acceptable to Provider). Provider will give prospective effect to any valid exemption certificate provided in accordance with the preceding sentence.

ARTICLE 5 – DEFAULT AND REMEDIES

5.1 **Customer Default.** Each of the following shall constitute a default by Customer under the Agreement (each a separate event of "**Default**"): (i) if Customer fails to pay any undisputed Fees when due, the failure of Customer to cure same within fourteen (14) days after receiving written notice from Provider regarding such failure to pay; (ii) if Customer fails to comply with any other material provision of the Agreement, the failure of Customer to cure same within thirty (30) days of receiving written notice from Provider regarding such non-compliance; or (iii) if Customer files or initiates proceedings, or has proceedings initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or other such official) under any bankruptcy, insolvency or other similar law, and the same is not dismissed within sixty (60) days.

5.2 **Remedies for Customer Default.** In the event of a Default by Customer under the Agreement, Provider may, at its option: (i) suspend any applicable Services until such time as the Customer Default has been corrected (provided, however, that any suspension shall not relieve Customer's on-going obligation to pay Provider all Fees and other amounts due under the Agreement as if such suspension of Services had not taken place); (ii) terminate the applicable Service(s) and/or the applicable Service Order(s); (iii) after the occurrence of any two Customer Defaults in any twelve (12) month period, terminate all Service Orders entered into with Customer; and/or (iv) pursue any other remedy available to Provider under the Agreement or applicable law. In the event of early termination for Customer Default pursuant to this Section 5.2, Customer shall pay to Provider the Termination Charge described in Section 6.3 below.

5.3 Provider Default. Each of the following shall constitute a Default by Provider under the Agreement: (i) if Provider fails to comply with any material provision of the Agreement other than provisions of the SLA, the failure by Provider to cure same within thirty (30) days of receiving written notice from Customer regarding such non-compliance; or (ii) Provider files or initiates proceedings, or has proceedings initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or other such official) under any bankruptcy, insolvency or other similar law, and the same is not dismissed within sixty (60) days.

5.4 Remedies for Provider Default. In the event of a Default by Provider under the Agreement Customer may, at its option: (i) terminate the applicable Service(s) and/or the applicable Service Order(s); and/or (ii) pursue any other remedy available to Customer under the Agreement or applicable law. Early termination by Customer shall be accomplished by providing termination notice to Customer's account manager and to the notice address specified in Article 13 below. In the event of early termination for Provider Default pursuant to this Section 5.4, Provider shall reimburse Customer for any pre-paid, unused monthly service Fees attributable to the terminated Service(s) and/or Service Order(s), and Customer shall have no further liability to Provider for the terminated Service(s) and/or Service Order(s). Early termination by Customer pursuant to this Section 5.4 shall not relieve Customer of its obligations to pay all Fees incurred prior to the early termination date.

ARTICLE 6 – EARLY TERMINATION & PORTABILITY

6.1 Early Termination for Non-Appropriation. Customer is a public entity subject to legislative appropriation requirements. As a general matter, Customer cannot legally be obligated to make payments for Services that are provided after the end of the fiscal period in which Customer executes a particular Service Order. In the event that, for any future fiscal period, sufficient funds are not appropriated or allocated for payment of any one or more Service Orders, Customer may terminate the Service Order at issue as a matter of public convenience as provided herein without incurring a Termination Charge or any other early termination fee. If and when Customer becomes aware that non-allocation of funds for the coming fiscal period appears likely, Customer shall use reasonable efforts to notify Provider of that possibility prior to the end of the then-current fiscal period. Once the non-appropriation decision has been made, Customer shall, as soon as reasonably practicable, deliver written notice of termination for non-appropriation to Provider specifying which Service or Services and/or which Service Order or Service Orders are being terminated for non-appropriation and the date on which such early termination shall occur. Customer shall remain obligated to pay for all Services delivered through the date of termination.

6.2 Early Termination for Customer Convenience. Customer may, at any time after executing a Service Order, discontinue one or more of the Services ordered and/or terminate the Service Order by giving at least thirty (30) days' advance written notice to Customer's account manager and to the notice address specified in Article 13 below. Any early termination of a Service pursuant to this Section 6.2 shall be referred to as "**Termination for Customer Convenience.**" In the event of Termination for Customer Convenience, Customer shall pay to Provider the Termination Charge described in Section 6.4 below.

6.3 Early Termination for Default. In accordance with Article 5 above, either Party may elect to terminate this MSA and/or one or more Service Orders prior to the scheduled Expiration Date in the event of an uncured Default by the other Party.

6.4 Termination Charge. In the event of Termination for Customer Convenience pursuant to Section 6.2 above, or termination for Customer Default pursuant to Section 5.2 above, Customer shall pay a Termination Charge to Provider. The "**Termination Charge**" shall equal the sum of the following: (i) all unpaid amounts for Services actually provided prior to the termination date; (ii) any portion of the NRC for the terminated Service(s) that has not yet been paid to Provider; (iii) with respect to off-net Services only, any documented cancellation or termination charges or fees imposed on Provider by any third party in connection with the early termination of the Services; and (iv) one hundred percent (100%) of all remaining MRCs Customer was to pay Provider for the Service during the remainder of the applicable Service Term. If incurred, the Termination Charge will be due and payable by Customer within thirty (30) days after the termination date of the Service at issue. Customer acknowledges that the calculation of the Termination Charge is a genuine estimate of Provider's actual damages and is not a penalty. So long as Customer has paid Provider the full Termination Charge specified by this Section 6.4, then upon the early termination of a Service Order for Customer Convenience or for Customer Default, title to any conduit or equipment installed pursuant to said Service Order that would pass to Customer upon expiration of that Service Order shall pass to Customer upon the early termination of the Service Order just as it would had the Service Order expired in the ordinary course.

6.5 Portability; Substitution of Services. At any time during the Service Term of a Service Order, Customer may elect to substitute new Services for then-existing Services. In such event, Provider will waive the Termination Charge associated with the termination of the then-existing Services as long as: (i) the Fees payable to Provider in connection with the substitute Services are equal to or greater than the Fees of the discontinued Services; (ii) Customer commits to retain the substitute Services for a period equal to or greater than the remainder of the Service Term for the discontinued Services; (iii) Customer pays all applicable installation and other NRCs, if any, for provision of the substitute Services; and (iv) Customer reimburses Provider for all reasonable and documented engineering, installation and construction costs associated with the discontinued Services, calculated on a time and materials basis, that have not already been recovered by Provider by the time of the substitution.

ARTICLE 7 – CONFIDENTIAL INFORMATION

7.1 Definition of Confidential Information. “**Confidential Information**” shall mean all information, including the Agreement, regarding the telecommunications needs of Customer and the Services that Provider offers under the Agreement which is disclosed by one Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”), to the extent that such information is marked or identified as confidential or proprietary or would be reasonably deemed confidential or proprietary given the circumstances surrounding its disclosure. All written or oral pricing and contract proposals, as well as network maps or diagrams exchanged between the Parties shall be deemed Confidential Information, whether or not so designated. The fact that Customer is a customer of Provider shall not be deemed Confidential Information and may be freely disclosed by either Party. Information shall not be deemed Confidential Information if (i) it is independently developed by or for the Receiving Party, (ii) it is lawfully received by the Receiving Party free of any obligation to keep it confidential, (iii) it becomes generally available to the public other than by breach of the Agreement, or (iv) it was known to the Receiving Party prior to the Disclosing Party’s disclosure of same.

7.2 Obligations Regarding Confidential Information. Confidential Information is the property of the Disclosing Party and shall be destroyed by or returned to the Disclosing Party upon request. The Receiving Party shall hold all Confidential Information in confidence. The Receiving Party: (i) shall use such Confidential Information only for the purposes of performing its obligations and/or enforcing its rights under the Agreement; (ii) shall reproduce such Confidential Information only to the extent necessary for such purposes; (iii) shall restrict disclosure of such Confidential Information to employees, contractors, advisors or consultants that have a need to know for such purposes (with disclosure to contractors, advisors and consultants being limited to contractors, advisors and consultants that have signed a non-disclosure agreement to protect the Confidential Information of third parties); (iv) shall not disclose Confidential Information to any third party without prior written approval of the Disclosing Party except as expressly provided in the Agreement or as required by law, by court order, by administrative order of an agency having jurisdiction, or in the enforcement of its rights under the Agreement; and (v) shall use at least the same degree of care (in no event less than reasonable care) as it uses with regard to its own proprietary or confidential information to prevent the disclosure, unauthorized use or publication of Confidential Information. In the event a Receiving Party is required to disclose Confidential Information of the Disclosing Party pursuant to law, court order or administrative order of an agency having jurisdiction, the Receiving Party will, if such notice is permitted by law, notify the Disclosing Party of the required disclosure with sufficient time for the Disclosing Party to seek judicial relief from the required disclosure, and reasonably cooperate with the Disclosing Party in any efforts the Disclosing Party may take to obtain protective measures in respect to the required disclosure. The Parties agree that breach of this Article 7 may cause irreparable injury for which monetary damages are not an adequate remedy; accordingly, each Party may seek injunctive relief and any other available equitable remedies to enforce the provisions of this Article 7.

7.3 California Public Records Act. Notwithstanding anything to the contrary contained elsewhere in this Article 7, the Parties understand and acknowledge that Customer is a governmental entity, and that California law limits the ability of Customer to shield from public disclosure any information given to Customer. Accordingly, the Parties agree to work together to avoid disclosures to Customer by Provider of confidential information which would result in economic loss or damage to Provider if such information were to be disclosed to third persons by Customer pursuant to a request submitted under the California Public Records Act, California Government Code §§ 6250 – 6276.48, or other similar public disclosure law. In the event that Customer receives a request pursuant to the Public Records Act (or other similar law) to disclose information identified by Provider in writing as confidential, Customer’s sole obligations to Provider shall be: (i) to promptly notify Provider; and (ii) to refrain from disclosing such records for a period of up to ten (10) business days to allow Provider an opportunity to seek legal protection against disclosure from a court of competent jurisdiction. Customer will not be required to withhold requested records beyond the ten (10) business days unless it may do so based on good faith reliance upon an exception to disclosure under the Public Records Act, or unless

Customer is ordered to withhold disclosure by the order of a court having competent jurisdiction. Customer may, but shall not be required, to join in any legal proceedings relating to the requested disclosure unless required to do so by the court. In the event that Provider initiates legal proceedings, or Customer initiates legal proceedings or withholds requested records at Provider's request, Provider shall indemnify and hold Customer harmless from and against all costs, attorneys' fees, expenses, liabilities, damages or other liabilities Customer may incur due to the legal proceedings initiated at and/or Customer's withholding of records at Provider's request. Customer shall not be liable to Provider for any loss, cost or expense relating to the disclosure of requested records if Provider fails to obtain legal protection against disclosure and Customer releases the records in good faith.

ARTICLE 8 – LIMITATION OF LIABILITY

8.1 General Limitations. Provider shall not be liable for any loss or damage occasioned by a Force Majeure Event. Except as expressly provided to the contrary elsewhere in the Agreement, Provider's aggregate liability to Customer for any and all causes and claims arising under the Agreement, whether based in contract, tort, warranty or otherwise shall be limited to the lesser of: (i) the actual direct damages sustained by Customer; or (ii) an amount equivalent to the total MRC received by Provider from Customer for the Service(s) at issue during the preceding twelve (12) month period.

8.2 Service Level Agreement. Should Provider fail, on any one or more occasions, to deliver any one or more Services to Customer in accordance with all of the terms and conditions contained in the applicable SLA, Customer's sole and exclusive remedy for such failure shall be as set forth in the SLA. No such failure shall be considered a Default by Provider under the Agreement.

8.3 No Special Damages. EXCEPT FOR (i) EACH PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER ARTICLE 7 ABOVE, (ii) EACH PARTY'S THIRD-PARTY INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 9 BELOW, AND (iii) CLAIMS ARISING FROM A PARTY'S INTENTIONAL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER, ARISING OUT OF OR INCURRED IN CONNECTION WITH A PARTY'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, INCLUDING, BY WAY OF EXAMPLE AND NOT BY WAY OF LIMITATION, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF DATA OR COST OF PURCHASING REPLACEMENT SERVICES, EVEN IF THE OTHER PARTY HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH SPECIAL DAMAGES.

8.4 Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PROVIDER MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, EITHER IN FACT OR BY OPERATION OF LAW, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, FITNESS FOR A PARTICULAR PURPOSE OR USE OF ANY SERVICES PROVIDED PURSUANT TO THIS AGREEMENT.

8.5 Assumption of Risk. PROVIDER HAS NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY OR RESPONSIBILITY WHATSOEVER FOR THE CONTENT OF ANY INFORMATION TRANSMITTED OR RECEIVED BY CUSTOMER THROUGH THE SERVICES, SERVICE INTERRUPTIONS ATTRIBUTABLE TO CUSTOMER'S NETWORK, ANY CUSTOMER EQUIPMENT FAILURES, OR ANY OTHER SUCH CAUSES, AND CUSTOMER USES THE SERVICES AT CUSTOMER'S OWN RISK. CUSTOMER SHALL BE RESPONSIBLE FOR THE SECURITY, CONFIDENTIALITY AND INTEGRITY OF INFORMATION CUSTOMER TRANSMITS OR RECEIVES USING ANY SERVICES.

8.6 Disclaimer Regarding HIPAA Compliance. If and to the extent Customer is a covered entity under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and needs its business associates to comply with HIPAA, Provider hereby notifies Customer that Provider's operations are not compliant with HIPAA. Provider's operations are generally exempt from HIPAA pursuant to the conduit exception. However, if and to the extent the Services provided pursuant to any Service Order would not qualify for the conduit exception, Provider's operations with respect to the Services are not HIPAA compliant. Provider will not execute a business associate agreement under HIPAA.

ARTICLE 9 – INDEMNIFICATION FOR THIRD PARTY CLAIMS

9.1 Indemnification by Customer. Customer shall indemnify, defend and hold Provider and its members, managers, officers, agents and employees (collectively, the "**Provider Indemnified Parties**") harmless from and against any and all claims, lawsuits or damages asserted against the Provider Indemnified Parties by any third-party to the extent the same arise out of or are due to: (i) Customer's negligence or willful misconduct in exercising its rights or performing its obligations under the Agreement;

(ii) Customer's noncompliance with or Default under the Agreement; and/or (iii) Customer's failure to comply with applicable law in connection with its performance under the Agreement.

9.2 Indemnification by Provider. Provider shall indemnify, defend and hold Customer and its elected or appointed officials, boards, agencies, volunteers, members, managers, officers, agents and employees (collectively, the "**Customer Indemnified Parties**") harmless from and against any and all claims, lawsuits or damages asserted against the Customer Indemnified Parties by any third-party to the extent the same arise out of or are due to: (i) Provider's negligence or willful misconduct in exercising its rights and performing its obligations under the Agreement; (ii) Provider's noncompliance with or Default under the Agreement; and/or (iii) Provider's failure to comply with applicable law in connection with its performance under the Agreement.

9.3 Indemnification Procedures for Third-Party Claims. Should any third-party claim arise under this Article 9, the indemnified Party shall promptly notify the indemnifying Party of same in writing, and shall take such action as may be necessary to avoid default or other adverse consequences in connection with such claim. The indemnifying Party shall have the right to select counsel and to control the defense and settlement of such claim; provided, however, that the indemnified Party shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in handling the claim, and provided further, that the indemnifying party shall not take any action in defense or settlement of the claim that would negatively impact the indemnified Party without the consent of the indemnified Party. The indemnified Party shall reasonably cooperate with the indemnifying Party in the defense of the third-party claim, including making its files and personnel reasonably available to the indemnifying Party, all at the cost and expense of the indemnifying Party.

ARTICLE 10 – FORCE MAJEURE EVENTS

Neither Party shall be liable for any delay in or failure of performance hereunder (other than Customer's payment obligations under Article 4) due to causes beyond such Party's reasonable control including, but not limited to, acts of God, fire, flood, earthquake, ice storms, wind storms, or other severe weather events, explosion, vandalism, cable cut, terrorist acts, insurrection, riots or other civil unrest, national or regional emergency, unavailability of rights-of-way, a governmental authority's failure to timely act, inability to obtain equipment, material or other supplies due to strike, lockout or work stoppage, or any law, order, regulation, direction, action or request of any civil or military governmental authority (each, a "**Force Majeure Event**"). If any Force Majeure Event causes an increase in the time required for performance of any of its duties or obligations, the affected Party shall be entitled to an equitable extension of time for completion. If the delay in performance caused by the Force Majeure Event exceeds thirty (30) days, either Party may terminate the Agreement or the applicable Service Order(s) immediately on written notice to the other Party, without incurring any liability in connection with such termination.

ARTICLE 11 – DISPUTE RESOLUTION

11.1 Good Faith Negotiations. Except for actions seeking a temporary restraining order or injunction, in the event any controversy, disagreement or dispute (each, a "**Dispute**") arises between the Parties in connection with this Agreement, the Parties shall use good faith efforts to resolve the Dispute through negotiation. In the event of a Dispute, either Party may give the other Party written notice of the Dispute (each, a "**Dispute Notice**"). The parties will meet and attempt to resolve the Dispute within sixty (60) days of the date on which the Dispute Notice is delivered. All discussions occurring and documents exchanged during negotiations under this Section are confidential and inadmissible for any purpose in any legal proceeding involving the Parties; provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation process. If the Parties do not resolve the Dispute within the sixty (60) day period, either of the Parties may pursue any remedy available to it under this Agreement, at law or in equity.

11.2 Governing Law. This Agreement and all matters arising out of this Agreement shall be governed by the laws of the State of California. Any judicial action arising in connection with this Agreement shall be in the Superior Court of the State of California in and for San Mateo County, or in the Federal District Court for the Northern District of California, as applicable.

ARTICLE 12 – ASSIGNMENT AND ASSUMPTION

Except as otherwise provided in this Article 12, neither Party shall assign, delegate or otherwise transfer the Agreement or its obligations under the Agreement, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, without the necessity of obtaining the other Party's consent, assign its interest in and to the

Agreement to: (i) any entity acquiring such Party, whether by merger or through purchase of substantially all the assets of such Party; (ii) a lender as an asset securing indebtedness; or (iii) an Affiliate of such party; provided, that in the event of a transfer to an Affiliate, the transferring Party shall continue to remain liable for the obligations under the Agreement.

ARTICLE 13 – NOTICES

Unless otherwise provided elsewhere in the Agreement, any notice to be given to either Party under the Agreement will be in writing and directed to the addresses set forth below. Notices will be deemed received (i) the next business day, when sent by reliable, commercial overnight courier; (ii) three (3) business days after being sent by certified mail, postage prepaid and return receipt requested; (iii) when actually received, if sent by email during the business hours of 9:00 a.m. to 5:00 p.m. (recipient's time). Notices received after 5:00 p.m. (recipient's time) will be effective the next business day.

If to Provider:

Wave Business Solutions, LLC
3700 Monte Villa Parkway
Bothell, WA 98021
ATTN: Business Solutions

If to Customer:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attn: Information Services

With a Copy to:

Wave Business Solutions, LLC
650 College Road East, Suite 3100
Princeton, NJ 08540
ATTN: Legal Department

With a Copy to:

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

Either Party may change its notice address by giving notice to the other Party in accordance with this Article.

ARTICLE 14 – REPRESENTATIONS AND COVENANTS

Each Party represents and covenants to the other as follows: (i) the execution and delivery of the Agreement and the performance of its obligations hereunder have been duly authorized; (ii) the Agreement is a valid and legal agreement binding on such parties and enforceable in accordance with its terms; (iii) to the best of its knowledge and belief, it is in material compliance with all laws, rules and regulations and court and governmental orders related to the operation of its business; and (iv) it shall comply with all applicable laws and regulations when exercising its rights and performing its obligations under the Agreement.

ARTICLE 15 – MISCELLANEOUS

15.1 Entire Agreement; Interpretation. The Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the Parties regarding the subject matter contained herein. The Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each Party. The Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the Parties, and the language in all parts of the Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the Parties. If any provision of the Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of the Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect.

15.2 No Waiver. No failure by either Party to enforce any rights hereunder will constitute a waiver of such rights. Nor shall a waiver by either Party of any particular breach or default constitute a waiver of any other breach or default or any similar future breach or default. Provider's acceptance of any payment under the Agreement will not constitute an accord or any other form of acknowledgement or satisfaction that the amount paid is in fact the correct amount, and acceptance of a payment will not release any claim by Provider for additional amounts due from Customer.

15.3 Intentionally left blank

15.4 Relationship; No Third Party Beneficiaries. The Agreement is a commercial contract between Provider and Customer and the relationship between the Parties is that of independent contractors. Nothing in the Agreement creates any partnership, principal-agent, employer-employee or joint venture relationship between the Parties or any of their Affiliates, agents or employees for any purpose. The Agreement is for the sole benefit of Provider and Customer and is not intended to confer any rights on any other person; there are no third party beneficiaries of the Agreement.

15.5 Exhibits. The following Exhibits, which are attached to this MSA, are incorporated herein and by this reference made a part of this MSA:

- EXHIBIT A - Service Level Agreement for Lit Fiber Services
- EXHIBIT B - Service Level Agreement for Dark Fiber & Wavelength Services
- EXHIBIT C - Acceptable Use Policy for Commercial Services
- EXHIBIT D - Service-Specific Terms and Conditions

15.6 Computation of Time. Except where expressly provided to the contrary, as used in the Agreement, the word "day" shall mean "calendar day," and the computation of time shall include all Saturdays, Sundays and holidays for purposes of determining time periods specified in the Agreement. If the final date of any period of time set out in any provision of the Agreement falls upon a Saturday or a Sunday or a legal holiday, then in such event, the time of such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday. As used in the Agreement, the term "business day" shall mean a day that is not a Saturday, Sunday or a legal holiday.

15.7 Counterparts; Electronic Signatures. Any Service Order entered into by the Parties pursuant to this MSA may be executed in multiple counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument. Any executed documents sent to the other Party in portable document format (pdf) images via email will be considered the same as an original document. The Parties consent to the use of electronic signatures.

[Signatures on following page.]

The Parties are signing this MSA as of the Effective Date set forth in the preamble above.

CUSTOMER:

City of Morgan Hill, a California
municipal entity

By _____

Name: _____

Title: _____

PROVIDER:

Wave Business Solutions, LLC, a Washington
limited liability company

By _____

Name: _____

Title: _____

Approved as to Form:

By _____

Name: _____

Title: _____

[The remainder of this page is intentionally left blank.]

EXHIBIT A
to
Master Services Agreement for Enterprise Services

Service Level Agreement for Lit Fiber Services

This Service Level Agreement for Lit Fiber Services (this "SLA") is part of the Master Services Agreement for Enterprise Services ("MSA") between Wave Business Solutions, LLC ("WAVE") and Customer. Unless otherwise provided in the applicable Service Order, this SLA applies to the following types of lit fiber Services provided by WAVE pursuant to the MSA: (a) dedicated Internet access services, (b) Ethernet transport services, and (c) voice services, including hosted voice. Additionally, the following Sections of this SLA apply to Business Class Internet access Services provided by WAVE pursuant to the MSA: Section 1, Section 7 and Section 8.

For purposes of this SLA, capitalized terms used but not defined in this SLA shall have the meanings set forth within the MSA.

1. AVAILABILITY SLA

WAVE's Network is designed to provide a target **Availability of at least 99.9%** per month. If the Availability target is not achieved in a given calendar month, Customer shall be entitled to the remedies set forth in the table below, which must be claimed as described in this SLA.

Target Availability	Duration of Service Outage	Customer Credit as % of MRC for the applicable Circuit*
99.9% Availability	Less than 45 minutes	Target Met
	45 Min. up to 4 hours	5%
	> 4 hours up to 12 hours	10%
	> 12 hours up to 18 hours	20%
	> 18 hours up to 24 hours	35%
	> 24 hours	50%

*Customer credits for Unavailability are calculated on an individual circuit basis, and the amount of any credit is based on the portion of MRC allocable to the affected circuit.

2. MEAN TIME TO RESTORE ("MTTR") SLA

In the event of Outages in Services due to failure or malfunction of the WAVE Network or WAVE Equipment, WAVE's CNOC is designed to provide a **MTTR of 6 hours or less**. If the target MTTR is not met for a particular circuit in a given calendar month, and Customer receives a Service from WAVE on the circuit at issue, then Customer shall be entitled to remedies set forth in the table below, which must be claimed as described in this SLA.

Target MTTR	Actual MTTR	Customer Credit as % of MRC for the applicable Circuit
6 hr MTTR	≤ 6 Hrs.	Target Met
	> 6 Hrs. to 10 Hrs.	5%
	> 10 Hrs. to 18 Hrs.	10%
	> 18 Hrs.	20%

3. PACKET DELIVERY/PACKET LOSS SLA

The WAVE Network is designed to provide **no greater than 0.1% Packet Loss**. If the Packet Loss target is not achieved in a given calendar month, Customer shall be entitled to the remedies set forth in the table below, which must be claimed as described in this SLA. Customer credits for average monthly Packet Loss are calculated on an individual circuit basis, and the amount of any

credit is based on the portion of MRC allocable to the affected circuit.

Target Maximum Packet Loss	Actual Packet Loss (lower end – upper end)	Customer Credit as % of MRC for the applicable Circuit
≤ 0.1% Packet Loss	0% - 0.1%	Target Met
	> 0.1% - 0.4%	5%
	> 0.4% - 0.7%	10%
	> 0.7% - 1.0%	25%
	> 1.0%	50%

4. LATENCY SLA

The WAVE Network is designed to provide a monthly average one-way Latency not to exceed the following:

- For “Local Market” distances of ≤ 75 miles = 10 milliseconds (ms)
- For “Inter-Market” distances of between 76 – 750 miles = 20 ms
- For “Long-Haul” distances of > 750 miles = 50 ms

If the applicable Latency target is not achieved in a given month and WAVE does not remedy the problem within fifteen (15) calendar days from the date on which Customer opens a Trouble Ticket with the WAVE CNOC regarding excessive Latency, Customer shall be entitled to the remedies set forth in the table below, which must be claimed as described in this SLA.

Target Local Market Latency	Target Inter-Market Latency	Target Long-Haul Latency	Actual One-Way Latency (lower end - upper end)	Customer Credit as % of MRC for the applicable Circuit
10 ms or less	20 ms or less	50 ms or less	≤ Target Latency	Target Met
			> Target up to 8 ms over Target	5%
			> 8 ms up to 15 ms over Target	10%
			> 15 ms up to 20 ms over Target	25%
			> 20 ms over Target	50%

5. NETWORK JITTER SLA

The WAVE Backbone Network is designed to have a monthly average one-way Network Jitter not to exceed the following:

- For Local Market distances of ≤ 75 miles = 2 ms
- For Inter-Market distances of between 76 – 750 miles = 5 ms
- For Long-Haul distances of > 750 miles = 15 ms

If the applicable Network Jitter target is exceeded in a given calendar month, Customer will be entitled to a credit of 1/30th of the MRC of the affected circuit for that month for each full 1ms of Network Jitter above the Network Jitter target set forth above. Any such credit must be claimed as described in this SLA.

6. CHRONIC OUTAGE

If Customer experiences a Chronic Outage with respect to a Service, Customer shall have the right to elect either of the following remedies, which must be claimed as described in this SLA: (i) substitute a different Service or a different circuit/path for the Service and circuit/path that experienced the Chronic Outage without incurring any Termination Charge or installation fees; or (ii) terminate the affected Service for the circuit/path that experienced the Chronic Outage without incurring any Termination Charge.

7. DEFINITIONS

For purposes of this SLA the following terms shall have the meanings set forth below.

“Availability” means the ability of Customer to exchange Ethernet packets with the WAVE Network via Customer’s router port. Availability is measured in minutes of uptime over the calendar month during which the Services are Available:

$$\begin{array}{lcl} \text{\% Availability} & = & \frac{(\text{Total Minutes in Month} - \text{Total Minutes of Unavailability in Month})}{\text{Total Minutes in Month}} \\ \text{(per calendar month)} & & \end{array}$$

For Ethernet Transport Services and VoIP Services, Availability is calculated at the individual circuit level, between WAVE’s Backbone Network and the Customer’s router port. For Dedicated Internet Access Services, Availability is calculated from the Customer’s router port through the WAVE Network to the handoff point for the Internet. Dedicated Internet Access Service Availability does not include the availability of the Internet itself or any particular Internet resource. Periods of Excused Outage are not included in Availability metrics.

“Chronic Outage” means a series of three (3) or more Service Outages affecting the same Service on the same circuit during a given calendar month, each of which has an actual time to restore “TTR” in excess of WAVE’s targeted MTTR.

“Emergency Maintenance” means WAVE’s efforts to correct conditions on the WAVE Network that are likely to cause a material disruption to or outage in services provided by WAVE and which require immediate action. Emergency Maintenance may degrade the quality of the Services provided to Customer, including possible outages. Any such outages are Excused Outages that will not entitle Customer to credits under this SLA. WAVE may undertake Emergency Maintenance at any time WAVE deems necessary and will provide Customer with notice of such Emergency Maintenance as soon as commercially practicable under the circumstances.

“Excused Outage” means any disruption to or unavailability of Services caused by or due to (i) Scheduled Maintenance, (ii) Emergency Maintenance, or (iii) circumstances beyond WAVE’s reasonable control, such as, by way of example only, Force Majeure Events, acts or omissions of Customer or Customer’s agents, licensees or end users, electrical outages not caused by WAVE, or any failure, unavailability, interruption or delay of third-party telecommunications network components the use of which are reasonably necessary for WAVE’s delivery of the Services to Customer.

“Jitter” or “Network Jitter” refers to a variation in the interval at which packets are received, also described as the variability in Latency as measured in the variability over time of the packet Latency across a network. Jitter is calculated as an aggregate average monthly metric measured by WAVE across the WAVE Backbone Network between a sample of WAVE POPs. Local access loops are not included. Periods of Excused Outage are not included in Jitter metrics.

“Latency” means how much time it takes, measured in milliseconds, for a packet of data to get from one designated point on WAVE’s Network to another designated point on WAVE’s Network. Latency is calculated as an aggregate average monthly metric measured by WAVE across the WAVE Backbone Network between a sample of WAVE POPs. Local access loops are not included. Periods of Excused Outage are not included in Latency metrics.

“Mean Time to Restore” or “MTTR” means the average time required to restore the WAVE Network to a normally operating state in the event of an Outage. MTTR is calculated on a circuit basis, as a monthly average of the time it takes WAVE to repair all Service Outages on the specific circuit. MTTR is measured from the time an Outage related Trouble Ticket is generated by the WAVE CNOC in response to Customer’s notification of the Outage until the time the Service is again Available. The cumulative length of Service Outages per circuit is divided by the number of Trouble Tickets in the billing month to derive the monthly MTTR per circuit:

$$\begin{array}{lcl} \text{MTTR in Hrs} & = & \frac{\text{Cumulative Length of Service Outages Per Month Per Circuit}}{\text{Total Number of Trouble Tickets for Service Outages Per Month Per Circuit}} \\ \text{(per calendar month)} & & \end{array}$$

Periods of Excused Outage are not included in MTTR metrics.

“Outage” means a disruption in the Service making the Service completely unavailable to Customer that is not an Excused Outage. For purposes of SLA-related credits and remedies, the period of unavailability begins when an Outage-related Trouble Ticket is opened by the Customer and ends when the connection is restored, as measured by WAVE. Unavailability does not include periods

of Service degradation, such as slow data transmission.

“Packet Loss” means the unintentional discarding of data packets in a network when a device (e.g., switch, router, etc.) is overloaded and cannot accept any incoming data. Packet Loss is calculated as aggregate average monthly metric measured by WAVE across the WAVE Backbone Network between a sample of WAVE POPs. Local access loops are not included. Periods of Excused Outage are not included in Packet Loss metrics.

“Scheduled Maintenance” means any maintenance of the portion of the WAVE Network to which Customer’s router is connected that is performed during a standard maintenance window (1:00AM – 6:00AM Local Time). Customer will be notified via email at least forty-eight (48) hours in advance of any scheduled maintenance that is likely to affect Customer’s Service.

“Trouble Ticket” means a trouble ticket generated through the WAVE CNOC upon notification of a Service-related problem. Trouble Tickets may be generated by WAVE pursuant to its internal network monitoring process, or by Customer’s reporting of a problem to the WAVE CNOC. In order for Customer to be eligible for credits or remedies under this SLA, Customer must contact the WAVE CNOC and open a Trouble Ticket regarding the problem; Trouble Tickets generated internally by WAVE will not provide a basis for Customer credits or Chronic Outage remedies.

“WAVE Backbone Network” means WAVE’s core fiber backbone that connects WAVE’s POPs and regional hubs.

“WAVE’s Commercial Network Operations Center” or “WAVE’s CNOC” means WAVE’s commercial network operations center, which is staffed 24x7x365 and can be reached at: 888-317-0488.

“WAVE Network” means all equipment, facilities and infrastructure that WAVE uses to provide Services to Customer, and includes Customer’s access port. The “WAVE Network” does not include Customer owned or leased equipment (unless leased from WAVE), or any portion of Customer’s local area network after the demarcation point for the Services provided by WAVE.

8. CLAIMING CREDITS AND REMEDIES

8.1 Requesting SLA Related Credits and Chronic Outage Remedies. To be eligible for any SLA-related Service credit or Chronic Outage remedy, Customer must be current in its financial obligations to WAVE. Credits are exclusive of any applicable taxes charged to Customer or collected by WAVE.

- (i) To claim SLA-related Service credits, Customer must do the following:
 - (a) Open a Trouble Ticket with the WAVE CNOC within twenty-four (24) hours of the occurrence giving rise to the claimed credit(s);
 - (b) Submit a written request for the credit(s) to Customer’s account manager within fifteen (15) days after the end of the calendar month in which the incident giving rise to the credit(s) occurred; and
 - (c) Provide the following documentation when requesting the credit(s):
 - Customer name and contact information;
 - Trouble Ticket number(s);
 - Date and beginning/end time of the claimed Outage or failed SLA metric;
 - Circuit IDs for each pertinent circuit/path; and
 - Brief description of the characteristics of the claimed Outage or failed SLA metric.
- (ii) To claim remedies for a Chronic Outage under this SLA, Customer must do the following:
 - (a) Open a Trouble Ticket regarding the Chronic Outage with the WAVE CNOC within seventy-two (72) hours of the last Outage giving rise to the claimed remedy;
 - (b) Submit a written request for a remedy regarding the Chronic Outage to Customer’s account manager within thirty (30) days of the end of the calendar month in which the Chronic Outage occurred; and

- (c) Provide the following documentation when requesting the remedy:
- Customer name and contact information;
 - Type of remedy requested (e.g., substitution or termination);
 - Trouble Ticket numbers for each individual Outage event;
 - Date and beginning/end time of each of the claimed Outages;
 - Trouble Ticket number for the Chronic Outage at issue;
 - Circuit IDs for each pertinent circuit/path; and
 - Brief description of the characteristics of the claimed Chronic Outage.

If Customer fails to timely submit, pursuant to the procedure described in this Section, a request for any SLA-related credit or Service Outage remedy for which Customer might otherwise be eligible under this SLA, Customer shall be deemed to have waived its right to receive such credit or remedy. The credits and remedies provided by this SLA are Customer's sole and exclusive remedies for any and all claims or complaints regarding the quality and/or availability of any of the Services for each occurrence to which this SLA applies.

8.2 WAVE's Evaluation of Claims. All claims for SLA-related credits and remedies for Chronic Outages are subject to evaluation and verification by WAVE. Upon receiving a claim for SLA-related credit and/or remedies for Chronic Outage, WAVE will evaluate the claim and respond to Customer within thirty (30) days. If WAVE requires additional information in order to evaluate Customer's claim, WAVE will notify Customer by email specifying what additional information is required. Customer will have fifteen (15) days from the date on which it receives WAVE's request for additional information in which to provide the requested information to WAVE. If Customer fails to provide the additional information within that time period, Customer will be deemed to have abandoned its claim. WAVE will promptly notify Customer of WAVE's resolution of each Customer claim. If Customer's claim for an SLA-related credit or Chronic Outage remedy is rejected, the notification will specify the basis for the rejection. If Customer's claim for a credit is approved, WAVE will issue the credit to Customer's account, to appear on the next monthly invoice. If Customer's claim for a Chronic Outage remedy is approved, WAVE will notify Customer of the date on which the requested substitution or termination will occur. WAVE's determination regarding whether or not an SLA has been violated shall be subject to the dispute resolution provisions in Article 11.1 of the MSA.

8.3 Limitations and Exclusions. Total credits for any given calendar month shall not exceed 100% of the MRC for the affected Service. Credits shall not be cumulative with respect to any given incident; instead, if multiple SLAs are violated during a single incident, Customer shall be entitled only to the largest applicable credit amount. This SLA will not apply and Customer will not be entitled to any credit under this SLA for any impairment of Services that is caused by or due to any of the following: (i) the acts or omissions of Customer, its agents, employees, contractors, or Customer's end users, or other persons authorized by Customer to access, use or modify the Services or the equipment used to provide the Services, including Customer's use of the Service in an unauthorized or unlawful manner; (ii) the failure of or refusal by Customer to reasonably cooperate with WAVE in diagnosing and troubleshooting problems with the Services; (iii) scheduled Service alteration, maintenance or implementation; (iv) the failure or malfunction of network equipment or facilities not owned or controlled by WAVE or WAVE's Affiliates; (v) Force Majeure Events; (vi) WAVE's inability (due to no fault of WAVE) to access facilities or equipment as reasonably required to troubleshoot, repair, restore or prevent degradation of the Service; or (vii) WAVE's termination of the Service for cause, or as otherwise authorized by the Agreement.

[The remainder of this page is intentionally left blank.]



EXHIBIT B
to
Master Services Agreement for Enterprise Services

Service Level Agreement for Dark Fiber & Wavelength Services

This Service Level Agreement for Dark Fiber & Wavelength Services (this "SLA") is a part of the Master Services Agreement for Enterprise Services ("MSA") between Wave Business Solutions, LLC ("WAVE") and Customer. Unless otherwise provided in the applicable Service Order, this SLA applies to the following types of Services provided by WAVE pursuant to the MSA: (i) dark fiber services, and (ii) wavelength services.

For purposes of this SLA, capitalized terms used but not defined in this SLA shall have the meanings set forth within the MSA.

1. AVAILABILITY SLA

WAVE's dark fiber paths and wavelengths are designed to provide a target Availability of **at least 99.9%** per calendar month. If the Availability target is not met with respect to a given dark fiber path or wavelength in a given calendar month, Customer will be entitled to a credit in the amount set forth below, which must be claimed as described in this SLA. Customer credits for Outages of dark fiber or wavelength Services are calculated on an individual path basis, and the amount of any credit is based on the portion of MRC allocable to the affected Service.

Duration of Unavailability	Customer Credit as % of MRC for the applicable Service
Less than 45 minutes	Target Met
45 Min. up to 8 hours	5%
> 8 hours up to 16 hours	10%
> 16 hours up to 24 hours	20%
> 24 hours	35%

2. MEAN TIME TO RESTORE ("MTTR") SLA

In the event of Outages in the Services, WAVE's CNOC is designed to provide a MTTR of **no greater than 6 hours**. If the target MTTR is not met for a particular dark fiber path or wavelength in a given calendar month, and Customer receives a Service from WAVE on the path at issue, then Customer shall be entitled to remedies set forth in the table below, which must be claimed as described in this SLA.

Target MTTR	Actual MTTR	Customer Credit as % of MRC for the applicable Service
6 hr MTTR	≤ 6 Hrs.	Target Met
	> 6 Hrs. to 10 Hrs.	5%
	> 10 Hrs. to 18 Hrs.	10%
	> 18 Hrs.	20%

3. CHRONIC OUTAGE

If Customer experiences a Chronic Outage with respect to a Service, Customer shall have the right to elect either of the following remedies, which must be claimed as described in this SLA: (i) substitute a different Service or a different path for the Service that experienced the Chronic Outage without incurring any Termination Charge or installation fees; or (ii) terminate the affected Service



for the path that experienced the Chronic Outage without incurring any Termination Charge.

4. DEFINITIONS

For purposes of this SLA the following terms shall have the meanings set forth below.

“Availability” means the dark fibers or the wavelength at issue is available to and accessible by Customer at the specified locations, is capable of transmitting signals and can otherwise be used by Customer. Availability does not involve the quality of data transmission. Periods of Excused Outage are not included in the Availability metric. WAVE does not monitor the use or availability of dark fiber or wavelength Services, thus any Outage must be reported to WAVE by Customer.

“Chronic Outage” means a series of three (3) or more Service Outages affecting the same Service on the path during a given calendar month, each of which has an actual time to restore “TTR” in excess of WAVE’s targeted MTTR.

“Emergency Maintenance” means WAVE’s efforts to correct conditions on the WAVE Network that are likely to cause a material disruption to or outage in Services provided by WAVE and which require immediate action. Emergency Maintenance may degrade the quality of the Services provided to Customer, including possible outages. Any such outages are Excused Outages that will not entitle Customer to credits under this SLA. WAVE may undertake Emergency Maintenance at any time WAVE deems necessary and will provide Customer with notice of such Emergency Maintenance as soon as commercially practicable under the circumstances.

“Excused Outage” means any disruption to or unavailability of Services caused by or due to (i) Scheduled Maintenance, (ii) Emergency Maintenance, or (iii) circumstances beyond WAVE’s reasonable control, such as, by way of example only, Force Majeure Events, acts or omissions of Customer or Customer’s agents, licensees or end users, electrical outages not caused by WAVE, or any failure, unavailability, interruption or delay of third-party telecommunications network components the use of which are reasonably necessary for WAVE’s delivery of the Services to Customer.

“Mean Time to Restore” or “MTTR” means the average time required to restore the Service(s) to a normally operating state in the event of an Outage. MTTR is calculated on a path/route basis, as a monthly average of the time it takes WAVE to repair all Service Outages on the specific path/route. MTTR is measured from the time Customer opens an Outage related Trouble Ticket is with the WAVE CNOC in response to Customer’s notification of the Outage until the time the Service is again Available. The cumulative length of Service Outages per circuit is divided by the number of Trouble Tickets in the billing month to derive the monthly MTTR per circuit:

$$\text{MTTR in Hrs (per calendar month)} = \frac{\text{Cumulative Length of Service Outages Per Month Per Circuit}}{\text{Total Number of Trouble Tickets for Service Outages Per Month Per Circuit}}$$

Periods of Excused Outage are not included in MTTR metrics.

“Outage” means a disruption in the Service making the Service completely unavailable to Customer that is not an Excused Outage. For purposes of SLA-related credits and remedies, the period of unavailability begins when an Outage-related Trouble Ticket is opened by the Customer and ends when the connection is restored, as measured by WAVE. Unavailability does not include periods of Service degradation, such as slow data transmission.

“Scheduled Maintenance” means any maintenance of the portion of the WAVE Network to which Customer’s demarc is connected that is performed during a standard maintenance window (1:00AM – 5:00AM Local Time). Customer will be notified via email at least forty-eight (48) hours in advance of any scheduled maintenance that is likely to affect Customer’s Service.

“Trouble Ticket” means a trouble ticket generated through the WAVE CNOC upon notification of a Service-related problem. In order for Customer to be eligible for credits or remedies under this SLA, Customer must contact the WAVE CNOC and open a Trouble Ticket regarding the problem; Trouble Tickets generated internally by WAVE will not provide a basis for Customer credits



or Chronic Outage remedies.

“WAVE’s Commercial Network Operations Center” or “WAVE’s CNOC” means WAVE’s commercial network operations center, which is staffed 24x7x365 and can be reached at: 888-317-0488.

“WAVE Network” means all equipment, facilities and infrastructure that WAVE uses to provide Services to Customer, and includes Customer’s access port. The “WAVE Network” does not include Customer owned or leased equipment (unless leased from WAVE), or any portion of Customer’s local area network after the demarcation point for the Services provided by WAVE.

5. CLAIMING CREDITS AND REMEDIES

5.1 Requesting SLA Related Credits and Chronic Outage Remedies. To be eligible for any SLA-related Service credit or Chronic Outage remedy, Customer must be current in its financial obligations to WAVE. Credits are exclusive of any applicable taxes charged to Customer or collected by WAVE.

- (i) To claim SLA-related Service credits, Customer must do the following:
 - (a) Open a Trouble Ticket with the WAVE CNOC within twenty-four (24) hours of the occurrence giving rise to the claimed credit(s);
 - (b) Submit a written request for the credit(s) to Customer’s account manager within fifteen (15) days after the end of the calendar month in which the incident giving rise to the credit(s) occurred; and
 - (c) Provide the following documentation when requesting the credit(s):
 - Customer name and contact information;
 - Trouble Ticket number(s);
 - Date and beginning/end time of the claimed Outage or failed SLA metric;
 - Circuit IDs for each pertinent circuit/path; and
 - Brief description of the characteristics of the claimed Outage or failed SLA metric.
- (ii) To claim remedies for a Chronic Outage under this SLA, Customer must do the following:
 - (a) Open a Trouble Ticket regarding the Chronic Outage with the WAVE CNOC within seventy-two (72) hours of the last Outage giving rise to the claimed remedy;
 - (b) Submit a written request for a remedy regarding the Chronic Outage to Customer’s account manager within thirty (30) days of the end of the calendar month in which the Chronic Outage occurred; and
 - (c) Provide the following documentation when requesting the remedy:
 - Customer name and contact information;
 - Type of remedy requested (e.g., substitution or termination);
 - Trouble Ticket numbers for each individual Outage event;
 - Date and beginning/end time of each of the claimed Outages;
 - Trouble Ticket number for the Chronic Outage at issue;
 - Circuit IDs for each pertinent circuit/path; and
 - Brief description of the characteristics of the claimed Chronic Outage.

If Customer fails to timely submit, pursuant to the procedure described in this Section, a request for any SLA-related credit or Service Outage remedy for which Customer might otherwise be eligible under this SLA, Customer shall be deemed to have waived its right to receive such credit or remedy. The credits and remedies provided by this SLA are Customer’s sole and exclusive remedies for any and all claims or complaints regarding the quality and/or availability of any of the Services for each occurrence to which this SLA applies.



5.2 WAVE's Evaluation of Claims. All claims for SLA-related credits and remedies for Chronic Outages are subject to evaluation and verification by WAVE. Upon receiving a claim for SLA-related credit and/or remedies for Chronic Outage, WAVE will evaluate the claim and respond to Customer within thirty (30) days. If WAVE requires additional information in order to evaluate Customer's claim, WAVE will notify Customer by email specifying what additional information is required. Customer will have fifteen (15) days from the date on which it receives WAVE's request for additional information in which to provide the requested information to WAVE. If Customer fails to provide the additional information within that time period, Customer will be deemed to have abandoned its claim. WAVE will promptly notify Customer of WAVE's resolution of each Customer claim. If Customer's claim for an SLA-related credit or Chronic Outage remedy is rejected, the notification will specify the basis for the rejection. If Customer's claim for a credit is approved, WAVE will issue the credit to Customer's account, to appear on the next monthly invoice. If Customer's claim for a Chronic Outage remedy is approved, WAVE will notify Customer of the date on which the requested substitution or termination will occur. WAVE's determination regarding whether or not an SLA has been violated shall be subject to the Dispute Resolution provisions in Article 11.1 of the MSA.

5.3 Limitations and Exclusions. Total credits for any given calendar month shall not exceed 100% of the MRC for the affected Service. Credits shall not be cumulative with respect to any given incident; instead, if multiple SLAs are violated during a single incident, Customer shall be entitled only to the largest applicable credit amount. This SLA will not apply and Customer will not be entitled to any credit under this SLA for any impairment of Services that is caused by or due to any of the following: (i) the acts or omissions of Customer, its agents, employees, contractors, or Customer's end users, or other persons authorized by Customer to access, use or modify the Services or the equipment used to provide the Services, including Customer's use of the Service in an unauthorized or unlawful manner; (ii) the failure of or refusal by Customer to reasonably cooperate with WAVE in diagnosing and troubleshooting problems with the Services; (iii) scheduled Service alteration, maintenance or implementation; (iv) the failure or malfunction of network equipment or facilities not owned or controlled by WAVE or WAVE's Affiliates; (v) Force Majeure Events; (vi) WAVE's inability (due to no fault of WAVE) to access facilities or equipment as reasonably required to troubleshoot, repair, restore or prevent degradation of the Service; or (vii) WAVE's termination of the Service for cause, or as otherwise authorized by the Agreement.

[The remainder of this page is intentionally left blank.]



EXHIBIT C
to
Master Services Agreement for Enterprise Services

Acceptable Use Policy for Commercial Services

Introduction.

Please read this Acceptable Use Policy for Commercial Services ("AUP") carefully. Wave offers a variety of communications services ("Services") to its commercial and governmental customers. Your use of Wave's Services constitutes your acceptance of and agreement to comply with the provisions of this AUP to the extent its provisions are applicable to the Services you use. You are responsible for ensuring that all users of Services comply with this AUP. This AUP applies to your use of Services in addition to and in conjunction with the provisions of any Master Services Agreement, Service Order, Standard Terms and Conditions for Enterprise Services, Small Business Services Subscriber Agreement, IRU Agreement, Standard Terms and Conditions for Commercial Bulk Video Services or other contract documents you have entered into with Wave (collectively, your "Contract"). To the extent the provisions of this AUP conflict with any provisions of your Contract, the provisions of your Contract control. Wave may modify this AUP at any time without notice. Your continued use of the Services after such modification constitutes acceptance of the modified AUP.

Potential Consequences of Violating this AUP.

Although Wave does not normally monitor, screen or otherwise access the content of data transmitted using any Service, Wave reserves the right to do so at any time for reasonable network management purposes, to identify violations of this AUP, and to cooperate with law enforcement activities. Wave reserves the right, in its sole discretion, to (i) remove or block any traffic which Wave determines is illegal, deceptive, harmful, offensive or otherwise in violation of this AUP, and/or (ii) suspend or terminate your Services without notice and without liability to Wave if a violation of this AUP occurs through your Services. Any violation by you of this AUP grants Wave permission to take action to restrict or terminate your access to and use of Services. You agree to indemnify, defend and hold Wave and its affiliates, suppliers, and agents harmless from and against all claims and expenses (including reasonable attorneys' fees and costs) resulting from your violation of this AUP. Your indemnification obligations will survive any termination of Service. Wave's failure to enforce this AUP in any one or more instances does not constitute a waiver of Wave's right to enforce this AUP at any time in the future.

Prohibited Activities.

Prohibited uses of Services include, but are not limited to, the following:

- (1) **Illegal or Unlawful Use.** Using Services to engage in, undertake, accomplish, instigate, encourage or further any illegal or unlawful purpose or activity. This includes any and all illegal or unlawful purposes and activities that are not expressly described elsewhere in this AUP.
- (2) **Unauthorized Hacking.** Using Services to perform, attempt to perform, encourage or enable unauthorized hacking of any kind. This includes, but is not limited to: (i) breaching or circumventing the network security system of



any host, network, server, database or user account, whether on Wave's network or on another carrier's network, without permission; (ii) initiating, performing, participating in or assisting in the performance of denial of service or DDoS attacks; (iii) using or distributing tools designed to circumvent or compromise network security, such as ransomware, spyware, malware, password cracking or network probing algorithms or analyzers, encryption circumvention devices, or Trojan Horse programs.

(3) Fraudulent Activity. Using Services to engage in, commit, encourage or further fraudulent activities or other deceptive practices. This includes, but is not limited to, identity theft, credit card fraud, forgery, or impersonation of any person or entity.

(4) Violating Intellectual Property Rights. Using Services in a manner that violates the intellectual property rights of Wave or of any third party. This includes, but is not limited to, (i) modifying, disassembling, decompiling, preparing derivative works of, reverse engineering or otherwise attempting to gain access to the source code of any of the software components of your Services, (ii) using the software components of your Services for the development, production or marketing of a service or product substantially similar to your Services, or (iii) transmitting, reproducing, or distributing information, data, software or other material that is protected by copyright, trademark, patent, trade secret or other proprietary rights laws, rules or regulations without obtaining permission of the owner.

(5) Privacy Violations. Using Services in a manner that violates the privacy of others. This includes, but is not limited to, collecting (or attempting to collect) or disseminating personal information about third parties without their consent.

(6) Offensive or Objectionable Use. Using Services in a manner that a reasonable person could deem to be offensive or objectionable, regardless of whether or not the use is lawful. This includes, but is not limited to, using Services to: (i) harass, annoy, or threaten others; (ii) transmit or disseminate material which a reasonable person could deem to be objectionable, defamatory, offensive, indecent, vulgar, hateful or otherwise inappropriate; or (iii) send or collect responses from unsolicited bulk communications (e.g., "spam").

(7) Causing Network Performance Degradation. Using Services in a manner that causes (or is likely to cause) performance degradation of Wave's network and/or inhibits, interferes with or impedes other authorized users of Wave's network from making normal and reasonable use of their Services. This includes, but is not limited to, the generation of excessive levels of network traffic, regardless of intent, purpose or knowledge.

(8) Unauthorized Resale. Unauthorized resale of Services. Unless you are an authorized wholesale partner of Wave, Wave's commercial Services are exclusively for your internal business use and may not be re-sold or otherwise distributed outside your organization. If you desire to re-sell Wave's Services, please contact Wave's Wholesale team about becoming an authorized wholesale partner.

(9) Violating Other Provider's Policies. Using Services in a manner that violates the rules, regulations, or policies established by or applicable to any non-Wave network, server, database, or website that you access using Wave's Services.

Security.

As a user of Services, it is your responsibility to secure your network from external threats such as DDoS attacks,



ransomware, viruses, worms and other methods of unauthorized intrusion. In all cases, you are solely responsible for the security of any device you choose to connect to Service, including any data stored or shared on that device. You are responsible for any misuse of Services, even if the misuse was committed without your authorization. Therefore, you must take steps to ensure that others do not gain unauthorized access to Services or use Services in an unauthorized manner.

Digital Millennium Copyright Act.

Wave is committed to complying with U.S. copyright and related laws, and requires all customers and users of the Service to comply with these laws. Owners of copyrighted works who believe that their rights under U.S. copyright law have been infringed may take advantage of certain provisions of the Digital Millennium Copyright Act of 1998 (the "DMCA") to report alleged infringements. It is Wave's policy in accordance with the DMCA and other applicable laws to reserve the right to restrict the use of or terminate Services provided to any customer who is either found to infringe third party copyright or other intellectual property rights, including alleged repeat infringers, or who Wave believes in its sole discretion is or may likely be infringing these rights. Wave may terminate the Service of any such customer at any time with or without notice. Copyright owners may report alleged infringements of their works that are committed using the Services by sending Wave's authorized agent a notification of claimed infringement that satisfies the requirements of the DMCA. Upon Wave's receipt of a satisfactory notice of claimed infringement for these works, Wave will take appropriate action. If the affected customer believes in good faith that the allegedly infringing works have been removed or blocked by mistake or misidentification, then that person may send a counter notification to Wave. Upon Wave's receipt of a counter notification that satisfies the requirements of DMCA, Wave will provide a copy of the counter notification to the person who sent the original notification of claimed infringement and will follow the DMCA's procedures with respect to a received counter notification. In all events, you expressly agree that Wave will not be a party to any disputes or lawsuits regarding alleged copyright infringement.

Copyright owners may send Wave a notification of claimed infringement to report alleged infringements of their works to:

Wave Business Solutions, LLC
 3700 Monte Villa Parkway
 Bothell, WA 98021
 Phone: (833) 418-0045
 E-mail: dmcanotice@wavebroadband.com

Copyright owners may use any form of notification of claimed infringement form that satisfies the requirements of [Section 512\(c\)\(3\)](#) of the U.S. Copyright Act. Under the DMCA anyone who knowingly makes misrepresentations regarding alleged copyright infringement may be liable to Wave, the alleged infringer, and the affected copyright owner for any damages incurred in connection with the removal, blocking, or replacement of allegedly infringing material.

If a notification of claimed infringement has been filed against you, you can file a counter notification with Wave's designated agent using the contact information shown above. All counter notifications must satisfy the requirements of [Section 512\(g\)\(3\)](#) of the U.S. Copyright Act.

[The remainder of this page is intentionally left blank.]



EXHIBIT D
to
Master Services Agreement for Enterprise Services

Service-Specific Terms and Conditions

Introduction.

Please read this Service-Specific Terms and Conditions (“Service-Specific T&Cs”) carefully. Wave offers a variety of communications services (“Services”) to its commercial and governmental customers. This Service-Specific T&Cs contains provisions that apply only to specific types of Services provided by Wave Business. If you receive from Wave Business any of the types of Services described in this Service-Specific T&Cs, then the applicable provisions of this Service-Specific T&Cs apply to your Service. If provisions of this Service-Specific T&Cs apply to one or more of your Services, the provisions of this Service-Specific T&Cs apply to those Services in addition to and in conjunction with the provisions of any Master Services Agreement, Service Order, IRU Agreement or other contract you have entered into with Wave Business (collectively, your “Contract”). To the extent the provisions of this Service-Specific T&Cs conflict with any provisions of your Contract, the provisions of your Contract control. Wave Business may modify this Service-Specific T&Cs at any time without notice. Your continued use of your Services after such modification constitutes acceptance of the modified Service-Specific T&Cs.

Internet Access Service Provisions.

If you receive Internet access Services from Wave Business, then, in addition to the other provisions of your Contract, your use of Wave Business’s Internet access Services is subject to the following terms and conditions:

- (1) **End User Access.** You must ensure that any persons who have access to the Services through your equipment and/or your internal network comply with the terms of this AUP and your Contract.
- (2) **Acceptance of Risk.** You expressly acknowledge and agree that the Internet is a shared network that is not secure and that is not controlled by Wave Business. Any content that you access through the Services is provided by independent third-party content providers, over which Wave Business does not exercise control. Wave Business does not preview, exercise editorial control over, or endorse any opinions or information accessed through the Services. You expressly understand and agree that it is possible data or files you send or receive over the Internet will be monitored by third-parties and/or subject to unauthorized access by third-parties. Third-parties may gain access to your data, including confidential information. Data or files transmitted over the Internet may contain computer viruses or other harmful components. Wave Business has no responsibility and assumes no liability for any such acts or occurrences. You expressly assume the risks inherent in connecting your internal network and your equipment to the Internet and in accessing and using the Internet through the Services.
- (3) **IP Addresses.** Any IP addresses provided to you by Wave Business in connection with the Services are and will remain the property of Wave Business. You will not alter, modify, sell, lease, assign, encumber or otherwise tamper with the IP addresses. Wave Business reserves the right to change addressing schemes at any time.
- (4) **Wave G Business.** If you receive Wave G Business Internet access Service from Wave Business, you expressly acknowledge and agree that Wave G Business is an “up to” bandwidth Service, with the bandwidth specified on your Contract being the maximum possible bandwidth. You expressly understand and agree that the actual bandwidth you experience at any time will vary based on numerous factors, such as the type and configuration of your internal network equipment, the number of devices simultaneously using your Wave G Business Internet access Service, the amount of traffic Wave Business’s network is then-experiencing, and other similar factors. Additionally, you understand and agree that, while Wave G Business Internet access Service is a fiber-based Service, Wave Business’s normal SLA for lit fiber services does NOT apply to Wave G Business Internet access Service. Instead, Wave G Business Internet access Service is a “best effort” service for which no SLA remedies are available.



While Wave Business will use commercially reasonable efforts to ensure that your Wave G Business Internet access Service is available to you twenty-four (24) hours per day, seven (7) days per week, it is possible that there will be interruptions (e.g., outages) or periods of degradation (e.g., slow transmission) in your Wave G Business Internet access Service. While Wave Business will use commercially reasonable efforts to correct any such interruptions or degradations in a timely manner, you expressly acknowledge and agree that neither service credits nor chronic outage remedies are available to you in connection with problems involving your Wave G Business Internet access Service. Temporary interruptions in or degradation to your Wave G Business Internet access Service do not constitute failures on the part of Wave Business to fulfill its obligations under your Contract.

(5) DDoS Protection Service. If you receive DDoS protection Service from Wave Business in connection with your Internet access Service, you expressly agree and understand that the DDoS protection Service does not guaranty that the Internet access Service for which the DDoS protection Service is activated will never be susceptible to or negatively impacted by any distributed denial of service attack or any other type of hostile hacking activity. Instead, the DDoS protection Service constitutes only one measure of protection against such activities. Wave Business shall not be liable for any damages of any type that may be suffered by you or any of your end users due to any DDoS attacks or other hostile hacking activity experienced by the Internet access Service that the DDoS protection Service does not successfully prevent, alleviate or ameliorate.

Burstable Service Provisions.

If you receive burstable Internet access Services or burstable data transport Services from Wave Business, then, in addition to the other provisions of your Contract, your use of Wave Business's burstable Services is subject to the following terms and conditions. Burstable Internet access or data transport Service allows you to increase from the selected base bandwidth up to the specified maximum burstable bandwidth on an as-needed basis when usage spikes. Charges for burstable Service will be calculated by using the industry standard 95th percentile. The 95th percentile measurement evaluates the regular and sustained use of a network connection and is measured by sampling usage at 5 minute intervals and ignoring the top 5% of usage samples taken over a month. The 95th percentile measure of peak bandwidth will then be compared to the base bandwidth and the incremental usage will be billed at the burst rate in arrears on a monthly basis. Charges for burstable Service will be measured, calculated and accrued on a monthly basis, and billed in arrears on a monthly basis.

SD-WAN, Advanced Firewall & Advanced Cloud Security Service Provisions.

If you receive SD-WAN, Advanced Firewall and/or Advanced Cloud Security Services from Wave Business, then, in addition to the other provisions of your Contract, your use of Wave Business's SD-WAN, Advanced Firewall and/or Advanced Cloud Security Services is subject to the following terms and conditions:

(1) Underlying Internet Connection Required. Wave Business's SD-WAN, Advanced Firewall and Advanced Cloud Security Services are cloud-hosted Services that require an underlying Internet connection in order to operate. The underlying Internet connection does not need to be provided by Wave Business; it may be provided by any Internet access provider. However, the SD-WAN, Advanced Firewall and Advanced Cloud Security Services will not function if you do not have an active connection to the Internet.

(2) Use of Customer Information to Configure Service. In order to configure your SD-WAN, Advanced Firewall and Advanced Cloud Security Service, Wave Business must provide certain information regarding your network configuration (e.g., your company name, service site address(es), circuit IDs, etc.) to the cloud-hosted portal through which your service will be configured and managed. By ordering SD-WAN, Advanced Firewall and/or Advanced Cloud Security Service from Wave Business, you are authorizing Wave Business to use your information to establish and configure your account on the cloud-hosted portal.

(3) Ownership of Equipment. The hardware installed by Wave Business at your service site in connection with your SD-WAN, Advanced Firewall and/or Advanced Cloud Security Service is and shall at all times remain the personal property of Wave Business.



Wave Business shall be responsible for the regular maintenance and repair of all such equipment. Should you experience problems with the equipment, you must contact Wave Business and Wave Business will use commercially reasonable efforts to repair or replace the malfunctioning equipment as soon as possible after receiving your notification. Wave Business shall have the right at any time, and from time to time, during the service term to substitute different equipment for some or all of the equipment initially installed at your service site; provided that the substituted equipment has equivalent or better functionality than the previously installed equipment. Should any equipment require repair or replacement due to your negligent or willful conduct, including the misuse or abuse of same, you shall reimburse Wave Business for the costs of such repair or replacement.

(4) **No Intellectual Property Rights.** By your use of Wave Business's SD-WAN, Advanced Firewall and/or Advanced Cloud Security Services, you will not gain any rights of ownership of copyrights, patents, trade secrets, trademarks or any other intellectual property rights in or to the SD-WAN, Advanced Firewall and/or Advanced Cloud Security products, hardware, firmware, software, or the output from the online cloud-hosted portal, all of which are and shall at all times remain owned by Wave Business or its vendors and suppliers, as applicable. Wave Business or its vendors and suppliers, as applicable, will retain exclusive ownership in all deliverables created hereunder and will own all intellectual property rights, title and interest in any ideas, concepts, know how, documentation or techniques developed in connection with the SD-WAN, Advanced Firewall and/or Advanced Cloud Security Services.

(5) **No Cyber Security or Network Consulting Services.** Wave Business does not provide cyber security consulting, network security consulting, network management consulting or any other similar types of professional services. You understand and agree that Wave Business has not provided you with and will not in the future provide you with any recommendations, guidance or advice regarding your use of the SD-WAN, Advanced Firewall and/or Advanced Cloud Security Services to configure, optimize, monitor and/or protect your network. Instead, you are at all times fully and solely responsible for configuring, optimizing, monitoring and protecting your network using the SD-WAN, Advanced Firewall and/or Advanced Cloud Security Services provided by Wave Business. Should you, at any time, ask Wave Business personnel to modify or alter the configuration of your SD-WAN, Advanced Firewall and/or Advanced Cloud Security Services, Wave Business personnel will not independently assess the advisability of your requested changes. Instead, Wave Business's only obligation in such situation is to make the specific modifications or alterations requested by you.

(6) **Cyber Security Disclaimer.** Use of Wave Business's Advanced Firewall and/or Advanced Cloud Security Services does not guarantee that your network will never be susceptible to or negatively impacted by any cyber security threats or hostile hacking activity (e.g., viruses, malware, denial of service attacks, ransomware, cryptojacking, phishing, SQL injection, man in the middle attacks, etc.). Instead, Wave Business's Advanced Firewall and/or Advanced Cloud Security Services constitute only one measure of protection against such activities. WAVE BUSINESS SHALL NOT BE LIABLE FOR ANY DAMAGES OF ANY TYPE THAT MAY BE SUFFERED BY YOU, OR ANY OF YOUR EMPLOYEES, BUSINESS PARTNERS, CUSTOMERS OR END USERS DUE TO ANY CYBER SECURITY BREACHES OR OTHER HOSTILE HACKING ACTIVITY THAT THE ADVANCED FIREWALL AND/OR ADVANCED CLOUD SECURITY SERVICES DO NOT SUCCESSFULLY PREVENT, ALLEVIATE OR AMELIORATE.

Phone Service Provisions.

If you receive phone Services (including hosted voice Services) from Wave Business, then, in addition to the other provisions of your Contract, your use of Wave Business's phone Services is subject to the following terms and conditions:

(1) **VoIP Services.** Wave Business's voice Services are provided via Internet Protocol voice network (aka "VoIP"). VoIP services operate using the standard commercial electrical power provided to your service site. Wave Business does not provide a back-up generator, UPS or other alternate power source for the Services; accordingly, in the event of a power outage at your service site, unless you have arranged for back-up power, the VoIP Services will be unavailable until electrical service is restored. You acknowledge and accept that the Service is not represented as fail-safe and is not designed for use in situations where error-free or uninterrupted service is essential. Wave Business will not be responsible for, and you expressly assumes all risk of, any losses or damages arising as a result of the unavailability of the Service, including the inability to reach 911 or other emergency services, or the inability to contact your security system, your fire alarm system or any remote medical monitoring service provider.



(2) **Important Notice Regarding E911 Service.** Federal Communications Commission rules require providers of VoIP phone services to remind customers of these important E911 facts: (a) Wave Business needs a complete and correct service site address in order to deliver accurate location information to E911; (b) If you move your VoIP phone equipment to a different physical address, you must call Wave Business immediately to update the location information, otherwise E911 will not have your correct location information on file; (c) VoIP services operate using the standard electrical power provided to the service site, so unless you have arranged for a back-up power supply, the Services will be unavailable during a power outage; (d) You may not be able to make E911 calls if there is a power outage, network outage or other technical problems, or if your phone service is terminated or suspended.

(3) **Other Providers.** Unless otherwise expressly agreed to in writing, Wave Business has no obligation or responsibility to arrange for termination or removal of telecommunications services provided by long distance providers. You remain responsible for terminating and removing any such unwanted services and circuits provided by other long distance providers. You understand that you may designate only one primary interexchange carrier for any one telephone number for state-to-state (interLATA), intrastate and international usage.

(4) **Long Distance Charges.** Any long distance rates listed in your Contract are the rates as of the effective date of that Contract and may not reflect the actual rates applicable at any given time during the term of the Contract. All long distance charges are exclusive of applicable taxes, and Wave Business may add or adjust rates and charges in order to recover amounts it is required or permitted by governmental or quasi-governmental authorities to collect from or pay to others in support of statutory or regulatory programs ("Governmental Charges"), plus amounts to recover reasonable administrative costs associated with such Governmental Charges.

(5) **CPNI.** Wave Business will have access to certain proprietary network information of yours ("CPNI"). Under federal law, you have a right to, and Wave Business has a duty to protect, the confidentiality of CPNI. CPNI may be useful to tailor services to you and to enhance Wave Business's ability to meet your needs. You expressly authorize Wave Business, its affiliates, or its sales representatives to use CPNI to determine if you could benefit from other services offered by Wave Business and its affiliates, and market them to you. You may withdraw your authorization at any time by informing Wave Business in writing. Any such withdrawal will not affect the quality of Services provided to you.

Hosted Voice Service Provisions.

If you receive hosted voice Services from Wave Business, then, in addition to the other provisions of your Contract and the Phone Service Provisions set forth above, your use of Wave Business's hosted voice Services is subject to the following terms and conditions:

(1) **Leased Hosted Voice Equipment.** If you are leasing hosted voice equipment (the "Leased Equipment") from Wave Business, then the Leased Equipment shall at all times be and remain the personal property of Wave Business. Wave Business shall be responsible for the regular maintenance and repair of all Leased Equipment. Should you experience problems with any of the Leased Equipment, you must contact Wave Business and Wave Business will use commercially reasonable efforts to repair or replace the malfunctioning Leased Equipment as soon as reasonably possible after receiving your notification. For Leased Equipment, Wave Business shall have the right at any time, and from time to time, during the service term to substitute different hosted voice equipment for some or all of the Leased Equipment initially installed at your service site; provided that the substituted Leased Equipment has equivalent or better functionality than the previously installed Leased Equipment. Should any Leased Equipment require repair or replacement due to your negligent or willful conduct, including the misuse or abuse of same, you shall reimburse Wave for the costs of such repair or replacement.

(2) **Purchased Hosted Voice Equipment.** If you have purchased hosted voice equipment (the "Purchased Equipment") through Wave Business, then upon your acceptance of the Purchased Equipment, the Purchased Equipment shall be and remain your personal property. As between Wave Business and you, you shall be solely responsible for the repair and maintenance of all



Purchased Equipment and any and all obligations and liabilities associated therewith. **YOU ACKNOWLEDGE THAT THE PURCHASED EQUIPMENT IS NOT MANUFACTURED BY WAVE BUSINESS AND THAT WAVE BUSINESS DOES NOT SUPPORT AND SHALL HAVE NO MAINTENANCE OBLIGATIONS OR OTHER LIABILITY REGARDING SAME.** WAVE BUSINESS WILL EITHER DELIVER THE MANUFACTURER'S WARRANTY FOR THE PURCHASED EQUIPMENT DIRECTLY TO YOU OR PASS THROUGH THE MANUFACTURER'S WARRANTY TO YOU DEPENDING ON THE APPLICABLE MANUFACTURER'S POLICY. WAVE BUSINESS HEREBY ASSIGNS TO YOU ALL OF THE MANUFACTURERS' WARRANTIES AND INDEMNITIES RELATING TO THE PURCHASED EQUIPMENT TO THE EXTENT WAVE BUSINESS IS PERMITTED BY THE MANUFACTURER TO MAKE SUCH ASSIGNMENT TO YOU. SUCH ASSIGNMENT IS SUBJECT TO ALL OF THE TERMS AND CONDITIONS IMPOSED BY THE MANUFACTURER WITH RESPECT THERETO. YOUR REMEDY FOR DEFECTIVE PURCHASED EQUIPMENT SHALL BE AS SET FORTH IN THE APPLICABLE MANUFACTURER'S WARRANTY WHICH IS YOUR SOLE AND EXCLUSIVE REMEDY FOR BREACH OF AN EQUIPMENT WARRANTY. WAVE BUSINESS DOES NOT EXTEND ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, EITHER TO YOU OR TO THIRD PARTIES, FOR ANY PURCHASED EQUIPMENT PURCHASED BY YOU PURSUANT TO A CONTRACT, NOR SHALL WAVE BUSINESS HAVE ANY LIABILITY FOR ANY LOSS, DAMAGE, OR EXPENSE DIRECTLY OR INDIRECTLY ARISING FROM YOUR USE OF (OR INABILITY TO USE) THE PURCHASED EQUIPMENT OR A THIRD PARTY'S UNAUTHORIZED USE OF THE PURCHASED EQUIPMENT. Any questions concerning or requests for maintenance or repair of the Purchased Equipment should be directed to the manufacturer of the Purchased Equipment at issue. If Purchased Equipment impairs the Services, you will remain liable for payment of the applicable monthly service fees. If, at your request, Wave Business attempts to resolve difficulties caused by Purchased Equipment, you will be responsible for Wave Business's then-current commercial rates and terms for such consulting services on a time and materials basis.

(3) Hosted Voice Software. Certain types of hosted voice Services, such as virtual seats, mobile clients, and video conferencing solutions, require the installation of third-party software on your equipment. Additionally, both Leased Equipment and Purchased Equipment may include a limited license to use certain third-party software and/or firmware provided by the vendor or manufacturer of the Leased Equipment / Purchased Equipment. Any such software or firmware provided to you in connection with hosted voice Services shall be collectively referred to as the "Hosted Voice Software." You expressly understand and agree that, unless otherwise provided in any written license agreement or other documentation from the third-party vendor or manufacturer of the Hosted Voice Software, you may only use the Hosted Voice Software for the purposes of using and operating the Leased Equipment / Purchased Equipment and receiving the Services as contemplated by your Contract. You understand and agree that each of the following is prohibited with respect to the Hosted Voice Software: (a) copying the Hosted Voice Software or associated documentation, either in whole or in part; (b) modifying, reverse compiling, reverse assembling or otherwise reverse engineering the Hosted Voice Software, either in whole or in part, or attempting to do any of the foregoing; (c) sub-licensing, leasing, sub-licensing, selling or otherwise distributing the Hosted Voice Software, either in whole or in part, and whether or not for profit, to any third parties; and (d) creating derivative works of, from, based on, using or incorporating all or any portion of the Hosted Voice Software.

(4) Use of Specific Hosted Voice Features. Wave Business's hosted voice Services may include certain features that are enabled by "add-in" software or service components. These features are intended to enhance the functionality of the hosted voice Services and provided you with additional convenience and collaboration tools. Examples of such features include, but are not limited to, SMS messaging, voicemail transcription, voicemail recording and other similar functions, expressly including any additional "add-in" feature enhancements that Wave Business may make available or incorporate into the hosted voice Services in the future. Wave Business has established its pricing for the hosted voice Services based on assumptions of normal business use of the hosted voice Services within the United States of America. Should your use of the hosted voice Services, including any of the "add-in" features such as SMS messaging, significantly exceed normal business use, Wave Business reserves the right to disable the feature(s) at issue and/or impose additional cost-recovery charges for your excessive use.

(5) Installation of Hosted Voice Equipment. As a part of the hosted voice Service, Wave Business will install the hosted voice equipment for you (whether such equipment is Leased Equipment or Purchased Equipment) at the specified service site. If your service site contains existing inside wiring, Wave Business will use your existing wiring for the installation; provided, that Wave Business's use of any existing wiring shall not constitute any type of representation, warranty or guarantee to you that the existing wiring is in good condition and/or free from defects. If your service site does not contain the necessary inside wiring (as determined by Wave Business in Wave Business's commercially reasonable judgment), Wave Business will so notify you and you may elect to



install wiring itself or to request that Wave Business install wiring for you. If Wave Business installs wiring for you, such work shall be performed on a time and materials basis, with the wiring to become your personal property upon your acceptance of the Service. If, during the installation process, Wave Business discovers or uncovers any hazardous materials or substances at your service site: (A) Wave Business shall have the option to cease work at the service site and terminate your hosted voice Service Contract, without any liability for or obligation to remove or remediate the hazardous materials so discovered; and (B) you shall indemnify, defend and hold Wave Business harmless from and against any and all claims, costs, damages and expenses incurred by Wave Business in connection with or as a result of the pre-existing hazardous materials, including attorneys' and experts' fees and costs as well as the costs of any environmental assessment or remediation work that may be performed at the service site.

(6) **Bring-Your-Own-Phone Provisions.** For certain models of phones, Wave Business has the ability to attempt to connect phones that you already own (the "Customer Phones") to Wave Business's hosted voice Service, which eliminates the need for you to lease or purchase phones from Wave Business. If you elect to use your existing Customer Phones with Wave Business's hosted voice Service, you expressly agree to the following provisions: (a) you must supply the passwords for the Customer Phones, otherwise the phones may not be usable with Wave Business's network; (b) the process of connecting the Customer Phones to Wave Business's network involves re-setting the Customer Phones to their factory defaults, which will delete all information stored on the phones, including contact lists, speed dial numbers, as well as the configurations established for connectivity to your previous hosted voice solution; (c) it is possible that attempting to connect the Customer Phones to Wave Business's network could render one or more of the Customer Phones unusable, requiring a firmware re-flash. In such event, Wave Business will have no responsibility or liability for repairing or replacing the Customer Phone(s) at issue. Instead, you expressly assume the risk inherent in attempting to attach the Customer Phones to Wave Business's hosted voice network; and (d) Wave Business will be unable to provide support and troubleshooting for Customer Phones after implementation. Wave Business will be able to troubleshoot problems with Wave Business's network, but if the network is functioning properly and there are technical problems with any of the Customer Phones, you must seek equipment support from the manufacturer or original vendor of the equipment.

ConnectNow Video Conferencing Service Provisions.

If you receive ConnectNow video conferencing Services from Wave Business, then, in addition to the other provisions of your Contract, including the Phone Service Provisions set forth above, and the Hosted Voice Service Provisions set forth above, your use of Wave Business's ConnectNow Service is subject to the following terms and conditions:

(1) **Use of ConnectNow Service and Your Responsibilities.** Wave Business's video conferencing solution, ConnectNow, is a software-based addition to Wave Business's hosted voice Services that is intended to facilitate group collaboration and remote team communications. You are solely responsible for your use of the Service, including for all use made of the Service by your employees, business partners, and other end users. Your use of the ConnectNow Service shall at all times comply with all applicable laws, including, but not limited to, laws related to recording, intellectual property, privacy and export control.

(a) **Registration Information.** You may be required to provide information about yourself and your employees and other end users of the ConnectNow Service in order to use the Service or certain functionality provided by the Service. You agree that all such information shall be accurate. You may be asked to choose a user name and password. You are entirely responsible for maintaining the security of your username and password and agree not to disclose same to third-parties.

(b) **Your Content.** You agree that you are solely responsible for the content sent, transmitted, displayed and/or uploaded by you, your employees and your other end users of the ConnectNow Service. You represent and warrant that you have the right to transmit and upload your content and that such use does not violate or infringe on the rights of any third party. Under no circumstances will Wave Business be liable in any way for any (i) content that is transmitted or viewed while using the ConnectNow Service, (ii) errors or omissions in the content, or (iii) any loss or damage of any kind incurred as a result of the use of, access to, or denial of access to your content. Although Wave Business is not responsible for your content, Wave Business may delete any of your content at any time without notice to you if Wave Business becomes aware that your content violates any provisions of your Contract or applicable law. You retain copyright and any other rights you already hold in content which you submit, post or display on, through or using the ConnectNow Service.



(c) Recordings. You are responsible for complying with all recording laws. The host of a ConnectNow session can choose to record ConnectNow meetings and webinars. By using the ConnectNow Service, you are giving Wave Business consent to store recordings for any or all ConnectNow meetings or webinars that you join, if such recordings are stored in Wave Business's systems. You will receive a notification (visual or otherwise) when recording is enabled. If you do not consent to being recorded, you can choose to leave the meeting or webinar.

(d) Prohibited Use. You agree that you will not use, and will not permit any of your employees, business associates or other end users of the ConnectNow Service to do any of the following: (i) modify, disassemble, decompile, prepare derivative works of, reverse engineer or otherwise attempt to gain access to the source code of the ConnectNow Service, (ii) knowingly or negligently use the ConnectNow Service in a way that abuses, interferes with, or disrupts Wave Business's network, your accounts or the ConnectNow Service, (iii) engage in activity that is illegal, fraudulent, false or misleading, (iv) transmit through the ConnectNow Service any material that may infringe the intellectual property or other rights of third parties, (v) build or benchmark a competitive product or service, or copy any features, functions or graphics of the ConnectNow Service, (vi) use the ConnectNow Service to communicate any message or material that is harassing, libelous, threatening, obscene, indecent, would violate the intellectual property rights of any third party or is otherwise unlawful, that would give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offense under any applicable law or regulation; (vii) upload or transmit any software, content or code that does or is intended to hard, disable, destroy or adversely affect performance of the ConnectNow Service or the Wave Business network in any way, or which does or is intended to harm or extract information or data from other hardware, software or networks of Wave Business or other users of Wave Business's Services, (viii) engage in any activity or use the ConnectNow Service in any manner that could damage, disable, overburden, impair or otherwise interfere with or disrupt the ConnectNow Service, or any servers or networks connected to the Service or Wave Business's security systems, (ix) use the ConnectNow Service in violation of any Wave Business policy or in a manner that violates applicable law, including but not limited to anti-spam, export control, privacy, and anti-terrorism laws and regulations and laws requiring the consent of subjects of audio and video recordings.

(e) Limitations on Use. You may not reproduce, resell, or distribute the ConnectNow Service or any reports or data generated by the ConnectNow Service for any purpose unless you have been specifically permitted to do so under a separate agreement with Wave Business. You may not offer or enable any third parties to use the Service purchased by you, display on any website or otherwise publish the ConnectNow Service or any content obtained from the Service (other than content created and owned by you) or otherwise generate income from the ConnectNow Service. You may not use the ConnectNow Service for the development, production or marketing of a service or product substantially similar to the ConnectNow Service.

(f) Responsibility for End Users. You are responsible for the activities of all of your employees and other end users who access or use the ConnectNow Service through your account and you agree to ensure that all such employees and end users comply with the terms of your Contract, including the provisions of this Service-Specific T&Cs document, and any other Wave Business policies. If you become aware of any violation of your Contract in connection with the use of the ConnectNow Service by any person, please notify Wave Business immediately. Wave Business may investigate any complaints and violations that come to its attention and may take any (or no) action that Wave Business believes is appropriate, including, but not limited to issuing warnings, removing the content or terminating accounts and/or user profiles.

(2) Not for Use in High Risk Environments. THE CONNECTNOW SERVICE IS NOT POSITIONED, INTENDED OR DESIGNED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING, WITHOUT LIMITATION, OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION/COMMUNICATIONS SYSTEMS, AIR TRAFFIC CONTROL, LIFE SUPPORT AND/OR WEAPONS SYSTEMS. YOU MUST NOT USE THE CONNECTNOW SERVICE IN ANY HIGH RISK ENVIRONMENT.

(3) Not Intended for Secure Communications. THE CONNECTNOW SERVICE IS NOT POSITIONED, INTENDED OR DESIGNED TO PROVIDE SECURE COMMUNICATIONS AND MUST NOT BE USED IN SITUATIONS WHERE THE CONFIDENTIALITY, PRIVACY OR SECURITY OF THE COMMUNICATION AT ISSUE IS ESSENTIAL OR PARAMOUNT. ConnectNow contains certain industry-standard features that, when correctly configured and enabled, can increase the security of ConnectNow sessions. Wave Business strongly recommends that you use the available security features of the Service. However, even with proper configuration of ConnectNow's



settings, it is possible that communications made using ConnectNow may be intercepted by unauthorized third parties, disseminated beyond your intended audience, recorded or altered without your consent, or otherwise compromised by hostile hacking activity. YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE CONNECTNOW VIDEO CONFERENCING SERVICE IS NOT GUARANTEED TO BE SECURE. INSTEAD, YOU UNDERSTAND AND AGREE THAT YOUR USE OF THE CONNECTNOW SERVICE IS AT YOUR SOLE RISK. WAVE BUSINESS SHALL NOT BE LIABLE FOR ANY BREACHES OF PRIVACY, UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION, OR OTHER DAMAGES OR LOSSES OF ANY TYPE THAT MAY BE SUFFERED BY YOU, OR ANY OF YOUR EMPLOYEES, BUSINESS PARTNERS OR END USERS DUE TO ANY SECURITY WEAKNESSES IN THE CONNECTNOW SOFTWARE OR ANY HOSTILE HACKING ACTIVITY EXPLOITING SAME.

(5) No Warranties; Acceptance of Risk. YOU UNDERSTAND AND AGREE THAT THE CONNECTNOW SERVICE IS PROVIDED “AS-IS” AND WAVE BUSINESS, ITS AFFILIATES AND SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. WAVE BUSINESS, ITS AFFILIATES AND SUPPLIERS MAKE NO WARRANTY OR REPRESENTATION REGARDING THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE, REGARDING THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICE OR THAT THE SERVICE WILL MEET ANY USER REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. USE OF THE SERVICE IS AT YOUR SOLE RISK. ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH USE OF THE SERVICE IS AT YOUR OWN DISCRETION AND RISK. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOU RESULTING FROM THE USE OF THE SERVICE. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE CONNECTNOW SERVICE REMAINS WITH YOU. WAVE BUSINESS DOES NOT ASSUME ANY RESPONSIBILITY FOR RETENTION OF ANY USER INFORMATION OR COMMUNICATION BETWEEN USERS. WAVE BUSINESS CANNOT GUARANTEE AND DOES NOT PROMISE ANY SPECIFIC RESULTS FROM USE OF THE SERVICE.

Dark Fiber Service Provisions.

If you receive dark fiber Services from Wave Business, then, in addition to the other provisions of your Contract, your use of Wave Business’s dark fiber Services is subject to the following terms and conditions:

(1) Grant of License. Beginning on the service commencement date for each segment of dark fiber, and continuing through the term of your Contract, Wave Business grants to you, and you accept from Wave Business, a license (the “License”) to use the specified number of dark fiber strands on the segment (the “Licensed Fibers”) by accessing same solely at the A Location and Z Location end points (the “End Points”) specified in your Contract. You are not permitted to access the Licensed Fibers at any location other than the End Points. The License does not include any right on your part to: (i) own, control, possess, encumber, repair or maintain, or cause or permit any lien to attach to the Licensed Fibers, any Wave Business-owned equipment, or any other property of Wave Business; or (ii) use or access any of the other fiber optic strands that may be in the same cable bundle as the Licensed Fibers.

(2) Route of Licensed Fibers. Wave Business shall at all times have full and complete discretion to choose the route along which the Licensed Fibers are installed between the End Points. That route will not necessarily be the most direct route between the End Points. Wave Business may, from time to time, elect to change the route along which the Licensed Fibers are installed. So long as the technical specifications for each Fiber Route continue to be met, you shall have no authority to approve or disapprove of any particular installation route. In the event of any route relocation, Wave Business shall use commercially reasonable efforts to minimize the disruption to your use of the Licensed Fibers.

(3) Wave Business’s Retained Rights. Wave Business retains the exclusive right to provide services using, or to sell or lease to other customers or end users fibers (other than the Licensed Fibers) contained in the same cable bundle as the Licensed Fibers. Wave Business shall not use the Licensed Fibers during the service term of your Contract.

(4) Standard Technical Specifications. Wave Business’s dark fiber will typically comply with the following specifications: (i) the maximum bi-directional average splice loss shall not exceed 0.15 dB; and (ii) the attenuation shall not exceed 0.25 dB/km when measured at a wavelength of 1550 nm. If your Service Order, IRU Agreement or other contract contains different technical



specifications from those listed above, the technical specifications set forth in your Service Order or IRU Agreement (as applicable) control.

Video Service Provisions.

If you receive video Services from Wave Business, then, in addition to the other provisions of your Contract, your use of Wave Business's video Services is subject to the following terms and conditions:

- (1) Price Increases. After the first twelve (12) months of the Initial Service Term, the MRC for the video Services is subject to increase; provided, that in no event shall any such increase exceed Wave Business's increased direct costs to deliver the video Services. Should Wave Business elect to increase the price of some or all of the video Services provided to you, Wave Business shall deliver at least thirty (30) days advance written notice to you specifying the amount of the price increase.
- (2) Additional Charges. The MRC for video Services that is specified on your Service Order does not include Applicable Taxes, franchise fees, FCC regulatory fees, broadcast station retransmission fees (aka RTC fees), certain sports programming fees or any charges or fees imposed by a governmental authority on the provision of the Services, all of which shall be passed through to you as additional line items on your monthly invoice.
- (3) Channel Line-Up. Wave Business may at any time and from time to time change the number and/or identity of the signals comprising the Services and/or the placement of those signals (aka the "channel line-up"). In connection with providing Services to you, Wave Business, its authorized agents and equipment manufacturers may send code updates to your equipment including, but not limited to, cable modems, digital interactive televisions with CableCARDS, MTAs, HD DTAs or other similar equipment at any time. Such code updates may change, add or remove features or functionality of any such equipment or the Services.
- (4) Restricted Viewing in Public Areas. Pursuant to the provisions of one or more of Wave Business's programming agreements with video content providers, you may be restricted from showing certain channels of the Services in public areas (e.g., meeting rooms, lobbies, exercise rooms, restaurants, etc.). You agree that you will not display the Services in public areas. Wave Business shall not be liable to you or to any third party should you violate the preceding sentence.
- (5) Separate Music Licenses. You may be required by law to obtain separate music performance license(s) if you use the audio component of the Services in public areas (e.g., meeting rooms, lobbies, exercise rooms, restaurants, etc.). You are solely responsible for (i) investigating and determining the need for such license(s), and (ii) taking all steps necessary to obtain and pay for such license(s).
- (6) No Unauthorized Distribution. Any video Services provided to you pursuant to the Agreement are for the sole benefit of you and your employees, contractors, agents, and/or end users who occupy the units at the Service Site. You shall not re-sell or allow redistribution of the Services to any third party, either in whole or in part, whether directly or indirectly, and whether on an integrated or unintegrated basis. You are responsible for all access to and use of the Services by means of your equipment and your internal wiring, whether or not you have actual knowledge of or authorize such access or use. You agree to implement commercially reasonable security measures to prevent unauthorized use of, access to, or redistribution of the Services.
- (7) Performance; Technical Support. Wave Business shall use commercially reasonable efforts in keeping with normal industry standards to ensure that the video Services are available to you twenty-four (24) hours per day, seven (7) days per week. It is possible, however, that there will be interruptions of the video Services. You understand and agree that the Services may be unavailable from time to time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond Wave Business's reasonable control. Temporary service interruptions for such reasons, as well as all service interruptions caused by your employees, contractors, agents, or end users, will not constitute failures by Wave Business to perform its obligations under the Agreement. If Wave Business responds to a request from you for technical support and Wave Business determines that the problem was due to or caused by you or your employees, agents or end-users, or by your equipment rather than any aspect of Wave Business's network or Wave Business's equipment, then you shall compensate Wave Business for its time spent



troubleshooting the problem at Wave Business's then-current rates.

(8) Right to Audit. Wave Business may, at any time during the Service Term, upon reasonable advance notice to you, enter onto the Service Site to perform an audit verifying that your use of the video Services complies with the provisions of the Agreement. Should Wave Business reasonably determine, whether through an audit or otherwise, that your use of the video Services has violated any provision of the Agreement, you agree to immediately correct same.

[The remainder of this page is intentionally left blank.]

ORDER FOR DARK FIBER SERVICES

This Order for Dark Fiber Services (this “Service Order”) is entered into as of the date of last signature below (the “Effective Date”), by and between WAVE BUSINESS SOLUTIONS, LLC, a Washington limited liability company (“Provider”), and the CITY OF MORGAN HILL, a California municipal entity (“Customer”). This Service Order is made pursuant to and will be governed by that certain Master Services Agreement for Enterprise Services – Governmental Customer between Provider and Customer dated December ____, 2020 (the “MSA”). All capitalized terms used but not defined in this Service Order shall have the meanings given to them in the MSA.

Section 1: Customer Information.

Account Name: City of Morgan Hill

Account Executive to Customer: Brenda Gisi

Invoicing Address: 17575 Peak Avenue

Morgan Hill, CA 94037

ATTN: Accounts Payable

To facilitate communication the following information is provided as a convenience and may be updated at any time without affecting the enforceability of the terms and conditions herein:

Customer Site/Technical Contact:

Information Services

Information.services@morganhill.ca.gov

408-909-0055

Customer Billing Contact:

Information Services

Information.services@morganhill.ca.gov

408-909-0055

Other Customer Contact:

John Lang

John.Lang@morganhill.ca.gov

408-310-4652

Section 2: Dark Fiber Services.

2.1 Description of Services. Provider shall provide to Customer the dark fiber services set forth in the following table (each, a “Service”). The Services shall connect the end points set forth below (each such location, a “Service Site”), using the number of dark fiber strands described below, in exchange for the one-time, non-recurring installation charges (“NRC”) set forth below, and the monthly recurring charges (“MRC”) set forth below:

Fiber Route Identifier	A Location End Point	Z Location End Point	Description of Fiber	NRC	MRC
Fiber Route A	Site #1: Civic Center / City Hall 17555 Peak Road Morgan Hill, CA 95037 Demarc: Building Main Point of Entry (MPOE)*	City Water Tower Lat: 37.126604° Long: -121.653531° Demarc: Closet	2 strands single mode dark fiber	\$0	\$10,000
Fiber Route B	City Water Tower Lat: 37.126604° Long: -121.653531°	Site #2: Police Department 16200 Vineyard Boulevard Morgan Hill, CA 95037 Demarc: Building MPOE*	2 strands single mode dark fiber		
Fiber Route C	Site #2: Police Department 16200 Vineyard Boulevard Morgan Hill, CA 95037 Demarc: Building MPOE*	Site #3: Corporate Yard 100 Edes Street Morgan Hill, CA 95037 Demarc: Building MPOE*	2 strands single mode dark fiber		
Fiber Route D	Site #3: Corporate Yard 100 Edes Street Morgan Hill, CA 95037	Site #4: Recreation Center 171 W. Edmundson Avenue Morgan Hill, CA 95037	2 strands single mode dark fiber		

	Demarc: Building MPOE*	Demarc: Building MPOE*			
Fiber Route E	Site #4: Recreation Center 171 W. Edmundson Avenue Morgan Hill, CA 95037 Demarc: Building MPOE*	Site #5: Aquatic Center 16200 Condit Road Morgan Hill, CA 95037 Demarc: Building MPOE*	2 strands single mode dark fiber		
Fiber Route F	Site #5: Aquatic Center 16200 Condit Road Morgan Hill, CA 95037 Demarc: Building MPOE*	Site #6: Community & Cultural Center 17000 Monterey Road Morgan Hill, CA 95037 Demarc: Building MPOE*	2 strands single mode dark fiber		
Fiber Route G	Site #6: Community & Cultural Center 17000 Monterey Road Morgan Hill, CA 95037 Demarc: Building MPOE*	Site #1: Civic Center / City Hall 17555 Peak Road Morgan Hill, CA 95037 Demarc: Building MPOE*	2 strands single mode dark fiber		
TOTAL COST:				\$0	\$10,000

* At each of the Service Sites, Provider shall be permitted to use existing, Customer-owned, underground conduit to pull Provider's fiber from Provider's conduit located in the public right-of-way adjacent to the Service Site across the property to the Customer's demarc at the Service Site.

2.2 **Fiber Route Locations.** The approximate location of Fiber Route A is depicted on Schedule A to this Service Order. The approximate location of Fiber Route B is depicted on Schedule B to this Service Order. The approximate location of Fiber Route C is depicted on Schedule C to this Service Order. The approximate location of Fiber Route D is depicted on Schedule D to this Service Order. The approximate location of Fiber Route E is depicted on Schedule E to this Service Order. The approximate location of Fiber Route F is depicted on Schedule F to this Service Order. The approximate location of Fiber Route G is depicted on Schedule G to this Service Order.

2.3 **As Built Plans.** Provider shall provide to Customer as built plans for Dark Fiber Services installation within thirty (30) days of the completion of the installation.

Section 3: Customer-Provided Conduit.

(a) **Partial Conduit for Fiber Route C.** Customer owns conduit along a portion of Fiber Route C, which is depicted as the green line on Schedule C. Provider shall use that Customer-owned conduit for the installation of Fiber Route C. Should the conduit at issue require repair in order for Provider to install fiber within it, the City shall be responsible for repairing same. Provider shall install the communications conduit needed for the remainder of Fiber Route C, which is depicted as the red line on Schedule C.

(b) **Conduit for Fiber Route D.** Customer owns existing underground communications conduit between Site #3: Corporate Yard and Site #4: Recreation Center, which is depicted as the green line on Schedule D. Should the conduit at issue require repair in order for Provider to install fiber within it, the City shall be responsible for repairing same. Provider shall use that Customer-owned conduit for the installation of Fiber Route D.

(c) **Partial Conduit for Fiber Route E.** Customer owns conduit along a portion of Fiber Route E, which is depicted as the green line on Schedule E. Provider shall use that Customer-owned conduit for the installation of Fiber Route E. Should the conduit at issue require repair in order for Provider to install fiber within it, the City shall be responsible for repairing same. Provider shall install the communications conduit needed for the remainder of Fiber Route E, which is depicted as the red and yellow lines on Schedule E.

Section 4: Initial Service Term. The Initial Service Term for all of the Services is twenty (20) years. The estimated installation date for the Services is approximately twelve (12) months from the Effective Date of this Service Order for Fiber Routes A, B, C, D, E, F, and G

Section 5: Complimentary Internet Access. Customer may, at any time during the Initial Service Term, elect to receive one (1) complimentary 1 Gbps dedicated Internet access circuit at any of the Service Sites listed in Section 2, for a period of twelve (12) consecutive months. To exercise this option, Customer must deliver written notice to Provider specifying the Service Site at which Customer would like the complimentary Internet access circuit installed as well as Customer's desired installation date. Provider shall use commercially reasonable efforts to accommodate Customer's desired installation date.

Section 6: Two Lateral Extensions to Concord Circle Business Park. Customer desires for Provider to extend its fiber optic network within the City of Morgan Hill for purposes of future economic development. Accordingly, in addition to the Services described in Section 2 above, as a part of this Service Order, and in exchange for the consideration described in Section 2 above, Provider shall install two fiber laterals and two vaults (the "Concord Circle Business Park Laterals") extending Provider's fiber optic network to the locations described below:

Vault 1 Location

Lat: 37.116389

Long: -121.633524

Vault 2 Location

Lat: 37.120507

Long: -121.636577

The approximate location of the Concord Circle Business Park Laterals are depicted on Schedule H to this Service Order. Customer shall have no right or license to use, nor any ownership interest in or to, the Concord Circle Business Park Laterals. Instead, the Concord Circle Business Park Laterals will at all times remain the property of Provider. Customer simply desires that the Concord Circle Business Park Laterals be installed so that they will be available in the event any businesses, organizations, individuals or other entities desire in the future to contract with Provider to receive fiber-based communications services at or near their locations.

Section 7: Communications Conduit.

7.1 Installation of Additional Conduit. As a part of this Service Order, and in exchange for the consideration described in Section 2 above, when Provider installs the dark fiber necessary to provide Customer with the Services described in Section 2 above, Provider shall also install an additional, two inch (2") empty, underground communications conduit along the same route as Provider installs Fiber Route A, Fiber Route B, that portion of Fiber Route C for which Provider is installing communications conduit, and Fiber Route G (collectively, the "Additional Conduit"). The Additional Conduit shall be installed adjacent to the Provider conduit (i.e., side by side along the horizontal plane, not on top or underneath along the vertical plane). All conduit will have tracer wire deployed during the installation to easily identify utility locations. A map depicting the approximate location of the Additional Conduit is attached to this Service Order as Schedule I.

7.2 Transfer of Title to the Additional Conduit. Upon the expiration of the Initial Service Term of this Service Order, title to the Additional Conduit shall automatically pass to Customer and Provider shall have no further right or interest in, or any maintenance obligations with respect to, the Additional Conduit. Prior to the transfer to Customer of title to the Additional Conduit, Provider shall proof the Additional Conduit to verify that the Additional Conduit is in good and usable condition. If any repair is needed, Provider shall perform same at Provider's cost and expense (unless the need for repair is caused by Customer, in which case Customer shall bear the expense of repair). The Additional Conduit shall be in good working order and free of any encumbrances when title transfers to Customer.

7.3 Early Access to Additional Conduit. At any time during the Initial Service Term, the Customer shall have the option to receive from Provider an exclusive license allowing Customer to access and utilize the Additional Conduit for the purposes and subject to the limitations described in this Section 7.3 (the "Early Access License"). To exercise this option, Customer must delivery no less than thirty (30) days' advance written notice to Provider, which notice shall specify the date on which Customer wants the Early Access License to commence. Once the Early Access License has been activated, it shall remain in force for the duration of the Initial Service Term (i.e., until title to the Additional Conduit transfers to Customer pursuant to Section 7.2 above). There shall be no charge to Customer for the Early Access License. However, once the Early Access License has taken effect, all responsibility for maintenance and repair of the Additional Conduit shall transfer to Customer and Provider shall have no further obligations with respect to the condition of the Additional Conduit. For clarity, if the Early Access License is activated, then Provider shall no longer have any obligation to proof

or repair the Additional Conduit prior to the transfer of title to Customer at the end of the Initial Service Term. The Early Access License shall allow Customer the exclusive right to access and use the Additional Conduit under the following conditions: (a) Customer's use of the Additional Conduit does not compete with WAVE Services as described in Section 3.5 of the MSA ("No Sub-Licensing; Non-Compete"), and (b) Customer's use of the conduit is for back up and redundancy purposes associated with Customer facilities and government operations. If the Early Access License is activated, the Early Access License shall terminate when Customer receives title to the Additional Conduit.

Section 8: [INTENTIONALLY OMITTED]

Section 9: Option to Install Communications Conduit Along Monterey Road.

(a) Grant of Option. Customer shall have the option to require Provider to install approximately linear 12,922 feet of 2 inch (2") communications conduit, together with certain lateral segments, along Monterey Road (the "Monterey Road Conduit"), between the following end points:

A Location End Point	Z Location End Point	Type of Conduit	Conduit Length
Lat: 37.124309° Long: -121.661573°	Lat: 37.115451° Long: -121.636357°	2 inch communications conduit	Approx. 12,922 linear feet

The approximate location of the Monterey Road Conduit, including the lateral segments, is depicted on Schedule J to this Service Order. Provider will not install any break-out vaults or other access points between the A Location and Z Location set forth above; instead, Customer may install any such access points itself once title to the Monterey Road Conduit has vested in Customer. The option described in this Section 9(a) shall be referred to as Customer's "Monterey Road Conduit Construction Option."

(b) Time Period for Exercising Option. Customer's Monterey Road Conduit Construction Option shall be valid for a period of one hundred twenty (120) days following the Effective Date of this Service Order. To exercise its Monterey Road Conduit Construction Option, Customer must deliver written notice of exercise within said one hundred twenty (120) day time period. If Provider has not received written notice that Customer is exercising its Monterey Road Conduit Construction Option by COB on the one hundred twentieth (120th) day following the Effective Date, then the Monterey Road Conduit Construction Option shall automatically expire and have no further force or effect.

(c) Cost of Monterey Road Conduit. If Customer exercises its Monterey Road Conduit Construction Option, Customer shall pay Provider a one-time, non-recurring charge in the amount of approximately One Million Five Hundred Forty Nine Thousand Five Hundred Thirty One and No/100 Dollars (\$1,549,531.00) (the "Monterey Road Conduit Charge") in consideration of the Monterey Road Conduit. Fifty percent (50%) of the Monterey Road Conduit Charge will be paid to Provider within thirty (30) days of the date on which Customer exercises its Monterey Road Conduit Construction Option. The remaining fifty percent (50%) of the Monterey Road Conduit Charge will be paid to Provider within thirty (30) days of the date on which Provider delivers the Monterey Road Conduit to Customer.

(d) Title to Monterey Road Conduit. If Customer exercises its Monterey Road Conduit Construction Option, Provider shall provide all materials and perform all work necessary for the installation of the Monterey Road Conduit. The estimated time for construction of the Monterey Road Conduit is approximately twelve (12) months from receipt of Customer's exercise of the option. Title to the Monterey Road Conduit will automatically vest in Customer upon Provider's receipt of the full amount of the Monterey Road Conduit Charge.

(e) Re-configuration of Fiber Routes. If Customer exercises its Monterey Road Conduit Construction Option, Provider shall have the right to re-configure the paths along which the Fiber Routes described in Section 2 of this Service Order are installed to make use of the newly installed conduit along Monterey Road. In such event, any one or more of Schedule A, Schedule B, Schedule C, Schedule D, Schedule E, Schedule F and/or Schedule G to this Service Order may need to be revised to depict the new location of the Fiber Routes depicted on same. In such event, Customer and Provider shall execute an amendment to this Service Order revising the Schedules at issue to memorialize the new Fiber Route locations once the same are known.

(f) **City-Owned Water Tower Conduit.** If Customer exercises its Monterey Road Conduit Construction Option, Customer shall grant Provider, during the Term of this Service Order, a license allowing Provider to use, for the purposes of providing the Services to Customer, certain pre-existing communications conduit owned by Customer (the "City-Owned Water Tower Conduit") that will connect the to-be-constructed Monterey Road Conduit to the City Water Tower Service Site. The approximate location of the City-Owned Water Tower Conduit is depicted on Schedule K to this Service Order.

(g) **Deletion of Section 7 and Schedule I.** If Customer exercises its option to have Provider construct the Monterey Road Conduit, Provider will not install the communications conduit described in Section 7 and depicted on Schedule I. Customer agrees that if Customer exercises its Monterey Road Conduit Construction Option, Section 7 and Schedule I of this Service Order shall become null and void as of the date on which Customer exercises its option and shall thereafter be deemed deleted from this Service Order. (For clarity, if Customer exercises its Monterey Road Conduit Construction Option, Customer will be receiving title to the Monterey Road Conduit depicted on Schedule J immediately upon completion of its construction in lieu of receiving title to the Additional Conduit depicted on Schedule I upon the expiration of the Initial Service Term of this Service Order.)

(h) **Extension of Provider Network Within Concord Circle Business Park.** If Customer exercises its Monterey Road Conduit Construction Option, Provider will extend its network infrastructure within the Concord Circle Business Park by installing the additional conduit and fiber shown on Schedule L to this Service Order; provided, that Provider's construction of the additional network infrastructure shall be dependent upon Provider receiving permission from the third party property owner to perform the installation. As with the Concord Circle Business Park Laterals, the additional network infrastructure constructed by Provider pursuant to this Section 9(h) will at all times remain the property of Provider.

Section 10: Fees and Permits

10.1 **Permitting Fees.** Provider agrees to pay all permitting fees that would normally be charged to Provider in connection with Provider's performance of the construction and installation work associated with fulfilling its obligations under this Service Order.

10.2 [INTENTIONALLY OMITTED]

Section 11. City's Property

11.1 **Grant of Easements.** Consistent with generally applicable law, Customer (City) reserves to itself, the right, from time to time, to grant such easements, rights, and dedications that Customer (City) deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as the easements, rights, dedications, maps and restrictions do not materially interfere with Provider's use of the right of way. As required by generally applicable law, Provider shall sign any of the aforementioned documents upon request of Customer (City).

11.2 **No Interference.** Consistent with generally applicable law, Provider shall not interfere in any manner with the existence and operation of any public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communication facilities, electroliners, cable television, location monitoring services, public safety, and other then existing telecommunications equipment, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable law. However, the Customer agrees that the Provider and/or any other tenants, licensees, or users of the public right-of-way who currently have, or in the future take possession of, space within the public right-of-way adjacent to any of Provider's Equipment will be permitted to install only equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of Provider. Provider shall act reasonably to accommodate future providers so that the public right-of-way may be used by additional providers.

Section 12. Prevailing Wage

To the extent applicable by law to Provider's activities under this Service Order, Provider shall pay prevailing wages.

Section 13: Exhibits. The following exhibits, which are attached to this Service Order, are incorporated herein and by this reference made a part of this Service Order:

SCHEDULE A - Depiction of Fiber Route A: Site #1 Civic Center to Water Tower

- SCHEDULE B - Depiction of Fiber Route B: Water Tower to Site #2 Police Department
- SCHEDULE C - Depiction of Fiber Route C: Site #2 Police Department to Site #3 Corporate Yard
- SCHEDULE D - Depiction of Fiber Route D: Site #3 Corporate Yard to Site #4 Recreation Center
- SCHEDULE E - Depiction of Fiber Route E: Site #4 Recreation Center to Site #5 Aquatic Center
- SCHEDULE F - Depiction of Fiber Route F: Site #5 Aquatic Center to Site #6 Community & Cultural Center
- SCHEDULE G - Depiction of Fiber Route G: Site #6 Community & Cultural Center to Site #1 Civic Center
- SCHEDULE H - Depiction of Concord Circle Business Park Laterals
- SCHEDULE I - Depiction of Additional Conduit
- SCHEDULE J - Depiction of Monterey Road Conduit
- SCHEDULE K - Depiction of City-Owned Water Tower Conduit
- SCHEDULE L - Depiction of Provider's Additional Network Infrastructure in Concord Circle Business Park

The submission of this Service Order to Customer by Provider does not constitute an offer. Instead, this Service Order will become effective only when both parties have signed it. The date this Service Order is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the Effective Date of this Service Order.

CUSTOMER:

CITY OF MORGAN HILL

By _____

Name: _____

Title: _____

Date: _____

PROVIDER:

WAVE BUSINESS SOLUTIONS, LLC

By _____

Name: _____

Title: _____

Date: _____

Approved as to Form:

By _____

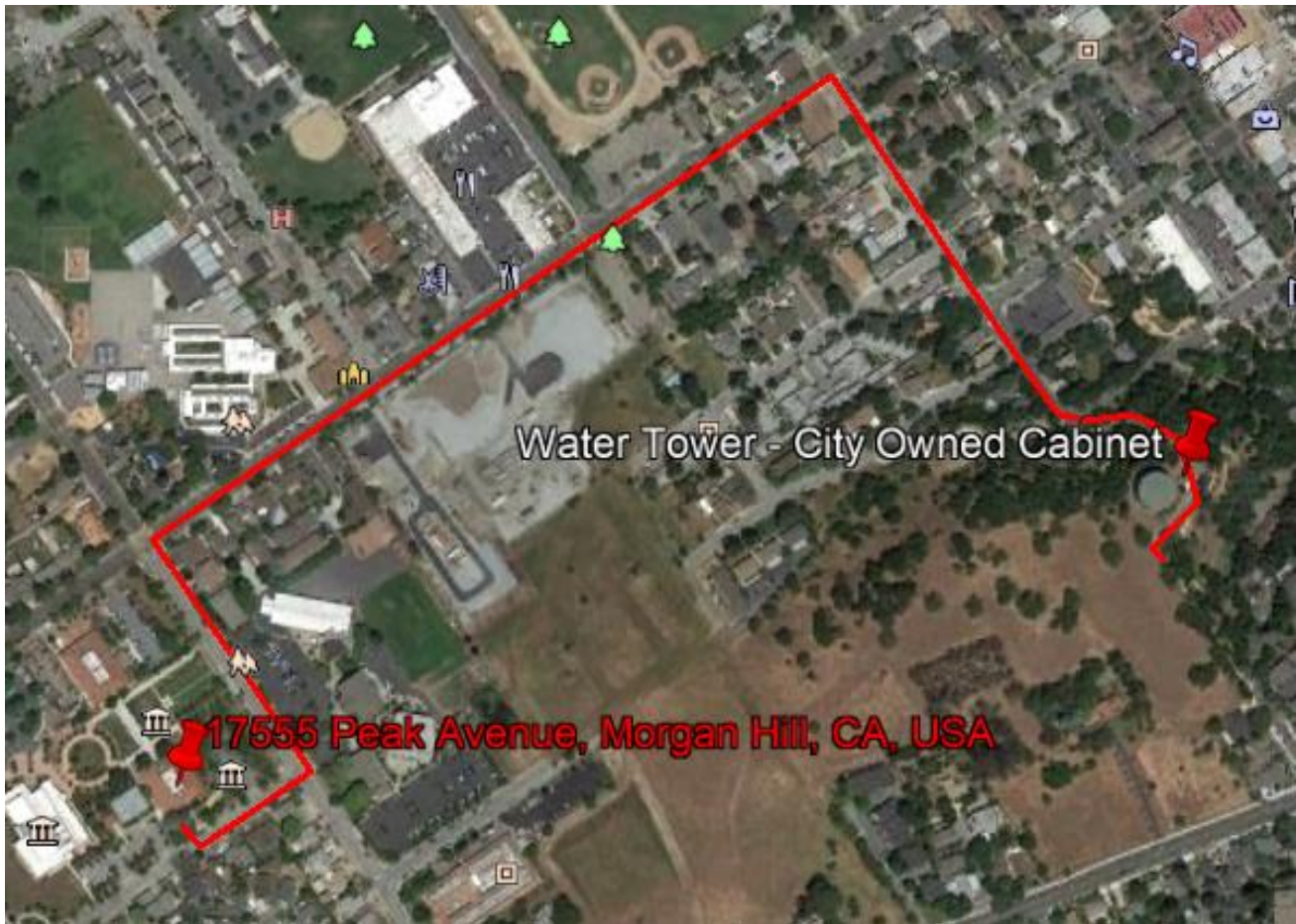
Name: _____

Title: _____

Date: _____

[The remainder of this page is intentionally left blank.]

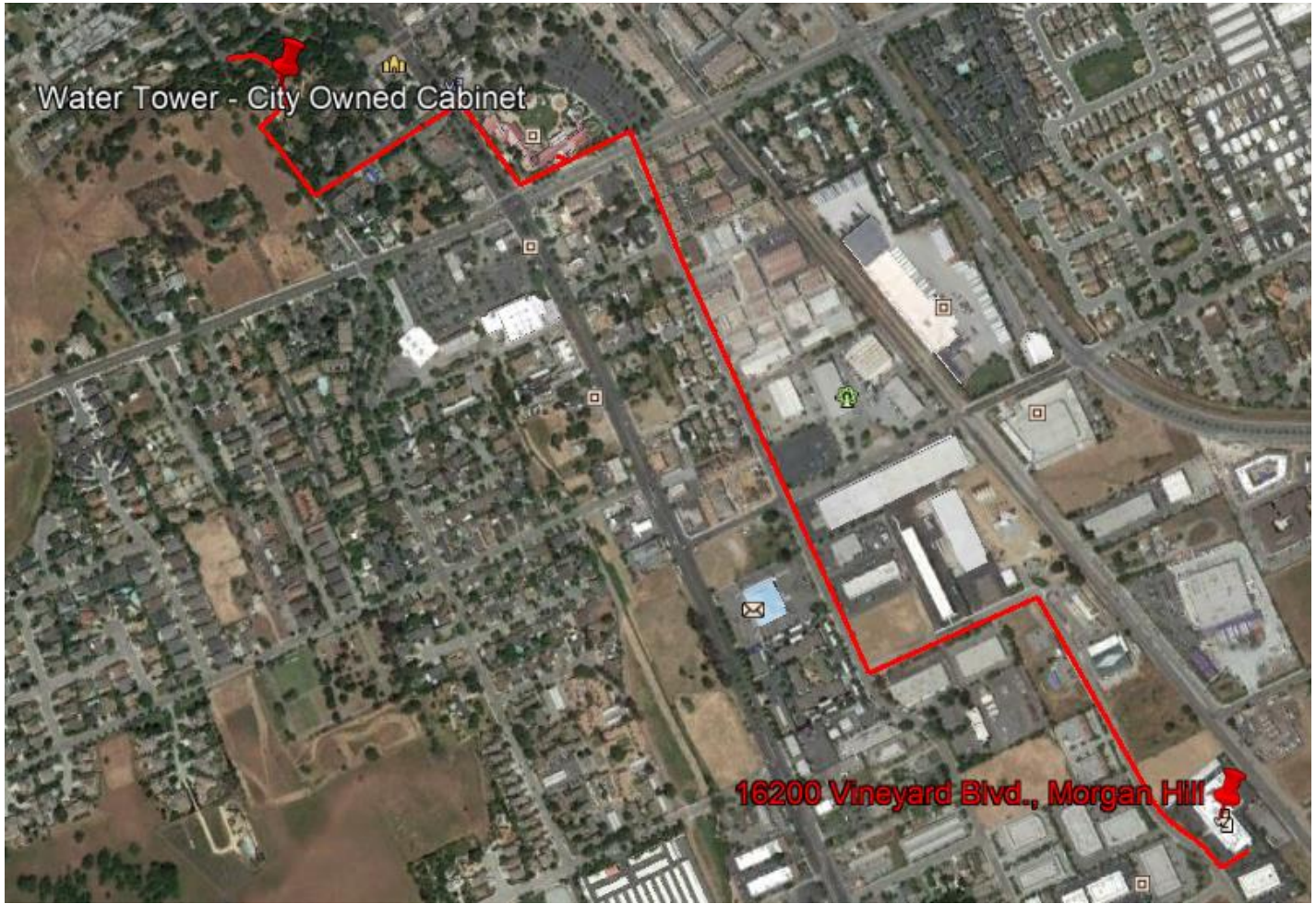
SCHEDULE A
to
ORDER FOR DARK FIBER SERVICES
Depiction of Fiber Route A: Site #1 Civic Center to Water Tower



[The remainder of this page is intentionally left blank.]

Attachment: City of Morgan Hill - Dark Fiber Order [Revision 4] (2895 : Execute Service Agreements with Wave Broadband)

SCHEDULE B
to
ORDER FOR DARK FIBER SERVICES
Depiction of Fiber Route B: Water Tower to Site #2 Police Department



[The remainder of this page is intentionally left blank.]

Attachment: City of Morgan Hill - Dark Fiber Order [Revision 4] (2895 : Execute Service Agreements with Wave Broadband)

SCHEDULE C
to
ORDER FOR DARK FIBER SERVICES
Depiction of Fiber Route C: Site #2 Police Department to Site #3 Corporate Yard



[The remainder of this page is intentionally left blank.]

Attachment: City of Morgan Hill - Dark Fiber Order [Revision 4] (2895 : Execute Service Agreements with Wave Broadband)

SCHEDULE D
to
ORDER FOR DARK FIBER SERVICES
Depiction of Fiber Route D: Site #3 Corporate Yard to Site #4 Recreation Center



[The remainder of this page is intentionally left blank.]

Attachment: City of Morgan Hill - Dark Fiber Order [Revision 4] (2895 : Execute Service Agreements with Wave Broadband)

SCHEDULE E
to
ORDER FOR DARK FIBER SERVICES
Depiction of Fiber Route E: Site #4 Recreation Center to Site #5 Aquatic Center



[The remainder of this page is intentionally left blank.]

Attachment: City of Morgan Hill - Dark Fiber Order [Revision 4] (2895 : Execute Service Agreements with Wave Broadband)

SCHEDULE F
to
ORDER FOR DARK FIBER SERVICES
Depiction of Fiber Route F: Site #5 Aquatic Center to Site #6 Community & Cultural Center



[The remainder of this page is intentionally left blank.]

Attachment: City of Morgan Hill - Dark Fiber Order [Revision 4] (2895 : Execute Service Agreements with Wave Broadband)

SCHEDULE G
to
ORDER FOR DARK FIBER SERVICES
Depiction of Fiber Route G: Site #6 Community & Cultural Center to Site #1 Civic Center



[The remainder of this page is intentionally left blank.]

Attachment: City of Morgan Hill - Dark Fiber Order [Revision 4] (2895 : Execute Service Agreements with Wave Broadband)

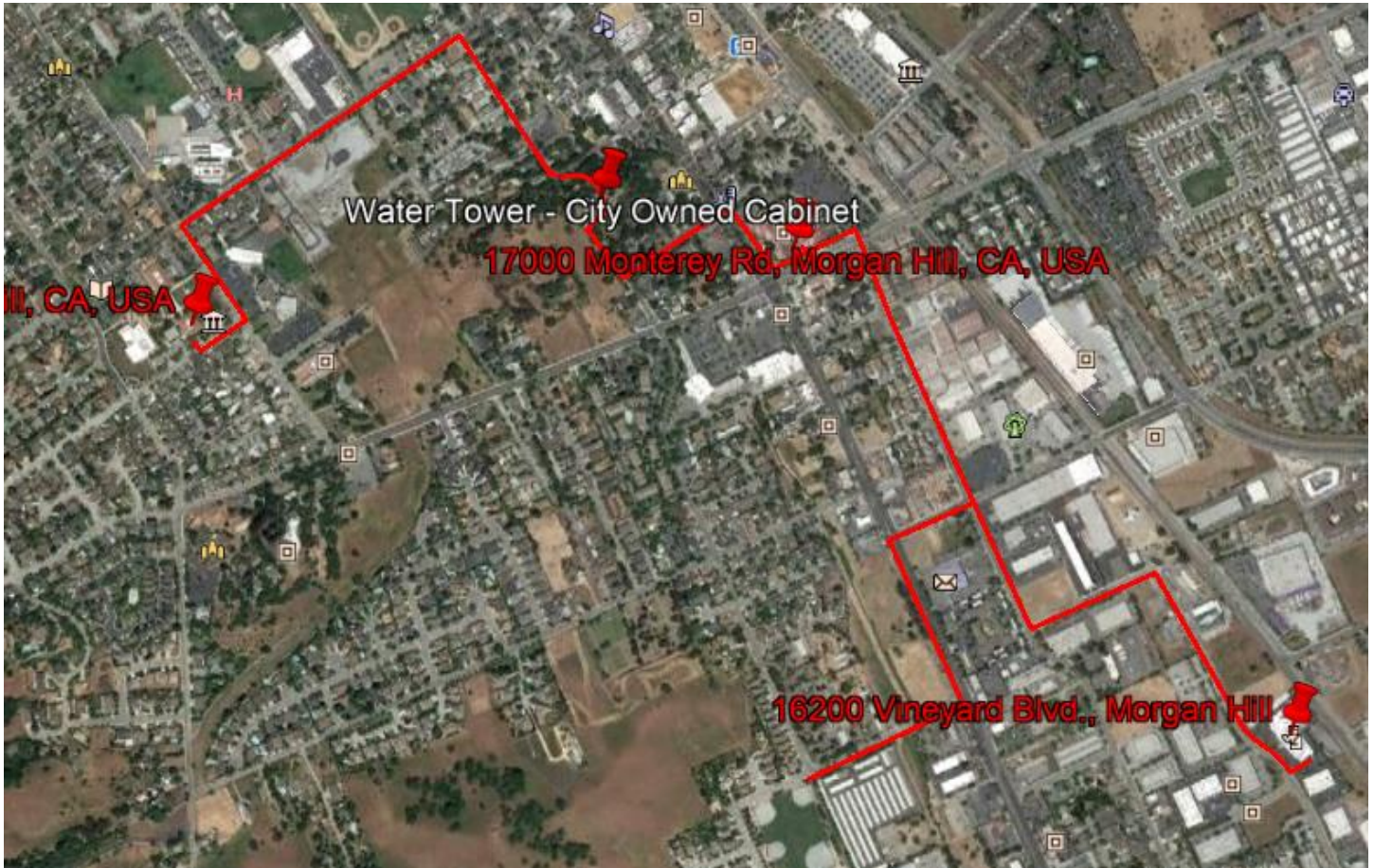
SCHEDULE H
to
ORDER FOR DARK FIBER SERVICES
Depiction of Concord Circle Business Park Laterals



[The remainder of this page is intentionally left blank.]

Attachment: City of Morgan Hill - Dark Fiber Order [Revision 4] (2895 : Execute Service Agreements with Wave Broadband)

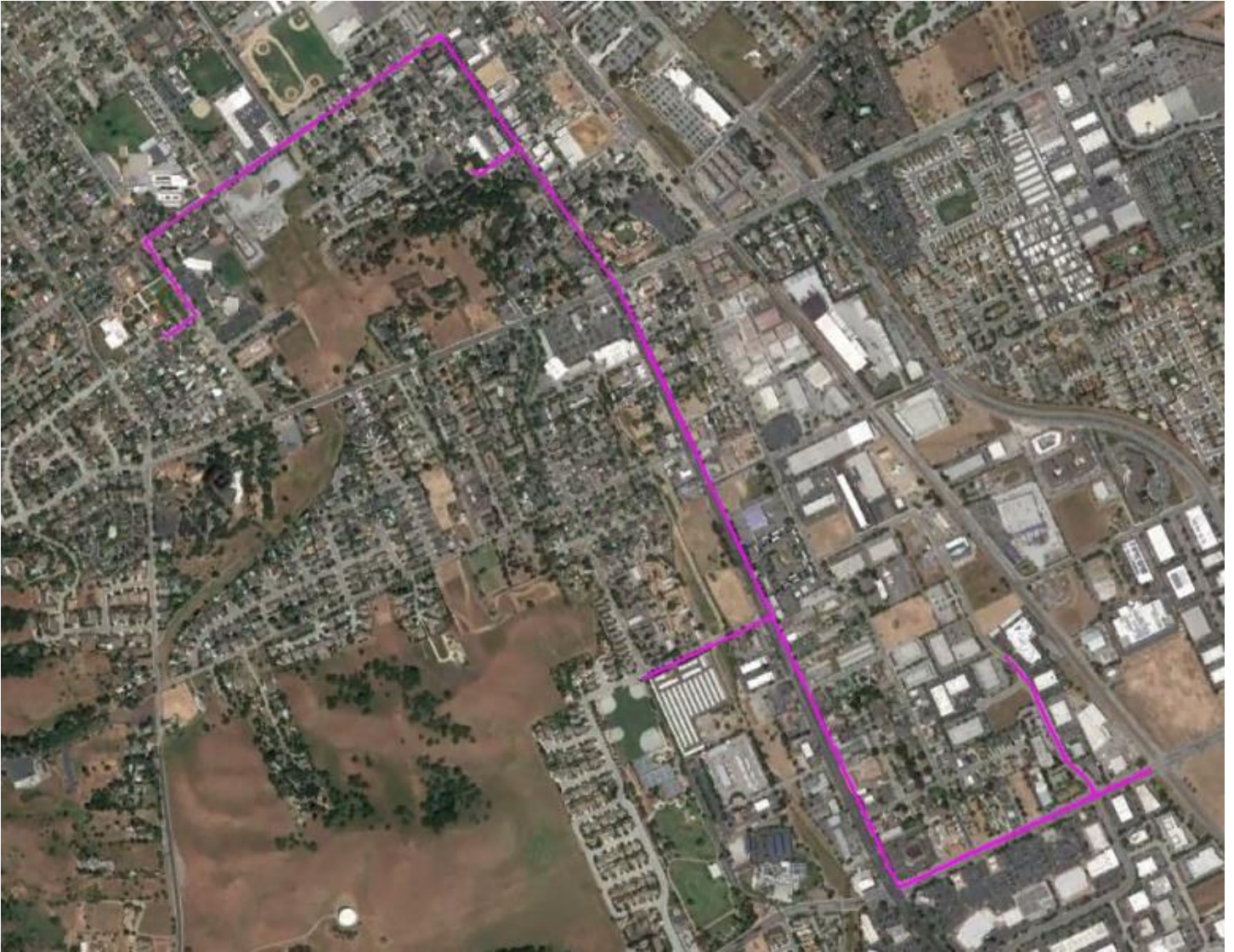
SCHEDULE I
to
ORDER FOR DARK FIBER SERVICES
Depiction of Additional Conduit



[The remainder of this page is intentionally left blank.]

Attachment: City of Morgan Hill - Dark Fiber Order [Revision 4] (2895 : Execute Service Agreements with Wave Broadband)

SCHEDULE J
to
ORDER FOR DARK FIBER SERVICES
Depiction of Monterey Road Conduit



[The remainder of this page is intentionally left blank.]

Attachment: City of Morgan Hill - Dark Fiber Order [Revision 4] (2895 : Execute Service Agreements with Wave Broadband)

SCHEDULE K
to
ORDER FOR DARK FIBER SERVICES
Depiction of City-Provided Water Tower Conduit



[The remainder of this page is intentionally left blank.]

SCHEDULE L
to
ORDER FOR DARK FIBER SERVICES
Depiction of Provider's Additional Network Infrastructure in Concord Circle Business Park



[The remainder of this page is intentionally left blank.]

Attachment: City of Morgan Hill - Dark Fiber Order [Revision 4] (2895 : Execute Service Agreements with Wave Broadband)

City of Morgan Hill 2035 General Plan Telecommunications Infrastructure



Final Report

12 September 2016



Stephen A Blum
Tellus Venture Associates

www.tellusventure.com

Table of Contents

1. Executive Summary	1
1.1. Current infrastructure	1
1.2. Broadband planning and policy	2
1.3. Conclusions and recommendations	3
2. Broadband Infrastructure and Service	5
2.1. Primary broadband infrastructure	5
2.2. Frontier and Charter transactions	12
2.3. Secondary service providers	14
2.4. Commercial and industrial broadband infrastructure	15
2.5. Wireless broadband service	18
2.6. Broadband adoption rate	19
2.7. Business and consumer perceptions	20
Workshop	20
Business survey	21
Consumer survey	23
2.8. Conclusions	24
3. Broadband infrastructure planning	27
3.1. Types of infrastructure	27
3.2. Land use considerations	29
Implications for Future Development	29
Single-Family Housing	29
Multi-Family Housing	30
Commercial	30
Industrial	30
3.3. Municipal resources	30
Pole routes	30
Conduit	30
Real estate	31
Agency IT budgets	31
4. Broadband planning framework	33
4.1. Overview	33
4.2. Initiative options	34
4.3. Requests for proposals	35
5. Policy options	38
5.1. Planning	38
5.2. Dig Once	39
5.3. Asset management	43
5.4. Permitting	44
5.5. Smart Cities	46
5.6. Regulatory	47
5.7. Government operations	50
6. Wireless	53

Table of Contents

6.1. Constraints on local agency discretion	53
6.2. Determining which shot clock applies	53
6.3. Preserving City control of wireless permitting	57
6.4. Considerations for applications involving the public right of way	59
6.5. Pre-approval of standard solutions	60
6.6. Summary	61
7. Recommendations	62
7.1. Strategic vision	62
7.2. Core broadband planning and management	63
7.3. Baseline broadband development policy	64
7.4. Second phase broadband development policy	65
7.5. Broadband development options	66
7.6. Wireless facilities management	67
Appendix A - Maps	69
1. Infrastructure grading maps	69
2. Frontier (formerly Verizon) DSL service	72
3. Charter cable modem service	75
Charter coverage gaps (versus assigned franchise area)	76
4. AT&T DSL service	77
5. Secondary providers	78
6. Wireless broadband availability	83
Appendix B - Infrastructure grades	89
Appendix C – Municipal enterprises	91
1. Dark fiber	91
2. Fiber to the home	91
3. Business Models	92
4. Municipal broadband case studies	95
Appendix D – Funding options	98
1. Bond funding	98
2. Infrastructure financing districts	99
3. Economic Development Administration	99
4. Transportation funding	99
5. Educational broadband programs	100
6. Telemedicine programs	100
7. California Advanced Services Fund	100
8. Connect America Fund	101
9. Rural Utilities Service	102
10. ARRA programs	102
11. Other funding sources	102
Appendix E - Glossary	103

1. Executive Summary

1.1. Current infrastructure

Primary broadband infrastructure in Morgan Hill rates a “D” grade (1.0 out of 4.0 possible) using a “report card” scale initially developed in the East Bay Area and subsequently adopted by cities, regional organizations and other agencies throughout California.

The relatively low grade in Morgan Hill is due to a lack of consistent upgrades by Verizon to the legacy telephone system it formerly operated (Frontier Communications took over ownership earlier this year) and the below industry average cable infrastructure maintained by Charter Communications.

By comparison, most cities to the north in Santa Clara and Alameda counties get at least a “C-” grade, with ratings between 1.7 and 2.0, on a 4-point scale. The two major cities to the south, Gilroy and Hollister, are more or less on a par with Morgan Hill. Both also receive “D” grades, at 1.0 and 1.1 out of 4.0 respectively.

The service available in Morgan Hill does not meet the expectations of the vast majority of residents. The minimum upload speed considered acceptable by 84% of residential customers who participated in an online survey is 6 Mbps or greater. The best commercially available consumer class service, from Charter, is reported at a maximum speed upload speed of 5 Mbps, according to the most recent information published by the California Public Utilities Commission.

Overall, only 30% of residents said that their current broadband service meets their needs.

There is also a disparity between the level of broadband service available to business and residential customers. On the whole, Frontier’s system delivers faster speeds in residential areas than in commercial/industrial zones. Although Charter claims a consistent level of service throughout Morgan Hill, businesses report difficulty obtaining adequate service or, in some cases, any service at all.

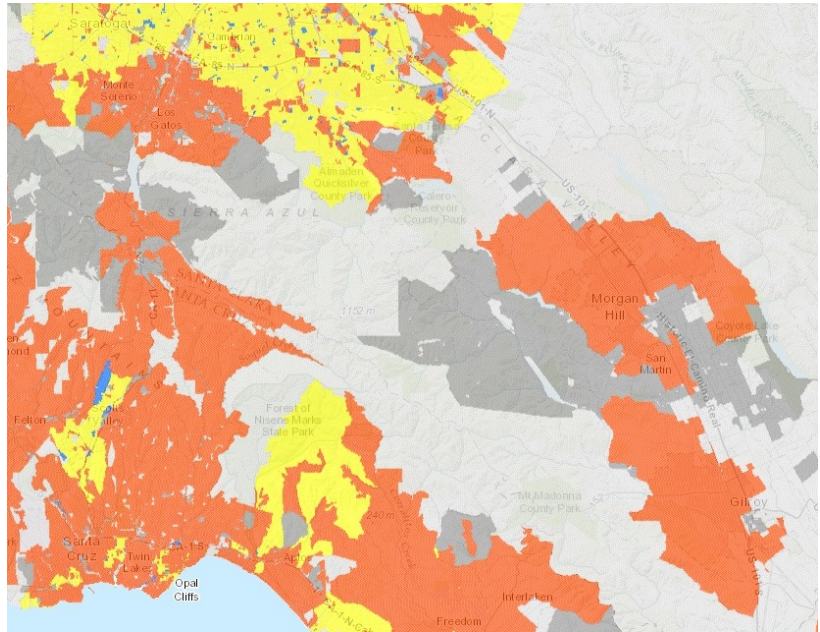


Figure 1.1 – Morgan Hill and regional broadband infrastructure grades, by census block. Red areas are “D” grades, grey are “F”, yellow are “C”. Larger maps are in Appendix A.

When businesses were surveyed, 93% of respondents stated that the reliability is the most important aspect of their Internet service. Only 20% of those businesses are very satisfied with the current level of reliability, whereas 40% are not satisfied. Responses regarding broadband speeds were similar.

Table 1.1 - Primary broadband service providers - Morgan Hill

Telephone companies, DSL-based service by census block

Download speed	1 Mbps	1.5 Mbps	3 Mbps	5 Mbps	7 Mbps	6 Mbps	10 Mbps	12 Mbps	15 Mbps
Frontier	10	36	43	25	94		40		120
AT&T			1		3				

Upload speed **384 Kbps** **512 Kbps** **768 Kbps** **1 Mbps**

Frontier	46		162	160
AT&T		1	3	

Charter - cable modem (DOCSIS 3.0) speeds claimed throughout service area

Download	100 Mbps
Upload	5 Mbps

Secondary broadband service providers – Level 3 and TW Telecom – have moved in to fill some of the gaps left by the primary providers by offering more specialized services, including direct fiber optic connections to end users. Major fiber network operators also provide connectivity in Morgan Hill on a wholesale basis.

1.2. Broadband planning and policy

Local governments in California have virtually no direct authority over broadband providers, and few options for compelling them to upgrade infrastructure or improve service. On the other hand, advanced infrastructure must be developed if Morgan Hill is to keep pace with high tech development in Silicon Valley, attract and retain jobs and meet the expectations of residents.

Broadband development and planning options are available, however. Recommendations include:

1. Set higher standards for broadband infrastructure in new residential and commercial developments.
2. Work cooperatively with Frontier, Charter and mobile carriers to identify policy barriers that could be removed or incentives that might be offered to encourage greater investment in their systems in Morgan Hill.
3. Evaluate options for creating a third, citywide broadband system, either as a municipal enterprise or through cooperation or partnership with a private, competitive provider.
4. Pursue targeted broadband projects, with or without private sector partners, that address specific last mile infrastructure and/or service deficits in commercial and industrial zones, and that improve local availability of existing middle mile resources.

5. Establish programs to 1. identify, construct and document broadband assets for future use and 2. create an ongoing role for the City as a coordinating body that aggregates information and complaints and provides such to state and federal regulators.

Planning options range from setting out a long term road map for broadband development, to working cooperatively with incumbents providers, to establishing a detailed master plan that might include new service providers or even a direct role by the City itself.

Specific policies can be adopted that encourage greater investment in broadband infrastructure by service providers, create market opportunities for new entrants and establish baseline standards for new development and ongoing upgrades. These include “dig once” requirements that encourage, or even mandate, cooperation among utilities and the City when work is done in the public right of way. Other options include management and development of broadband-related City assets, changes in permit and leasing procedures, proactive measures regarding regulatory proceedings, and policies that stimulate demand for broadband services.

1.3. Conclusions and recommendations

This report recommends that the City articulate its role in broadband infrastructure planning and development, establish goals and adopt a phased approach to reaching those goals.

The first recommended step is to determine the level of the City’s involvement and identify the roles and responsibilities that are appropriate to it, in order to set broadband infrastructure development goals and establish policies designed to reach those goals.

The City should first develop a roadmap based on the infrastructure “report card” grading criteria described more fully in Section 2.1 and Appendix B. Morgan Hill receives a “D” grade, in comparison to the “C” grades given to cities immediately to the north. Keeping in mind that those cities are also actively engaged in improving their broadband infrastructure, the City should lay out a road map that brings its broadband infrastructure up to the statewide average in the near term, and keeps pace with and/or exceeds it over the long term.

The initial phase should focus on creation of a roadmap for development, organization and consolidation of the City’s broadband-related assets and establishment of a proactive working relationship with primary broadband providers.

Once this initial work is done, the City can move to the second phase and implement ten recommended policies in the near term that set specific broadband development goals, ideally in cooperation with existing providers but independently when necessary. The primary market research conducted for this report indicates that residential and business broadband use and expectations differ in Morgan Hill, but in either case there is a significant amount of dissatisfaction with the choices available.

The City has the greatest amount of influence over greenfield and new or major remodelled infill development, and over work performed in the public right of way. By establishing clear broadband-

related requirements for these kinds of projects, the City can encourage the construction of facilities that will support upgraded infrastructure. Municipal assets can be offered on open terms to any qualified broadband provider, and information about all broadband infrastructure can likewise be made available, so as to reduce barriers to entry for new competitors and promote the more efficient use of existing resources by incumbents.

The third and subsequent phases represent a greater level of direct City involvement in broadband development. For example, prospective installation of city-owned conduit, either in conjunction with routine undergrounding programs or third party utility projects, puts the City in the position of being an active developer of broadband assets, rather than simply making use of resources obtained in the normal course of business. Putting teeth into “dig once” policies by imposing moratoria on street excavations following an open trench notification process puts similar pressure on utility companies to do the same.

Other measures include:

- Setting building standards that range from requirements for broadband infrastructure in new or redeveloped City right of way to specifications for wiring and access in new construction.
- Reviewing construction plans to maximize use of existing facilities.
- Mapping broadband assets and availability.
- Driving demand through open data, telecommuting and online services.
- Adapting the City’s wireless permitting practices to maintain control of the process in light of recent changes in state law and federal regulations.

These recommendations will allow the City to take both immediate and long term steps, to the degree desired, to encourage private sector investment, extend the benefits of modern telecommunications services to residents and businesses, attract new jobs and leverage existing City resources to promote the development of broadband infrastructure in ways that further the City’s goals.

2. Broadband Infrastructure and Service

2.1. Primary broadband infrastructure

The primary broadband infrastructure in Morgan Hill is owned and operated by Frontier Communications, which recently took over ownership and operation of Verizon's wireline telephone systems in California, and Charter Communications, which are the incumbent telephone and cable companies. When compared to the primary broadband infrastructure available to the average home or business in California, Morgan Hill is significantly below average, with a grade of "D" (1.0 on a 4 point scale), using criteria originally developed for the East Bay and Central Coast Broadband Consortia.

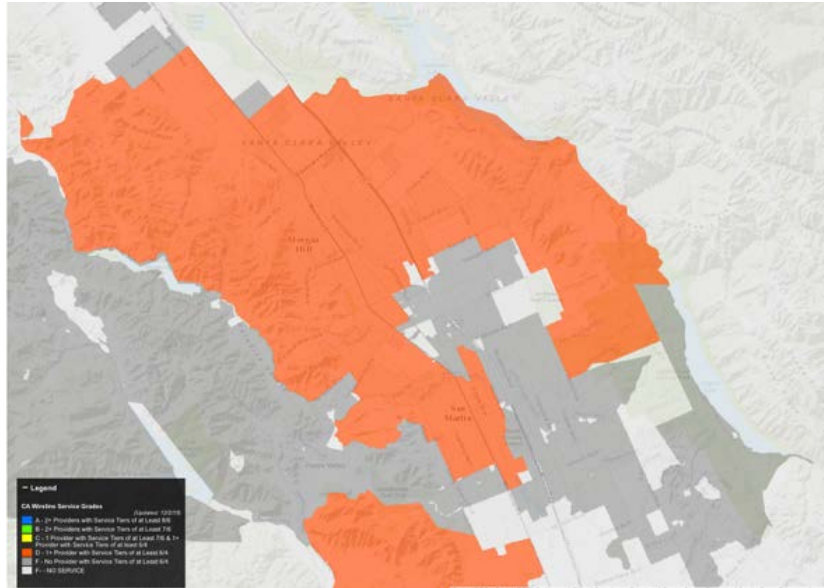


Figure 2.1 – Morgan Hill broadband infrastructure grades, by census block. Red areas are "D" grades, grey are "F". Larger maps are in Appendix A.

When compared to the primary broadband infrastructure elsewhere in the region, Morgan Hill's grade fits into a clear pattern: San Jose and communities to its north and east generally match the Californian average, with most grades falling within two-tenths of a point of "C" (2.0), while communities to the south are largely within one-tenth of a point of "D" (1.0). San Martin, which is largely unserved by Charter and has poor service from AT&T, is an outlier with an F+ (0.3).

Verizon, Charter and AT&T, along with two secondary service providers in Morgan Hill, filed availability, technology and service level reports with the Federal Communications Commission as of 31 December 2014. The data was then given to the California Public Utilities Commission, which further refined it. The analysis in this report is based on the data sets published by the CPUC and supplemented with standard census data, unless otherwise indicated. Another update to this data set, using information submitted as of the end of 2015 is expected later this year. The information and analysis contained in this report is based on the 31 December 2014 reports filed by the service providers with the FCC and CPUC.

Frontier has not yet filed data regarding its new service territories, so the evaluation of its service and infrastructure in this study is based solely on the data provided by Verizon.

AT&T's service reports indicate that it provides service in four census blocks on the southern edge of Morgan Hill, south of Llagas Creek and between Santa Theresa Blvd. and Monterey Highway. A total of 139 housing units are in these four census blocks, and it is not entirely clear that all are located within the city limits of Morgan Hill. This slight overlap is not significant in terms of evaluating city-wide infrastructure, although the data is included in the overall analysis below.

The sharp dividing line between Morgan Hill and San Jose is the result of having two different sets of primary infrastructure providers.

The original telephone company in Morgan Hill was the Western California Telephone Company, which also owned a system in Los Gatos and which was acquired by GTE in the 1970s. GTE merged with Bell Atlantic in 2000, and became Verizon. The company's capital investment strategy focused initially on converting copper-wire telephone systems to fully fiber optic systems¹ and on expanding its mobile telephone and broadband infrastructure. The return on the fiber conversion investments proved disappointing and Verizon discontinued the program and re-focused on its wireless business.

As a result, wireline service areas that weren't upgraded suffered from a lack of investment, initially because fiber conversion was the preferred upgrade path and later because consumer-focused wireline infrastructure of any kind – copper or fiber – became a much lower priority for the company. Last year, Verizon reached an agreement with Frontier Communications to sell its wireline systems in California, Texas and Florida. That transaction closed on 1 April 2016.

The incumbent telephone company in San Jose is AT&T. The systems there were developed and operated by Pacific Telephone and Telegraph Company within the old Bell System, and have retained a consistent Bell-centric line of ownership through Pacific Bell, SBC and, now, AT&T.

¹ Fiber optic systems use bundles of thin strands of glass or plastic – i.e., fibers – to carry information via light waves, as opposed to the electric signals carried by copper wires. Fiber optic technology allows for much greater data speeds and volumes than copper, usually by orders of magnitude.

Table 2.1 - Broadband infrastructure grades

	Grade	GPA
Campbell	C	2.0
Milpitas	C-	1.9
Los Altos	C-	1.9
Cupertino	C-	1.9
San Jose	C-	1.8
Mountain View	C-	1.8
Saratoga	C-	1.8
Santa Clara	C-	1.7
Los Altos Hills	C-	1.7
Hollister	D	1.1
Los Gatos	D	1.0
San Juan Bautista	D	1.0
Gilroy	D	1.0
Morgan Hill	D	1.0
Monte Sereno	D-	0.8
Lexington Hills	D-	0.7
San Martin	F+	0.3

AT&T has had a track record of favoring copper-wire infrastructure over fiber for final connections to customers, and has been more consistent in investing in ongoing upgrades and maintenance.

As a result, the copper wireline systems acquired by Frontier from Verizon in California, including the one serving Morgan Hill, tend to be less capable than systems in comparable communities operated by AT&T.

When upload and download speeds reported by the two companies to the Federal Communications Commission are compared, the difference between the services offered by the two companies, and consequently the condition and capability of the supporting infrastructure, become evident. Taking Union City as a typical example – it received a “C-” (1.9) grade – the difference in supported speeds and underlying architecture becomes clear. Speeds in Union City skew higher on both the download and upload side than in Morgan Hill. The distribution of those speeds indicates that Frontier’s service in Morgan Hill is based on Verizon’s legacy DSL² and interim ADSL2 technology to a greater degree than in Union City, where AT&T has made substantial investments in more advanced VDSL technology (and upgrades to ADSL2 technology).

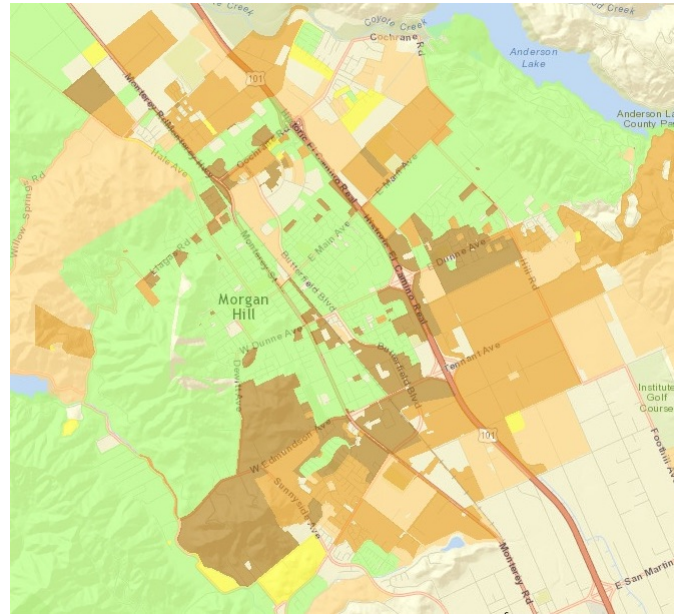


Figure 2.2 – Verizon DSL coverage in Morgan Hill. Note slower speeds further from the center. A larger version is in Appendix A.

From a consumer standpoint, the difference between the three technologies is readily apparent. If the service being received is branded as Uverse and television service is (or at least was, until recently) available, then it is VDSL-based. If it carries the Uverse brand and television service isn’t available, it’s ADSL2. If it doesn’t carry the Uverse brand, it is legacy DSL service. AT&T has made a concerted effort over the past several years to transition customers from legacy service, which is subject to regulation by the California Public Utilities Commission, to unregulated Uverse branded service where it is available. Verizon’s strategy, on the other hand, has been to sell off its regulated, wireline telephone systems, as it has just done in California.

The pattern of reported service levels in Morgan Hill also indicates a lack of infrastructure upgrades over the years. In communities where AT&T has invested in newer generations of DSL technology, it has also modified the architecture of the physical network that supports it. To a much greater degree

² “DSL” stands for digital subscriber line, and is a term that refers to technology developed by telephone companies to transmit data over the legacy copper telephone network. ADSL, ADSL-2 and VDSL are progressively more advanced versions of the technology. Older DSL technology is, for example, generally limited to 3 to 6 Mbps download speeds, ADSL-2 usually tops out in the 20 Mbps (or lower) download range and VDSL can support download speeds in excess of 40 Mbps.

than Verizon, AT&T has installed high capacity fiber optic cables deeper into neighborhoods, where it connects to shorter and more localized copper wires that, in turn, connect to customers. Since DSL service speeds are, to a great degree, a function of the distance traveled over copper wires, a typical pattern seen in AT&T markets is a checkerboard of fast speed reports around a number of neighborhood fiber “nodes³”, surrounded by relatively small and compact areas of declining speeds.

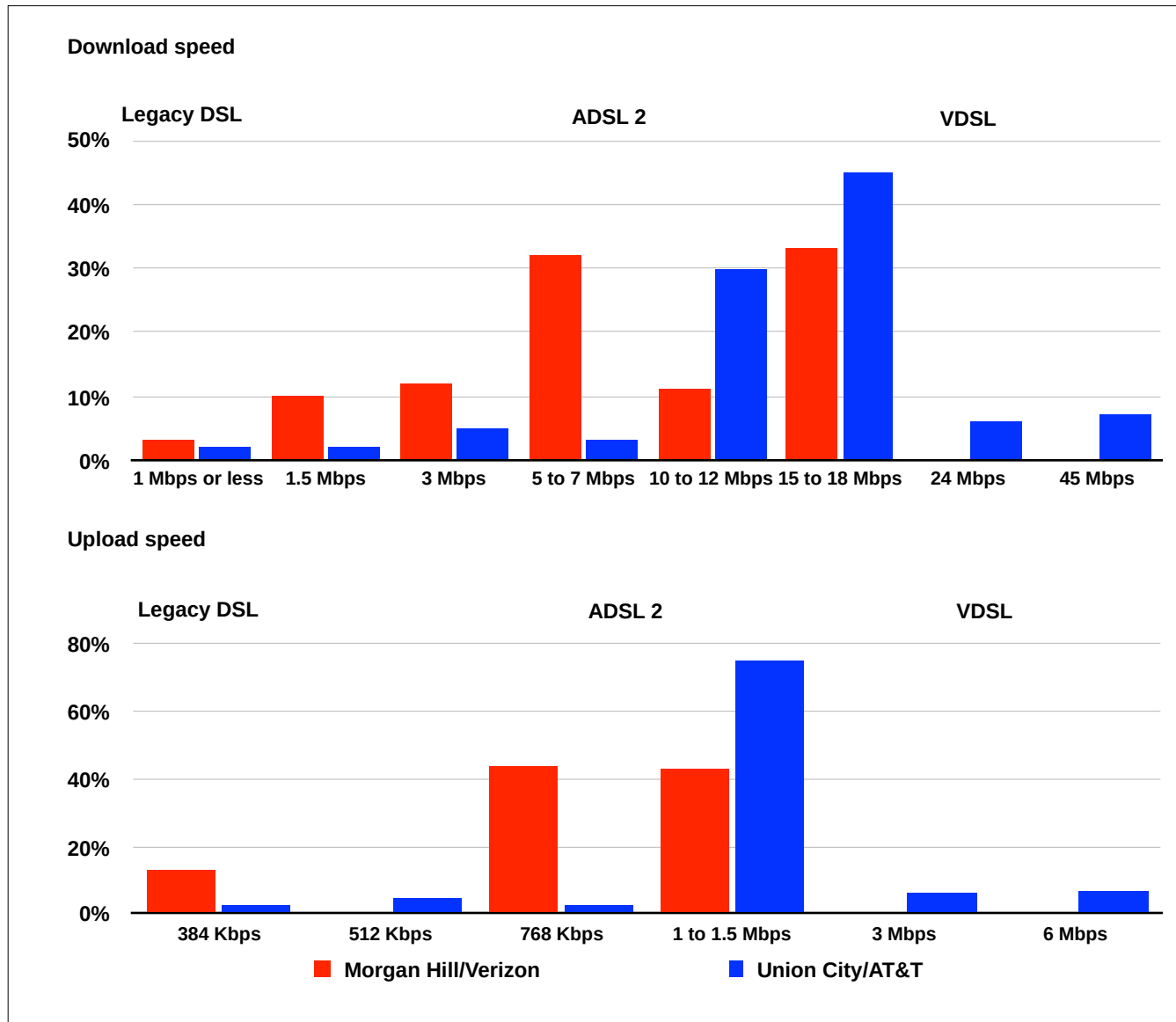


Figure 2.3 – Morgan Hill/Verizon versus Union City/AT&T broadband speeds, by census block.

By contrast, the overall pattern of service speeds reported on the system previously owned by Verizon in Morgan Hill indicates that this sort of fiber upgrade is not commonly present. DSL service is generally at its best in the center of the city, and drops off as the distance from the center increases.

³ Although the term “node” can refer to many things, in this report it refers to a central box or vault in a neighborhood where high capacity fiber optic trunk lines connect to copper distribution lines that serve customers’ homes or businesses.

There are exceptions, particularly in the western and eastern areas of Morgan Hill, but the overall pattern indicates that Verizon’s former network relies on copper wired-based distribution and legacy architecture to a much higher extent than AT&T’s networks to the north.

Charter Communications is the cable company serving Morgan Hill. Charter reports that it is using DOCSIS⁴ 3.0 technology exclusively and, consistent with common practice in the cable industry, claims to deliver up to 100 Mbps download and 5 Mbps upload speeds everywhere in its broadband service area. The key phrase is “up to”. It is a term of art in the broadband industry that means, in effect, that the technology that’s been deployed in an area is theoretically capable of supporting the indicated service level, but consumers should not expect to experience that maximum service level consistently, if at all. Charter’s ability to actually deliver promised speeds depends on the level of investment it has made in a particular neighborhood and the usage patterns of residents – the more people accessing the Internet in a given area, the lower the speeds each will receive. Charter also has a practice of not fully building out its cable systems to marginal residential areas, or to commercial and industrial zones.

Charter’s reported service speeds are below average for the California cable industry overall. By contrast, Comcast, which serves San Jose and most of the remainder of the Bay Area, offers service at 150 Mbps download and 20 Mbps upload speeds, which is typical of cable companies in California.

Table 2.2 - Primary broadband availability in Morgan Hill

	Census blocks	Housing units	Population
AT&T	4	139	433
Charter	682	12,623	37,425
Frontier	368	11,201	33,377
Combined availability (all 3 carriers)	687	12,628	37,433
Union City total (including unserved)	729	12,857	37,882
AT&T	1%	1%	1%
Charter	94%	98%	99%
Frontier	50%	87%	88%
Combined availability (all 3 carriers)	94%	98%	99%

In other words, Morgan Hill is served by telephone and cable companies that offer significantly slower speeds than their peers elsewhere in California. Frontier’s current service does not meet the California Public Utilities Commission’s minimum standard of 6 Mbps download and 1.5 Mbps upload speeds anywhere in Morgan Hill – consistently on the upload side and frequently on the download side – and

⁴ DOCSIS stands for “data over cable service interface specification”, and is the set of standards used by cable companies in the U.S. to provide two-way Internet service over coaxial cable networks that were originally designed to deliver one-way television service.

Charter's speeds in Morgan Hill are lower than Comcast, Cox and, in large measure, Time Warner⁵, its three peer companies in California.

Overall though, broadband availability at one level or another is nearly ubiquitous. Table 2.2 shows that 98% of homes in Morgan Hill – 12,628 out of 12,857 – have broadband service available at some speed from at least one company. The remaining unserved homes are scattered throughout Morgan Hill, but generally on the periphery (see Appendix D, sub-section 7).

“Broadband” refers generally to any telecommunications service capable of supporting digital data transmission at high speeds. These services can include and/or support Internet, television, telephone, private data networks and various specialized uses. Broadband service can be delivered in a variety of ways, including telephone lines (e.g., DSL), coaxial cable (e.g., cable modem), fiber optic cable, wireless cellular/mobile service (e.g., cell phones, tablets, wireless modems), WiFi, point-to-point and point-to-multipoint fixed wireless service and hybrid networks. There are technical distinctions between the terms “broadband” and “Internet”, but when discussing retail services offered to consumers and small businesses, the two can be used interchangeably.

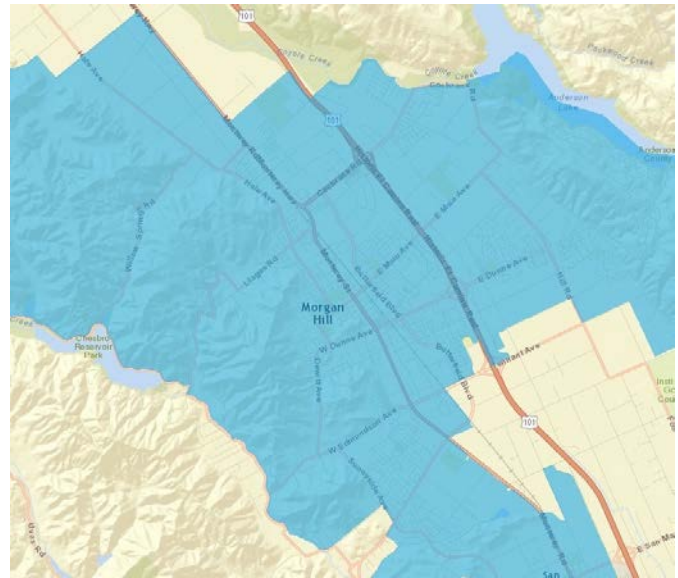


Figure 2.4 – Charter's claimed cable modem service availability. A larger version is in Appendix A.

The infrastructure grade of a census block is determined by the generally available level of service it supports. A “C” grade means a census block has the most common wireline service choices found in California, typical of the standard packages offered by, for example, AT&T and Comcast: a minimum of two providers, one just meeting the minimum standard of broadband service set by the CPUC (6 Mbps download and 1.5 Mbps upload) and the other exceeding it. A “D” grade – below the Californian average – is given when wireline service meets but does not exceed this standard or where consumers only have access to one qualifying service provider. If no qualifying service is available, a failing grade – “F” – is given. “A” and “B” grades are given where superior service is offered. Details regarding the grading method are in Appendix B.

Service levels reported by telephone and cable companies are listed separately because of the differences in the quality of the reports and the methods used to generate the data.

⁵ On 18 May 2016, Charter Communications completed its purchase of Time Warner and Bright House cable systems in California. Since the transaction is so recent and no operational changes have been implemented, Charter and Time Warner systems are compared separately for the purposes of this report.

Table 2.3 - Primary broadband service providers - Morgan Hill**Telephone companies, DSL-based service by census block**

Download speed	1 Mbps	1.5 Mbps	3 Mbps	5 Mbps	7 Mbps	6 Mbps	10 Mbps	12 Mbps	15 Mbps
Frontier	10	36	43	25	94		40		120
AT&T			1		3				
Upload speed	384 Kbps	512 Kbps	768 Kbps	1 Mbps					
Frontier	46		162	160					
AT&T		1	3						

Charter - cable modem (DOCSIS 3.0) speeds claimed throughout service area

Download	100 Mbps
Upload	5 Mbps

Primary broadband infrastructure is designed to provide retail level service, and often supports telephone and television service as well. It is the type of service that consumers buy for consumer-class home use, and small to medium-sized business use for routine, commercial-class Internet access. The two primary broadband companies in Morgan Hill, Frontier and Charter, have hybrid networks that use copper wires to connect directly to homes and businesses, and fiber optic lines that connect these local distribution networks to the Internet. In some cases, Frontier and Charter might use fiber optic lines to connect directly to a major customer, but neither report doing so in Morgan Hill.

Table 2.4 - Major California cable company maximum upload speed, as a percentage of census blocks

	5 Mbps	20 Mbps
Charter Communications	100%	
Comcast		100%
Cox Communications		100%
Time Warner Cable	14%	86%

Table 2.5 - Major California cable company maximum download speed, as a percentage of census blocks

	30 Mbps	50 Mbps	100 Mbps	105 Mbps	150 Mbps	300 Mbps
Charter Communications	3%		97%			
Comcast				3%	97%	
Cox Communications					100%	
Time Warner Cable	1%	14%				86%

Both Charter and Frontier offer significantly slower upload speeds than their peers. As a general rule, disproportionately slow upload speeds are an additional indicator of poor infrastructure. The geographic gap between service speeds offered by the respective providers is the reason cities in

AT&T's and Comcast's territories in the Bay Area receive broadband infrastructure grades in the "C" range and Morgan Hill receives a "D".

The primary broadband service providers in Morgan Hill report reaching most residential customers. Altogether, the primary providers (in this case, including AT&T) offer broadband service to 98% of housing units and 99% of the population in Morgan Hill, according to their own reports. These numbers are likely overstated, since the providers report partial coverage of a census block as full coverage. When looked at in detail, Frontier's coverage appears significantly poorer than Charter's, with gaps in the northern and southern edges of Morgan Hill, as well as some predominantly commercial/industrial areas.

2.2. Frontier and Charter transactions

On 1 April 2016, Frontier Communications assumed ownership of local wireline (copper and fiber) telephone systems owned by Verizon in California, including the one serving Morgan Hill. Frontier took operational control of its 2 million new customers in California by performing a "flash cutover", which was an attempt to transfer all former Verizon customers into its systems at once. The flash cutover did not go as expected.

Three systematic problems caused service disruptions to what appears to be several thousand customers. Most of the customers affected were in southern California, but not all. Media reports indicated that some customers in Verizon's Bay Area systems also experienced service disruptions, primarily related to Internet access but also possibly to telephone service as well.

The three problems that affected the vast majority of customers reporting problems were:

- Corrupt data in the customer records imported from Verizon's system.
- Records that said some customers' equipment had one serial number when in fact it had another.
- The need to train ex-Verizon employees on Frontier's systems.

The first two problems – corrupt data and mismatched serial numbers – resulted in the transmission of incorrect authorization messages and other operational data to some customers. The number of customers affected is believed to be less than 1% of Frontier's new customer base, but even that relatively low percentage of errors resulted in probably 10,000 to 20,000 service disruptions. Many of the service disruptions appear to be related to television service on fiber-to-the-home systems that Frontier acquired from Verizon in southern California, but telephone and Internet service was also affected statewide.

There were also service disruptions reported that were caused by incidental problems of the sort that's common for utility companies. These problems included, for example, a squirrel chewing through a cable and a vehicle hitting a utility pole. As a point of reference, Frontier expects to process an average of 50,000 trouble tickets a month in California in its normal course of business.

The third problem compounded the issues caused by the corrupt data, mismatched serial numbers and normal operational factors. Frontier’s staffing plan for the cutover involved bringing in current Frontier employees from other regions to handle what they expected would be a higher than usual number of customer service calls, while using Verizon’s existing call center in the Philippines as a back up resource. In the meantime, the former Verizon employees in California were to be trained on Frontier’s systems in an orderly process that was intended to result in a 100% U.S.-based customer service staff following the transition period.

The flood of phone calls triggered by the faulty data Frontier received from Verizon overwhelmed the existing Frontier staff and more calls with more complex problems were transferred to the back-up call center than expected. Personnel at the back up call center were not equipped and/or trained to handle the level or volume of problems they faced, and the result was a high degree of customer anger and dissatisfaction.

According to information given to state regulators by Frontier, all of their California systems were back to “business as usual” status by June 2016.

On 18 May 2016, Charter Communications completed a purchase of cable systems belonging to Time Warner Cable and Bright House Networks, nationwide. Many of those systems are in southern California and the San Joaquin Valley. Charter has stated that there is no expectation of similar problems, because its plan is to transfer operational control and integrate system gradually over time, rather than do a flash cutover, as Frontier attempted.

However, this transaction will affect the existing Charter cable system that serves Morgan Hill. In addition to the financial considerations of the purchase itself and the cost of integrating millions of new customers over time, Charter will also have to bear the cost of fulfilling the conditions that were attached to the approval of the transaction by regulators, particularly the Federal Communications Commission (FCC) and the CPUC, but also by regulatory agencies in other states. These conditions include extending service and/or upgrading analog service to digital to up to 2 million new locations nationwide.

The Morgan Hill system is at the northernmost end of a chain of existing Charter systems that generally extends south into Santa Barbara County, and an estimated 20,000 to 30,000 of the digital conversions and line extensions required will be in this region. The combination of required upgrades, transaction financing considerations and system integration costs will very likely result in capital constraints that will put a lower priority on investment in current Charter systems, such as the one in Morgan Hill, that are performing adequately from a management and regulatory point of view.

Both Frontier and Charter are required by the terms attached to regulatory approval of their respective purchases to provide other public benefits, including free WiFi service, free connections to a limited number of government agencies, discounted service packages for low income households and other programs intended to increase Internet adoption in disadvantaged communities. The companies were given a year or more to comply with these requirements and to date neither have provided any details regarding plans to do so.

2.3. Secondary service providers

In addition to the primary, retail level of service provided by Frontier and Charter, two other secondary companies provide commercial and industrial class service in Morgan Hill, via infrastructure or facilities they own themselves and/or leased facilities. Typically, these companies lease lines from the incumbent telephone company, but it is also possible that they are buying wholesale access from Charter.

The secondary broadband infrastructure in Morgan Hill is limited and generally falls into two categories: fiber optic networks and electronic enhancements to traditional copper wireline networks, likely leased from Frontier.

Two companies – Level 3 Communications and TW Telecom – report providing business-oriented services via leased lines (Level 3 acquired TW Telecom in 2014, but the companies still report service levels to the FCC separately). In accordance with state and federal rules, these companies are able to install equipment in Frontier’s central offices and use it to provide a higher level of service than would ordinarily be available. Both focus primarily on industrial and commercial areas of Morgan Hill. Full coverage area maps are in Appendix A.

TW Telecom claims to offer wireline service at 45 Mbps upload and download speeds in 11 census blocks and Level 3 reports the same in one census block. The type of technology reported – “other copper” – and the symmetrical speeds⁶ are consistent with DS-3 service, which is an older type of high capacity data transport connection that typically uses copper wires leased from an incumbent telephone company, which in this case is Frontier.

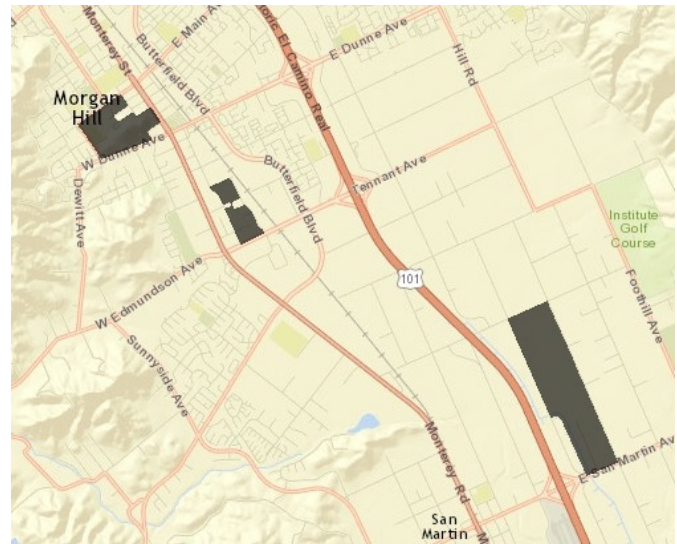


Figure 2.5 – Census blocks with fiber-to-the-premise service from Level 3. Larger map is in Appendix A.

Level 3 also reports providing 100 Gbps symmetrical service directly to end users via fiber optic lines in two census blocks.

Two long haul fiber corridors pass through Morgan Hill. The companies that have installed fiber optic cables along these corridors generally use it to connect large customers, Internet service providers and mobile telecommunications companies directly to major Internet exchanges and data centers in the Bay Area and Los Angeles, but some also use it for inter-city connections between customer sites and, in

⁶ Broadband service is considered symmetrical when upload and download speeds are the same.

limited circumstances, for intra-city connections.

The larger corridor of the two runs along the Union Pacific right of way, going north and south through Morgan Hill. AT&T, Verizon, CenturyLink, Level 3 and Zayo are among the companies present. A supplemental corridor runs north and south along Monterey Rd. through Morgan Hill. Optic Access (now owned by Integra) and AT&T are present on this route.

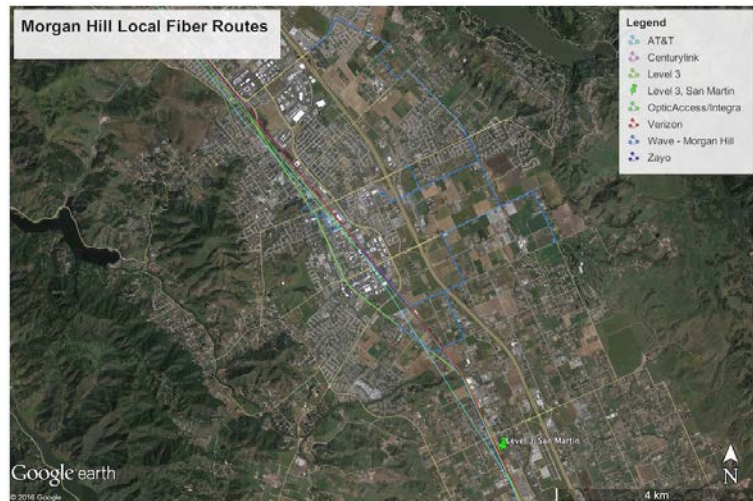


Figure 2.6 – Fiber routes in Morgan Hill. A larger version is in Appendix A.

At least four telecommunications companies are accessing fiber in Morgan Hill along this corridor: Frontier, Charter, Level 3 and Wave Broadband, which filed permit applications with the City of Morgan Hill requesting permission to build a fiber distribution network that is consistent with a network design intended to provide connections to cellular sites used by mobile telecommunications companies. It is likely that other companies are also accessing this trunk fiber, since it is standard practice in the mobile telecommunications business to provision cellular sites with direct fiber connections.

2.4. Commercial and industrial broadband infrastructure

It is much easier for primary broadband service providers to generate an acceptable return on investment in residential areas than in commercial or industrial ones, particularly densely populated urban and suburban neighborhoods. Standardized equipment can be used to provide a managed level of service, and each home can be offered a wide range of products including Internet access, television programming and telephone service. It is a predictable business, and capital investments can be made with a reasonable degree of certainty.

Industrial and commercial customers are more diverse and less predictable than residential subscribers. One business might need gigabit speeds at the highest quality-of-service levels, while the one next door is content with a standard, relatively slow DSL connection. As a result, incumbent carriers tend to approach commercial and industrial customers on a case by case basis. They do not prospectively build high speed infrastructure. Businesses seeking higher grade service are frequently presented with installation estimates in the thousands and tens of thousands of dollars range. Specialized, secondary companies offer a more diverse range of services to this market.

“Commercial class” service is defined as being similar to residential service in that the provider takes effectively all responsibility for installing, maintaining and supporting the service. Speeds are similar (6 to 150 Mbps), but service levels, reliability, consistency and pricing are higher.

“Industrial class” service refers to situations where the customer plays a much greater role in building and supporting the service, including buying different elements from different vendors and managing installation and support. Speeds would be higher – perhaps as high as 100 gigabits per second or more – and quality of service levels could be as high as found in top tier Internet exchanges. DS-3 circuits or dark fiber strands are examples of industrial class service. Large industrial customers frequently buy services directly from middle mile providers.

At this level of service, the distinction between “broadband” and “Internet” facilities becomes important. “Internet” service involves a connection, at whatever speed, to the vast, publicly accessible network of interconnected information technology (IT) resources that’s called the Internet. Internet service is usually obtained from a company that provides a connection between the end user and a major Internet exchange facility where data is handed back and forth between various networks: either a dedicated exchange facility or a data center where many companies install servers and other IT equipment. There are several such facilities in the Bay Area, including Fremont and San Jose, but none have been identified in Morgan Hill.

“Broadband” is a more generic term. It simply refers to a high speed data connection. That connection might be between an end user and an Internet exchange point, or it could be only for internal connections within a company.

The reports regarding Frontier’s service in Morgan Hill (filed by Verizon) show a pattern of not prioritizing broadband service in commercial and industrial areas. This data is reported by census block, and not by street address or zone designation, so inferences must be made based on the number of housing units in a given census block, as reported by the U.S. Census Bureau (2010 census). Frontier provides no broadband service in 361 of 726 census blocks total in Morgan Hill, of which 275, or 76%, have zero housing units. Frontier offers broadband service in the remaining 368 census blocks, of which 97, or 26%, have zero housing units.

A census block with zero housing units is usually either vacant residential land or used for commercial, industrial or institutional purposes. However, comparison of the map of Frontier’s reported service with a City of Morgan Hill zoning map indicates that these unserved census blocks are predominantly in areas zoned for commercial, industrial and institutional use.

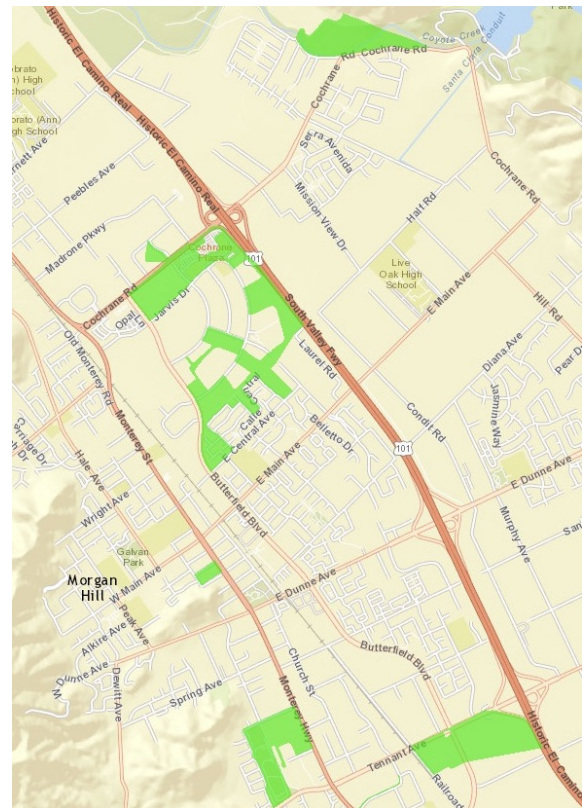


Figure 2.7 – Census blocks with enhanced copper service. Note correlation to commercial and industrial zones. A larger version is in Appendix A.

In the census blocks with zero housing where Frontier does offer service, the reported download speeds are significantly slower than in census blocks containing residences. Since service would not be reported for vacant land, effectively all of these census blocks can be assumed to be commercial, industrial or institutional in nature.

In just over half (51%) of census blocks with residences, Frontier offers broadband at its two highest download speeds, 10 Mbps and 15 Mbps. In census blocks without residences, just under a quarter (24%) have that level of service. The lowest download speed service tiers – 3 Mbps and less – are offered in 35% of census blocks without residences, while only 20% of census blocks with residences have such service.

Census blocks with residences are inferred to be residential in character, while census blocks without residences are inferred to be commercial or industrial in nature.

Charter Communications reports serving a greater number of presumably commercial, industrial and/or institutional census blocks. Of the 352 census blocks in Morgan Hill with zero housing units, Charter reports that it offers broadband to 340, or 97%. It also reports offering a uniform download speed of 100 Mbps in every census block it serves.

Table 2.6 - Frontier download speeds by land use

	3 Mbps or less	5 to 7 Mbps	10 to 15 Mbps
Commercial/industrial	35%	41%	24%
Residential	20%	29%	51%

Although there appears to be a significant disparity in commercial and industrial area service between Charter and Frontier, it should not be assumed that the difference is as great as it appears. It is common practice in the cable industry to advertize service to business customers without having the facilities in place to immediately provide that service, and with the intention of requiring those customers to pay for the cost of installing the necessary facilities.

The poor state of commercial-class Internet infrastructure in Morgan Hill was also brought out in the workshop and online surveys discussed below.

The two secondary providers – TW Telecom and Level 3 – specialize in providing service to business customers. The 14 census blocks served by the companies are all commercial, industrial or institutional in nature. Ten of these census blocks are in commercial planned unit developments or light industrial zoned areas on or near Cochrane Rd., Jarvis Dr., Tennant Ave. and Vineyard Blvd. Two are in or near the central business district on Monterey Rd., and one is south of there on Monterey Rd. The remaining census block appears to contain a Santa Clara County facility, north of Malaguerra Ave. on the north side of Morgan Hill. Frontier reports offering broadband service in 10 and Charter in 11 of these census blocks.

2.5. Wireless broadband service

Four mobile broadband companies – AT&T, Sprint, T-Mobile and Verizon – serve Morgan Hill. According to testing conducted by the California Public Utilities Commission, AT&T's expected mobile download speeds in Morgan Hill are in the 3 Mbps to 10 Mbps range, with speeds decreasing as users move from north to south in the city. Verizon has a similar pattern, but with lower expected download speeds, ranging from 768 Kbps to 6 Mbps.

Sprint is largely unable to provide reliable service in Morgan Hill. The CPUC's testing shows its effective coverage ending just north of the city limits. T-Mobile's download speeds are in the 1.5 Mbps to 3 Mbps range in the northern end of Morgan Hill, decreasing to the 768 Kbps to 1.5 Mbps range in the middle of the city, and effective coverage lacking in the southern end.

Fixed wireless Internet service is offered by at least two companies in Morgan Hill. Etheric reports offering spotty coverage in the city, in the 25 Mbps to 50 Mbps range. The data Etheric submitted to the CPUC indicates that it can provide service in the eastern half of the city, but not on the western side. Examination of the mapping data provided by Etheric indicates that its coverage estimates are based on unsophisticated modeling of relatively few access points and cannot be taken at face value. Prospective customers are best advised to contact the companies to confirm availability and actual service levels.

South Valley Internet does not report its coverage and service levels to the CPUC, and does not provide coverage data on its website. The company advises prospective customers to contact it to find out pricing, service level and availability details.

Both Etheric and SVI use unlicensed radio frequencies, which are subject to inference and may be preempted by other users. Any and all users have the same legal right to transmit on unlicensed frequencies, and must accept whatever interference or degradation results.

Other fixed wireless Internet service providers are active in the Bay Area and in northern San Benito County, and might offer service in the Morgan Hill area from time to time. The same caveats apply.

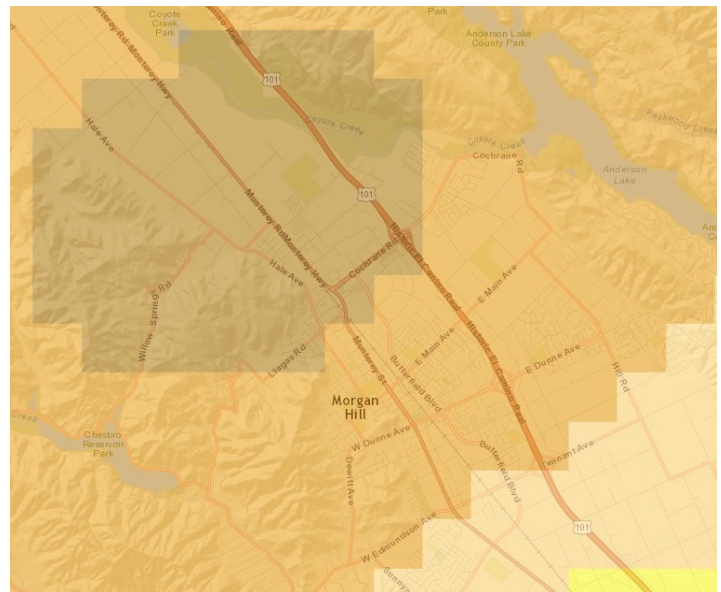


Figure 2.8 – AT&T's mobile broadband coverage in Morgan Hill, per CPUC testing. Dark brown indicates 6 Mbps to 10 Mbps download speeds, light brown and yellow are progressively slower. More and bigger maps are in Appendix A.

2.6. Broadband adoption rate

The most recent data collected and published by the California Public Utilities Commission (circa June 2012) indicates that broadband adoption and penetration in Morgan Hill is consistent with the statewide average in California.

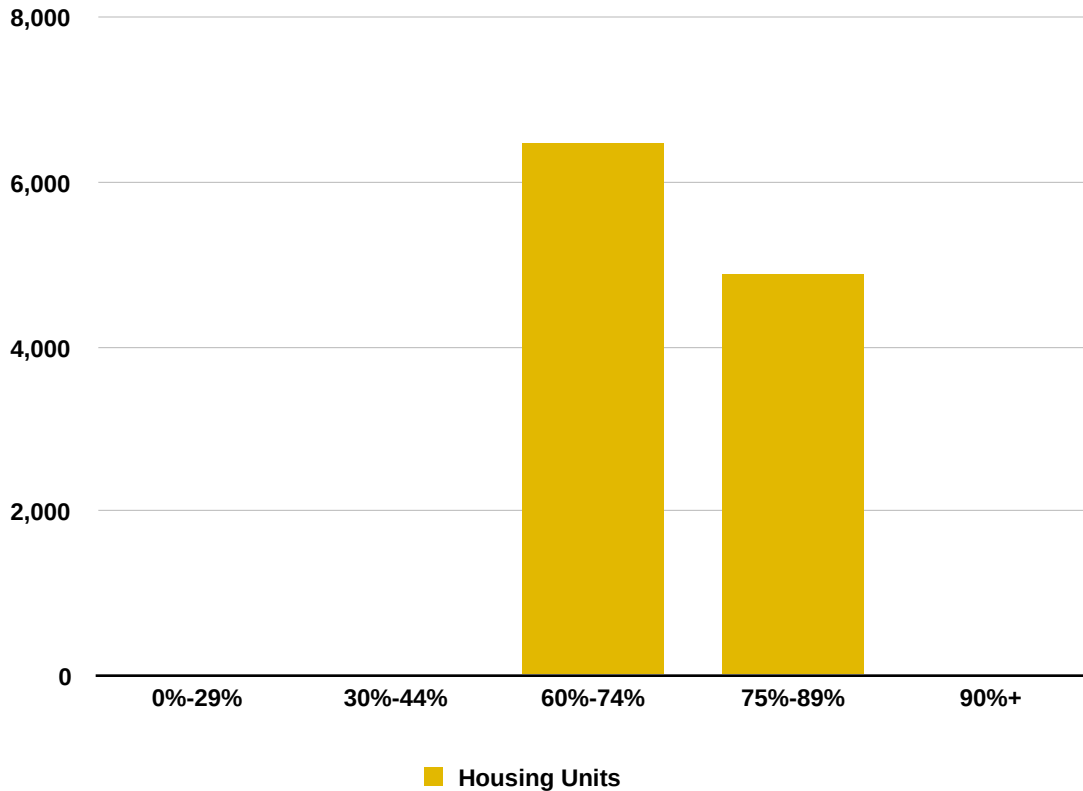


Figure 2.9 – Morgan Hill household broadband adoption rate by census tract.

The two metrics differ in that the adoption rate factors in broadband availability, while the penetration rate simply expresses broadband use as a percentage of overall population. Because broadband service of one kind or another is available to virtually every household in Morgan Hill, the two metrics are identical and this report will use the adoption figures for comparison.

Service providers consider this kind of customer data to be proprietary, and as a result the FCC and CPUC treat it confidentially. Exact figures for cities, or census tracts or blocks are not released. Other than state and county-level summaries, the only data published is an indication of which of six broad percentage ranges the adoption rate in any given census tract falls into. Even this scant information is suppressed when there are fewer than three service providers reporting customer data in a census tract, in order to preserve confidentiality.

The CPUC provided adoption data for eight census tracts that include a significant number of homes within the Morgan Hill city limits, and suppressed data for one. One census tract with an insignificant

number of homes in Morgan Hill (4 homes) was disregarded, as were two census tracts with zero homes within Morgan Hill.

There are 11,360 homes within the Morgan Hill city limits and within the eight census tracts for which data was provided. Of those, 57% (6,470 homes) are reported to have household broadband adoption rates within a range of 60% to 74%, and 43% (4,890 homes) fall within a 75% to 89% range. None of the significant census tracts in Morgan Hill for which data was provided have adoption rates of 59% or less, or 90% or higher.

By comparison, the California statewide adoption rate is 74%, Santa Clara County's is 81% and San Benito County's is 65%. In other words, the statewide rate is roughly at the center of the range and distribution of adoption rates within Morgan Hill, while approximately two-fifths of homes fall are in the same range as Santa Clara County overall and three-fifth of homes are in the same range as San Benito County overall.

2.7. Business and consumer perceptions

Tellus Venture Associates conducted primary market research to find out what residents and business people think about the broadband service and infrastructure that is available in Morgan Hill. A workshop was held for local businesses on 20 November 2015, and online surveys were conducted: one for local businesses in February 2016 and one for residents in March 2016.

Workshop

Ten people from Morgan Hill businesses and local government attended, representing:

- Anristu Americas
- Robinson Technologies
- Smith Commercial Management
- Leal Vineyards
- Morgan Hill City Government

Two representatives from Charter Communications were also present but, consistent with sound market research methodology and as required by Tellus Venture Associates, observed anonymously and did not participate.

All companies represented have contracts with at least two broadband providers, including:

- Charter
- Exceed
- Verizon
- South Valley Internet
- AT&T Uverse
- Level 3

- BCN Networks
- NTT Etheric

Each company stated multiple times that they needed the redundancy because of a long history of re-occurring system reliability issues. They also expressed frustration regarding inadequate throughput and latency, and that none of the available broadband systems meet their current needs at an affordable price. Several participants detailed problems they had with their respective service providers regarding outages.

Each company has experienced significant growth over the past three years and they all expect this trend to continue in the foreseeable future. Each company stated that a major obstacle to realizing and sustaining that growth is the ability of the current broadband systems to meet data system needs at an affordable rate. Currently they are paying anywhere from \$1,200 to \$10,000 per month for services they do not find satisfactory, with the exception of one participant.

When asked to rate the level of satisfaction for their current broadband services in terms of: 1. overall reliability and 2. quality of service (i.e. throughput and latency) on a scale of 1 to 5 with 5 being excellent and 1 being very poor, each company gave a rating of 1 for each metric for their respective service provider, with the exception of one company which gave a 4 rating.

Major issues with current broadband service and providers include:

- System throughput and latency.
- System reliability.
- Extremely poor customer service, especially technical support.
- Length of time required to upgrade current service/system.
- Current pricing models, which are not a sustainable business model that facilitates growth and long term partnership.
- Limited system footprint, which does not support employees working remotely.

Business survey

There were 53 survey respondents, representing an 8.5% sample size, which is a statistically sound sample. Generally, any sample greater than 5% of total population is statistically relevant in analysis projections. However, because this survey was conducted online and the respondents were self-selected, the statistical validity of the results is open to question, and the data gathered should be considered qualitatively, rather than strictly quantitatively.

- 81% of respondents currently purchase Internet service for their business.
- 96% of the responding businesses have Internet access.
- 62% of the businesses responding allow telecommuting,
- Roughly one half purchase cellular (54%) and/or fixed line phone service (47%).

There does not appear to be a dominant trend among the respondents with regard to how these services are purchased, about one-third each purchase these services as a bundled package, separately or some combination:

- 27% - All my services are bundled
- 35% - All services are obtained through separate providers
- 33% - Some services are bundled, some are sold separately

Nearly one half of the respondents (47%) currently contract with Verizon for their broadband services, followed by Charter (40%). AT&T Uverse and South Valley Internet are currently used by 10% of the respondents as their primary broadband carrier.

- 31% of the respondents use DSL as their primary Internet connection.
- 18% use T-1 lines or similar (1960s vintage digital transmission technology using telephone lines).
- 13% use cable modem service.
- 13% use fixed wireless service.

When asked how important Internet access is:

- 88% of respondents said it is very or somewhat important in their ability to achieve strategic goals (68% very important).
- 80% said it was very or somewhat important in their ability to stay competitive (66% very important).
- 62% stated that it is very or somewhat important when deciding where to locate existing or future facilities (44% very important).

Nearly one-half (48%) do not have a backup or secondary connection, and of those who do have a secondary service, 14% use wireless and 7% rely on cable.

- 93% of respondents stated that the reliability of connection is the most important aspect of their businesses Internet service. Only 20% of those businesses are very satisfied with the current level of reliability, whereas 40% are somewhat/not at all satisfied with the current reliability of their Internet service.
- 80% responded that the speed of connection was very important while only 24% responded that they are very satisfied with current internet speed versus 42% stating that they are not at all or only somewhat satisfied with current internet speed.
- Technical support was identified as the 3rd most important service attribute (71%). Only 17% were very satisfied with their current level of tech support.

Each of these key metrics indicate a need for the current providers to substantially improve current systems and services.

In terms of value, 60% stated that the price of services was either very or somewhat important, only 11% are currently very satisfied with the price of services, 28% are neither satisfied or unsatisfied with current prices of services. This result is noteworthy. In our experience if only 10% to 15% of a customer base feels that they are getting good value for services it is a key indicator that most would likely switch providers if any were available.

Type of businesses responding:

- 15% of the respondents represented the Professional, Scientific & Technical Industries.
- 12% from the Finance, Insurance and Real Estate Community
- 11% from the Retail Sector
- 38% of the responding businesses have had a presents in Morgan Hill for more the 20 years.
- 31% between 1-5 years, and of that 31%, 17% have been in Morgan Hill less than 2 years.
- 51% have 5 or fewer employees
- 21% have between 6 and 20 employees

Consumer survey

There were 510 survey respondents, representing a 4.2% sample size. Because this survey was conducted online and the respondents were self-selected, the statistical validity of the results is open to question, and the data gathered should be considered qualitatively, rather than strictly quantitatively.

- 99% of respondents have internet access at their home.
- 98% of respondents currently purchase Internet for their home.
- 93% of respondents purchase cellular/mobile telephone service.
- 85% of the responding households purchase either cable or satellite television.

There does not appear to be a dominant trend among the respondents with regard to how these services are purchased:

- 5% - All my services are bundled
- 42% - All services are obtained through separate providers
- 48% - Some services are bundled, some are sold separately

More than half of the respondents (67%) currently use cable as their primary Internet connection, followed by DSL (14%) and Wireless (10%).

Only 30% of respondents reported that their current Internet speed was fast enough for their needs. Given that 65% of respondents say their employers allow telecommuting, it was surprising that only 24% considered the availability of Internet services prior to purchasing or renting a home.

Reliability of connection was very important to 93%, yet only 15% reported being very satisfied with current reliability. It is alarming that 38% reported being either not at all satisfied or only somewhat satisfied.

86% said that speed of connection (including latency and throughput) was very important to 86% of respondents but, again, only 15% reported being very satisfied with the speed of their current Internet service, whereas 38% reported being either not at all satisfied or only somewhat satisfied. Similarly, 64% of the respondents said that the cost of services was very important and only 24% reported being very satisfied or somewhat satisfied with the price they were paying.

The minimum acceptable upload speed for Internet service was 6 Mbps or higher or higher for 84% of respondents:

Table 2.7 - Minimum acceptable upload speed for Internet service

1.5 Mbps or less	2%
3 Mbps	14%
6 Mbps	25%
10 Mbps	31%
25 Mbps or greater	28%

The minimum acceptable download speed for Internet was 10 Mbps or greater for 81% of respondents.

Table 2.8 - Minimum acceptable download speed for Internet service

1.5 Mbps or less	1%
3 Mbps	6%
6 Mbps	12%
10 Mbps	25%
25 Mbps or greater	56%

Our overall conclusion is that residential and business Internet customers in Morgan Hill are not satisfied with their current service and are not receiving a perceived good value.

2.8. Conclusions

The broadband availability data reported by Verizon (for the system now owned by Frontier Communications), Charter Communications, AT&T, Level 3 and TW Telecom and the results from primary market research conducted for this analysis paints a clear and consistent picture: broadband infrastructure and service in Morgan Hill is significantly poorer than the Californian and Bay Area average. The broadband adoption rate is generally lower than for Santa Clara County residents overall, however it is in line with the statewide average.

Frontier's system in Morgan Hill has not been maintained at the level and upgraded to the extent that AT&T's wireline systems have been in the Bay Area. It relies on older generations of technology and a legacy copper line network that has not been supplemented with high capacity distribution fiber or reconfigured to provide even levels of availability throughout the city, to the same degree as networks in comparable cities to the north.

The predominance of commercial and industrial areas in the census blocks where Frontier offers no broadband service, and the generally lower level of service offered in the commercial and industrial areas it does serve indicates that the previous owner, Verizon, gave scant consideration to providing the commercial and industrial classes of broadband services that businesses rely on now, much less an ever increasing demand for bandwidth in the future.

Charter Communications does a better job of providing high speed broadband connectivity to residents and businesses, but it also falls short of meeting common industry standards. Although its advertised service levels in Morgan Hill are the same as it offers in most of the other California cities it serves, those service levels are significantly below that of its peers in the cable industry. Particularly, its advertised 5 Mbps upload speed is only a quarter of that offered in California by Comcast, Cox and, for the most part, Time Warner, which indicates that it is severely constrained by the condition of its network, the degree to which it has deployed upgraded technology and/or the resources – such as wholesale Internet bandwidth – it provides to its network. This upload speed also falls below a level considered to be adequate by 84% of Morgan Hill consumer respondents to the online survey described above.

Secondary companies – Level 3 and TW Telecom – have moved in to fill some of the gaps left by the primary providers with more specialized services, including via direct fiber optic network connections to end users. Major fiber network operators also provide connectivity in Morgan Hill on a wholesale basis.

Mobile broadband coverage is generally poorer in Morgan Hill than in areas to the north, but the level of service experienced by users will vary depending on the carrier, location and the number of users accessing service at the same time. Internet service is also offered in some locations from fixed wireless system operators, but little reliable information is available regarding actual coverage, availability and true service levels.

There is a sharp divide between the broadband service and infrastructure in residential areas, and that found in commercial and industrial areas. Although Frontier's service levels fail to meet the CPUC's minimum standard of 1.5 Mbps upload speeds anywhere in Morgan Hill, it meets or exceeds the minimum download standard of 6 Mbps in 72% of residential census blocks it serves. By comparison, it only meets the CPUC's download minimum in 61% of non-residential census blocks. Its highest tier of service – 15 Mbps download speeds – is available in 39% of residential census blocks, but only 13% of non-residential ones.

Charter's service reports indicate a more even distribution of broadband availability across residential and non-residential areas, meeting both the CPUC's 6 Mbps download/1.5 Mbps upload standard and

the Federal Communication Commission’s higher standard of 25 Mbps download and 3 Mbps upload speeds for “advanced services”. However, that claim does not match the experience of Morgan Hill business people participating in the workshop and online survey described above. Participants reported unavailability of service from Charter, delays in installing service, and unreliable levels of service.

Although one company (Level 3, reporting as two separate service providers, Level 3 and TW Telecom) offers faster connections to a limited number of business customers, the responses from the survey and workshop indicates that this service is very expensive. The reported speed levels and technology employed for 12 of the 14 census blocks where Level 3 offers service indicates it is based on older and limited facilities.

The low level of residential broadband service in Morgan Hill, relative to other Bay Area and Silicon Valley communities, creates a competitive economic disadvantage for both the real estate market and for individuals who operate home-based businesses or have the option, but not the ability, to telecommute to jobs elsewhere. The inability of Morgan Hill residents to enjoy the same level of social, entertainment and recreational benefits as people living in the greater Bay Area results in a lower quality of life as well. The even lower level of commercial and industrial broadband service and infrastructure is a barrier to companies that might wish to locate or expand in Morgan Hill, and is a motivating factor for existing businesses that might consider moving elsewhere.

However, Morgan Hill is not isolated. The inter-city (middle mile) fiber routes that run along the railroad right of way and on city streets provide the essential connectivity that would make it possible for incumbent carriers to upgrade their networks or for new service providers to locate in Morgan Hill. This middle mile connectivity is a necessary resource. Many communities do not have access to this sort of resource, but Morgan Hill does and should make the most of it.

Morgan Hill’s future economic growth and living standards will be constrained or even degraded by its legacy broadband infrastructure and the substandard levels of broadband service it supports. The planning and policy analysis sections that follow offer both near term and long recommendations for addressing this problem. Solutions will necessarily involve the current incumbents, Frontier and Charter, but the capital and operational constraints both companies face, as a result of recent transactions and otherwise, will require the involvement of other service providers as well.

3. Broadband infrastructure planning

Morgan Hill, like other California cities, has no direct role in regulating Internet service providers. However, the City can implement policies that help or hinder broadband infrastructure development and competition. Options include managing the use of city-owned facilities by Internet service providers, setting policy for shared use of public right of ways, becoming directly involved in developing broadband infrastructure and directly providing services, with or without private sector partners. Policy initiatives that encourage broadband infrastructure development can have a significant impact on the availability of service and facilities. Cities have attracted private, competitive broadband service providers by lowering barriers to entry and leveraging existing city infrastructure and budgets.

3.1. Types of infrastructure

Broadband infrastructure generally breaks down into two categories – middle and last mile – and supports four different types of service: consumer, commercial and industrial classes, and mobile.

Last mile infrastructure is used to deliver broadband service directly to customers from a central office or other distribution point operated by telephone, cable, mobile and other telecommunications companies. It is the type of infrastructure most commonly seen in Morgan Hill and, as described above, variations in its quality and capacity result in different service levels in different areas of the city. In Morgan Hill, these last mile facilities primarily consist of older generation telephone lines (Frontier), coaxial cables (Charter Communications) and cellular wireless sites, plus some very limited access via fiber optic cables.

Middle mile infrastructure connects the central offices and distribution points to major data centers and Internet exchanges, and provides the high capacity, wholesale bandwidth that is distributed on a retail basis via last mile infrastructure. As with other types of utilities, middle and last mile infrastructure is also sometimes referred to as transmission and distribution facilities, respectively. The terms can be used interchangeably.

In most of Morgan Hill, consumer, commercial and industrial class service is delivered via wireline networks, although service is also available via fixed wireless technology on a more limited basis.

As discussed above, consumer-class Internet access is typically a shared resource, with many subscribers contending for the same bandwidth, and is subject to speed and volume limits as determined by the provider. This type of service often meets the needs of small and medium businesses, but not always. And it is generally inadequate for larger companies, which need commercial and industrial class broadband facilities.

It is much easier for broadband service providers to generate an acceptable return on investment in residential areas than in commercial or industrial ones, particularly densely populated urban and suburban neighborhoods. Standardized equipment can be used to provide a managed level of residential-class service, and each home can be offered a wide range of products including Internet

access, television programming and telephone service. It is a predictable business, and capital investments can be made with a reasonable degree of certainty.

“Commercial class” service is defined as being similar to residential service in that the provider takes effectively all responsibility for installing, maintaining and supporting the service. Speeds are similar (6 to 150 Mbps), but service levels, reliability, consistency and pricing are higher.

“Industrial class” service refers to situations where the customer plays a much greater role in building and supporting the service, including buying different elements from different vendors and managing installation and support. Speeds would be higher – perhaps as high as a gigabit per second or more – and quality of service levels could be as high as found in top tier Internet exchanges. Large industrial customers frequently buy services directly from middle mile providers. DS-3⁷ circuits or dark fiber strands are examples of industrial class services that are available in Morgan Hill, although it is the older, copper wire-based services, such as DS-3 circuits, which predominate.

Industrial and commercial customers are more diverse and less predictable than residential subscribers. One business might need gigabit speeds at the highest quality-of-service levels, while the one next door is content with a standard, relatively slow DSL connection. As a result, incumbent carriers tend to approach commercial and industrial customers on a case by case basis or be extremely selective in choosing which neighborhoods and business districts to upgrade. They do not prospectively build high speed infrastructure. Businesses seeking higher grade service are frequently presented with installation estimates in the thousands and tens of thousands of dollars range.

The experience of other cities, particularly those in the Bay Area, shows that relatively small-scale efforts can result in significant improvements in commercial and industrial class broadband infrastructure by reducing the risk for private telecommunications companies. These steps have included streamlining permitting procedures, directing redevelopment funds towards broadband projects and other measures.

Mobile broadband infrastructure supports yet another type of service. It is differentiated from fixed services and infrastructure – consumer, commercial or industrial – in that it is accessible over a wide area, rather than in a specific place. Because it relies on limited radio frequency spectrum, mobile service has less overall capacity than service based on modern wireline technology and is more expensive to purchase, on a cost per megabyte basis. Although carriers will often make claims to the contrary, mobile service is not a generally acceptable substitute for wireline service, either in terms of service levels or cost. However, it is regarded as equally essential. The Federal Communications Commission’s *2016 Broadband Progress Report*⁸ defined this distinction:

⁷ “DS-3” is one of several standard types of data connections, originally developed for use by telephone companies. It refers to a copper wire-based circuit that can support speeds of approximately 45 Mbps.

⁸ *Broadband Progress Report 2016*, Federal Communications Commission 28 January 2016, In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act.

Consumers have advanced telecommunications capability only to the extent that they have access to both fixed and mobile broadband service. As they currently exist, fixed and mobile broadband services are not functional substitutes for one another, as some commenters suggest. Rather, as many commenters recognize, in today's society, fixed and mobile broadband are both critically important services that provide different and complementary capabilities, and are tailored to serve different consumer needs...

It is true that, at a high level of generality, both services provide consumers with broadband Internet access service. As we have explained, however, significant differences in service capability and pricing prevent fixed and mobile broadband from being adequate substitutes for one another. Although fixed and mobile broadband sometimes provide overlapping functionality, this does not compel the conclusion that the two services are interchangeable for purposes of our Inquiry. Indeed, Americans with access to only one type of service are often unable to take advantage of the full range of functionality offered by advanced telecommunications capability.

Cellular wireless sites are last mile facilities and rely on the same middle mile fiber optic networks as wireline systems.

3.2. Land use considerations

Implications for Future Development

The Morgan Hill land use alternatives evaluated in 2014 include four primary types of land use – single-family housing, multi-family housing, commercial and industrial – each of which have particular implications for broadband policy. All four, however, share the same need for core infrastructure.

Single-Family Housing

If a residential project is in the thousands of homes range, it might be practical for a developer or home owners' association to bring in a competitive telecommunications company as a primary Internet (or cable or telephone) service provider. In a gated community, the threshold might drop to hundreds, or even dozens, of homes because rules for providing television service are different when the public right of way is not involved. If residents agree to buy services in bulk – i.e., all residents subscribe to a base level of service, which might or might not include Internet service – then a broadband provider will be able to amortize construction costs over fewer homes.

Smaller last mile projects in residential developments will almost always rely on incumbents, which in Morgan Hill are Frontier and Charter. It is becoming common practice for new homes to include pre-wired data networks, but there is no single, industry standard for doing so, or for providing open access to existing or potential competitive networks. The City can play a role in setting these standards for new construction (and for major remodeling projects). The greater the degree of standardization and open access, the easier it is for prospective last mile competitors to enter the market and offer residents additional choices.

Multi-Family Housing

The same considerations apply as with single-family housing, with one major difference. Landlords and homeowner associations play a gatekeeper role and, up to a point, can control which broadband service providers can gain access to a property. In some cases, this control poses a barrier – e.g., landlords can prevent or refuse to pay for upgrades – but in other cases it can be an opportunity. Even a small multi-tenant property could be attractive to a competitive provider, due to the low cost per customer to build and maintain facilities, and the potential for bulk purchases of service, by landlords or homeowner/tenant groups. Google Fiber is following this model in San Francisco.

Commercial

Office and retail properties—particularly those with a large number of tenants—are attractive to incumbent and competitive service providers alike, particularly when some or all of the construction costs for broadband facilities are borne by property owners. However, without access to core infrastructure, competitive providers operate at a severe disadvantage. Municipal conduit and dark fiber facilities, along with policies that require lateral connections to new construction, can level the playing field.

Industrial

Companies and institutions will often prefer to work directly with the raw materials of broadband: dark fiber, electronic equipment, and direct connections to major Internet exchanges. Although organizations with large-scale bandwidth needs are often willing to invest in on-site upgrades, site selectors will bypass locations that lack access to this core infrastructure.

3.3. Municipal resources

City facilities that can support broadband development fall into two general categories: conduit and pole routes, and real estate.

Pole routes

Most California cities, including the City of Morgan Hill, do not own pole routes. The exceptions are cities that also operate municipal electric utilities, such as Alameda, Santa Clara and Palo Alto. Not coincidentally, these three cities were the first in the San Francisco Bay Area to embark on large scale, municipal broadband projects.

Conduit

According to the Public Works department, the City of Morgan Hill does not own a significant amount of broadband-capable conduit. Some conduit has been installed for traffic signal management purposes, but it is not designed to support interconnection of facilities over a significant footprint. The City also

apparently owns, by default, some abandoned conduit in various, scattered locations. This abandoned conduit has not been mapped or evaluated for re-use potential, and at this point appears to be irrelevant for broadband planning purposes.

Most cities in California similarly lack municipal conduit assets that are relevant to broadband planning. However, many do own significant conduit routes, particularly interconnect conduit used to manage traffic signal networks. Because traffic signals tend to be installed on busy streets in commercial areas, the conduit routes that serve them are usually well suited to support business-oriented broadband service and middle mile facilities. The City of San Leandro was the first in the Bay Area to make large scale use of traffic signal conduit for this purpose.

Other types of municipal conduit include empty conduit installed on a prospective basis – the Cities of Brentwood and Watsonville are examples – as well as conduit specifically designed to support internal city data networks and street light systems. Conduit installed for IT network purposes can be useful, but is usually more limited in scope than traffic signal systems. Electrical conduit installed for street light purposes is usually not well suited for broadband systems because of differences in the way electrical distribution networks are designed and maintained. The conduit used to deliver electricity to Morgan Hill's streetlights follow this pattern and appear to be designed to support relatively short connections to PG&E's distribution network. Using other city utility systems, such as sanitary and storm sewers, is likewise problematic.

Real estate

According to staff, the City of Morgan Hill is currently leasing space on city-owned water tanks to mobile broadband infrastructure companies, including Crown Castle, which owns and manages cellular wireless sites on behalf of mobile carriers. No other city-owned real estate assets were identified as being currently used by third-party broadband providers.

City-owned real estate – either vacant land or space inside buildings – can be used to house network electronics and data centers for fiber and other wireline projects. City buildings, street lights and other facilities can support public WiFi access points. Towers, tall structures and vacant land can be used for cellular sites and support facilities for wireline networks.

As discussed below, cities can use these resources to build municipally owned broadband infrastructure. Many different kinds of business arrangements can also be made with major incumbent providers and competitive independent companies, including swaps of service for access to facilities, partnerships and normal purchase agreements.

Agency IT budgets

Public agencies are usually among the biggest users of broadband service at the local level. Although there are restrictions on the use of services and facilities purchased with public funds, particularly those earmarked for educational purposes, public agencies can serve as anchor customers of new broadband

projects. Within limits, municipal information technology and telecommunications budgets can be directed in ways that support broadband development goals.

Although money allocated for educational networks cannot be used to subsidize municipal or public broadband service, it can be used to purchase service from competitive private or municipal service providers. For example, pre-purchase commitments made on behalf of U.C. Santa Cruz provided the critical initial revenue stream which made it possible for a private company, Sunesys LLC, to build a fiber line from Silicon Valley to Santa Cruz, and to successfully apply for state grant funds to build a second line from Santa Cruz to Soledad.

4. Broadband planning framework

4.1. Overview

The evaluation in Section 2 above reached several conclusions about the state of broadband infrastructure in Morgan Hill:

- Overall, primary last mile wireline infrastructure is generally below average in Morgan Hill, receiving a “D” grade, as opposed to the “C” and “C-” grades typically found to the north, in the greater Bay Area.
- The existing telephone network (now owned by Frontier Communications) was not upgraded to contemporary standards by Verizon.
- Charter Communications’ cable system supports higher broadband speeds but is less capable than systems operated by other major cable companies in California.
- Mobile broadband availability varies by carrier and location, and is often poorer than the service that is available in the greater Bay Area.
- There is a significant last mile infrastructure deficit in commercial and industrial areas, across all primary and secondary service providers.
- Competitive middle mile connectivity to major Internet exchanges is available and appears to be sufficient to support significant last mile upgrades.

There are a number of alternatives for addressing these deficiencies. As discussed in the policy section below, the City of Morgan Hill has no direct regulatory influence over telecommunications service and, where broadband service is concerned, few, if any, regulatory avenues to pursue at the state or federal level. Instead, the tools available are limited to persuasion, coordination, direct or indirect broadband initiatives, and policy that promotes or impedes broadband infrastructure development.

The City has several options for encouraging the development of core broadband infrastructure. It can do nothing and allow the incumbent service providers, working with property developers, to install telecommunications facilities that can only be accessed on their terms, as is generally the case in Morgan Hill today. The City might also establish requirements for installing fiber and conduit in new developments and, up to a point, mandate some level of access by competitive carriers. Or the City can take a more proactive role, ranging from installing its own conduit any time trenches are dug, to building out a dark fiber network, possibly extending to developed properties as well. This core infrastructure would also include connections to regional fiber networks, for greater utility and lower cost.

In general, the choices can be summed up as:

1. Set higher standards for broadband infrastructure in new residential and commercial developments.
2. Work cooperatively with Frontier, Charter and mobile carriers to identify policy barriers that could be removed or incentives that might be offered to encourage greater investment in their systems in Morgan Hill.
3. Evaluate options for creating a third, citywide broadband system, either as a municipal enterprise or through cooperation or partnership with a private, competitive provider.
4. Pursue targeted broadband projects, with or without private sector partners, that address specific last mile infrastructure and/or service deficits in commercial and industrial zones, and that improve local availability of existing middle mile resources.
5. Establish programs to 1. identify, construct and document broadband assets for future use and 2. create an ongoing role for the City as a coordinating body that aggregates information and complaints and provides it to state and federal regulators.

Broadband infrastructure initiatives (items 3 and 4 above) and related considerations follow; policy-based options (item 1, 2 and 5) are discussed in Section 5 below.

4.2. Initiative options

Similar to planning roads and water supplies, assessing alternatives for broadband infrastructure initiatives includes consideration of the immediate needs of existing companies as well as long term growth requirements for future commercial and industrial development, new businesses that might be relocated or started in Morgan Hill and new residential construction.

Even though existing broadband infrastructure is below average, the City of Morgan Hill is in a position to make targeted improvements and meet the increasing demand for low cost, high capacity, reliable broadband infrastructure and service from consumers as well as new and existing businesses.

These options include:

Survey, map and systematically track broadband assets. As far as is known, the City of Morgan Hill does not own any conduit that might be capable of supporting broadband initiatives. However, the City does not systematically track conduit or other broadband assets and there is some degree of uncertainty. Conducting an engineering survey of known or suspected conduit locations and routinely entering information about conduit and other assets into a GIS database will give the City the ability to pursue opportunities or plan initiatives using accurate and immediately available data. The City can also evaluate city owned real estate and related facilities to determine if it might be available or appropriate to a broadband development project.

Build the City's inventory of municipal broadband assets. Over time, the City can improve its negotiating position with incumbent service providers and increase its independent options through coordinated planning of 1. internal information technology needs, 2. public works and transportation

infrastructure construction and 3. conduit (and other broadband asset) development, via targeted projects or general policy implementation.

Develop a phased build out plan. Once the City has a systematic process for tracking current assets and coordinated plans for building its overall inventory, the next step is to prioritize areas with the greatest need and/or the least attention from incumbents – older business parks, for example – and identify specific projects that those assets could support, or alternatively projects that fill gaps in those assets.

Seek private sector partners. Many cities have issued general requests for proposals, seeking private sector partners who are willing to finance and implement projects that achieve municipal objectives. Generally, the more assets – money or broadband infrastructure – that are put on the table, the more likely an RFP will produce a useful result. Alternatively, cities have used other procedures, such as exclusive negotiating rights agreements or non-exclusive leases of public assets, to recruit willing private companies.

Assess the potential for using existing City funds. This option is likely to be limited in scope, but, for example, the City could be an anchor tenant on new infrastructure built by a private carrier. Even a small amount of guaranteed revenue at the beginning of a capital-intensive project can make a big difference in the attractiveness of the business model to investors.

Investigate mutual use agreements with VTA, Caltrain and other agencies. Transit and regional and state transportation agencies often include conduit and fiber optic facilities in new construction or major upgrades. Often, these projects are coordinated with cities, at least at a public works/transportation planning level. This coordination can and should include consideration of broadband development policies and priorities.

Establish a municipal dark fiber enterprise. See Appendix C for municipal broadband enterprise descriptions and examples. Table 4.1 summarizes significant examples.

Conduct a fiber-to-the-home feasibility study. The cost of building a full, fiber to the home system that serves every Morgan Hill home and business would be in the tens of millions of dollars range⁹, perhaps approaching the \$100 million point. A feasibility study can be used to assess such a project, from the point of view of operating it as a municipal enterprise as well as an opportunity to present to potential private sector partners (see Appendix C below). Table 4.1 summarizes significant examples.

4.3. Requests for proposals

California cities have used a number of different strategies to solicit interest in infrastructure partnerships, conduit leases and other broadband initiatives. Some examples are:

Benicia - The city targeted a specific industrial area, put \$750,000 on the table and asked companies to bid to build a system that would provide service to the area. Several proposals were received and the

⁹ *Financial analysis of user-financed residential broadband service in Palo Alto*, Tellus Venture Associates, June 2012.

city is in the final stages of negotiating a contract with one of the proposers. The advantage is that the city gets the economic development boost it wants at a defined cost and no additional risk or operational involvement.

Los Angeles - The city put some assets – mostly existing middle mile fiber – on the table, offered good will efforts to obtain other assets, such as pole routes that the city also owns, and asked for what amounts to a full fiber to the home system. Advantage is that it focuses attention on the city's goal of improving broadband access for all residents. Downside, so far, is that there's been no tangible result.

Salinas - The city put its conduit on the table (but no money) and asked companies for proposals to build out a broadband network in two targeted areas: downtown and a mostly greenfield area that's designated as an agricultural technology corridor. The RFP is still in process. The intended advantage is that the city will encourage economic development in two depressed areas and improve the city's overall infrastructure, and perhaps gain the benefit of better a better internal IT network, without incurring significant costs.

Watsonville - The city stitched 3 miles of existing conduit and fiber together with a mile of new conduit. It built, owns and operates the system. It was done as a standard public works build-to-spec bid (not a formal RFP), and the city went with the low bidder. The system was built with the intention of using it as a replacement for the INET formerly provided by Charter Communications. It serves that purpose now and the city is in the process of developing a standard rate card for leasing out surplus capacity to ISPs. Advantage is that the city has complete control over the network with guaranteed completion, and a much lower cost of operation for its IT infrastructure. Disadvantage is that the city pays the full construction cost (~\$300,000) and ongoing operating expense (and responsibility).

Inyo County - The county asked for someone to both build a fiber to the home network and find the money to do it. Nothing substantial was on the table. Only two responses came back. One was from a construction company that basically said "if you give us enough money we'll build it for you". The other was from a reputable fiber company that offered to look for grant funding. Nothing has come of it yet, and it doesn't appear anything will. Advantage is zero risk. Disadvantage, to date, is zero gain.

Seattle - An RFP to lease out a short section (~200 feet) of city-owned conduit was issued. Advantage is the city gains revenue, and some economic development benefit. Disadvantage is that it's limited.

San Leandro - An exclusive negotiating rights agreement (ENRA) was entered into with a major local company, OSI Soft, to build a fiber enterprise called Lit San Leandro. No public RFP was published; the ENRA was in response to an offer made by a local company for use of city-owned conduit. A similar process was used in the City of Brentwood and the City of Santa Cruz. The advantage is that the city can quickly take advantage of a firm offer made by an interested party, and have greater control over the negotiating process. The disadvantage is that it requires an interested party at the beginning.

San Luis Obispo - An RFP to lease out two miles of city-owned conduit was issued. Similar to Seattle, but for a longer distance.

City of Morgan Hill 2035 General Plan – Telecommunications Infrastructure

Table 4.1 Municipal broadband enterprises

City	Business model	Markets Served					Financial notes
		Business	Industrial	Public uses	Amenity WiFi	Homes	
Alameda	Formerly public, now private.	•		•		•	Funded by revenue bonds, bondholders lost when system was sold at 50% of value.
Austin, TX	Google Fiber, private.	•	?	•		•	No direct city investment, provided concessions regarding access to city assets, permits.
Benicia	Private with public funding.	•	•				Under development, funded by transportation grant
Brentwood	Conduit is developer funded; private operator.	•	?	•		•	Conduit deeded to city required in new construction. City leases conduit to 3rd party provider.
Kansas City	Google Fiber, private.	•	?	•		•	No direct city investment, provided concessions regarding access to city assets, permits.
Loma Linda	Conduit is developer-funded; city owns & operates system.	•	•	•		•	Conduit required in new & major remodel construction. Service is optional & fee-based.
Lompoc	City owned & operated, WiFi only.			•	•	•	WiFi-only system, funded by 10 year lease-back and subsidized by utility department.
Pacific Grove	Private, city funding undefined.	•		•		•	Either city or private provider will have to pay fee to company that funds/builds.
Palo Alto	City owned & operated, funded via electric utility. Dark fiber only.	•	•	•	•		\$2+ million surplus/year, initially funded as electric infrastructure, now self supporting.
Provo, Utah	Built via city utility revenue bonds; sold to Google for \$2.	•	?	•		•	Ratepayers still paying off electric revenue bond obligations incurred to build network.
San Francisco	CCSF owned; operated as an ad hoc service; built via IT budget		•	•			City conduit and fiber originally installed for public purposes; funded out of agency budgets.
San Leandro	City traffic signal conduit leased to local company.	•	•	•	•		Extension funded by EDA grant. City will receive revenue in future years.
Santa Clara	City owned & operated, funded via electric utility. Dark fiber only.	•	•	•	•		\$500K surplus/year, initially funded as electric infrastructure, now self supporting.
Santa Cruz	City funded, leased by private operator	•	?	•		•	City responsible for any lease payment shortfall or default.
Santa Monica	City owned & operated "lit service": system built with IT budget funds.	•	•	•	•		Revenue appears to be at or above break even level.
Seattle	City conduit lease via RFP.		•				Limited conduit revenue only, no larger network built.
Watsonville	City owned fiber; run as ad hoc service; built via IT, public works budget.		•	•			Saved the City \$150,000/year in telecoms costs, now generating revenue.

5. Policy options

Federal and State laws have largely preempted the ability of local government to regulate or manage telecommunications service providers. Cities may, however, adopt policies that encourage competition and put more choices in the hands of residents and businesses.

There are already many sections within the City's municipal code that have an impact on telecommunications facilities planning, policy and deployment. Provisions concerning encroachments, excavations, underground utility districts, towers, and zoning criteria are directly relevant to the construction and maintenance of new telecommunications facilities.

Appropriately, most of these provisions relate generally to utilities and are not specific to telecommunications planning. In some cases the language is restrictive (e.g., Chapter 15.08.070) and could exclude telecommunications facilities that are not built or owned by organizations that are regulated by the CPUC or FCC. In other cases (e.g., Chapter 12.12.010.E) definitions are broader, allowing for a greater variety of solutions. While useful, these provisions do not deal comprehensively with the issues, opportunities, and constraints involved in planning and deploying telecommunications facilities. Proactive measures, such as open trench notification requirements, are also generally lacking in Morgan Hill.

The code does contain language regarding municipal cable television franchises as well as provisions relating to newer statewide franchises. This language should be evaluated to ensure that, on the one hand, it does not inhibit the development of new infrastructure and, on the other, does not prevent the City from exercising appropriate oversight or proactively pursuing development of telecommunications projects.

As Morgan Hill 2035 General Plan moves forward, the City of Morgan Hill may choose to investigate the possibility of adopting a range of new policies that directly target broadband infrastructure development and broadband service availability.

5.1. Planning

- 5.1.1. **Develop a long term broadband infrastructure roadmap.** *Taking into account existing resources, City networking needs, economic and social development objectives and private sector investment plans, draft specific objectives for high speed network expansion into commercial and residential areas.*
- 5.1.2. **Solicit implementable ideas for upgrading Morgan Hill's broadband infrastructure.** *Hold informal staff discussions with local Internet service providers and provide notice to all interested parties of the City's goal of supporting equitable fiber optic network expansion.*
- 5.1.3. **Broadband Master Plan.** *Develop and maintain a Broadband Master Plan for prioritizing connectivity needs in future years, with an emphasis on delivering high bandwidth services to Morgan Hill's industrial and commercial land use districts and*

community anchor organizations (education, public services, public safety, and health care).

The benefits to a community of modern, high-speed broadband infrastructure generally break out into three categories: sustainable economic development, improved quality of life and greater social equity.

Technology forms the backbone of the local and regional economy, and will continue to do so in the future. As technology spreads through more aspects of everyday lives, tremendous opportunities arise to creatively and carefully use technology to shape the community. Technological innovation can help the City in many ways. It can facilitate citizen interaction with each other and government; company services to customers; and City services to visitors; and it can provide ways to showcase Morgan Hill’s commitment to a sustainable environment.

Electronic services in particular (cable television, telephone, satellite, computer networking technologies, internet, radio, and other such services) create greater accessibility to and exchange of information, impact the ways people communicate, and create job opportunities. Enhancing and improving access to these resources will have a profound effect on the quality of daily life and work. Toward improving both, the City can examine and respond to the possibilities and challenges offered by—and the implications of—technological advances and opportunities.

5.2. Dig Once

Cities retain the ability to establish reasonable conditions and procedures for utility companies, including telecommunications carriers, to do construction work in the public right of way. There are many different approaches, but in general most street cut management – also known as “dig once” – policies intended to promote broadband fall into three categories: “open trench”, “shadow conduit” and construction standards.

- 5.2.1. **Open Trench.** *Require and provide a process for notification and information about all major infrastructure and construction projects, including transportation projects and new residential subdivisions, to a shared data base so that broadband and other utility providers have the opportunity to coordinate infrastructure deployment with projects.*

Open trench policies require some degree of advance notice of any digging that’s done in streets, sidewalks or other public places. This notice goes to other utilities that might be interested in installing facilities in that location or local agencies or both. If another utility wants to take advantage of the opportunity presented by the work, cost sharing arrangements can be negotiated or specified by policy. San Francisco, Santa Cruz and Berkeley have such policies.

Santa Cruz routinely sends out notifications of encroachment permit applications to utilities and other interested providers. Berkeley mandates participation in “city-sponsored utility coordination meetings” involving other utility companies, and requires companies to submit “general information regarding any Facilities that the Company plans to apply for permits to install within the [public right of way] in the next six (6) months, regardless of whether a permit is currently sought for those Facilities”.

The City can also be a participant in the open trench process, either an installer of last resort (5.2.7 below) or as part of planned process for meeting internal networking needs (5.2.5 below).

- 5.2.2. **Conduit Specifications.** *Adopt standard specifications for placement and construction of conduit, applicable to both planned work in the public right of way and prospective installation of spare (or “shadow” conduit).*

Although the City generally does not have the authority to review proposed telecommunications projects on the basis of capacity or network design, it can create a preference for a minimum set of specifications. It can also establish standard specifications for conduit it installs, either for specific projects or on a prospective basis, and for conduit installed pursuant to building standards imposed on new development or major remodelling projects.

The City and County of San Francisco has developed standard conduit specifications for its own installations, and a similar effort is underway in San Benito, Santa Cruz and Monterey counties. Likewise, Caltrans may adopt standard conduit specifications if a pending bill (AB 1549) receives final approval from the governor.

- 5.2.3. **Conduit Standards.** *Require spare, city-owned broadband conduit within joint utility trenches in new developments or major remodelling projects.*
- 5.2.4. **Lateral Connection Standards.** *Require spare, lateral broadband conduit to all structures within new developments or major remodelling projects.*

Requirements for installation of empty, fiber-ready conduit can be imposed on new construction and major remodelling projects. This conduit should, as a minimum, comply with the specifications developed in 5.2.2 above. Ownership of the conduit can be passed to the city, as in Brentwood, or remain with the property owner with the requirement it be connected to a municipal network, as in Loma Linda.

- 5.2.5. **Shadow Conduit - Public Works.** *Require installation of city-owned broadband conduit as a part of any suitable city public works project, including public buildings and all transportation projects.*
- 5.2.6. **Shadow Conduit - Undergrounding.** *Incorporate routine placement of spare, city-owned broadband conduit into utility undergrounding programs.*

- 5.2.7. **Shadow Conduit - Excavations.** *Include evaluation of need to install city-owned broadband conduit in review of any work or permit involving excavation in the public right of way and establishes process for requiring such installation.*

Shadow conduit policies build on the opportunity presented by open trench notifications. Cities can make it a routine practice to install empty conduit prospectively any time a suitable trench is available. Typical cost estimates are in the one dollar per foot range. Shadow conduit placement can be done according to a predetermined broadband infrastructure construction plan, or routinely in any suitable location. The risk is that the conduit would never be used; the benefit is that if even a small fraction of the installed conduit is eventually used, the cost savings and/or revenue it would generate would offset the additional installation cost.

Watsonville, Salinas and Santa Cruz have all adopted shadow conduit policies. Watsonville built a cross-city fiber network which included previously installed conduit and Salinas is currently pursuing a downtown fiber network using its shadow conduit.

- 5.2.8. **Excavation Moratorium.** *Establish a 5 year or more moratorium on excavations in the public right of way after completion of work conducted subsequent to an "open trench" notification process.*

Some jurisdictions require a moratorium – five years is common – on any other utility work being done in the public right of way following major street work after potentially interested parties have been given an opportunity to participate. This policy achieves two objectives. First, it minimizes wear and tear on streets – any time a cut is made in a street, its remaining useful life is reduced by 10% to 40%, depending on the circumstances. Second, it provides an incentive for telecommunications companies and other utilities to upgrade or build infrastructure sooner rather than later by setting a deadline for doing so and by offering an opportunity to share costs.

San Francisco has such a policy, as does Berkeley, which states that “a Company may not excavate any Street that has been reconstructed or resurfaced by the [Public Works] Department or at its direction in the preceding five-year period and shall participate in City efforts to coordinate excavation activities”¹⁰.

- 5.2.9. **Excess Capacity Utilization.** *Facilitate the use of existing conduit and other pathways by requiring encroachment permit applicants to demonstrate that alternatives do not exist, supported by City collection and coordination of information.*

To a certain extent, California law requires telecommunications carriers and other utilities to provide access to conduit and pole routes to other carriers. Cities can encourage and, to some degree, require this kind of cooperation.

¹⁰ Berkeley Municipal Code 16.10.080 C 4

Berkeley requires anyone who applies for a permit to install new conduit in the ground to first show that there is no existing conduit (or pathway) that can be used instead, including conduit owned by other companies or the city, “whenever sufficient Excess Capacity is available on commercially reasonable terms and conditions”. Berkeley’s ordinance also gives the city broad scope to inspect work¹¹ and related documents¹², and to consider the availability of existing conduit capacity in approving or denying a permit application¹³.

This requirement can also be used to encourage use of publicly-owned conduit and other resources. In order to be effective, however, sufficient information must be available to both the City and applicants. The asset management policies below are integral to this process.

- 5.2.10. **Establish a dedicated revenue account.** *This account would be funded through leases or rents of City property, including publicly owned conduit, for the purpose of communications infrastructure, and to be made available for construction and maintenance of public owned conduit.*
- 5.2.11. **Future Proofing.** *Encourage broadband providers to size underground and overhead facilities to accommodate future expansion, changes in technology, and where possible the facilities of other telecommunications and utility providers.*

Similar to shadow conduit policies, future proofing involves the installation of surplus conduits, ducts and pole space in anticipation of potential future need. Standard specifications can be included in building codes for new and major remodelled construction. For work done in the public of right of way, minimum sizes may be suggested, and encouraged by encroachment permit policies. For example, West Sacramento reduced encroachment permit fees for a conduit project in exchange for the inclusion of a spare, city-owned inner-duct within that conduit. The city subsequently leased out its inner-duct, recovered the initial cost and continued generating revenue.

Wireless facilities and supporting infrastructure, such as fiber optic networks, should also be planned with future needs in mind. The current trend is toward smaller cell areas and facility sizes, and this trend will accelerate as 5G standards are finalized and network upgrades begin.

¹¹ BMC 16.10.060 F

¹² BMC 16.10.080 G

¹³ BMC 16.10.060 B 4

5.3. Asset management

- 5.3.1. **Asset Inventory.** *Identify city-owned assets, including fiber, conduit, rights of way and towers, that can support broadband infrastructure deployment.*
- 5.3.2. **Open Access.** *Make public assets available to all providers on an open and non-exclusive basis, commensurate with adopted policies regarding public benefits.*
- 5.3.3. **Master Leases.** *Establish standard terms and conditions for the lease of City assets such as buildings, towers and land by telecommunications companies.*

Performing an initial inventory and systematically following up – e.g., routinely logging newly constructed or identified assets – and then publishing the information or making it available to telecommunications companies upon request maximizes the opportunities to put broadband-related assets to work. Setting standard lease terms and access policies reduces the time and effort necessary for telecommunications companies to take advantage of those assets, which in turn makes the city a more attractive location for infrastructure upgrades or expansion and reduces barriers to competition.

- 5.3.4. **Telecom Operations and Maintenance Matrix.** *Establish detailed delineation of responsibilities for operating and maintaining city-owned conduit, fiber and other assets, and any attachments or equipment/facilities placement by third parties.*

When a mix of public and private assets are involved in a broadband project, responsibilities and roles for operation, maintenance and ongoing capital investment must be clearly stated. San Leandro uses an operations and maintenance matrix to assign roles and define demarcation points for responsibilities.

- 5.3.5. **GIS Logging.** *Require routine entry of conduit and other broadband asset data into geographic information systems.*

An important adjunct to both open trench and shadow conduit policies is a requirement that all conduit installed by public agencies and, ideally, private utilities, be logged into the city's GIS database. Watsonville was able to build its own city-wide data network because it had taken care over the years to keep its records up to date. On the other hand, cities that have failed to do so often lose track of where municipal conduit has been installed.

Collecting detailed information about telecommunications infrastructure, making it available in a convenient and useful way, and requiring, to the extent possible, that telecommunications companies cooperate with each other levels the playing field for smaller companies that might want to build new facilities or offer upgraded service. It also gives the City a means of participating in the telecommunications marketplace.

- 5.3.6. **Digital Plans.** *Establish a requirement that plans and other information be submitted by utilities, developers, contractors and others in an appropriate GIS format.*

Traditional, paper-based permit applications do not provide adequate access to information about telecommunications infrastructure installed in the public right of way or in conjunction other municipally regulated work. One solution, adopted by Santa Cruz County, the City of Santa Cruz and Berkeley, is to require permit applicants to submit maps in “electronic and/or other form required by the City, and include information describing the proposed facilities”¹⁴. This map data would also include “information regarding any Excess Capacity that will exist in such Facilities after the installation of the Company’s Facilities” if requested by the City.

- 5.3.7. **Broadband infrastructure database.** *Build a database showing the types and location of broadband infrastructure in Morgan Hill.*

The City can improve the telecommunications market in Morgan Hill by compiling a geo-database of available infrastructure (and/or services). Information can be requested from service providers, collected from publicly available source and gathered from ground surveys. For example, the Central Coast Broadband Consortium has published a regional online, interactive map showing local and inter-city fiber routes and other infrastructure. Most of the data was the result of a professional survey, which was supplemented by information provided by local companies and other sources.

5.4. Permitting

- 5.4.1. **Transparent Process.** *Delineate the process for ensuring fairness, including transparency, public notice and timetables and deadlines for timely review of any required local permits.*
- 5.4.2. **Permit Streamlining.** *Establish procedures to streamline the approval of broadband-related public right of way encroachment permits consistent with principles of fairness and competition for all providers.*
- 5.4.3. **Master Permits.** *Establish a process for issuing a master encroachment permit for large scale telecommunications projects, subject to standard conditions for specific circumstances.*
- 5.4.4. **Single Review.** *Limit permit requirements to encroachment permits for broadband infrastructure work in the public right of way.*

Complicated and/or opaque permitting processes can serve as barriers to entry for broadband companies that want to bring competitive service into a city. Permit processes for broadband projects that meet certain criteria – construction completely contained in the public right of way, for example – can be standardized through the use of checklists, reference designs and administrative reviews. As a first step, streamlining existing

¹⁴ BMC 16.10.040

processes does not necessarily involve eliminating or consolidating review requirements. Rather, it recognizes that many broadband project reviews confront largely identical issues, which can be addressed in standard way.

Streamlining is important because it can reduce time and costs, and increase predictability for service providers, making Morgan Hill a more attractive target for capital investment. As described in Section 6 below, permit streamlining is now unavoidable for most permits involving wireless facilities, due to continuing changes in state and federal law.

Although care must be taken to protect the public's interests and ensure community values are maintained, some jurisdictions, such as the City of Santa Cruz, are moving permitting for broadband facility construction out of planning departments and completely into the hands of public works departments, which can use a relatively streamlined encroachment permit process to achieve the same ends in a single review. Costs to applicants are expected to drop from the tens of thousands of dollars to the hundreds of dollars.

One approach, advocated by Google Fiber, is to establish a master permit process for large scale projects. Standard conditions can be established for defined circumstances, with provisions for specific conditions when unique circumstances occur.

- 5.4.5. **Evergreen Permits.** *Authorize longer-term “evergreen” permits that provide a right to providers to enter specified easements to upgrade their infrastructure for an indefinite or significant period of time (such as 20 years) to upgrade the broadband service consistent with the adopted policies.*

An extension of the master permit concept, evergreen permits go one step further and allow upgrade and expansion work to take place within defined parameters over a longer period of time.

- 5.4.6. **Environmental and Aesthetic Mitigation.** *Set forth transparent and consistent procedures and process for preventing and/or mitigating environmental impacts and protecting and/or preserving visual integrity of jurisdiction.*

The California Environmental Quality Act allows for expedited review of many types of broadband projects, particularly when those projects occur within or on existing structures, including utility poles, or paved ground. Establishing clear guidelines for when the City will and won't allow broadband projects to proceed on the basis of a negative declaration will add predictability to the environmental review process and aid in defending any subsequent challenges.

As discussed in Section 6 below, state and federal law requires rapid CEQA review of permit applications for wireless projects, and only provides a limited window of time and discretion for addressing aesthetic issues. A simple and well defined process, with standard solutions where appropriate, will help avoid permit approval by default.

- 5.4.7. **Permitted Telecommunications Sites.** *Establish a preference for colocating new telecommunications facilities at existing telecommunications sites.*

As noted in Section 6 below, federal and state regulations provide for favorable treatment of wireless facility permit applications when a site is already used for such purposes. By establishing policies that take existing telecommunications into account when reviewing permit applications and provide for more rapid decision-making, the City can encourage greater use of existing sites.

5.5. Smart Cities

- 5.5.1. **Broadband Building Standards.** *Require projects to provide broadband connectivity and include the infrastructure components necessary to support broadband, similar to requirements for other essential utilities.*
- 5.5.2. **Broadband Wiring Standards.** *Establish standards for broadband wiring in residential and commercial buildings, similar to standards for other utilities.*
- 5.5.3. **Smart Building Requirements.** *Specify “smart building” requirements for land use and construction permits for all projects (public, commercial, residential, industrial).*

Building standards can be used to increase broadband availability and access, and promote the use of broadband dependent applications that promote energy efficiency, safety and other public policy goals. The simplest approach is to require all new construction and major remodelling work to include broadband facilities and provisions for connecting those facilities to the necessary outside infrastructure. San Leandro has taken this approach.

The next level of involvement is to specify the types and extent of indoor wiring, connection panels and other “plumbing” required for new and remodelled construction, as Loma Linda has done, or establish specifications and requirements for broadband infrastructure in the public right of way and lateral connections from homes, as Brentwood has done.

The final stage is to include requirements for specific “smart building” features and applications, such as predictive climate control or health and security monitoring. These types of requirements bring intrinsic benefits, but also help drive demand for high quality broadband service.

- 5.5.4. **Public Facilities.** *Promote the provision of broadband facilities in all public buildings, major transportation and other infrastructure projects.*

It is commonplace to include basic information technology networking capabilities and Internet connectivity in plans for public buildings, transportation facilities and other public projects. These plans can be expanded to include provisions for supporting commercial broadband service on a partnership basis, for example by including spare conduit and

inner-ducts or increasing the size of fiber optic cables. This spare capacity can be leased to private users or could form the basis of an economic development initiative, as AC Transit and Oakland are doing with a bus rapid transit project.

Public facilities can also serve as anchor tenants for new broadband infrastructure built by private companies, and provide a baseline of revenue that will justify the construction of facilities that can serve much larger areas of the city. The University of California, for example, offered sufficient revenue to Sunesys LLC to first build a fiber optic line from Silicon Valley to Santa Cruz, and then extend it to the Salinas Valley. These lines are available to any user along the route, and have been credited with spurring economic development, particularly within the City of Santa Cruz.

- 5.5.5. **Telecommuting - City.** *Establish a telecommuting program for city employees.*
- 5.5.6. **Telecommuting - General.** *Encourage local businesses to develop telecommuting programs.*

Factoring telecommuting incentives and requirements into reviews of planned commercial developments, and establishing policies to encourage telecommuting by city employees when appropriate, can have the double benefit of reducing automobile traffic and increasing the demand for advanced broadband services. Mono County, for example, promotes telecommuting “as a viable method allowing visitors to stay in the region longer and work remotely, and attract new permanent residents”.

5.6. Regulatory

- 5.6.1. **Regulatory Position.** *Articulate the interest of the jurisdiction in monitoring the reliability and quality of broadband connectivity in the local jurisdiction and ensuring appropriate speed availability.*

The California Public Utilities Commission (CPUC) regulates “telephone corporations” and, to a lesser extent, “cable television corporations” and “video service providers”. These categories include Frontier Communications and, to a restricted extent, Charter Communications, which are the two primary retail broadband service providers in Morgan Hill. Intercity carriers are also regulated as telephone corporations.

Responsibility for regulating telephone corporations is shared between the CPUC and the Federal Communications Commission (FCC). Municipalities are allowed no authority in that regard.

Nevertheless, cities can be very effective advocates on behalf of residents and businesses. The City of Gonzales intervened in the CPUC’s review of Charter’s purchase of Time Warner and Bright House cable systems in California, and obtained an agreement to significantly upgrade the city’s broadband service and infrastructure. Similar concessions were obtained by others during the review of Frontier’s purchase of Verizon’s telephone

systems. Establishing a clear mission statement regarding the City's role as an advocate for better broadband infrastructure and service allows consistent routine communications with service providers regarding expectations and makes it possible to move quickly when windows of opportunity, such as regulatory proceedings at the CPUC or FCC, appear.

5.6.2. Franchise Compliance. *Monitor and audit compliance with state video franchising requirements.*

Originally, regulation of cable television corporations was the responsibility of local governments in California. Many were actively involved in regulating franchisees to the extent allowed by federal and state law until the Digital Infrastructure and Video Competition Act of 2006 (DIVCA) was approved by the California legislature.

DIVCA established statewide franchises for video service providers, which now includes telephone companies such as AT&T. DIVCA severely limits the role cities and other local government entities may play in regulating or otherwise influencing video service providers. Cities still receive a 5% franchise fee from video franchise holders, and have a limited opportunity to inspect their books to ensure compliance. Requirements for public access channels, consumer protection rules and obligations to build out infrastructure are also subject to municipal review, but enforcement authority is severely limited.

Nevertheless, some jurisdictions are taking an aggressive approach to franchise compliance monitoring. Palo Alto, on behalf of itself and neighboring cities, recently completed an audit of Comcast's compliance with franchise fee and public access channel requirements. Such an audit may form the basis for formal court proceedings, or informal negotiations with franchise holders.

5.6.3. Specific Conditions Compliance. *Monitor and audit Frontier and Charter compliance with CPUC and FCC mandates.*

Recently concluded proceedings at the CPUC and FCC resulted in approval of Frontier's purchase of Verizon's telephone system in Morgan Hill (along with others in California) and Charter's purchase of Time Warner and Bright House cable systems in the state. These approvals came with conditions regarding upgrades and line extensions, and other public benefits such as equipment for schools, digital literacy programs and connections for community anchor institutions.

The City can play a role in ensuring compliance with these conditions by identifying specific requirements that apply to Morgan Hill as well as general requirements that include it. The City can directly engage with the companies, and/or seek relief from the CPUC and FCC if compliance or cooperation is lacking.

5.6.4. **Enforcement Liaison.** *Establish a program for systematically collecting and aggregating public complaints and concerns regarding telecommunications services, and submitting information to appropriate state and federal regulatory agencies.*

The FCC’s recent decision¹⁵ to bring “broadband Internet access service” under common carrier regulation (often referred to as the “network neutrality” decision) tries to draw a clear line between the kind of regulation that does and does not apply to providers of those services. In particular, the FCC has ruled out regulation, by itself or states, of Internet service offerings, rates, or access to infrastructure by third parties, except to say that it will review complaints on an after-the-fact basis using a “just and reasonable” standard.

The decision specifically allows “any body politic, or municipal organization”, as well as individuals and state utility commissions, to file complaints. It establishes formal and informal procedures for doing so, and creates an ombudsman’s position to facilitate the process.

The CPUC’s role is narrower and generally restricted to “telephone corporations”, which can include traditional wireline carriers, such as Frontier, as well as broadband companies that use the public right of way. Its oversight responsibilities include enforcement of safety requirements, such as those related to utility poles, minimum telephone service standards, particularly relating to 911 access, and general compliance with applicable consumer laws and regulations. The commission has shown a willingness to couple this relatively narrow but well established jurisdiction with general but largely undefined responsibilities granted by federal law to extend its influence over broadband providers and other non-traditional telecommunications companies.

The FCC and CPUC have established procedures for the public to use in submitting and pursuing complaints against regulated companies. However, knowledge of these procedures is not widespread and making use of them involves a learning curve which can be an obstacle for many people. The City may reduce these barriers by acting as a middleman between residents and these two regulators.

The City can establish an enquiry and complaint process for businesses and/or residents that are seeking broadband services or are having problems with current providers. Although the City has limited authority in this regard, collecting this information and making it public is an effective first step toward providing incentives for telecommunications companies to voluntarily cooperate, expanding public knowledge of existing resources and constraints, and building a record for submission to the appropriate regulatory bodies.

¹⁵ *In The Matter of Protecting and Promoting the Open Internet*; Report and Order on Remand, Declaratory Ruling, and Order; Federal Communications Commission; adopted February 26, 2015 and released March 12, 2015.

5.6.5. **Performance Test Participation.** *Encourage public participation in CPUC and FCC broadband speed and performance test programs.*

The CPUC and FCC have separate but complementary programs that allow the public to conduct speed tests of wireless and wireline Internet service. This data is factored into assessments of needs and eligibility for various programs. The more data points that are submitted from a given area, the better the understanding of local conditions will be on the part of the public, local officials and state and federal regulators. The City can play a role in promoting participation in these testing programs.

5.7. Government operations

- 5.7.1. **Broadband Role.** *Establish an ongoing role for the City to play in identifying broadband needs and working proactively with businesses and service providers to meet those needs.*
- 5.7.2. **Evaluate long term City networking needs.** *Review existing City broadband facilities and budgets with due consideration to expected future traffic loads and expectations of available resources, and identify infrastructure development projects which are potentially of mutual interest to the City and private sector providers.*
- 5.7.3. **Anchor Tenant Positioning.** *Leverage City budget to stimulate demand for broadband facilities.*
- 5.7.4. **Interagency Coordination.** *Participate in regional and statewide planning and standards organizations.*

The City is a major purchaser of broadband services. By actively engaging with service providers as a customer, the City can influence the location and extent of infrastructure upgrades by incumbents, and provide opportunities for competitive carriers to enter the market. Coordinating these efforts, when possible, with large businesses and other agencies with similar needs, such as Santa Clara County or VTA, multiplies this influence.

The City can identify opportunities for investment by evaluating funding available for economic development initiatives, applying that funding to broadband construction plans – both public and private sector – and determine if those funds can be directed to support those projects, either through direct investment or indirectly through administrative means.

One alternative for the City to consider is transitioning from leased facilities to lines that it owns or controls on a long term basis, perhaps via a public/private partnership that allows the City to concentrate on its own operations while a private (usually for-profit) company focuses on the utility aspects of the business. Over time, money currently budgeted for leased lines could be increasingly invested in new facilities that would support economic development, or saved for other uses.

One example of this kind of public/private partnership is Lit San Leandro. The City of San Leandro has worked with a local company to build a 20-mile fiber optic ring through the

industrial and commercial areas of the city, for use by local businesses. The City contributed the use of traffic signal conduit and in return received 30 fiber strands for its own use. The remaining capacity on the network is sold to local businesses by the private, for-profit partner, Lit San Leandro LLC.

Without new investment in local fiber optic infrastructure, the City – like other agencies, institutions and companies – will face increasing operating costs over time, for the use of ageing assets. Putting additional emphasis on long term infrastructure planning and investment, in cooperation with private sector carriers, is a potential solution to this problem.

- 5.7.5. **Validate broadband infrastructure mapping.** *Review information collected by state, federal and regional organizations, incorporate it into the City's GIS system and make it publicly available.*

Publishing reliable information regarding the availability of infrastructure and services is one of the most powerful policy tools available to the City to promote broadband development. The California Public Utilities Commission, the National Telecommunications and Information Administration and other agencies collect and publish a wide variety of information about broadband availability, access and adoption. Consolidating this information, as it relates to Morgan Hill, will lead to better planning and project development, by the City, telecommunications companies and others.

The City can develop a detailed geodatabase of existing fiber optic networks, including lateral connections, access points, splice points and information regarding ownership, and make it available for economic development purposes. Included in this database development can be an ongoing assessment of the condition of private utility poles and conduit. Over time, deficiencies can be documented and presented to either the owners or regulatory bodies to address.

- 5.7.6. **Upgrade broadband availability in publicly subsidized housing.** *Identify private and public sources of investment in broadband facilities and service in public housing and develop implementable initiatives.*

Publicly subsidized housing operators in Morgan Hill are eligible to apply for grants to upgrade broadband facilities in their properties and support programs designed to increase broadband adoption among public housing residents. The California Advanced Services Fund is one such source, and federal agencies, such as HUD, have similar programs.

- 5.7.7. **Online Access.** *Direct how government operations and services are to be provided online.*
 5.7.8. **Online Permits.** *Streamline and provide online access to business and development permit processes.*
 5.7.9. **Open Data.** *Establish an "open data" policy.*

The City also is, or can be, a major producer of online content and services. Maximizing the accessibility of information and public services via the Internet provides an incentive for people to adopt and increase their use of broadband services. Offering services, such as permits, to businesses via online platforms, such as the Open Counter system originally developed by the City of Santa Cruz, will also stimulate broadband demand, and attract new, high tech businesses by engaging with them on their own terms.

The City has a wealth of stored data – information collected from its programs on topics ranging from municipal finance to scientific and sociological data. Much of this data is already publicly available though not, in most cases, in machine readable formats that programmers can easily use. The trend across local governments to make this kind of machine readable municipal data publicly accessible; this movement has been termed “Open Data”.

6. Wireless

The Morgan Hill municipal code does not include a written policy regarding construction of wireless facilities. Planning Commission minutes and staff reports indicate that the City has procedures in place that appear to be generally consistent with the scope of its authority. However, recent changes in California law and federal decisions have shortened the timeframe available for exercising that authority in many, if not most, cases.

6.1. Constraints on local agency discretion

As of 1 January 2016, permit applications for wireless facilities within California have to be approved or denied by local governments within specific time frames, commonly referred to as "shot clocks". If the clock runs out, the application is "deemed approved". The new rules are the combined result of a new California state law – Assembly Bill 57 – which just took effect, two FCC decisions (and subsequent affirming decisions from federal appeals courts), existing California public utilities law and a California Public Utilities Commission rulemaking.

Depending on the type of facility and location involved, the applicable shot clock could be 60, 90 or 150 days. The clock begins running when the application is submitted. The City has 30 days to review the application and request additional information. In that case, the clock is tolled – stops – but starts again when the applicant responds. Additional requests for information are allowed under stricter limits and will toll the clock, but a response by the applicant starts it running again.

The only other ways to toll the clock is by mutual consent, or by approving or denying the application. It will not stop due to CEQA review, public hearing requirements, council meeting schedules or any other local agency process requirement. If the City has not approved or denied the application when the clock runs out, it is "deemed approved". The applicant must notify the City that it is proceeding with construction on that basis and the City has 30 days to file a lawsuit seeking to block it.

There are three primary methods the City can use to maintain control of the process:

- Front load the application process by requiring a comprehensive submission (backed up by a standard checklist), covering all contingencies from the very beginning.
- Structure the review process so that a legitimate administrative denial can be quickly issued if appropriate.
- Adopt a short form application and review process for pre-approved, standard solutions for wireless facilities, to encourage applicants to voluntarily choose appropriate designs and locations.

6.2. Determining which shot clock applies

The wireless permit "shot clock" rules that went into effect on New Year's Day result in three different shot clock limits (60, 90 and 150 days), and California law (including a California Public Utilities Commission rulemaking, 14-05-001) creates two different classes of wireless facilities: construction by a mobile carrier in the public right of way and everything else.

City of Morgan Hill 2035 General Plan – Telecommunications Infrastructure

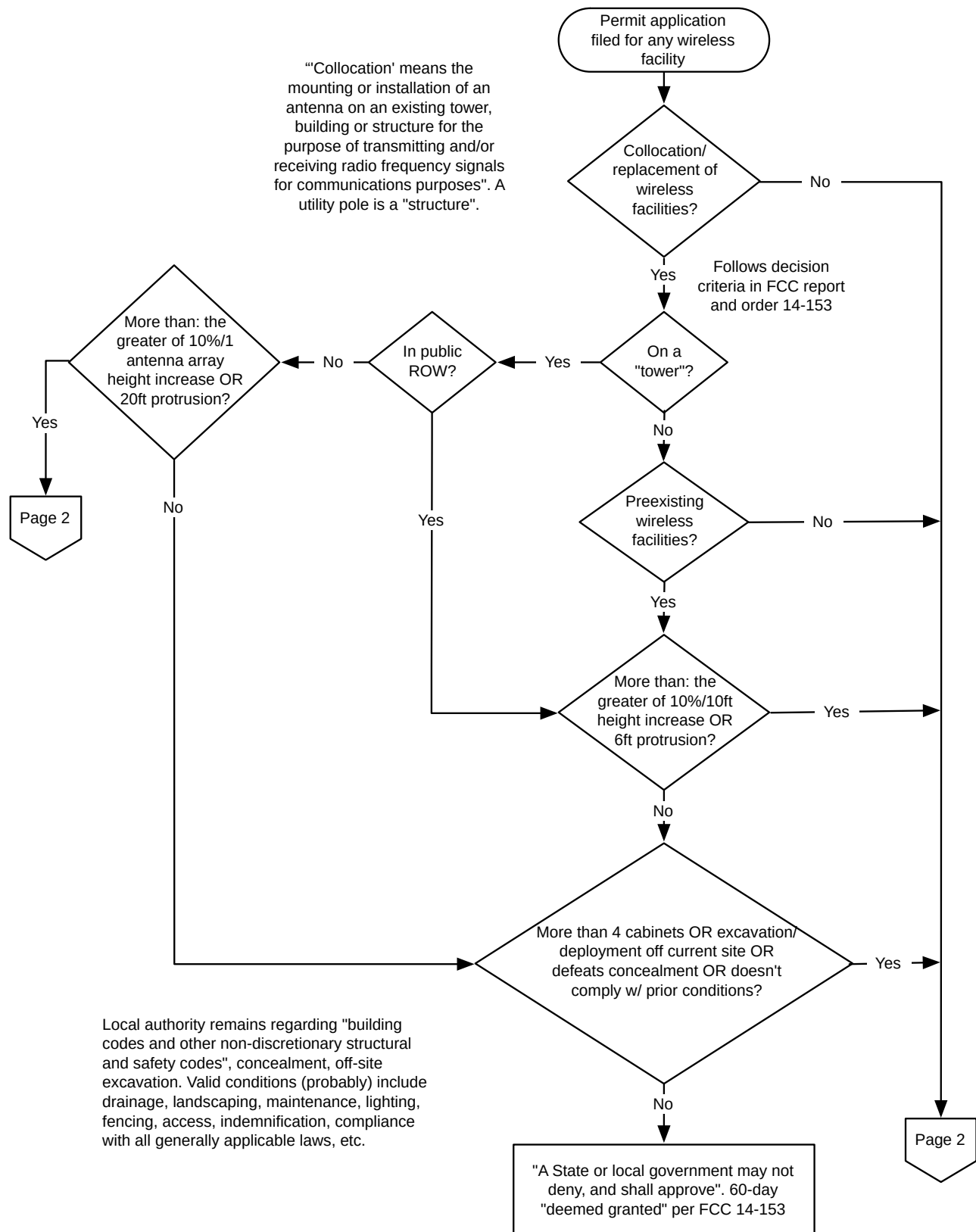


Figure 6.1 – Wireless permit “shot clock” flowchart, page 1.

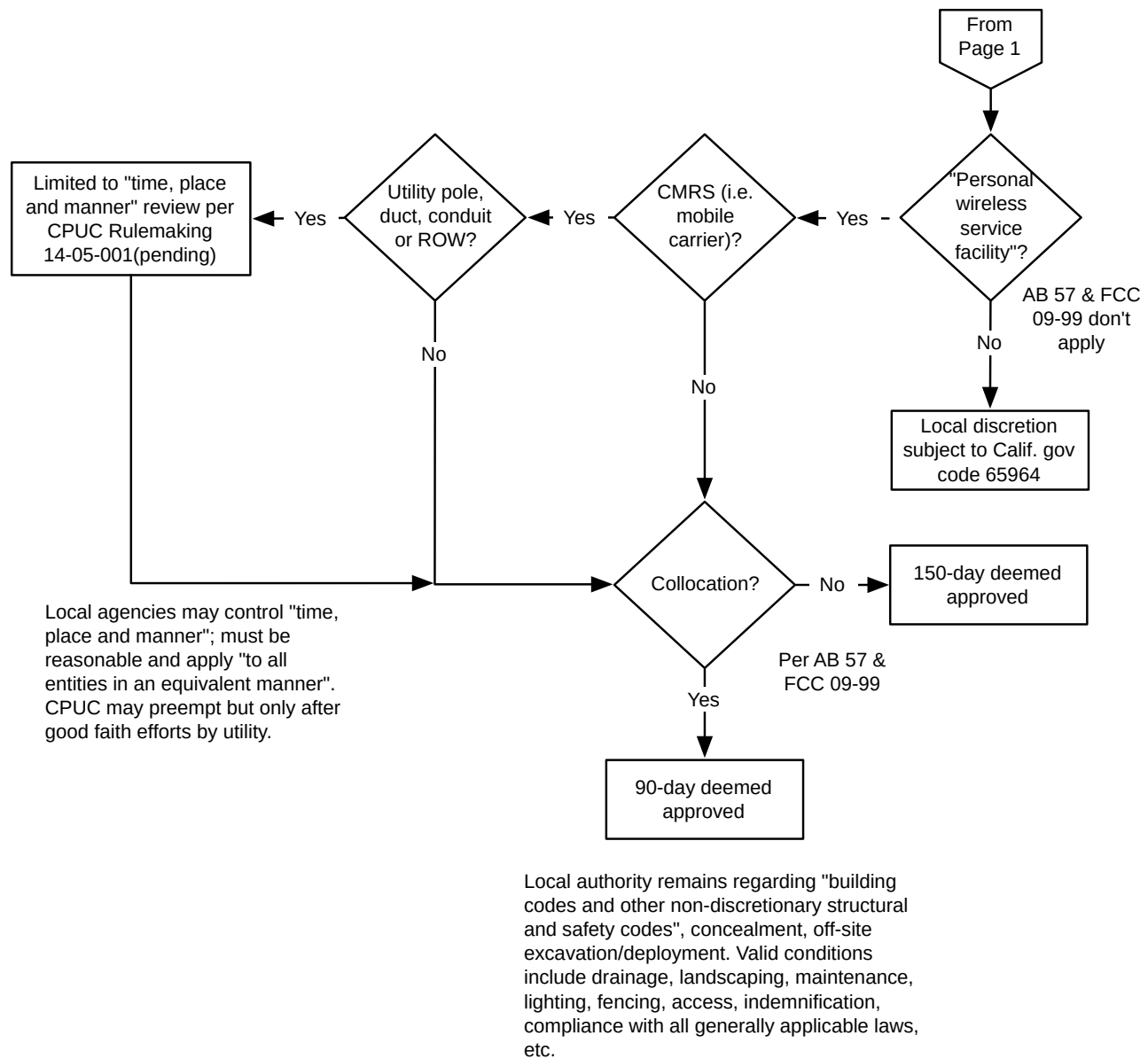


Figure 6.2 – Wireless permit “shot clock” flowchart, page 2.

Figures 6.1 and 6.2 contain a flowchart that gives an overview of how the different rules relate to each other. The result is three basic scenarios:

- Minor collocation of transmission equipment on an existing structure (or replacement of existing transmission equipment): 60 days with significant limits on criteria the City may consider when reviewing the application. This shot clock results from a 2014 FCC order (14-153), which was recently upheld by the federal fourth circuit court of appeals.

- Major collocation: 90 days. This shot clock is the result of the combination of Assembly Bill 57 and a 2009 FCC ruling (09-99), which AB 57 references (Referred to as the “AB 57 rule”, for the sake of brevity).
- New facilities (i.e., anything else): 150 days, per AB 57.

The 60-day shot clock applies to wireless facilities built for nearly any purpose; the 90 and 150-day clocks only apply to "personal wireless service", which are defined as "commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services". In other words, wireless telephone or broadband facilities. It wouldn't include, for example, satellite services or public safety facilities.

Another potential difference could be in the definition of "collocation". The FCC 60-day order is based on Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, and is often referred to as the "6409 rules". The order makes it clear that in order to be eligible, a collocation has to be on an existing wireless facility, while the 2009 shot clock ruling could be interpreted as applying to any preexisting structure. That's one of many details that are likely to be worked out in court or by the FCC.

Section 6409 says in part that "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station". The order says...

A modification “substantially changes” the physical dimensions of a tower or base station, as measured from the dimensions of the tower or base station inclusive of any modifications approved prior to the passage of the Spectrum Act, if it meets any of the following criteria:

- For towers outside of public rights-of-way, it increases the height by more than 20 feet or 10%, whichever is greater; for those towers in the rights-of-way and for all base stations, it increases the height of the tower or base station by more than 10% or 10 feet, whichever is greater;
- For towers outside of public rights-of-way, it protrudes from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for those towers in the rights-of-way and for all base stations, it protrudes from the edge of the structure more than six feet;
- It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;
- It entails any excavation or deployment outside the current site of the tower or base station;
- It would defeat the existing concealment elements of the tower or base station; or
- It does not comply with conditions associated with the prior approval of the tower or base station unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding “substantial change” thresholds.

The order also allows local governments to "continue to enforce and condition approval on compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying

objective standards reasonably related to health and safety". However, local governments "may only require applicants to provide documentation that is reasonably related to determining whether the eligible facilities request meets the requirements of Section 6409(a)".

Similarly, existing CPUC policy limits the scope of local authority over utility pole use in the public right of way by licensed mobile carriers to the same kind of "time, place and manner" restrictions that might apply to other telephone companies (and, as a practical matter, to cable and electric companies).

Under the AB 57 criteria, the definition of a major collocation is fairly narrow. Generally, it's any attachment of new equipment to an existing structure that falls within the same dimension limits as the 6409 rules (except the tighter restrictions on facilities in the public right of way don't apply) but entails more construction work, or modifications to existing conditions. There is room to debate whether an apparent collocation actually falls under the 150-day instead of the 90-day clock, but the clock will run while the debate continues.

Although AB 57 doesn't directly apply to the 60-day shot clock – it specifically excludes facilities that are eligible under the 6409 rules – the procedural requirements are, for the most part, identical. As a practical matter, the only question is whether the applicable shot clock is 60, 90 or 150 days. Expect wireless carriers to be more aggressive about claiming "deemed granted" or "deemed approved" status now that any application for wireless facilities falls under one shot clock or another.

Once a shot clock expires, or an applicant believes it has, then the applicant has to notify the City that it is proceeding on that basis and the City then has 30 days to challenge the "deemed approved" assumption in court. There's no guidance in AB 57 as to what happens if the City doesn't go to court – alternatives range from an applicant being able to simply start work on the basis of the notice, to the City being required to automatically issue the permits, to an applicant being required to obtain a court order confirming the deemed approved status. The City should consider the position it will initially take in those circumstances, but be prepared to adjust as practice and the courts clarify the procedure.

However it happens, though, carriers are likely to prevail eventually in at least some cases, and the City needs to consider what it will do in that event. One option is to create conditions of approval that would automatically apply if a deemed granted action occurs. Rather than trying to craft a default policy from scratch, however, the City might instead rely on existing design requirements or precedent. The carrier could be served notice that even though the applicable permits have been automatically granted, it is still responsible for adhering to the standards, conditions and precedent that apply to such permits and the City will enforce those terms as it would with any other permit. In other words, there's nothing special or exempt about a permit that's been deemed granted. The same rules apply, the only difference is in the method of approval.

6.3. Preserving City control of wireless permitting

The City of Morgan Hill has only a couple of sticks and one carrot left when it comes to administering permits for wireless facilities.

The biggest stick is the application requirements. An incomplete application is the only specific grounds for "tolling" (i.e., stopping) the clock, other than mutual agreement. The City has 30 days to ask for additional information, and 10 days for subsequent (albeit limited) requests if it falls under 6409 rules. The time it takes to review the application and request additional information counts against the shot clock, but the clock will be tolled (stopped) while the applicant is responding. Once an application is complete, either by default or formal acceptance by the City, the clock will run while any discussions or questions or negotiations continue.

The only way to maintain control of the clock is to explicitly require all potentially relevant information be included in the initial application. Specific, predetermined information should be routinely required in an initial application and itemized in a detailed checklist provided to the applicant.

A checklist allows the City to quickly review an application and, where necessary, write a comprehensive request for additional information. The less time required to determine that an application is incomplete, the more quickly the clock is stopped. But more importantly, it helps ensure that all deficiencies will be caught in the first review. Under 6409 rules, the City can make subsequent requests for additional information within 10 days but only in regard to items identified in the initial request. The primary FCC ruling referenced in AB 57 is less specific about limitations on additional requests for information, but until the question has been fully litigated the safest course is to assume that the same limits apply.

A further step is requiring wireless carriers to hold their own community meeting, prior to either considering an application complete or allowing a carrier to submit a new facility or colocation permit application. Such a meeting would make any subsequent public hearing less contentious by reducing the sense of surprise for community members and allow more potentially unforeseen land use challenges (e.g., noise concerns from specific equipment cabinet or generator placement) to be resolved earlier on during the review process. Furthermore the community meetings may allow for more substantive engagement by wireless carriers with neighborhood groups, so that less-intrusive sites are initially proposed. Any challenges that do occur will happen while the clock is running and could, perversely, result in an application being deemed granted because the process required for denial was not completed.

The City should take what steps it can to guard against "Trojan Horse" applications, where a seemingly innocuous facility is approved and built under the more rigorous review allowed by AB 57, but then significantly modified later under the more lax standards of the 6409 rules.

The City should also require the inclusion evidence of approval by all other necessary public agencies, such as Caltrans, as a mandatory item on the application checklist.

A community meeting requirement or Caltrans approval are examples of requirements that might apply to a new facility but not a minor collocation, for example. It's an important consideration because 6409 limits application requirements to items necessary for determining whether a proposed collocation qualifies for the expedited 60-day review. The application should establish that all applications are considered to be subject to the 150-day shot clock rule unless the applicant submits specific

information that demonstrates otherwise. If the information is omitted or insufficient, the application could be tolled or denied on that basis.

The only other stick is the threat of denial. The value of that threat is greatest when the information included in the application creates a sufficient record to support denial because subsequent inquiries could end up providing the applicant an opportunity to run out the clock. If possible, denials should be done on an administrative basis. Noticing and other requirements for City Council and Planning Commission agenda items could likewise result in a deemed granted outcome.

It can be argued that the shot clock requirements make it less likely that a denial will be appealed. Refiling the application would reset the clock and could provide the applicant with greater predictability and a faster outcome than a court challenge would offer. At that point, however, an even better alternative for the applicant might be to agree to toll the clock. The credible threat of denial creates an incentive for mutual cooperation, and does it in a way that gives the applicant a clearer idea of how to balance the costs.

The one carrot to offer is the establishment of standard, pre-approved plans and thereby create the opportunity for the applicant to avoid lengthy and detailed application requirements up front and the possibility of denial down the road. The 6409 rules allow cities to give preferential treatment to proposals for facilities that would be located on municipal property, and presumably the same would apply under the AB 57 rules.

6.4. Considerations for applications involving the public right of way

Other than the more restrictive qualification criteria for the 60-day shot clock and a categorical exclusion for NEPA (but not section 106 NHPA) review in the 6409 rules, the FCC's rules do not differentiate between applications for facilities in the public right of way and on private property. The 6409 order does, however, "conclude that Section 6409(a) applies only to State and local governments acting in their role as land use regulators and does not apply to such entities acting in their proprietary capacities", and it specifically refuses to draw a clear line between those two roles except to say "like private property owners, local governments enter into lease and license agreements to allow parties to place antennas and other wireless service facilities on local-government property, and we find no basis for applying Section 6409(a) in those circumstances".

The arguments laid out in the order and in subsequent court cases indicate that at least some cities consider ROWs to be municipal property, so that question is likely to be litigated at some point. California law, though, effectively makes ROWs state property and limits municipal authority over telephone company work (wired or wireless) in the public right of way to "reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed". However, local ordinances that regulate the location and appearance of wireless facilities in the ROW are allowed so long as a local government 1. "does not abuse its discretion or arbitrarily or unfairly deny requests for access", 2. establishes reasonable rules, 3. applies the rules "to all entities in an equivalent manner" and 4. the rules do not effectively prohibit wireless facilities.

Consequently, the City can enforce aesthetic and other standards for installation of wireless facilities, particularly small/micro cell sites often referred to as distributed antenna systems (DAS), on existing utility poles and on new poles placed in the ROW. The process is subject to federal shot clock limits and it may be reviewed by the California Public Utilities Commission. Location may also be regulated, but not in a way that particularly singles out wireless carriers.

6.5. Pre-approval of standard solutions

As noted above, the City can offer the carrot of a short form application and/or expedited processing for projects that involve standard, pre-approved cell site installations. Over time, detailed specifications for what is and isn't acceptable could be developed either by the City or others, but in the short term the City could establish a process for approving reference designs submitted by either carriers or equipment manufacturers. It's possible that an interagency group, for example under the auspices of the California League of Cities or a professional organization, could assume that responsibility, but for now it's up to the City.

As a general and quickly implementable policy, the City can encourage the organization of applications such that generic, non-proprietary information – manufacturer's specs or a particular landscaping scheme, for example – is presented separately in a standardized format. Once the application has been approved, the generic elements can be published on the City's website as an example of an acceptable solution. Those elements could either be downloaded and included "as is" in subsequent applications by anyone – allowing virtually instant review by the City – or modified to the minimum extent necessary for faster review. This process could speed up review of multiple applications by a single carrier, and in the long run it could simplify the process for everyone. But any acceleration of the City's overall processing ability would happen gradually over time.

Other fast track considerations could include locating facilities in the ROW on busier or wider streets in commercial and industrial areas, rather than in residential neighborhoods, or when set back a certain distance from residential properties.

Rather than try to establish a comprehensive reference design review process, the City could consider immediately pursuing some degree of standardization for two specific cases: replacement/upgrade of streetlights and installation of new or upgraded utility poles.

There are a couple of different ways to approach light standards. From an administrative perspective, the simplest solution is to establish specifications for new light standards intended to support wireless facilities (existing City light standard specifications might suffice) and design parameters for the attachments. Initially those parameters can be stated generally, in terms of height and width/circumference and placement on the pole (e.g., on the pole top), but as experience is accumulated, the general requirements could be replaced by specific reference designs. The carrier would either rent space on an existing City light standard, or replace a deficient City-owned light standard with a conforming one, with the City maintaining ownership of the new pole. Rent can be deferred for a period of time sufficient for the carrier to recoup the construction cost. Since it's a city-owned asset, an

encroachment permit and, possibly, a use permit wouldn't be necessary. A design permit could be issued, if necessary, on the basis of the standardized, pre-approved specifications.

Maintaining ownership of the supporting pole also gives the City more flexibility under FCC rules, since it will be acting in its capacity as a landlord, rather than a regulator. For example, it could limit or prohibit attachment of additional equipment, as would otherwise be allowed under the 6409 rules.

Another alternative is for the carrier to own the light standard and operate it under terms that are similar to those that apply to electric utilities. The carrier might be persuaded to absorb some or all of the operating cost of the light, but the City's negotiating power in that regard is limited: past a certain point, it would make more sense economically for the carrier to apply for permits under standard procedures. There's also the question of how much of the standard permitting procedure may be waived, although presumably any precedents set by the City in regard to other public utilities would apply.

It would be more difficult for the City to create significantly different standards for installation of new utility poles by wireless carriers in the ROW – in general, rules that apply to one utility must apply to all – but creating a fast track process based on the City's future needs could be defensible. It would also be reasonable to create a fast track permit process for a metal pole – either completely new or as a replacement for an overloaded wooden one – that would be available to any utility. As with light standards, the City could also establish specifications and/or reference designs for the wireless equipment that would be attached. Although opponents could still invoke the appeals process, the worst case is that the shot clock would simply expire (and the City might, in that case, be able to agree that a 90-day shot clock applies). The City could choose not to challenge the "deemed approved" status, but still be confident that the resulting installation would comply with all applicable regulations.

6.6. Summary

AB 57 has created a situation where rigorous review of applications for wireless facilities, including opportunities for public comment and decisions by elected officials, works against the original purpose of safeguarding the public interest. In order to work within the limits set by State and federal rules, the City of Morgan Hill should adapt its current wireless facilities review process to allow for rapid decisions via comprehensive application information, rapid administrative decisions and incentives for applicants to propose conforming designs from the very beginning. Existing city code should be reviewed and modifications considered to ensure its provisions do not work against the original intent, now that the game has changed. Recommendations for doing so can be found in Section 7.6 below.

7. Recommendations

The overall recommendation of this report is for the City to articulate its role in broadband infrastructure planning and development, establish goals and adopt a phased approach to reaching those goals.

The trend at the state and federal level is toward less regulation of telecommunications companies. Local governments in California no longer manage franchises for video service and state regulation is minimal. Legislation proposed in Sacramento would transition landline telephone service away from its current regulatory regime, which is based on assumptions regarding legacy analog technology, and toward a less restrictive environment that might or might not be in keeping with current digital technology trends. Broadband and Internet service is not directly regulated at the state level at all, and federal agencies have adopted a “light touch” approach, where they have considered intervention at all.

Morgan Hill, like other California communities, should consider its policy and program choices not just in terms of municipal authority, which is limited, but also in terms of opportunities to become a partner and an active participant in broadband infrastructure development initiatives. The specific recommendations below identify a path that begins with a strategic vision and moves through several steps, each representing greater involvement by the City in broadband development and an increasingly engaged role.

Recommendations for wireless facilities planning and management are treated separately. Development of wireless facilities, particularly those designed to support mobile broadband services, is necessary to meet increasing consumer demand and because construction of mobile infrastructure also requires additional investment in the fiber optic networks that support it. On the other hand, the City has a stewardship responsibility regarding environmental regulations, other community standards, and the use of the public right of way. Recent changes in state law and federal regulations has made exercising this responsibility problematic, and require adjustments to City policy and procedures in the near term.

In order to develop a sustainable economy by fostering new technology-based enterprises and expanding the City’s technology infrastructure, as called for by the Morgan Hill 2035 General Plan, the following steps are recommended:

7.1. Strategic vision

5.1.1. Long term broadband infrastructure roadmap

5.6.1. Regulatory position

5.7.1. Broadband role

The first step in setting broadband infrastructure development goals and establishing policies designed to reach those goals is to determine the level of the City’s involvement and identify the roles and responsibilities that are appropriate to it.

It is recommended that the City first develop a roadmap based on the infrastructure “report card” grading criteria in Section 2. Morgan Hill receives a “D”/1.0 grade on that four point scale, in comparison to the “C”/2.0 or thereabouts grades currently given to cities immediately to the north. Keeping in mind that those cities are also actively engaged in improving their broadband infrastructure, the City should lay out a road map that brings its primary broadband infrastructure up to the statewide average in the near term, and keeps pace with and/or exceeds it over the long term. Similar goals should be set for commercial and industrial class infrastructure.

The City should also determine the extent of its involvement in the telecommunications regulatory process – nearly all of which is outside its direct control – and whether it will be an active participant and advocate in the broadband development process, a passive observer, or something in between. These recommendations assume that the City wishes to actively work to develop and improve local broadband infrastructure.

7.2. Core broadband planning and management

5.1.2. **Solicit ideas for infrastructure upgrades**

5.3.1. **Asset inventory**

5.3.5. **GIS logging**

5.3.6. **Digital plans**

5.4.1. **Transparent process**

5.5.4. **Public facilities**

5.6.3. **Specific conditions compliance**

5.7.2. **Long term City networking needs**

Before setting specific policy or launching broadband development initiatives, the City should establish ongoing working relationships with telecommunications providers and organize its internal resources and standard processes to support the achievement of the goals in its long term road map.

Incumbent providers, particularly Charter Communications and Frontier Communications, are in the best position to embark on infrastructure upgrade projects. They are also in a position to inhibit or even block competing initiatives by smaller companies or new market entrants. Engaging in an ongoing conversation that focuses on the City’s road map will allow the City to ascertain the degree to which incumbents’ goals coincide with its own and identify the gaps that need to be addressed.

The City can work with Frontier and Charter to develop and implement plans to address those problems, and provide ongoing information regarding service conditions to existing and prospective businesses. If Frontier and/or Charter are not willing to meaningfully engage, then the City will have to find remedies on its own, including pursuing regulatory options and creating opportunities for competitors to enter the market.

As a result of regulatory approval conditions placed on their recently approved transactions, Charter and Frontier have specific obligations they must fulfil in their California service areas. The City should immediately establish clear expectations as to what that fulfilment entails in Morgan Hill, and monitor

progress on a quarterly basis. These regulatory conditions represent a unique and immediate opportunity for the City, one which is unlikely to reoccur in the foreseeable future.

The City is also a participant in the development process. It owns and controls assets that are essential to broadband infrastructure development. Identifying and routinely tracking those assets, along with improvements made by third parties pursuant to encroachment or other permits, will allow the City to manage and employ its resources to the greatest effect. Creating a transparent process for managing and developing those resources, and making them available to interested parties will maximize their value, both as capital assets and as day to day tools.

The City can also design and build future public works projects and other facilities with broadband development goals in mind, and plan its internal IT network development along those same lines.

7.3. Baseline broadband development policy

- 5.1.3. **Broadband master plan**
- 5.2.1. **Open trench**
- 5.2.2. **Conduit specifications**
- 5.2.3. **Conduit standards**
- 5.2.4. **Lateral connection standards**
- 5.2.5. **Shadow conduit - public works**
- 5.3.2. **Open access**
- 5.3.7. **Infrastructure database**
- 5.4.2. **Permit streamlining**
- 5.7.3. **Anchor tenant positioning**

Ten policies are recommended for near term adoption and implementation. The first step is to develop the City's long term roadmap into a specific master plan that sets goals for the type and extent of broadband infrastructure in residential, commercial, industrial and other land use categories. The primary market research conducted for this report indicates that residential and business broadband use and expectations differ in Morgan Hill, but in either case there is a significant amount of dissatisfaction with the choices available.

The City has the greatest amount of influence over greenfield and new or major remodelled infill development, and over work performed in the public right of way. By establishing clear broadband-related requirements for these kinds of projects, the City can encourage the construction of facilities that will support upgraded infrastructure. Establishing an "open trench" notification process any time excavation work is done in the public right of way offers all interested parties, including the City, potential cost savings or unique opportunities to pursue upgrade or new utility construction projects. Setting minimal technical specifications for broadband conduit, where appropriate, and requirements for main conduit and lateral connections in new or major remodelled construction, or in public works projects ensures, over time, the development of a consistent and adequate level of basic infrastructure.

The City's own assets can be offered on open terms to any qualified broadband provider, and information about all broadband infrastructure can likewise be made available, so as to reduce barriers to entry for new competitors and promote the more efficient use of existing resources by incumbents. The City can further reduce barriers by streamlining permit processes and create incentives for infrastructure development that meets City goals by using its information technology budget to position itself as the anchor tenant for particularly critical projects.

These baseline policies primarily serve to standardize and focus existing policy and practices on well articulated broadband development goals, without requiring major new initiatives or changes.

7.4. Second phase broadband development policy

- 5.2.6. **Shadow conduit - undergrounding**
- 5.2.7. **Shadow conduit - excavations**
- 5.2.8. **Excavation moratorium**
- 5.3.3. **Master leases**
- 5.4.3. **Master permits**
- 5.4.4. **Single review**
- 5.4.6. **Environmental and aesthetic mitigation**
- 5.5.1. **Broadband building standards**
- 5.5.2. **Broadband wiring standards**
- 5.6.2. **Franchise compliance**

A baseline broadband development program can be supplemented with more proactive measures that position the City as an active participant in broadband development initiatives. These steps can be taken either at the same time as adoption of baseline policies or later, after the effectiveness of the baseline program is assessed.

Each of the above policies represent a greater level of direct City involvement in broadband development. Prospective installation of city-owned conduit, either in conjunction with routine undergrounding programs or third party utility projects, puts the City in the position of being an active developer of broadband assets as such, rather than simply making use of resources obtained in the normal course of business. Putting teeth into “dig once” policies by imposing moratoria on street excavations following an open trench notification process puts similar pressure on utility companies to do the same.

Adopting a master lease template for third party use of City assets allows for more aggressive marketing, with either the goal of increasing revenue or incentivizing development, or both. A master permit process for large scale projects can be likewise used to attract the attention of companies, including incumbents, that might be interested in pursuing major upgrades, and position Morgan Hill as a better destination for investment. The same is true of a single review process for smaller projects and standard, predictable environmental and aesthetic mitigation requirements.

Adding broadband requirements to construction standards will build the City’s inventory of high-tech enabled real estate over the long term and provide a competitive incentive for owners of older property to retrofit. The more properties that are “gigabit ready”, the more cost effective it is to upgrade and add infrastructure and facilities upstream, and the more demand there will be for that level of service.

A consistent, proactive approach to enforcement of video franchise requirements, even to the limited extent allowed under California law, also puts the City in the role of an active participant in the broadband industry, albeit as a regulator who sits on the other of the table from the companies involved. Doing so can improve the City’s negotiating position with some broadband providers and build, and possibly fund, in-house expertise that can be used to pursue further measures.

All of these policies are recommended for the City’s adoption over the long term, and the City should consider including some in its initial baseline program if more rapid progress is desired in specific policy areas.

7.5. Broadband development options

- 5.2.9. **Excess capacity utilization**
- 5.2.10. **Dedicated revenue account**
- 5.2.11. **Future proofing**
- 5.3.4. **Telecom O&M matrix**
- 5.4.5. **Evergreen permits**
- 5.4.7 **Permitted Telecommunications Sites**
- 5.5.3. **Smart building requirements**
- 5.5.5. **Telecommuting - City**
- 5.5.6. **Telecommuting - general**
- 5.6.4. **Enforcement liaison**
- 5.6.5. **Performance test participation**
- 5.7.4. **Interagency coordination**
- 5.7.5. **Validate infrastructure mapping**
- 5.7.6. **Broadband in public housing**
- 5.7.7. **Online access**
- 5.7.8. **Online permits**
- 5.7.9. **Open data**

The broadband development options listed above can be divided into two groups: incremental enhancements to proactive second phase policies – for example, combining City-owned asset development initiatives into an ongoing enterprise fund – and policies that serve to increase demand for high speed broadband service and promote its adoption by residents. The recommended approach to these options is to defer action on them until a baseline program is established and the extent of City involvement and the degree to which it will be an active in developing broadband infrastructure has been determined.

7.6. Wireless facilities management

The changes in California and federal law regarding municipal authority over wireless facilities, as described in Section 6 above, make it advisable to quickly respond by changing City procedures, specific policies and, where necessary, the Municipal Code to ensure continued control of the process and avoid permit issuance by default. A dozen specific steps are recommended:

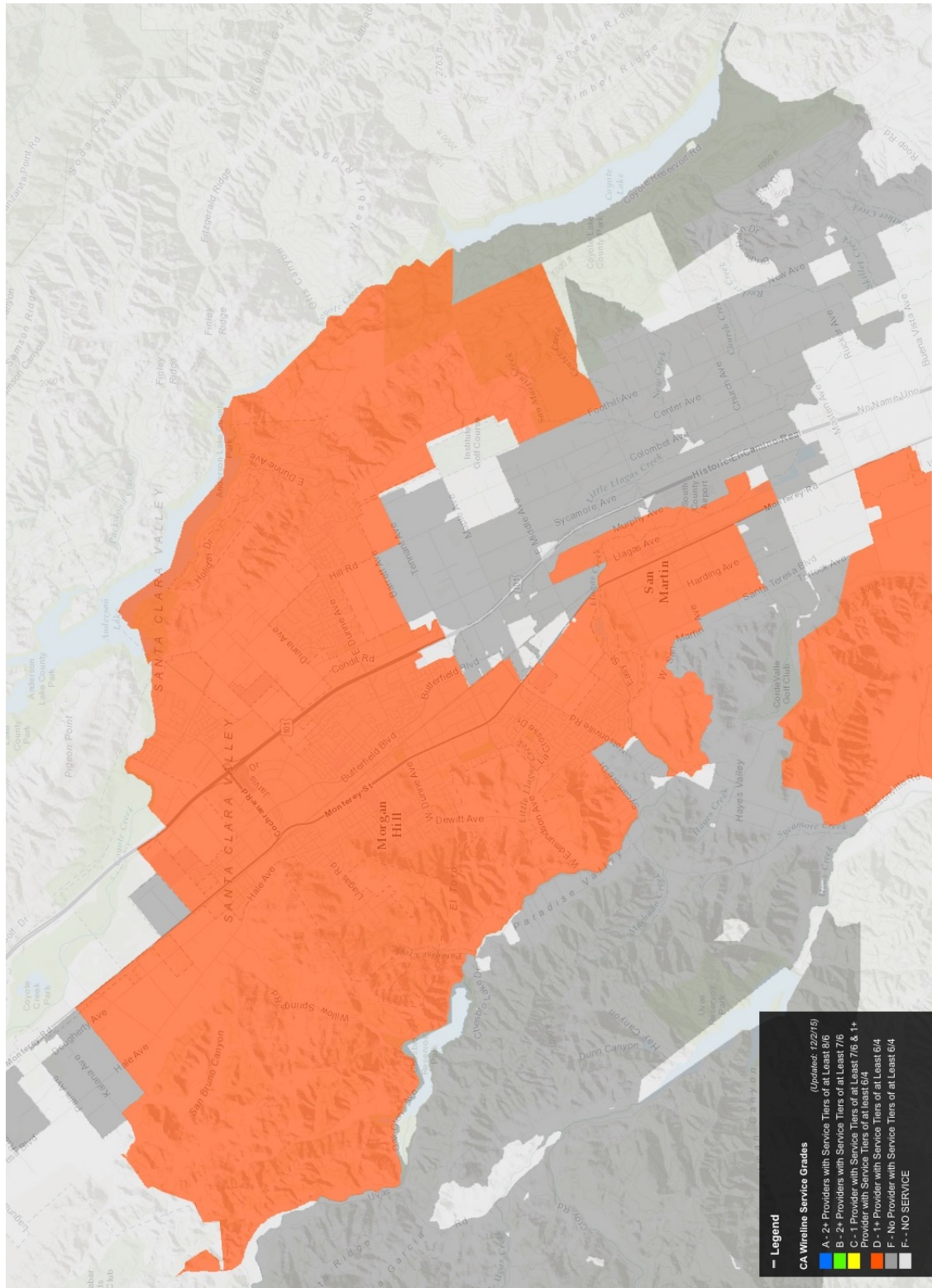
1. Create a comprehensive checklist of items that must be included in a wireless facilities application.
2. In the application, establish the presumption that the 150-day clock applies unless the applicant 1. states otherwise and 2. provides specific information that demonstrates eligibility for the 60 or 90 day clocks. Any application for a location that doesn't already support wireless facilities would automatically be subject to the 150-day clock. Failure to provide the necessary information would be grounds for either denial or immediate tolling.
3. Include all possible questions, documentation, other city departments/outside agency approvals , etc., as a standard requirement of an initial design permit application. In particular, the application should include all information required for use and encroachment permits or other approvals by other City departments to demonstrate that it complies "with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety".
4. Descriptions of the facilities, including photo simulations, should include 1. the facilities as currently designed. 2. as potentially modified according to the federal rules described in Section 6.2 above (e.g. 20 feet higher and 20 feet wider in all directions).
5. Require evidence, including blueprints and photo simulations, that shows that proposed modifications to existing facilities will not "defeat concealment" and that new facilities will be able to support concealment even if later modified under federal rules.
6. Require full documentation regarding all previous permits for existing facilities, in order to determine that a collocation/modification complies "with conditions associated with the prior approval".
7. Require all CEQA-related studies, including seasonal-dependent biological assessments, to be completed and included in the application.
8. Structure the application and the process so that denials can be issued administratively during the design permit review, even for reasons pertinent to use and encroachment permit reviews.
9. Decide what position the City will take if and when presented with the initial "deemed approved" notices from carriers. Will the City routinely challenge the presumption in court? Will it demand that the applicant obtain a court order confirming the presumption (and use its enforcement powers if the applicant refuses)? Will it concede the point but still require the applicant to follow City policies and conditions? If so, what are those policies and conditions?

10. Establish preferred specifications for streetlight mounted wireless facilities, including the light standard itself, and for equipment mounted on utility poles.
11. Create a short form application/checklist for proposed wireless facilities that are mounted on light standards or utility poles and conform to the preferred specifications.
12. Review the Municipal Code to determine if procedural changes can be made to safeguard the City's ability to reach decisions within the allowable time frames.

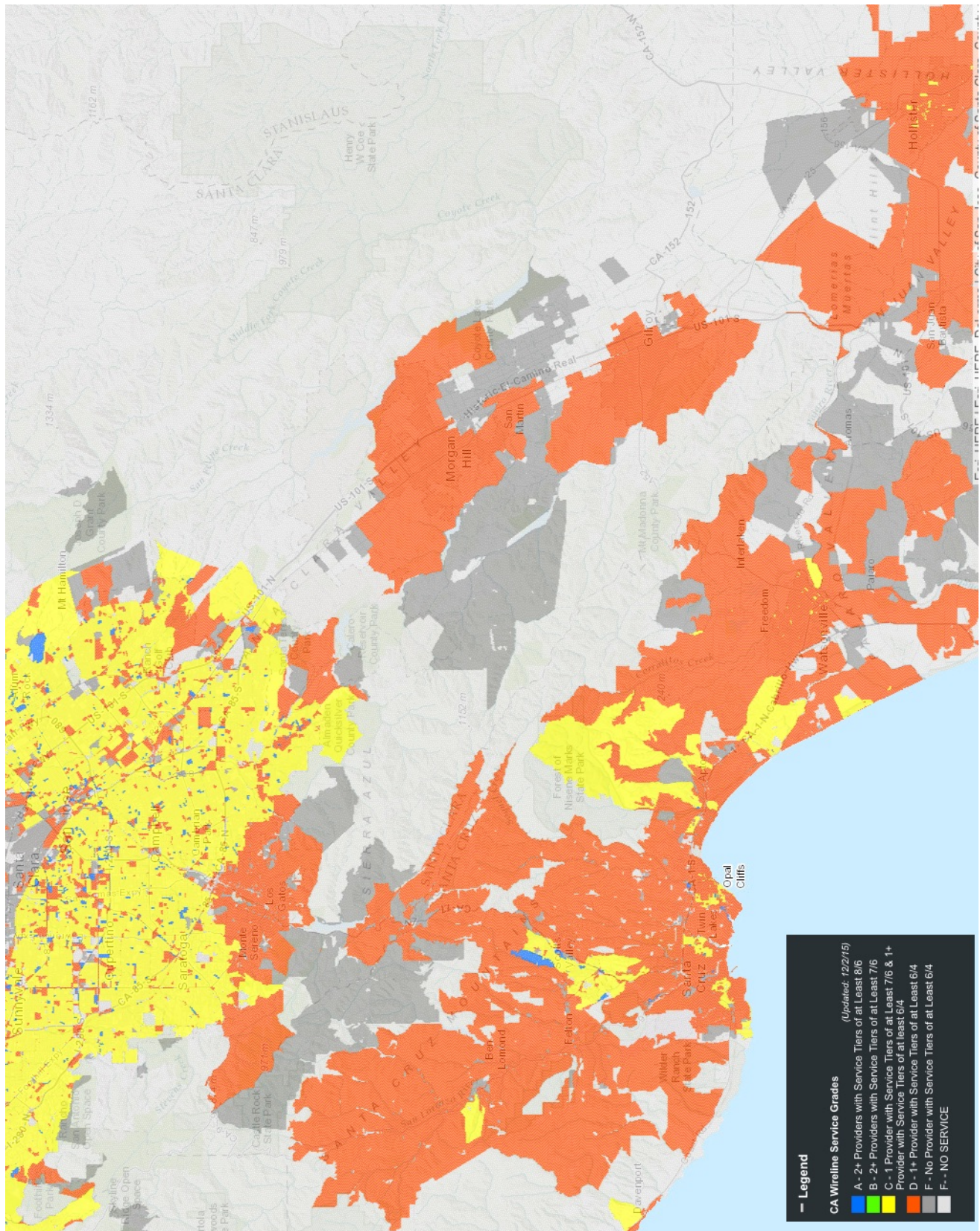
Appendix A - Maps

1. Infrastructure grading maps

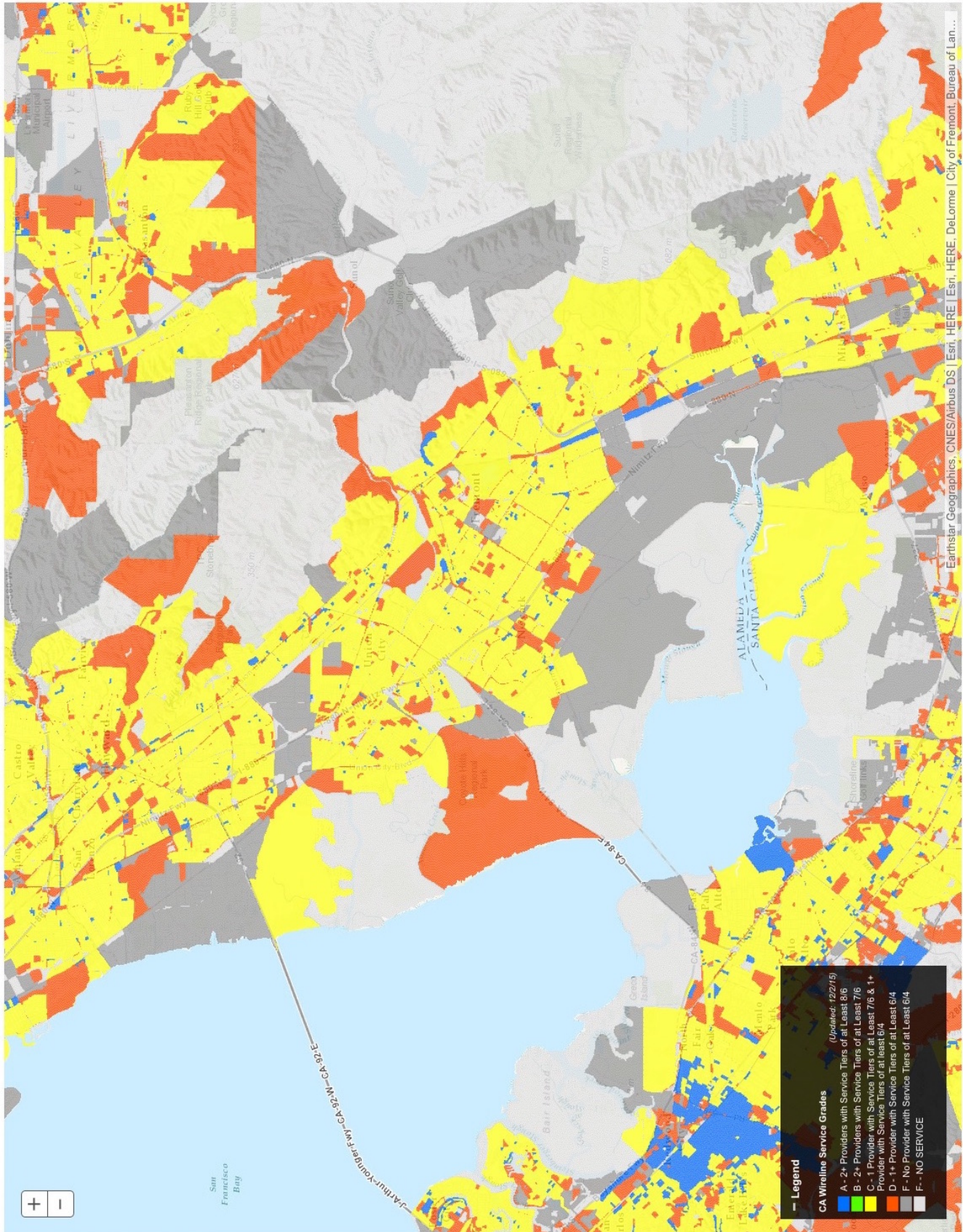
Morgan Hill



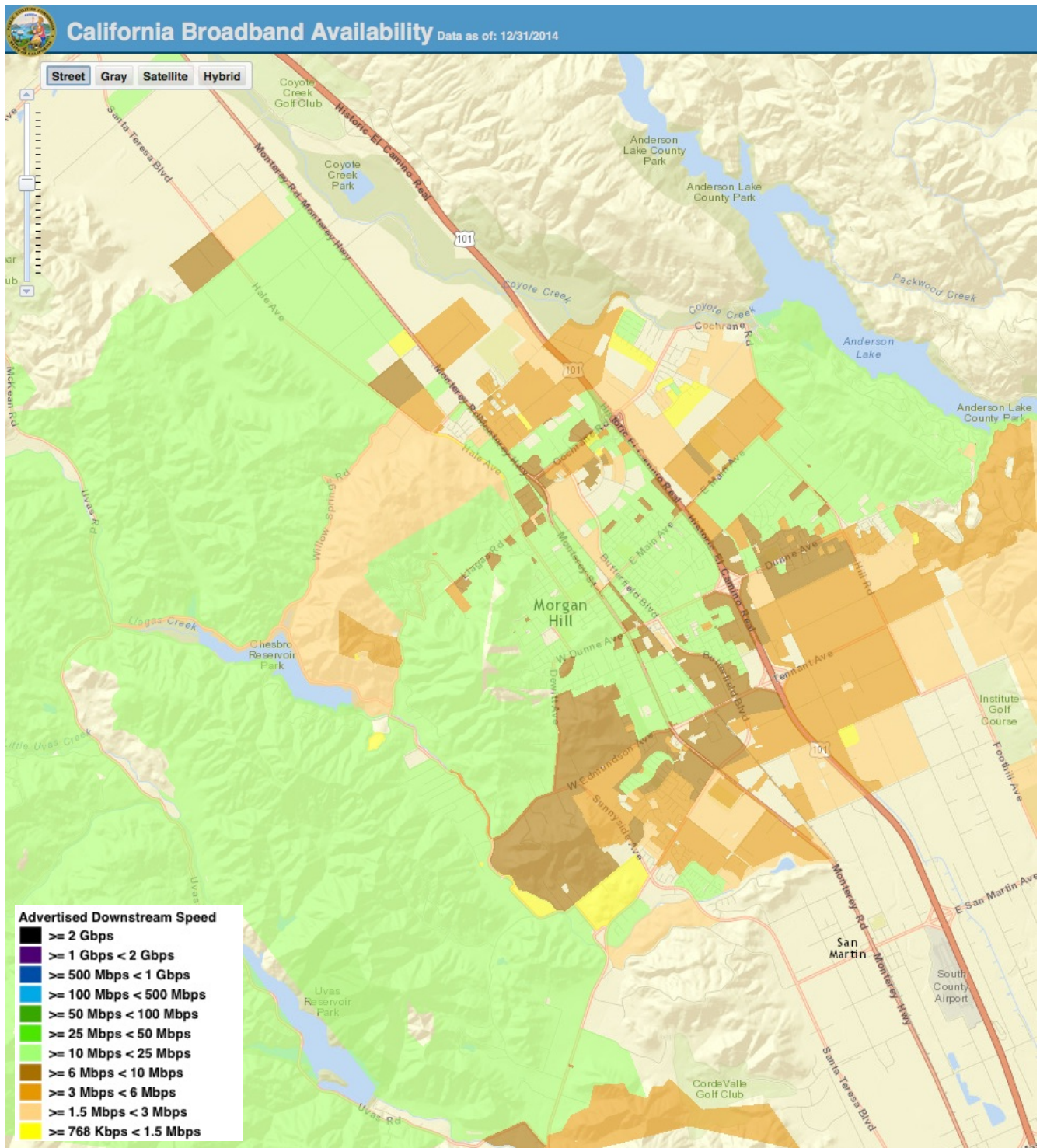
South Bay Area



East Bay Area

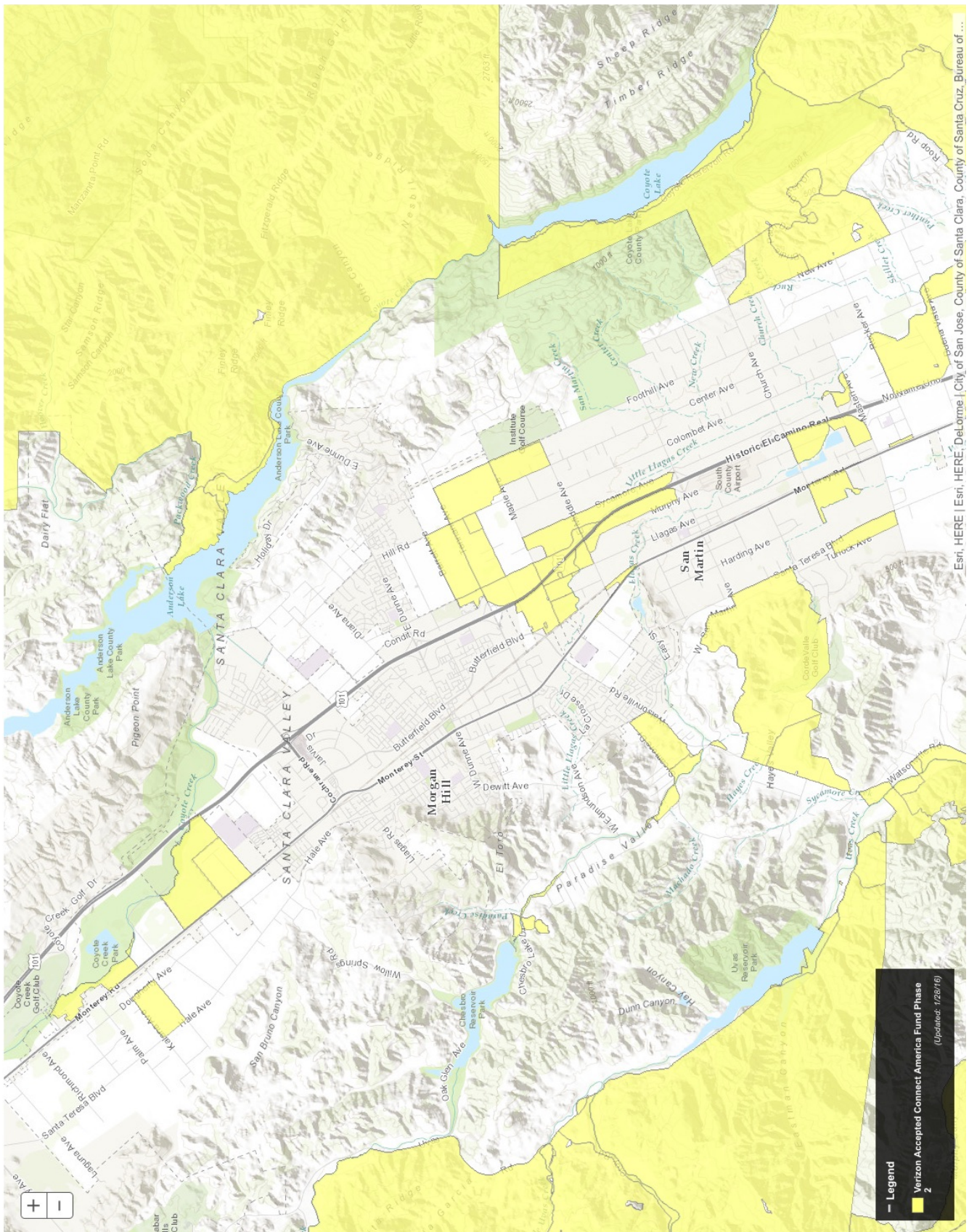


2. Frontier (formerly Verizon) DSL service



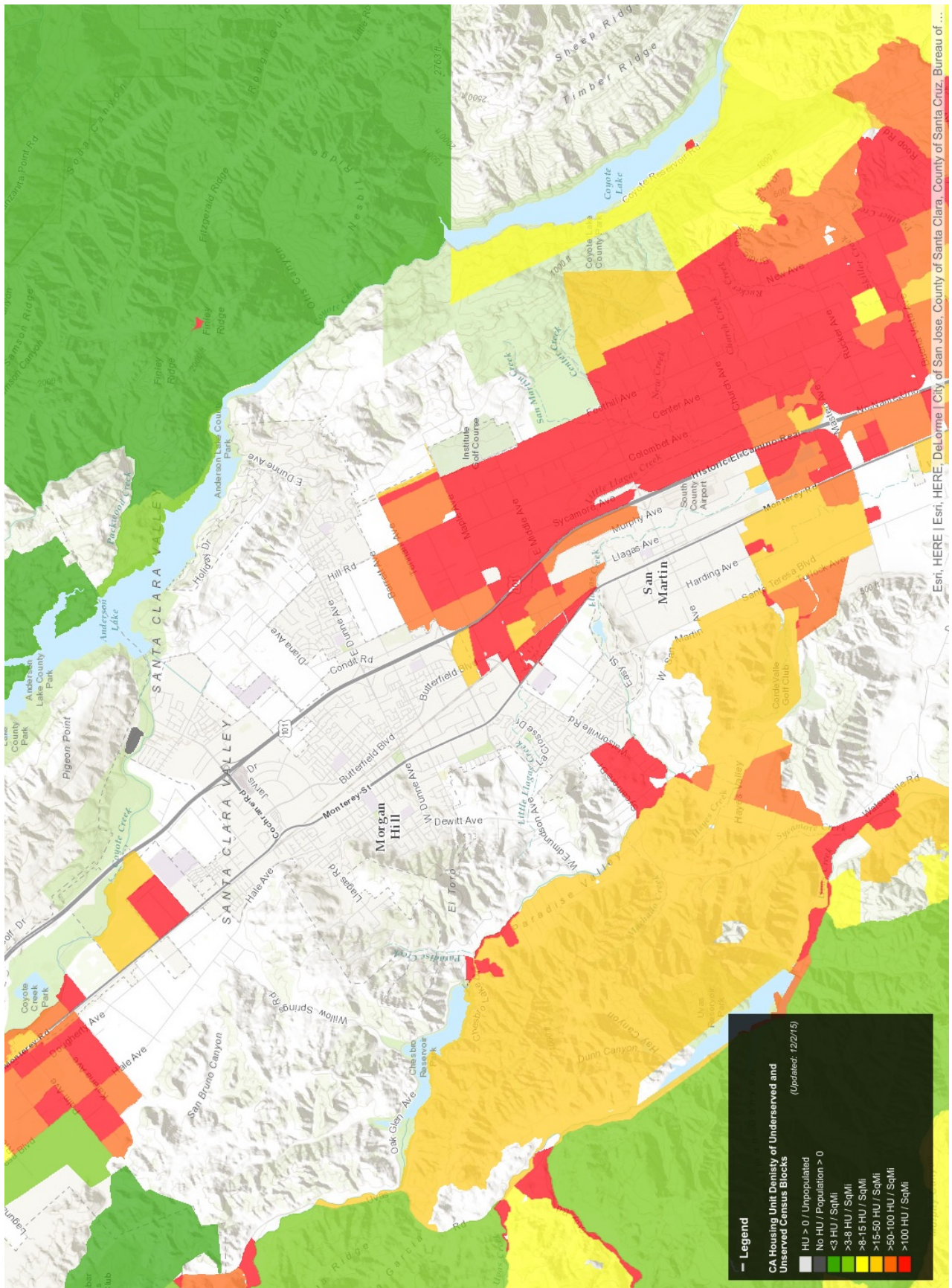
City of Morgan Hill 2035 General Plan – Telecommunications Infrastructure

Frontier – census blocks qualified for federal upgrade subsidies (CAF-2 program)



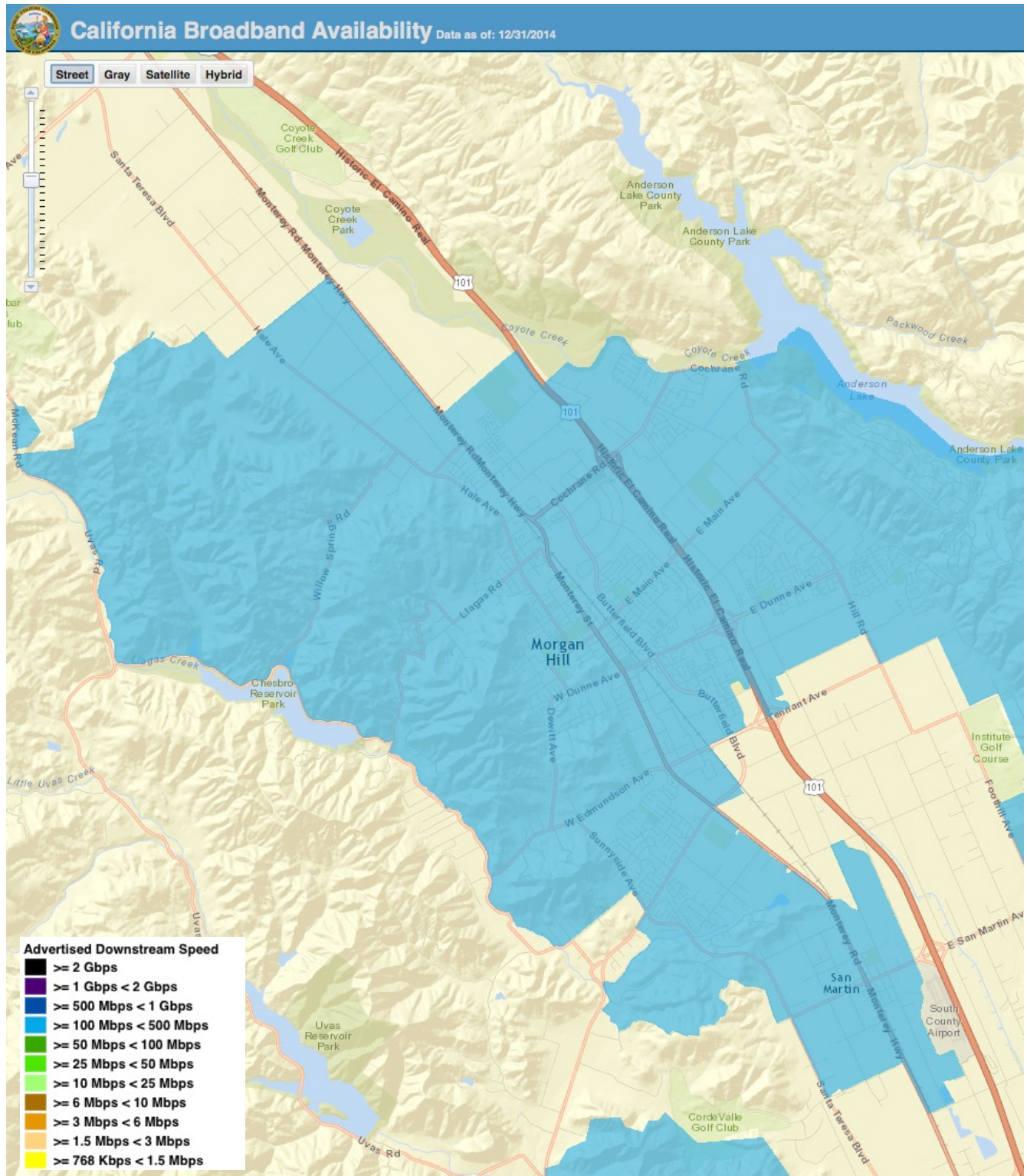
Attachment: 2016 Telecommunication Infrastructure Report (2895 : Execute Service Agreements with Wave Broadband)

Census blocks provisionally eligible for California Advanced Service Fund subsidies



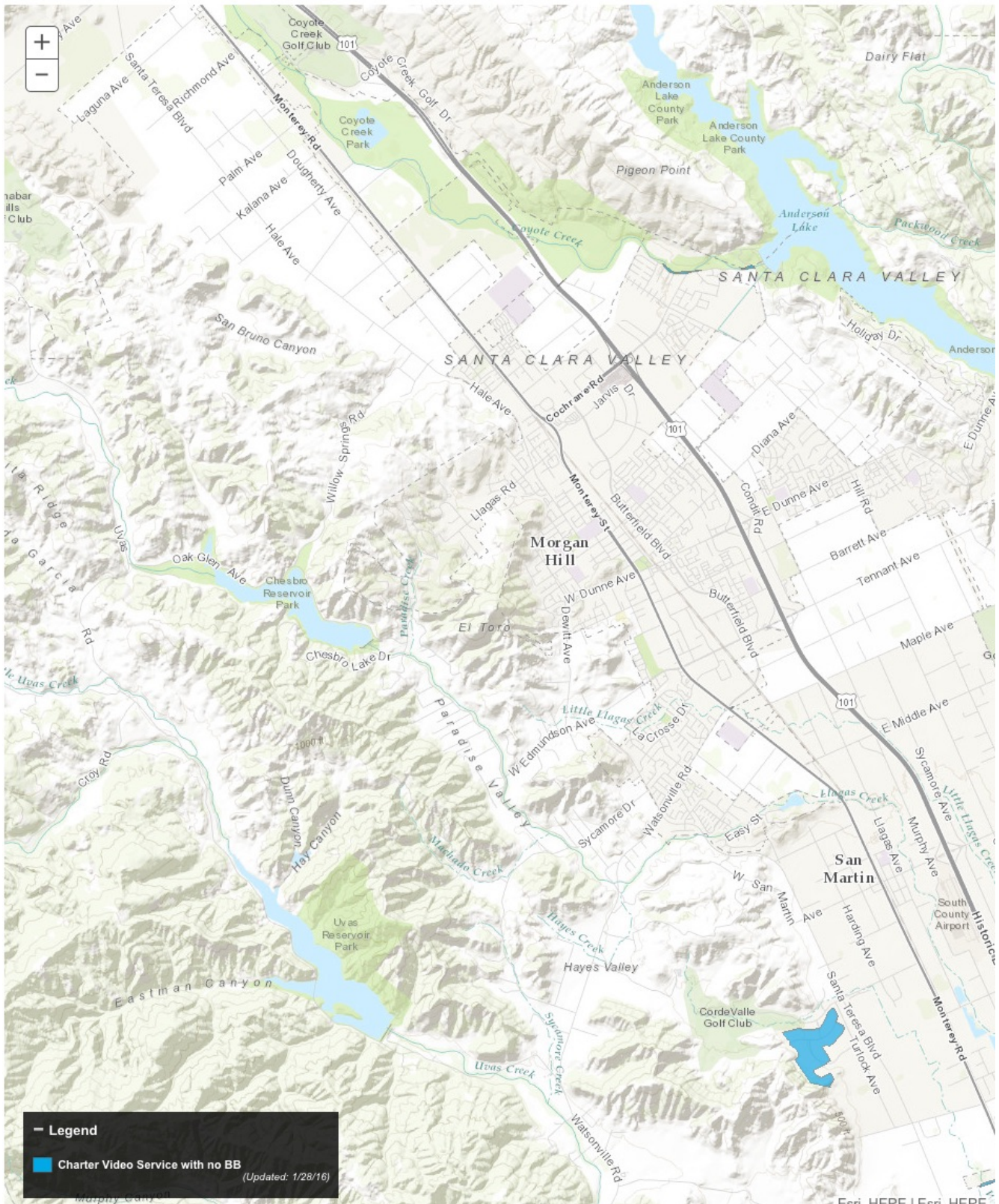
Attachment: 2016 Telecommunication Infrastructure Report (2895 : Execute Service Agreements with Wave Broadband)

3. Charter cable modem service



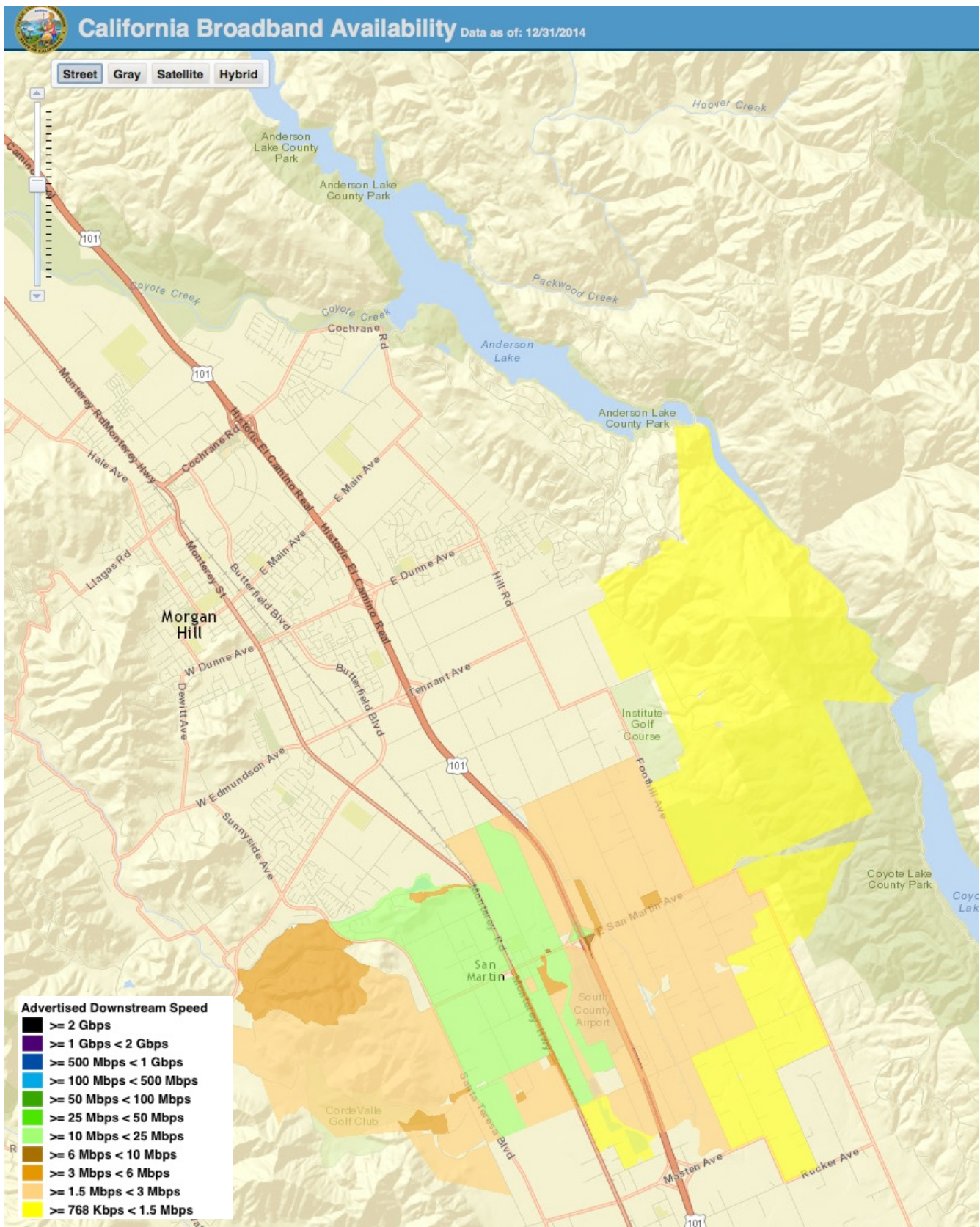
City of Morgan Hill 2035 General Plan – Telecommunications Infrastructure

Charter coverage gaps (versus assigned franchise area)



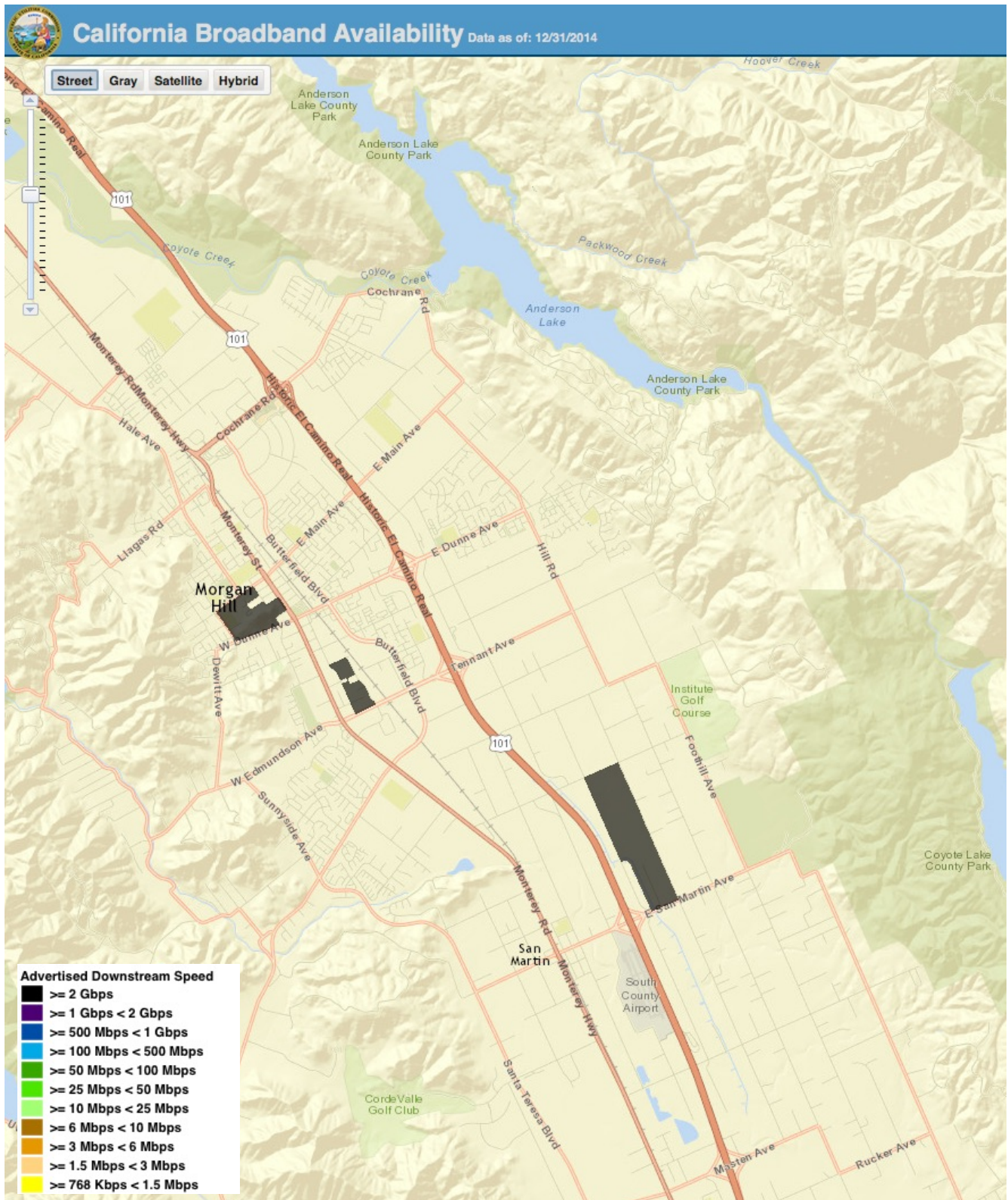
Attachment: 2016 Telecommunication Infrastructure Report (2895 : Execute Service Agreements with Wave Broadband)

4. AT&T DSL service



5. Secondary providers

Level 3 fiber locations

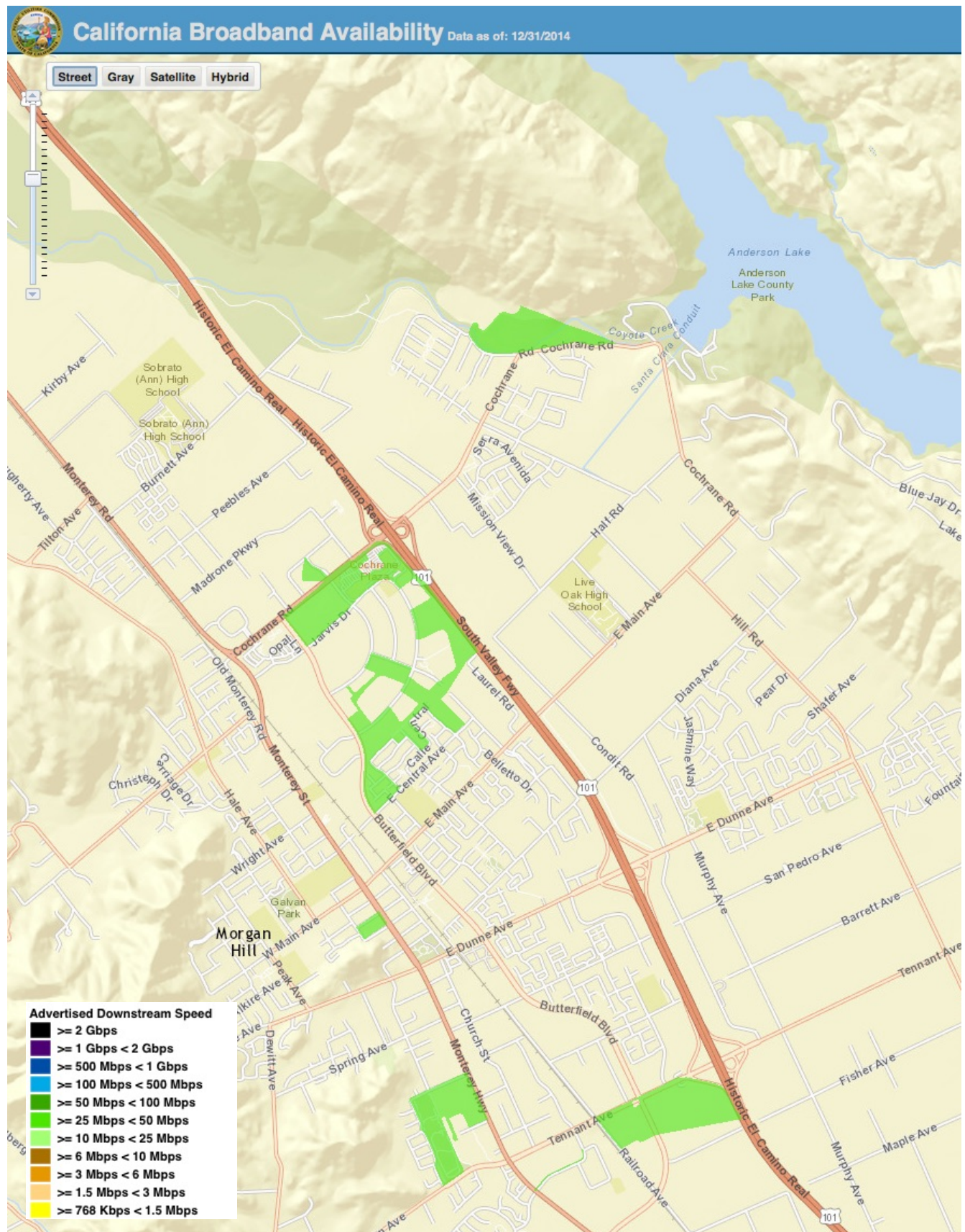


Attachment: 2016 Telecommunication Infrastructure Report (2895 : Execute Service Agreements with Wave Broadband)

Level 3 enhanced copper locations

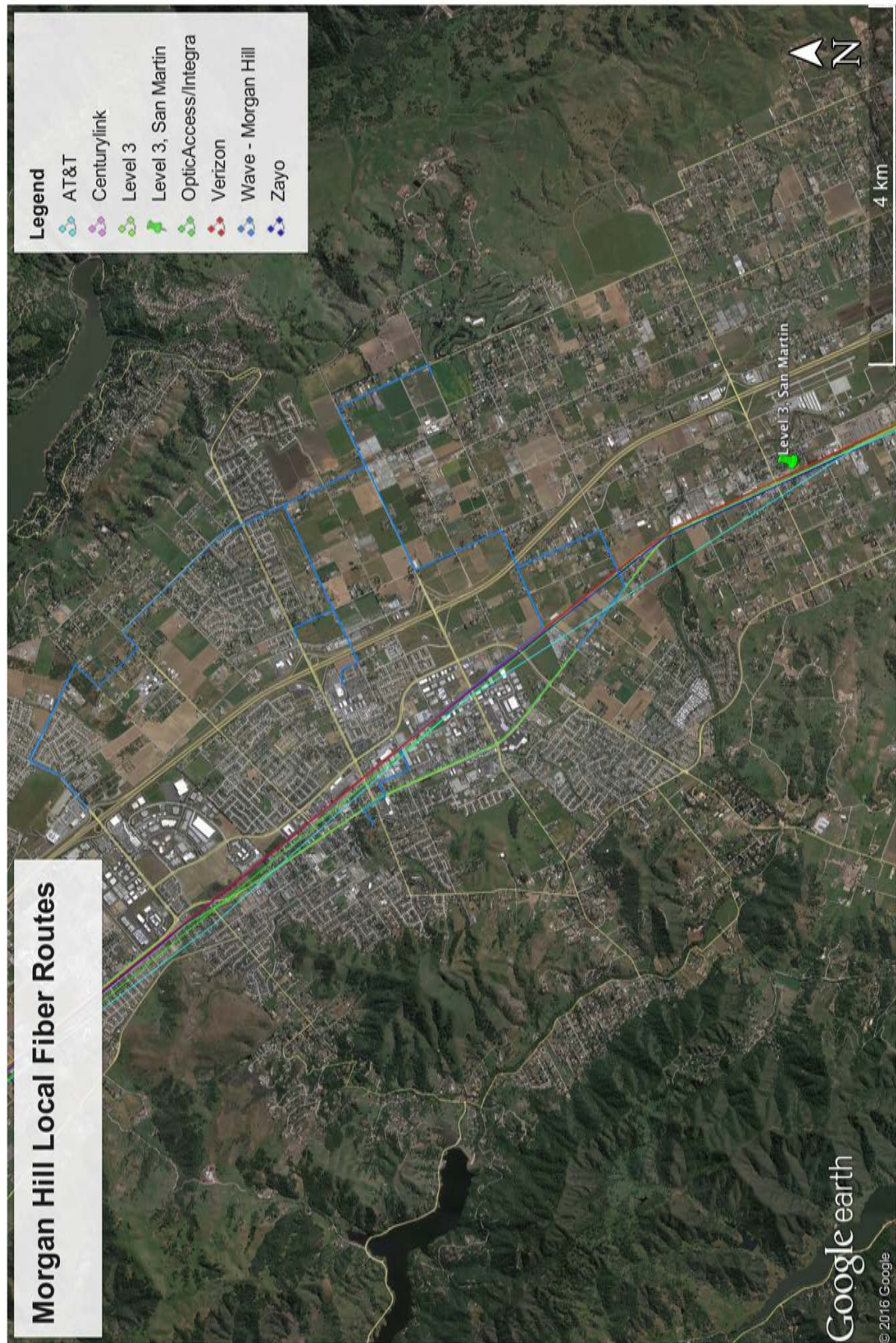


TW Telecom enhanced copper locations

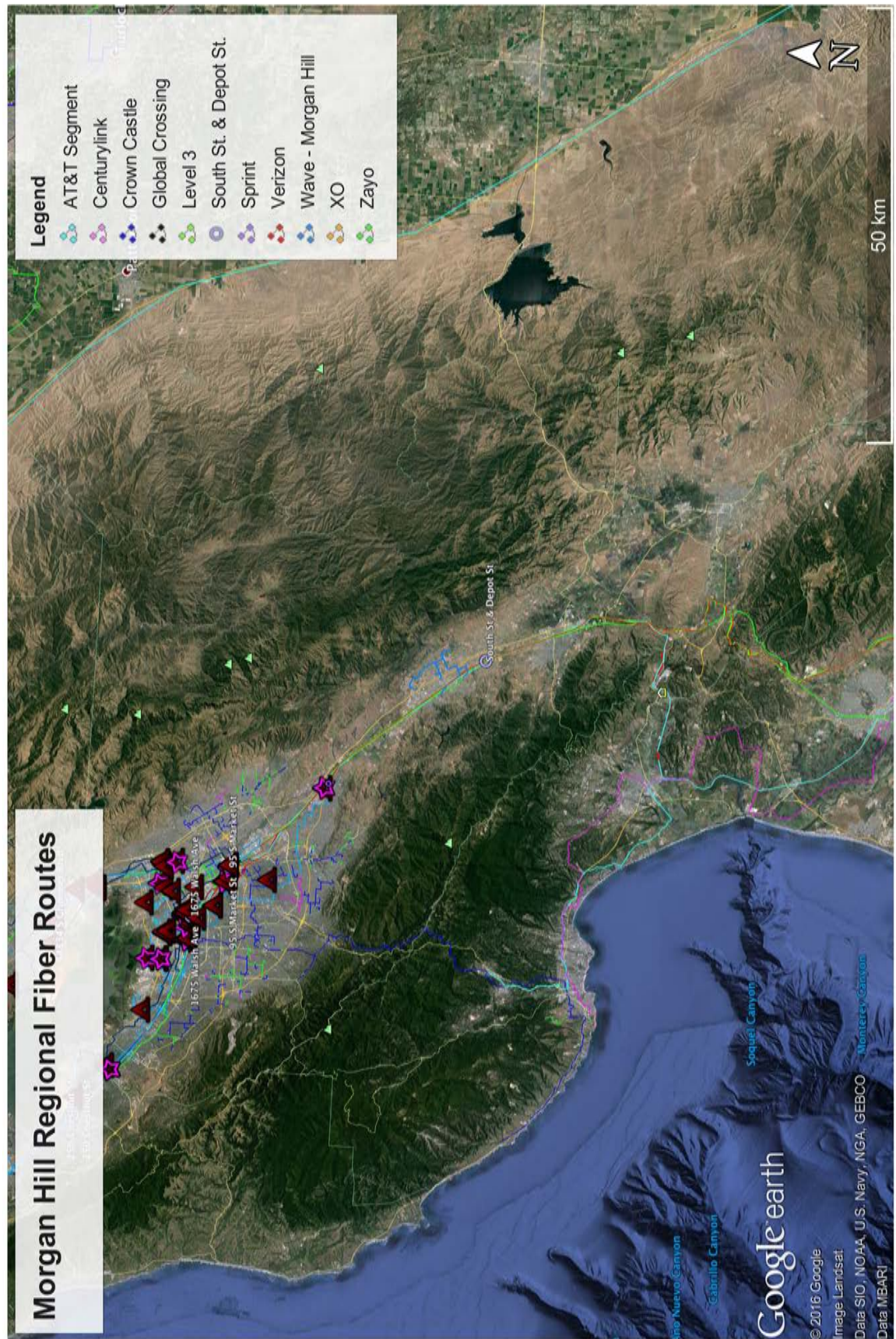


Attachment: 2016 Telecommunication Infrastructure Report (2895 : Execute Service Agreements with Wave Broadband)

Local fiber optic network routes

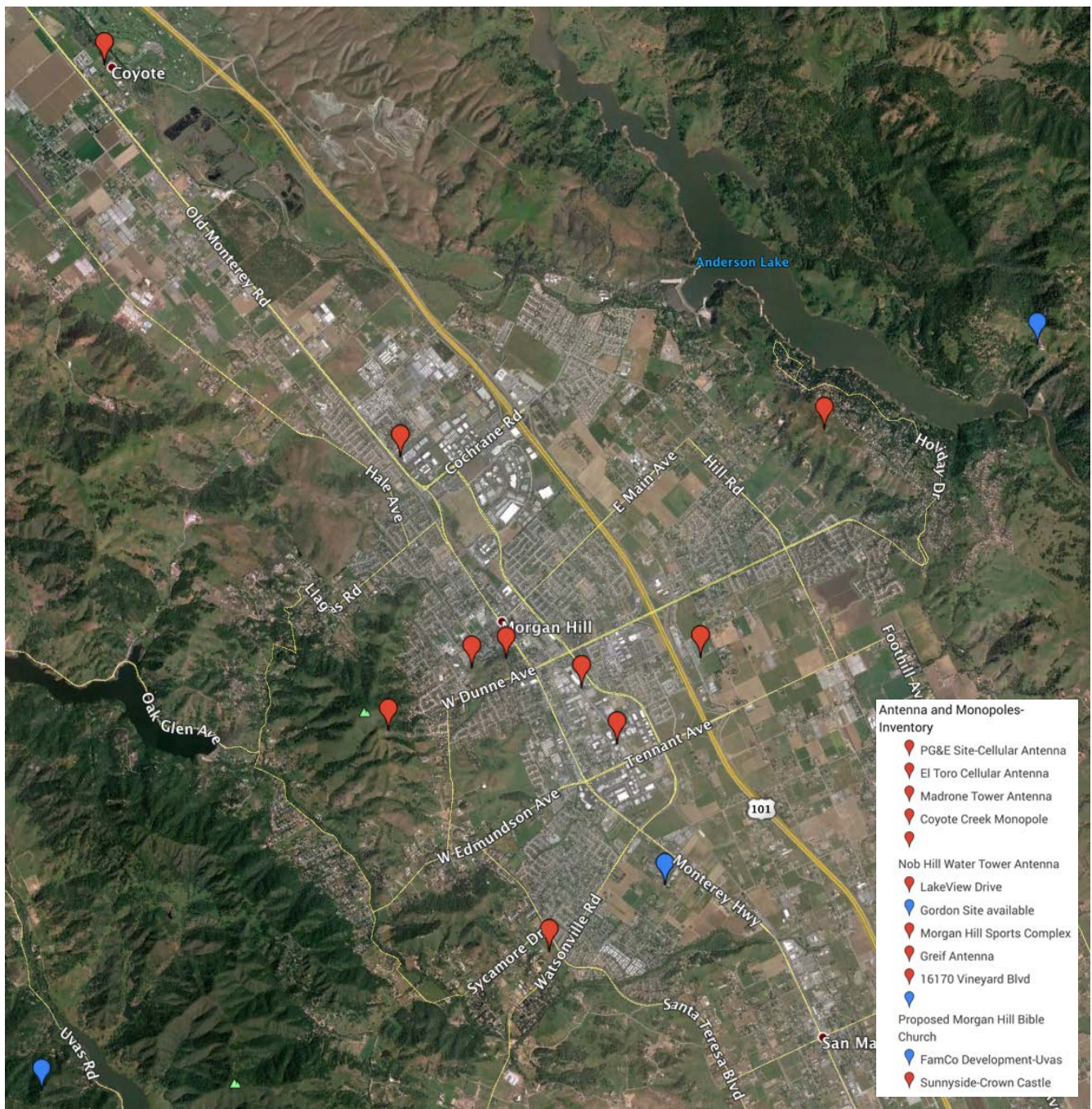


Regional fiber optic network routes



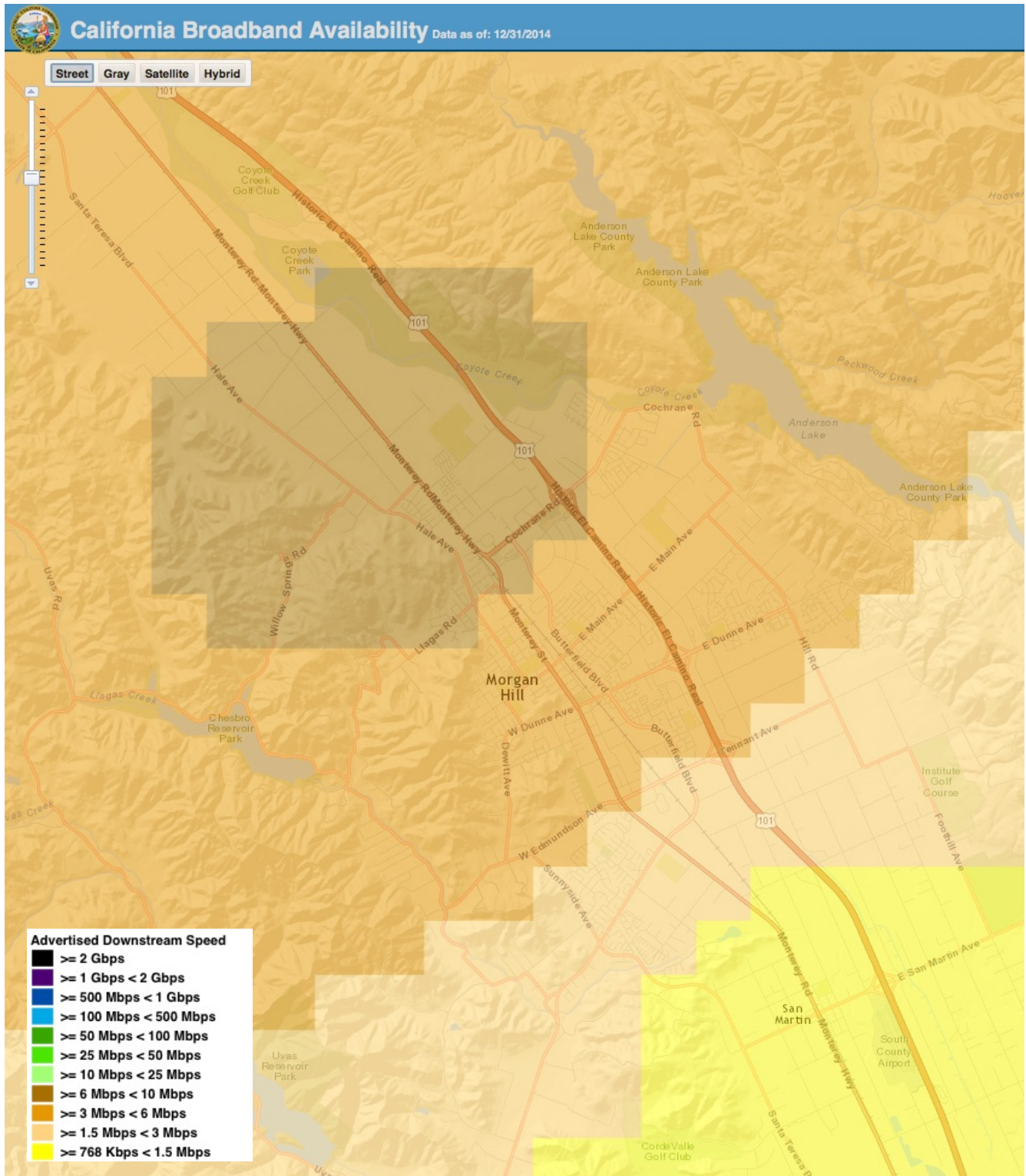
6. Wireless broadband availability

Antenna and monopoles – Morgan Hill



City of Morgan Hill 2035 General Plan – Telecommunications Infrastructure

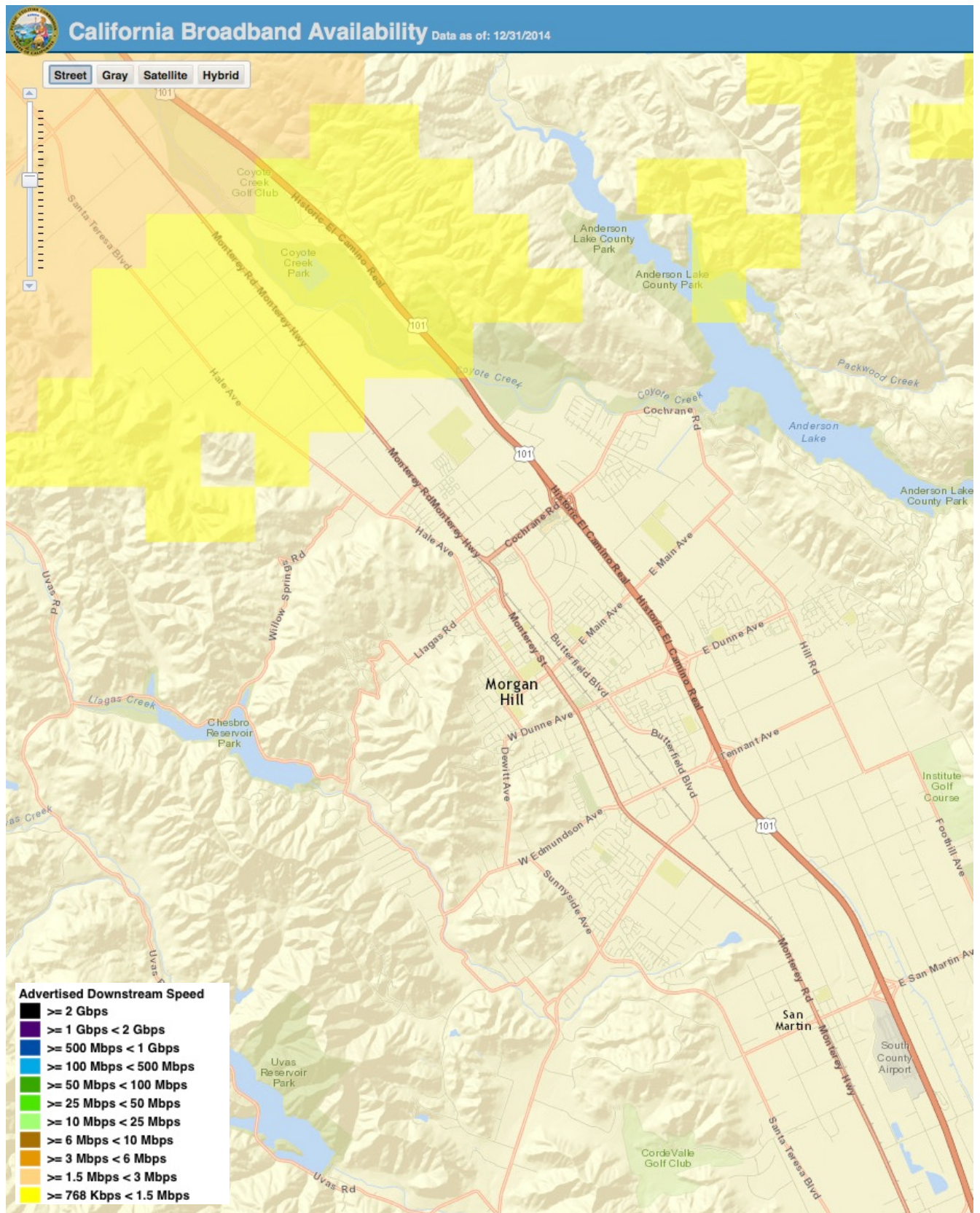
AT&T mobile broadband service



Attachment: 2016 Telecommunication Infrastructure Report (2895 : Execute Service Agreements with Wave Broadband)

City of Morgan Hill 2035 General Plan – Telecommunications Infrastructure

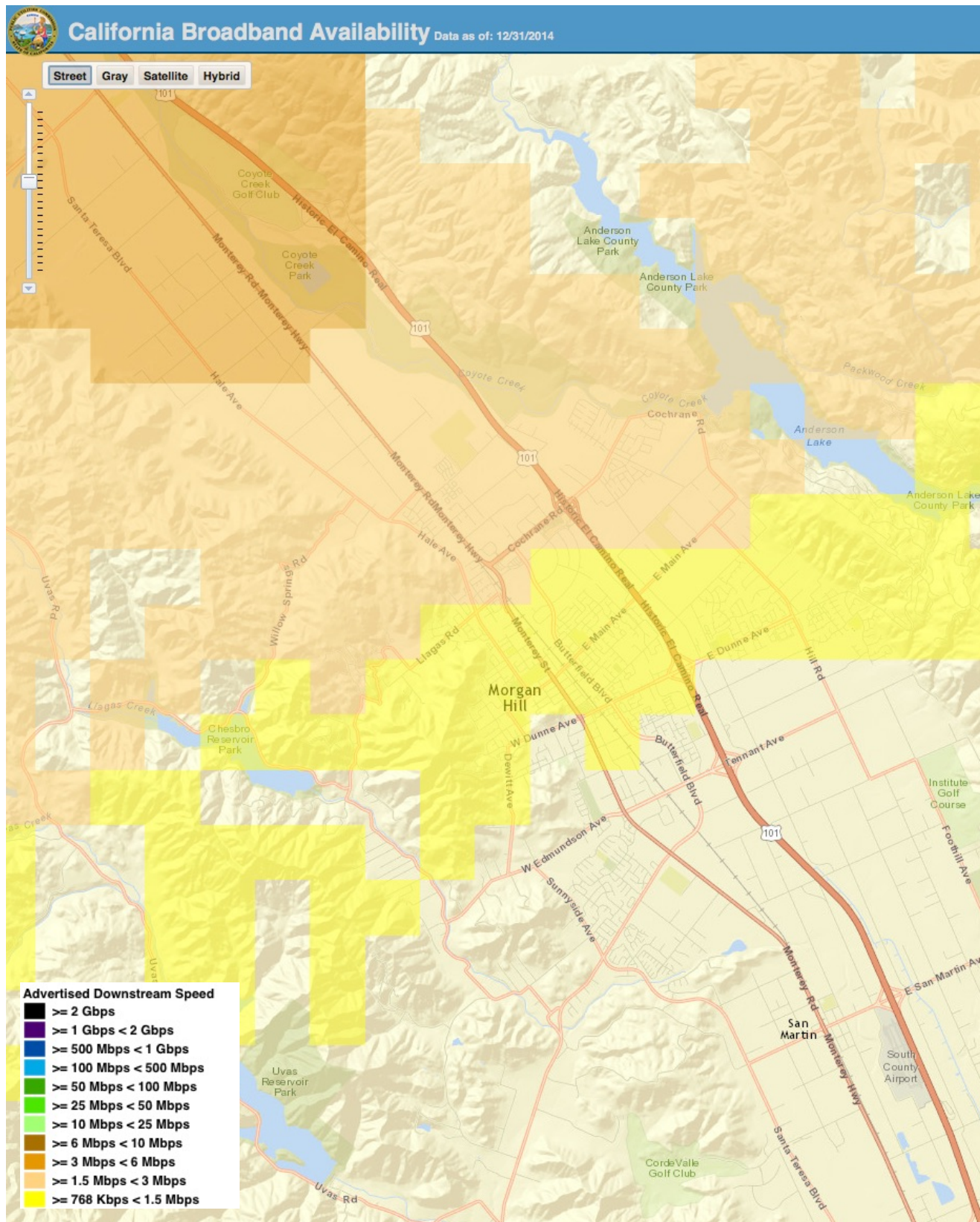
Sprint mobile broadband service



Attachment: 2016 Telecommunication Infrastructure Report (2895 : Execute Service Agreements with Wave Broadband)

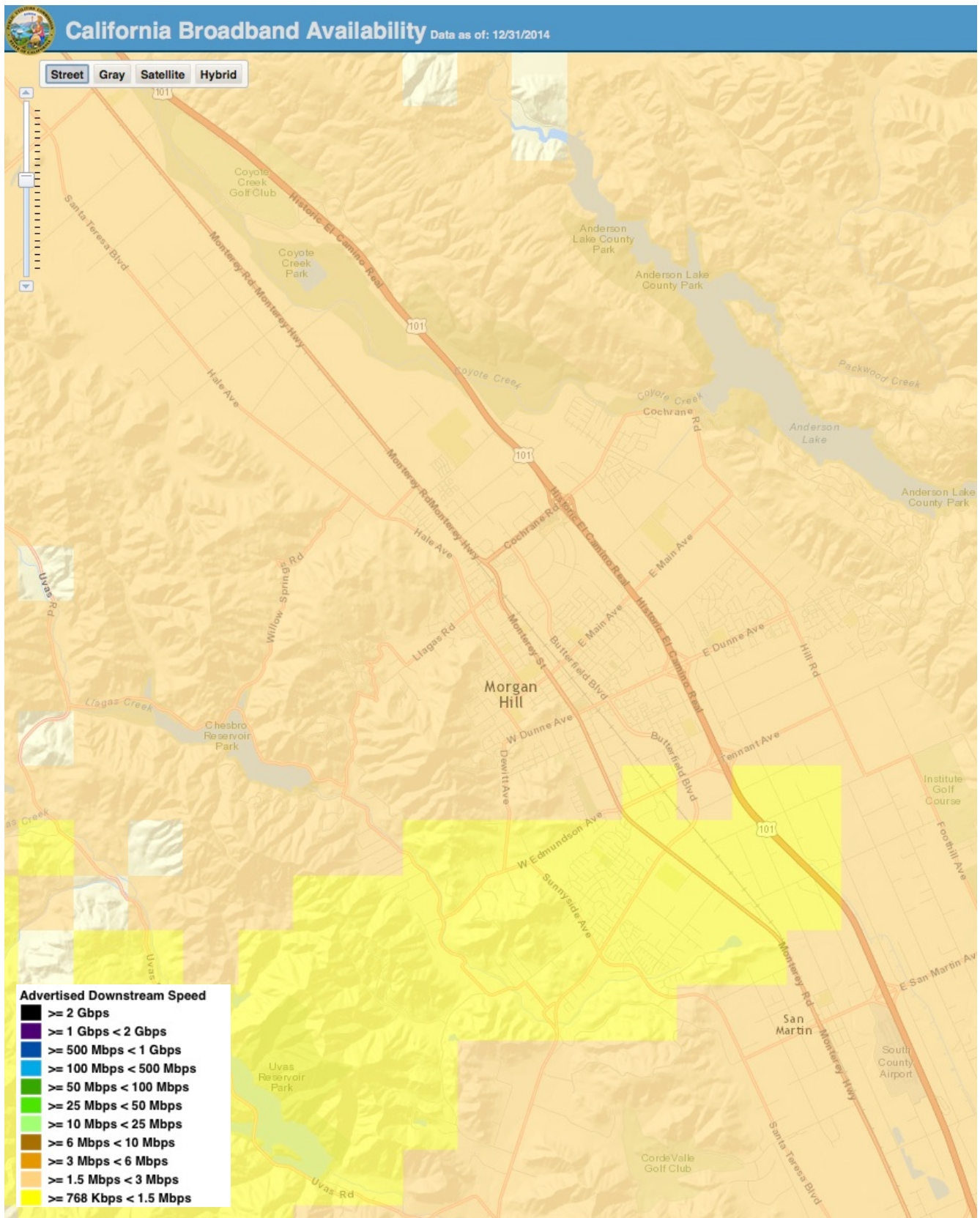
City of Morgan Hill 2035 General Plan – Telecommunications Infrastructure

T-Mobile mobile broadband service



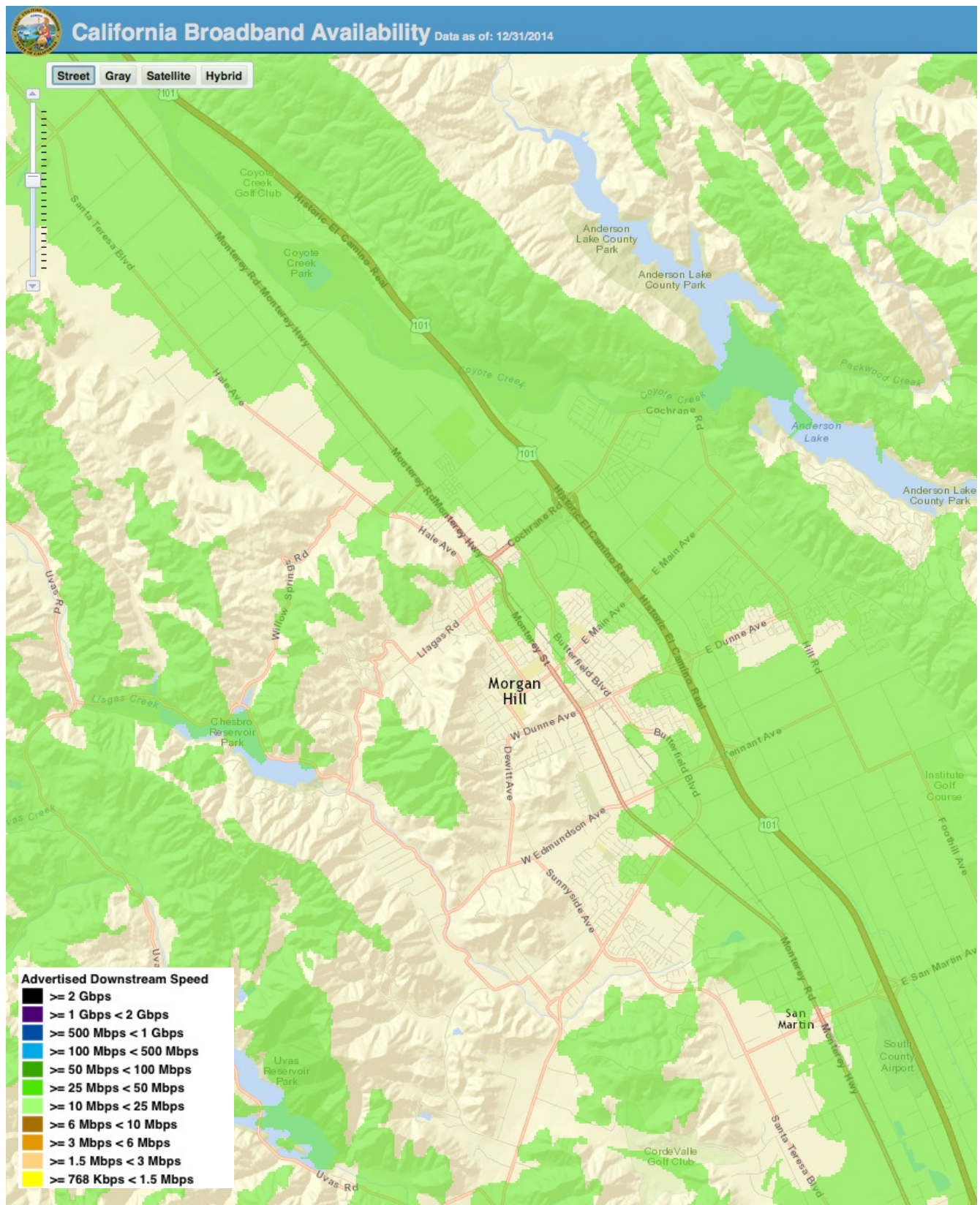
City of Morgan Hill 2035 General Plan – Telecommunications Infrastructure

Verizon mobile broadband service



Attachment: 2016 Telecommunication Infrastructure Report (2895 : Execute Service Agreements with Wave Broadband)

Ethereic fixed wireless service area (unlicensed)



Appendix B - Infrastructure grades

Methodology

In a study conducted for the East Bay Broadband Consortium (EBBC) in 2013¹⁶, in cooperation with the Central Coast Broadband Consortium, core broadband infrastructure was evaluated in Alameda, Contra Costa and Solano Counties using data submitted to the California Public Utilities Commission by Internet service providers. A comparative report card was developed, with the average grade – “C” – set at the most prevalent infrastructure, and corresponding service levels, in the state: a combination of relatively high speed cable modem and mid-range telephone company DSL facilities.

This methodology was subsequently used by the Central Coast Broadband Consortium to evaluate California broadband infrastructure and service on a statewide basis, on behalf of the California Emerging Technology Fund. It was later adopted by the Tahoe Broadband Consortium, the Broadband Consortium of the Pacific Coast and the California Center for Rural Policy.

The primary data for assessing the quantity and quality of broadband infrastructure comes from the California Public Utilities Commission, which collects service level reports from providers throughout the state. This data can be broken down to the census block level, and shows what level of service Internet companies claim to provide, but not necessarily what they deliver. The accuracy of this data and the definition of service levels varies from company to company, although it is generally consistent within any given company. In other words, if Company Z exaggerates the speeds and availability of home Internet service, it tends to do so to more or less the same extent everywhere. By using a comparative system for ranking, rather than using the absolute values provided, the variation in the accuracy of the data can be smoothed out and an apples-to-apples comparison can be achieved.

The data collected by CPUC was divided into three categories: core wireline service, commercial broadband service providers and mobile carriers.

Consumer-class service throughout California was assessed, and used as one of the two primary grading benchmarks, the other being the CPUC's standard for minimum acceptable service of 6 Mbps download/1.5 Mbps upload speed. Upload speed was given equal weight to download speed, even though it's generally less critical for consumers, because upload speed gives a good indication of the capacity of the underlying infrastructure. When a service provider skimps on upload speeds, as frequently happens, it is usually because its cables and other core equipment have a limited capacity.

Grades were then assigned as follows:

A - Two competing providers, both advertizing maximum download speeds of at least 25 Mbps and maximum uploads speeds of 6 Mbps, or 3 or more competing providers offering that standard of service in combination.

¹⁶ *East Bay Broadband Report Card*, Tellus Venture Associates, 28 January 2014.

B - Competing providers, both advertizing maximum download speeds of at least 10 Mbps and maximum uploads speeds of 6 Mbps.

C - Competing providers, one advertizing max down/up speeds of at least 10/6 Mbps and the remainder meeting CPUC's minimum 6 down/1.5 up standard.

D - At least one provider advertizing speeds that meet the CPUC's minimum standards of 6 Mbps down and 1.5 Mbps up.

F - At least one provider offers service, but no service is available that meets the CPUC's minimum standard of 6 Mbps down and 1.5 Mbps up (meets CPUC's definition of underserved).

F- - No broadband service available (meets CPUC's definition of unserved).

A "C" grade indicates that the consumer class broadband services, and consequently the underlying core infrastructure, in a given area meets the statewide average. A "D" grade means it meets the minimum passing service standard set by the CPUC. "F" grades indicate full or partial failure, which also means the area is eligible for infrastructure construction subsidies from the Commission. "A" and "B" grades show that service in an area is superior to the California average.

The first step in grading was to give a letter grade to each census block in the three counties. Then, the grade points were tallied, weighted by population and averaged for the census blocks within cities, counties and unincorporated areas, to produce a numerical grade on a four point scale, which was rounded to the nearest tenth.

The numerical grade point average for an area was then converted to a letter grade on the following scale:

A	4.0
A-	3.7-3.9
B+	3.3-3.6
B	3.0-3.2
B-	2.7-2.9
C+	2.3-2.6
C	2.0-2.2
C-	1.7-1.9
D+	1.3-1.6
D	1.0-1.2
D-	0.7-0.9
F+	0.3-0.6
F	0.0-0.2
F-	No service available

Appendix C – Municipal enterprises

Several cities, including San Leandro, Benicia, Palo Alto and Santa Clara in the Bay Area, either own and operate commercial and industrial class fiber optic networks, or partner with private companies to make sure those resources are available to the community.

1. Dark fiber

Palo Alto and Santa Clara operate dark fiber networks which have proved very profitable. Once installed these systems require little upkeep other than fixing accidental breaks, and customer service is mostly limited to making the initial connections – for a fee – and sending periodic bills.

San Leandro has given a local company non-exclusive access to its traffic signal network (a near-loop of approximately 11.5 miles in length) and to 7.5 miles of new conduit it built using a federal grant. In return, the city received ownership of approximately 10% of the fiber installed by the company and eventually will receive cash payments, as the business becomes profitable. Similarly, the City and County of San Francisco is leasing surplus capacity in its own fiber optic network to Google Fiber, as part of a targeted effort to improve broadband service to multiple dwelling units.

2. Fiber to the home

Direct municipal involvement in providing consumer-class service via fiber-to-the-home (FTTH) systems has a less successful track record, particularly in communities such as Morgan Hill which are served by two large, consumer-oriented broadband providers. Frontier and Charter, between them, offer a range of residential Internet service in Morgan Hill and most residents subscribe to it, with Charter appearing to have about two-thirds of broadband customers. Both companies offer telephone service, and Charter has an extensive television line-up. Although both companies are the target of complaints about service and prices, it is evident from the research conducted for this study that their service offerings fall within the range desired by most residents. Both companies have a national presence and millions of customers. They enjoy substantial operating economies of scale, including the ability to negotiate favorable terms with television programming providers, and can pick and choose which neighborhoods to upgrade on the basis of expected return on investment.

City-run systems do not have those economies of scale and cannot discriminate amongst residents on the basis of their economic potential. Consequently, it is usually impossible to compete with entrenched incumbents on the basis of lower prices offered, due to national-scale purchasing power and operating efficiencies, or lower costs incurred as a result of limiting the provision of advanced services to high potential customers.

Although a municipal FTTH system could theoretically offer more television programming options and greater broadband speeds at the same price as copper-based incumbent service providers, this competitive strategy usually results in lower net revenue and ongoing operating losses, particularly when employed against major incumbents such as Charter or Frontier.

The only successful example of a municipally operated FTTH system in California is Loma Linda, which only provides Internet service – and not television service – to newly constructed or remodeled homes where the developer or property owner has installed empty conduit for the city’s use. The City of Loma Linda – which is 4 square miles in size and suburban in character – has invested in a fiber backbone network to support this service, but much of the cost of building and operating it is borne by the several colleges and hospitals in town which act as anchor customers.

It is possible for cities in competitive urban markets to build and operate FTTH systems, but it is not reasonable to expect that operating costs and capital pay-back requirements – bond payments, for example – will be met by customer revenue in the near to mid term. Instead, a municipal FTTH operator must expect to subsidize operations for the foreseeable future, via the general fund, grant money, tax increment financing or assessments on property owners or utility ratepayers.

3. Business Models

California cities have a wide range of choices when considering how to pursue broadband projects. They can work with, or even own, for profit corporations, participate in cooperatives and non profit corporations or they can own and operate a broadband network, either fully or in partnership with a private sector company.

Generally, California cities (and some special districts) can provide telecommunications services within their boundaries with few restrictions. Even if a city provides a service that falls under the CPUC's jurisdiction, it is exempt from CPUC oversight. On the other hand, it is subject to all the controls, restrictions and obligations that pertain to any other municipal function, such as public oversight, open access and Brown Act requirements.

Full City Ownership

A common way of organizing a municipal telecommunications utility is to run it via a separate enterprise fund. Examples include the cities of Palo Alto, Santa Clara, Lompoc, Alameda and Chattanooga, which all have municipal electric utilities, and Santa Monica, which operates a business-oriented lit fiber service via its information technology department.

Advantages: City controls operating policy and benefits from any profits generated, most regulatory requirements do not apply.

Disadvantages: City would have to support any financial deficits, could require additional costs such as staff time.

Partial City Ownership

When a city contributes resources to a broadband network project, it can take ownership of specific parts of that network, rather than owning and operating the entire system.

Examples include the cities of San Leandro and Brentwood, which are leasing conduit to a competitive service provider. Another example is the City of Monterey. When Comcast installed an institutional network as part of its former franchise agreement, the city paid for extra fiber strands to be installed. Those strands are the property of the city, and are now being used to provide effectively free connectivity between city locations even though local franchise agreements have been preempted at the state level.

Advantages: City gains access to telecommunications resources for its own use and can exercise a degree of control over the operation of a system that it helped to fund.

Disadvantages: Control is only partial. Continued access to the resource may depend on the viability or cooperation of a private sector partner. Care must be taken to avoid exposure to liability or unreasonable ongoing costs.

Corporation/LLC

Limited liability companies and for-profit corporations of various types can do business with few restrictions. Telecommunications companies are potentially an exception. For example, if it is deemed to be a telephone company (CLEC/competitive local exchange carrier) a private company would fall under the California Public Utilities Commission's jurisdiction.

Corporations are owned by shareholders, and different classes of stock can have different voting rights. The assets of a corporation can be sold or assigned to shareholders or others with few restrictions. To a great degree, ongoing governance and control of a corporation can be predetermined by the founders, who can also put requirements and restrictions on how it can do business and structure it to achieve goals they set (and benefit from), within limits.

For-profit organizations make money, pay taxes and distribute dividends to shareholders. Individual shareholders can usually sell their stock, although there are ways to limit the ability of new stock owners to control the company. The City can be a shareholder of such a corporation, even the sole shareholder.

Examples run from national organizations (AT&T and Comcast) to intrastate networks (Sunesys, now a subsidiary of Crown Castle) to local companies (Cruzio Internet). Several public-private partnerships were formed to apply for ARRA grants in 2009 and 2010. Examples include the City of Oakland and the City of Watsonville, which did not receive funds.

Advantages: freedom of action, ability to maintain control, able to operate company for the direct benefit of shareholders, able to borrow money and take private investment.

Disadvantages: could bear a regulatory burden, would likely require arms-length dealings with the City, no guarantee that it will always put the public interest foremost.

Non-Profit

A non-profit corporation can do nearly everything a for-profit corporation can do. The major differences are that a non-profit must offer some kind of public benefit, has limits on the amount of cash surplus it can generate from its operations and its governance structure is less controllable by the founders.

Non-profits aren't owned by anyone. The corporation is governed by a board that can be chosen by voting members, named by organizations designated in the bylaws or picked by the board itself. There are restrictions on the degree to which board members can act on items in which they have a financial interest.

With self-perpetuating boards or boards chosen by voting members, there is a chance that the organization will take a direction that was not intended by the founders. A board with directors appointed by other people or organizations, for example the founders, is less likely to take an unintended direction but there are limits on the extent to which appointed directors can act in the interest of their parent organization.

A mutual benefit corporation is another type of non-profit, and is similar in concept to a cooperative.

In California, CENIC (Corporation for Education Network Initiatives in California) is a non-profit that runs a statewide broadband network supporting K-12 and higher education institutions. It is a membership based non-profit, controlled primarily by major public and private universities, which in turn are its major customers. Because it is a non-profit serving primarily government entities (as well as a few private non-profit schools) it can more directly serve the needs of its members than it could if its members were for-profit companies.

The Nevada Hospital Association (technically a not-for-profit professional association) received a \$20 million ARRA grant to build a public access fiber network throughout Nevada. OneCommunity received a similar grant to build a fiber network in Ohio, as did the University Corporation for Advanced Internet Development, which is working on a national network primarily for higher education use.

Advantage: some freedom of action, less potential for conflict of interest with the City.

Disadvantage: can be difficult to maintain control over the long term, financial and managerial options are restricted.

Cooperative

Cooperatives are not-for-profit corporations that are usually set up to provide some kind of benefit to members. Commonly, cooperatives are set up to pool buying power. Although there can be different classes of membership with different rights, generally governance is on the basis of one vote per

member, regardless of the amount of business a member does with the cooperative. Operating surpluses, on the other hand, are usually distributed to members according to how much business they do with the co-op.

The board of directors is chosen by a vote of eligible members. Although there are ways that founders can maintain a large degree of influence, it is possible that other members, representing a majority of votes, can gain control.

Examples:

California Broadband Cooperative. This ARRA grant recipient built and is now operating a 500 mile fiber optic network from Reno, down the eastern side of the Sierra generally along U.S. 395 in California to Barstow.

Plumas-Sierra Rural Electrical Co-op. A rare Californian example of a traditional rural utilities cooperative. These sorts of organization are common in the midwest and south, and provide telecommunications services as well as electricity.

Mid-Atlantic Broadband Cooperative. Located in rural Virginia, operates a fiber optic network of several hundred miles. Built with tobacco settlement money and ARRA funds.

Advantages: can be run strictly for the benefit of members, has freedom of action and can do business as a private company would.

Disadvantage: can be run strictly for the benefit of members (rather than focusing on public policy objectives), difficult for the founders to maintain control.

4. Municipal broadband case studies

Some cities, such as Palo Alto, San Leandro, Benicia and Santa Monica, are involved to one degree or another in developing broadband facilities and services for commercial and industrial areas. Other cities, for example Alameda, Loma Linda, Lompoc and Provo, Utah, have pursued broadband projects that are focused on providing consumer-class Internet service to homes. Still others, such as Santa Cruz, Brentwood, Kansas City and Austin, Texas, have used policy initiatives to attract private fiber-to-the-home projects.

Each city has its own particular set of circumstances, constraints and needs, but all have determined that broadband is an essential twenty-first century utility – as necessary for economic development and social equity as water or electricity – and that there is a public interest in encouraging its development.

Municipal broadband business models include city or county owned and operated networks, partnerships with private companies, and facilitation of the development of completely private systems.

Examples (in California unless otherwise indicated) include:

City of Palo Alto – the municipal electric utility has installed more than 40 miles of fiber optic cables, which it makes available to business and industrial customers, and is supplementing this coverage with publicly available, amenity grade WiFi access (i.e., intended to meet occasional, on-the-spot needs of tourists and shoppers, for example, rather than daily household, business or educational needs). No residential service is offered. The system generates more than \$2 million in surplus revenue a year.

City of Santa Clara - similar to Palo Alto, the city's electric utility provides access to fiber optic lines to businesses, and also uses the smart meter infrastructure it has installed to support amenity grade WiFi service. This system also generates an annual surplus.

City of San Leandro - as noted above, the city entered into an agreement with a local company, Lit San Leandro, to provide access to city-owned conduit. This private company installed fiber optic lines in the city's conduit, to support commercial and industrial customers as well as public uses. In the second phase of this project, the city applied for and received a grant from the federal Economic Development Administration to install additional conduit in order to extend the fiber network. In exchange, the city receives access to the network for its own use and, eventually, will receive conduit lease revenue. The city incurs costs to support the project and currently generates no direct revenue, but has had significant success in attracting new, high technology businesses.

City of Lompoc - the city's electric utility department built and continues to operate a municipal WiFi utility which was originally intended to provide ubiquitous Internet access to homes and businesses. Although using WiFi to provide primary Internet access to homes proved problematic, the system provides a valuable, albeit low speed, lifeline option for residents and access for visitors. The revenue generated by this service is not sufficient to meet costs, and it is currently subsidized by other city funds.

City and County of San Francisco - over the years, San Francisco has developed an extensive, municipally owned fiber system to meet internal networking needs. Surplus capacity in the system is leased to private companies, most notably Google Fiber, which may use it to connect to multiple dwelling units. Going forward, this municipal network will be expanded as opportunities are presented. A policy is in place that requires inclusion of broadband conduit in public projects and to provide an option for placement of publicly-owned conduit in private projects which involve cutting into streets and other right of ways.

City of Watsonville - since the end of local cable television franchising in California, cable companies have begun charging cities for the use of institutional networks – INETs – originally provided at little or no cost. Charter Communications initially wanted to charge the City of Watsonville \$150,000 a year for the use of its INET, which connected critical city facilities. Because the city had a policy of routinely keeping an inventory of conduit and other network assets that had been installed on a prospective basis as well as for specific projects over the year, it was able to use conduit routes it already owned to duplicate all but a few segments, totalling a mile, of the INET system. The remaining

gaps were connected via conduit installed by the city for about the cost of two years of service from Charter.

City of Brentwood - for the past 17 years, the city has required new home construction to include empty conduits which are deeded over to the city. An agreement has been reached with an independent Internet service provider, Sonic.net, to use the city-owned conduit to install fiber lines and provide fiber-to-the-home service to homes already served by conduit, and extend the system over time throughout the city.

City of Pacific Grove - a contract was approved with SiFi Networks, a U.K.-based company, which provides the company with access to city streets, right of ways and sewers in order to build a fiber-to-the-home network. Originally, the project would have been funded by SiFi Networks, using capital raised overseas and repaid with guaranteed leases from incumbent operators. This financing mechanism is commonly used in Europe and elsewhere in the world, however incumbent business models in the U.S. do not support it. Consequently, SiFi Networks proposed that the City take over responsibility for lease payment at an annual cost of approximately \$1 million per year, which might or might not be offset by operating surplus. So far, this plan has met with skepticism.

Kansas City, Kansas and Missouri and Austin, Texas – local governments have worked with Google Fiber to facilitate construction of privately-owned, competitive fiber-to-the-home systems. This facilitation includes access to government owned facilities, such as right of ways and pole access for fiber installation and real estate leases for equipment huts, as well as a high degree of cooperation in granting permits and carrying out inspections.

Appendix D – Funding options

Some California cities are in a position to use economic development resources, including federal and state grants and other financing vehicles to expand existing broadband facilities, either on behalf of private companies or as part of a municipal enterprise. Examples of potential funding sources include the Economic Development Administration, U.S. Department of Agriculture and the Federal Communications Commission's Connect America Fund phase 2 (CAF-2) on the federal level, and the California Teleconnect Fund, the California Advanced Services Fund (CASF) and the California Infrastructure and Economic Development Bank at the state level.

All these programs have different eligibility and matching fund requirements, service levels, application processes, design and due diligence standards and schedules. To a degree, these programs are complementary, but in many respects there are conflicting requirements or standards. Another, larger problem is that each program – including local telecommunications budgets that receive state and federal subsidies – is independently administered and, with the occasional exception of CASF, is managed without regard for the others.

To an extent, this variety is useful. For example, homes that are not eligible for CAF subsidies might be eligible for funding from CASF. The challenge is to comprehensively analyse eligibility on a census block by census block and project by project basis, and coordinate grant and loan applications and service contracts accordingly.

The challenge in Morgan Hill is to identify which funding sources are realistically available, given the City's economic and demographic characteristics and existing service levels.

1. Bond funding

The City of Santa Cruz is in the process of negotiating an agreement with a local Internet service provider – Cruzio – to operate a fiber-to-the-premise system that would be built with money raised via revenue lease bonds. Cruzio would be responsible for making bond payments, although the City remains the ultimate guarantor.

Other municipal broadband projects have been built via other types of bonds or lease-back financing.

The City of Alameda funded construction of a cable television and Internet system by its municipal electric utility with revenue bonds secured only by revenue from the project. It could not generate sufficient revenue to meet its bond obligations and the system was sold at a loss to the local private cable operator, Comcast. Because the bonds were only backed by revenue from the cable system, and not the electric utility or the city's general fund, bondholders lost approximately 50% of their investment. The city was able to successfully defend the subsequent lawsuits. Since then, no California city has funded a broadband project using pure revenue bonds.

The City of Provo, Utah began building a fiber to the home system with bond repayment guaranteed by revenue, first from the project and then from its municipal electric utility. However, the revenue was insufficient to meet bond obligations and a mandatory \$5.25 monthly fee was added to residential and commercial electric bills. The system was subsequently sold to Google for a nominal amount, although the bond obligations remain with the city and local electric ratepayers.

2. Infrastructure financing districts

Although it can be difficult to gain approval for traditional bond measures, new legislation enacted in 2014 (Senate Bill 628) gave local agencies the ability to form enhanced infrastructure financing districts and issue tax increment financed bonds with 55% voter approval. These districts can also use incremental property tax gains to pay back other kinds of financing, including private loans. Additionally, Assembly Bill 2292, passed the same year, added broadband infrastructure to list of allowable projects that may be pursued by traditional infrastructure financing districts.

To date, no California jurisdiction has formed such a district for broadband project purposes.

3. Economic Development Administration

Jurisdictions that are eligible for grants from the federal Economic Development Administration (EDA) may apply for grants to build certain types of broadband infrastructure and perform various broadband related planning tasks, including feasibility studies and engineering work. Broadband infrastructure projects can be eligible for grants under the EDA's public works program, which typically funds 50% of project costs up to \$3 million. Planning grants also typically require a 50% match, and will provide up to \$1,250,000 in funding.

The first such grant in California was received by the City of San Leandro to build underground telecommunications conduit, which it then made available to a private telecommunications company. The EDA has recently put a higher priority on broadband infrastructure, and is accepting proposals for such grants within its regular application cycle.

4. Transportation funding

Broadband projects as such are not eligible for funding under the various state and federal transportation infrastructure programs, but broadband facilities installed as elements of transportation projects are usually eligible for funding. Typically, broadband facilities must either enhance the operations of the transportation project or improve public safety. Examples include spare capacity included in traffic signal interconnect conduit and conduit installed in bike paths to support public safety agencies.

A proposed bill (AB 1549) is pending approval by the governor and, if approved, would encourage Caltrans to include broadband facilities, such as conduit, in its future construction projects.

5. Educational broadband programs

The federal E-rate program provides subsidies to schools and libraries, including funds to upgrade supporting infrastructure under certain circumstances. The Corporation for Education Network Initiatives in California (CENIC) funds, builds and manages educational broadband networks in California, including high capacity networks for higher education. Generally, the specific resources funded through these sorts of programs are restricted to use only by qualified schools, libraries and research institutions, but in many cases those specific resources can be purchased from or be made part of a larger project. If, for example, municipal conduit projects were to be planned in Morgan Hill, consideration should be given to opportunities to link to eligible schools and libraries that might be able to contribute such funds.

It is also advisable to maintain an ongoing conversation with school districts that serve Morgan Hill. Educational organizations are not required to consult with other local agencies when using federal and state funds to build broadband infrastructure.

6. Telemedicine programs

As with educational broadband programs, federal and state agencies provide funding for broadband resources that support telemedicine programs. For example, the California Telehealth Network, based at U.C. Davis, receives federal funding to provide network services to, primarily, rural health care facilities. Typically, telemedicine programs buy services from existing providers rather than constructing facilities, and can potentially be anchor tenants of new broadband projects.

7. California Advanced Services Fund

The State of California has established the California Advanced Services Fund (CASF) to pay for broadband infrastructure in areas where service that meets the CPUC's minimum standard of 6 Mbps download and 1.5 Mbps upload speeds is not available. Typically, CASF will subsidize 60% of construction costs in areas where substandard service is available and 70% in areas where broadband service is not available at all. An additional 20% of constructions costs, up to a total of \$500,000, can be covered via loans from CASF.

An analysis of census data and broadband availability reports submitted by service providers to the CPUC indicates that only a negligible number of homes in Morgan Hill are in census blocks that are arguably eligible for CASF funding, based on an analysis of wireline service availability. However, when deciding whether or not to approve CASF grants, the CPUC also takes mobile and fixed wireless service availability into account. As mentioned above, most of the mobile broadband service that is available in Morgan Hill does not meet the CPUC's minimum standard, and is not likely to be an obstacle. Fixed wireless Internet service is spotty, but there are locations – particularly in areas not well served by wireline providers – where challenges from fixed wireless operators might also be problematic.

Out of a total of 12,857 housing units in Morgan Hill (2010 census), all but 235 are automatically excluded from CASF eligibility on the basis of wireline service. Most, if not all, of the 235 would probably be considered ineligible on the basis of fixed or mobile wireless service, although more testing would be required.

Adding to the problem is the fact that these arguably eligible homes are in scattered locations around the edge of the city (see map in Appendix A). There is an insufficient concentration of eligible homes to support independent service providers' business models, given the fixed costs involved, including the cost of developing and defending a CASF infrastructure grant or loan application. Given those costs and the probability that few or none of the homes would ultimately be verified as eligible, even Frontier Communications, which routinely applies for CASF grants in more rural areas, would not likely be interested in pursuing such funding in Morgan Hill.

Separate CASF accounts provide funding to public housing entities for broadband facilities in eligible properties and for programs that promote broadband adoption by residents of public housing. First Community Housing received a \$34,838 grant for broadband facilities in 100 living units at its Murphy Ranch property on East Dunne Avenue in Morgan Hill. Eden Housing received two grants, \$28,029 and \$19,028, for, respectively, its Jasmine Square and Royal Court properties on Monterey Rd. A grant application for \$34,020 was for the Butterfield Retirement property on Butterfield Blvd. Two grants are pending for EAH Housing, \$40,620 and 40,085 for Cochrane Village on Butterfield Blvd. and Village Avante on Del Monte Ave., respectively. No CASF public housing broadband adoption grants have been awarded in Morgan Hill.

8. Connect America Fund

The Federal Communications Commission gives operating subsidies to telephone companies that provide broadband service in rural and/or remote areas, as a part of its universal service mandate. In the current round – Phase 2 – of the Connect America Fund (CAF-2) program, the FCC offered large telephone companies a right of first refusal to accept these funds or not, on a state by state basis. Frontier accepted CAF-2 subsidies in California for its existing systems as well as those acquired from Verizon, including approximately \$3 million for locations in Santa Clara County. AT&T accepted CAF-2 subsidies as well, including approximately \$260,000 for Santa Clara County locations.

As the map in Appendix A shows, there are census blocks in the area surrounding Morgan Hill that are eligible for CAF-2 funding, in service territories that belong to both Frontier and AT&T. However, only three such census blocks served by Frontier and one served by AT&T are within the city limits of Morgan Hill. Of those four census blocks, three are unpopulated and one contains only a single housing unit. As a practical matter, Morgan Hill is not currently eligible for CAF-2 funding.

The FCC closed the application window in 2014 for its rural broadband experiments program, also funded through CAF. Initially, three projects in California – two in Monterey County and one in the San Joaquin Valley – were provisionally funded, but all three failed to meet program requirements and were dropped from consideration. In at least two cases, the applicants were unable to obtain the particular kind of technical and financial expertise required by the FCC and other federal agencies. In

all three cases, the areas involved had much smaller populations and were either more remote and/or had economies that were more dependent on agriculture than Morgan Hill's.

9. Rural Utilities Service

The U.S. Department of Agriculture runs several broadband-related grant and loan programs via the Rural Utilities Service (RUS). These programs include Community Connect Grants, loans and loan guarantees and a series of gigabit community pilot projects. The loan programs are available on a year-round basis, while application windows are periodically announced for the grant programs.

In the past, service providers in California have had difficulty qualifying for and/or winning RUS funding. The programs have been designed with midwestern and southern business models and demographics in mind, which are markedly different from conditions in California. These programs typically define eligibility in terms of population, to distinguish between rural areas, which are fundable, and urban areas, which are not. Under any of the USDA definitions used, Morgan Hill's population is well in excess of the established limits and would be considered an ineligible urban area.

10. ARRA programs

American Recovery and Reinvestment Act of 2009 (ARRA) included the Broadband Technology Opportunities Program (BTOP) run by the National Telecommunications and Information Administration and the Broadband Initiatives Program (BIP) run by the Rural Utilities Service. Several billion dollars in grants and loans were awarded, and the programs are no longer funded or active, except to the extent that the responsible agencies are managing implementation and compliance. In the past, though, some cities received stimulus grants for the purpose of building publicly available telecommunications networks. Chattanooga, Tennessee is the best known example. It received approximately \$100 million in grants through ARRA and, via its municipal electric utility, used it to build a fiber-to-the-home system.

11. Other funding sources

Both the State of California and the federal government operate programs that provide funding to various types of agencies – for example police and fire departments, sheriffs' offices and other first responders – for the purpose of purchasing broadband and other telecommunications services and facilities. Typically, this money is not directly available for construction of commercially available broadband infrastructure but can be used to support business plans on an ongoing basis.

Appendix E - Glossary

ADSL	Asymmetric Digital Subscriber Line: DSL service with a larger portion of the capacity devoted to downstream communications, less to upstream. Typically thought of as a residential service. ADSL2 is the second generation of ADSL technology and provides higher service levels.
ATM	Asynchronous Transfer Mode: A data service offering by ASI, that can be used for interconnection of customer's LAN. ATM provides service from 1 Mbps to 145 Mbps utilizing Cell Relay Packets.
Backhaul	Connecting Internet access to a location over long or short distances. Traditionally, wired networks have been necessary for backhaul, but with 802.16, also known as WiMAX, backhaul via wireless will become even more common than it is with WiFi.
Bandwidth	The amount of data transmitted in a given amount of time; usually measured in bits per second, kilobits per second, and megabits per second.
Bit	A single unit of data, either a one or a zero. In the world of broadband, bits are used to refer to the amount of transmitted data. A kilobit (Kb) is approximately 1,000 bits. A megabit (Mb) is approximately 1,000,000 bits.
Broadband	“Broadband” refers generally to any telecommunications service capable of supporting digital data transmission at high speeds. These services can include and/or support Internet, television, telephone, private data networks and various specialized uses. Broadband service can be delivered in a variety of ways, including telephone lines (e.g. DSL), coaxial cable (e.g. cable modem), fiber optic cable (e.g. Lit San Leandro), wireless cellular/mobile service (e.g. cell phones, tablets, wireless modems), WiFi, point-to-point and point-to-multipoint wireless service (e.g. TelePacific, Etheric) and hybrid networks (XO Communications). Although different organizations use different criteria, the California Public Utilities Commission considers 6 Mbps download and 1.5 Mbps upload speed to be a standard for adequate broadband service availability. Unless otherwise stated, this report uses the CPUC definition.
Byte	The amount of memory space needed to store one character, which is normally 8 bits.
Cable modem	A device that hooks to your cable TV line to allow your computer to receive data at about 1.5 Mbps. The theoretical maximum for downstream transactions is 27 Mbps and 2.5 Mbps upstream, but the connection is usually much slower because the provider may be hooked to the Internet via a T-1 line.
CDMA	The type of digital cellular phone network used throughout most of the United States, but rare elsewhere in the world. CDMA stands for Code Division Multiple Access, and CDMA2000 1x is the third-generation, or 3G, extension to which CDMA cellular operators are upgrading their networks. It is a digital

cellular technology that uses spread-spectrum techniques. Unlike competing systems, such as GSM, that use TDMA, CDMA does not assign a specific frequency to each user. Instead, every channel uses the full available spectrum. Individual conversations are encoded with a pseudo-random digital sequence. CDMA consistently provides better capacity for voice and data communications than other commercial mobile technologies, allowing more subscribers to connect at any given time, and it is the common platform on which 3G technologies are built.

Cell	The geographic area covered by a cellular telephone transmitter. A connected group of cells form a cell system, which is what you gain access to when you sign up for cellular telephone service.
Cellular	A mobile communications system that uses a combination of radio transmission and conventional telephone switching to permit telephone communications to and from mobile users within a specified area.
CLEC	Competitive Local Exchange Carrier: Wireline service provider that is authorized under state and Federal rules to compete with ILECs to provide local telephone service. CLECs provide telephone services in one of three ways or a combination thereof: a) by building or rebuilding telecommunications facilities of their own, b) by leasing capacity from another local telephone company (typically an ILEC) and reselling it, and c) by leasing discreet parts of the ILEC network referred to as UNEs.
Coaxial cable	A type of cable that can carry large amounts of bandwidth over long distances. Cable TV and cable modem service both utilize this technology.
Commercial class	Broadband service similar to residential service in that the provider takes effectively all responsibility for installing, maintaining and supporting the service. Speeds are similar (6 to 100 Mbps), but service levels, reliability, consistency and pricing are higher.
Copper	Most telephone and cable lines are built using copper wires, which is a telecommunications technology that has been in use since the 19th century. The term is to distinguish lower capacity copper wires (and cables) from higher capacity fiber optic strands (and cables) that are made from glass or plastic.
CPCN	Certificate of Public Convenience and Necessity: Authorization given by the CPUC to telecommunications carriers in order to provide service in the state of California.
Dark fiber	Fiber optic cables are composed of many, very thin fiber optic strands made of glass. A laser is used to send a beam of light through a fiber optic strand, and this beam carries data from one end to the other. If no electronic equipment (i.e., the laser) is connected to a strand, it is literally dark, and cannot carry data. Dark fiber is sought after and used by telecommunications carriers and large companies that prefer to install and operate their own electronic equipment at either end.

Dial-Up	A technology that provides customers with access to the Internet over an existing telephone line.
DS3	A dedicated phone connection supporting data rates of about 43Mbps (megabits per second). Also called a T-3, the line actually consists of 672 individual channels, each of which supports 64Kbps. DS3 lines are used mainly by Internet Service Providers (ISPs) connecting to the Internet backbone. Large businesses also use DS3 lines when they have large sites to interconnect.
DSL	A common form of broadband Internet connection. DSL stands for Digital Subscriber Line.
E-Rate	A Federal program that provides subsidy for voice and data lines to qualified schools, hospitals, CBOs, and other qualified institutions. The subsidy is based on a percentage designated by the FCC. CTF benefits are calculated net of the E-rate subsidy.
E911	Enhanced 911, an emergency service that automatically sends phone number and location information to the operator. E911 comes in handy, say, when you need to get emergency help and are unable to speak or don't know your location.
Ethernet	The most common networking standard in the world, formally known as IEEE 802.3.
Fixed wireless	Broadband systems based on fixed wireless technology provide Internet service using outdoor antennas installed on homes and businesses. It is most commonly found in rural areas, but it is also sometimes used by businesses to compensate for poor wireline service in urban areas. Fixed wireless systems can provide services between two specific locations – i.e., point to point – or from a central access point to many locations in the surrounding areas – i.e., point to multipoint.
FTTN	Fiber To The Neighborhood: A hybrid network architecture involving optical fiber from the carrier network, terminating in a neighborhood cabinet with converts the signal from optical to electrical.
FTTP	Fiber To The Premise.
Gigahertz	A measure of electromagnetic wave frequency equal to one thousand million (1,000,000,000) hertz, often abbreviated as GHz and used to specify the radio frequency used by wireless devices. 802.11a networks operate at 5 GHz. 802.11b and g networks use 2.4 GHz, which is susceptible to interference from nearby cordless phones and microwave ovens that use the same frequency.
GPON	Gigabyte-Capable Passive Optical Network: GPON uses a different, faster approach (up to 2.5 Gbit/s in current products) than BPON.

GSM	Global System for Mobile Communications: This is the current radio/telephone standard in Europe and many other countries except Japan and the United States.
Hub	A common connection point for devices, such as computers and printers, in a network.
ILEC	Incumbent Local Exchange Carrier. An ILEC is a telephone company that was providing local service when the Telecommunications Act of 1996 was enacted. Compare with CLEC, a company that competes with the already established local telephone business.
Industrial class	Broadband service where the customer plays a much greater role in provisioning and supporting the service, including buying different elements from different vendors and managing installation and support. Speeds would be higher – perhaps as high as a Gigabit per second or more – and quality of service levels could be as high as Tier 1. Comcast’s Business Class service or AT&T’s business DSL service are examples of commercial class service. A DS-3 or dark fiber strands are examples of industrial class service.
I-Net	Institutional Network. Provides a high-speed connection between government, educational and community entities. It is often negotiated with a cable franchise, in exchange for using right-of-way in a jurisdiction.
ISP	Internet Service Provider: A company providing Internet access to consumers and businesses, acting as a bridge between customer (end-user) and infrastructure owners for dial-up, cable modem and DSL services.
LAN	Local Area Network: A geographically localized network consisting of both hardware and software. The network can link workstations within a building or multiple computers with a single wireless Internet connection.
Last mile	Infrastructure (e.g., fiber optic lines, distribution boxes, equipment vaults, poles, conduit) that provides broadband service to end users or end-user devices (including households, and businesses).
Lit fiber	Fiber optic cables are composed of many, very thin fiber optic strands made of glass. A laser is used to send a beam of light through a fiber optic strand, and this beam carries data from one end to the other. When this kind of electronic equipment (i.e., the laser) is installed and operating, then the fiber strand is literally “lit” and ready to transmit data, either for the company that operates it or for third-party customers.
Local Loop	A generic term for the connection between the customer’s premises (home, office, etc.) and the provider’s serving central office. Historically, this has been a wire connection; however, wireless options are increasingly available for local loop capacity.

MAN	Metropolitan Area Network: A high-speed data intra-city network that links multiple locations with a campus, city or LATA. A MAN typically extends as far as 50 kilometers.
Managed services	The type of service provided by dominant incumbent providers, such as AT&T and Comcast. Rather than providing a simple connection between points – via lit or dark fiber – these companies provide full Internet bandwidth services, at a speed and quality of service level they specify, and sometimes with quantity limits, i.e., data caps. It is analogous to water service: these companies sell “water” and don’t rent out access to their “pipes”.
Mbps	Megabits per second: 1,000,000 bits per second. A measure of how fast data can be transmitted.
Middle mile	Broadband infrastructure that does not predominantly provide broadband service to end users or to end-user devices, and may include interoffice transport, backhaul, Internet connectivity, or special access. Middle mile facilities are the link between last mile facilities and major interconnection points, such as those that form the core of the Internet.
Modem	Short for modulator/demodulator. A modem modulates outgoing digital data into analog signals so they can be sent over copper phone lines, and demodulates incoming analog signals into digital.
Overbuilders	Building excess capacity. In this context, it involves investment in additional infrastructure project to provide competition.
PON	Passive Optical Network: A Passive Optical Network consists of an optical line terminator located at the Central Office and a set of associated optical network terminals located at the customer’s premise. Between them lies the optical distribution network composed of fibers and passive splitters or couplers. In a PON network, a single piece of fiber can be run from the serving exchange out to a subdivision or office park, and then individual fiber strands to each building or serving equipment can be split from the main fiber using passive splitters / couplers. This allows for an expensive piece of fiber cable from the exchange to the customer to be shared amongst many customers thereby dramatically lowering the overall costs of deployment for fiber to the business (FTTB) or fiber to the home (FTTH) applications.
Rights-of-Way	Legal rights of passage over land owned by another. Carriers and service providers must obtain rights-of-way to dig trenches or plant poles for cable systems, and to place wireless antennae.
Router	An intelligent network device that goes one step beyond bridging by converting address-based protocols that describe how packets move from one place to another. In practice, this generally comes down to translating between IP addresses and MAC addresses for data flowing between your local network and the Internet. Many people use the term interchangeably with "gateway." You

	must enter the IP address of your router when configuring network settings manually.
Subscribership	Subscribership is how many customers have subscribed for a particular telecommunications service.
Switched Network	A domestic telecommunications network usually accessed by telephones, key telephone systems, private branch exchange trunks, and data arrangements.
T-1	The T-1 standard was introduced in 1961 in order to support a bi-directional speed of 1.5 Mbps at a high quality-of-service level, using the copper wires of the time. Because it is a dedicated and managed circuit, its performance is usually substantially better than shared services such as DSL or cable modem, even in cases where the claimed top speed of those shared services is many times higher. A T-1 circuit is generally considered to be the lowest level of service that can be described as industrial or carrier class.
Telco	An abbreviation for Telephone Company.
Telecommunications	Refers to all types of data transmission, from voice to video.
Throughput	The amount of data that can be transmitted in a given amount of time. Throughput is commonly measured in bits per second. (Although throughput is not really a measurement of speed, most people, including us, use the word "speed" when talking about a high-throughput network.)
Universal Service	The idea of providing every home in the United States with basic telephone service.
VDSL	Very-high-bit-rate digital subscriber line (VDSL or VHDSL)[1] is a digital subscriber line (DSL) technology providing data transmission faster than asymmetric digital subscriber line (ADSL) over a single flat untwisted or twisted pair of copper wires (up to 52 Mbit/s downstream and 16 Mbit/s upstream),[2] and on coaxial cable (up to 85 Mbit/s down- and upstream)[3] using the frequency band from 25 kHz to 12 MHz.[4] These rates mean that VDSL is capable of supporting applications such as high-definition television, as well as telephone services (voice over IP) and general Internet access, over a single connection. VDSL is deployed over existing wiring used for analog telephone service and lower-speed DSL connections. This standard was approved by ITU in November 2001.
Videoconferencing	Conducting a conference between two or more participants at different sites by using computer networks to transmit audio and video data.
VLAN	Virtual Local Area Network. A network of computers that behave as if they are connected to the same wire even though they may actually be physically located on different segments of a LAN.
VoIP	Voice Over Internet Protocol: A new technology that employs a data network (such as a broadband connection) to transmit voice conversations.

VPN	A method of creating an encrypted tunnel through which all traffic passes, preventing anyone from snooping through transmitted and received data. VPN stands for virtual private network.
WAN	Wide Area Network, A collection of local area networks connected by a variety of physical means. The Internet is the largest and most well-known wide area network. Wide area network is generally abbreviated to WAN.
WiFi	Short for wireless fidelity and is meant to be used generically when referring of any type of 802.11 network, whether 802.11b, 802.11a, dual-band, etc. The term is promulgated by the WiFi Alliance. Any products tested and approved as "WiFi Certified" (a registered trademark) by the WiFi Alliance are certified as interoperable with each other, even if they are from different manufacturers. A user with a "WiFi Certified" product can use any brand of access point with any other brand of client hardware that also is certified. Typically, however, any WiFi product using the same radio frequency (for example, 2.4 GHz for 802.11b or 11g, 5 GHz for 802.11a) will work with any other, even if not "WiFi Certified." Formerly, the term "WiFi" was used only in place of the 2.4 GHz 802.11b standard, in the same way that "Ethernet" is used in place of IEEE 802.3. The Alliance expanded the generic use of the term in an attempt to stop confusion about wireless LAN interoperability.
WiMAX	Another name for the 802.16 wireless networking specification used for long-haul and backhaul connections.
Wireless ISP	A company that provides wireless Internet access. The term is often abbreviated to WISP.
WLAN	Wireless Local Access Network, a LAN that can be connected to via a wireless connection.

Sources: Tellus Venture Associates, California Public Utilities Commission, Neratech, Wikipedia.



Broadband Services

City Council

December 2, 2020



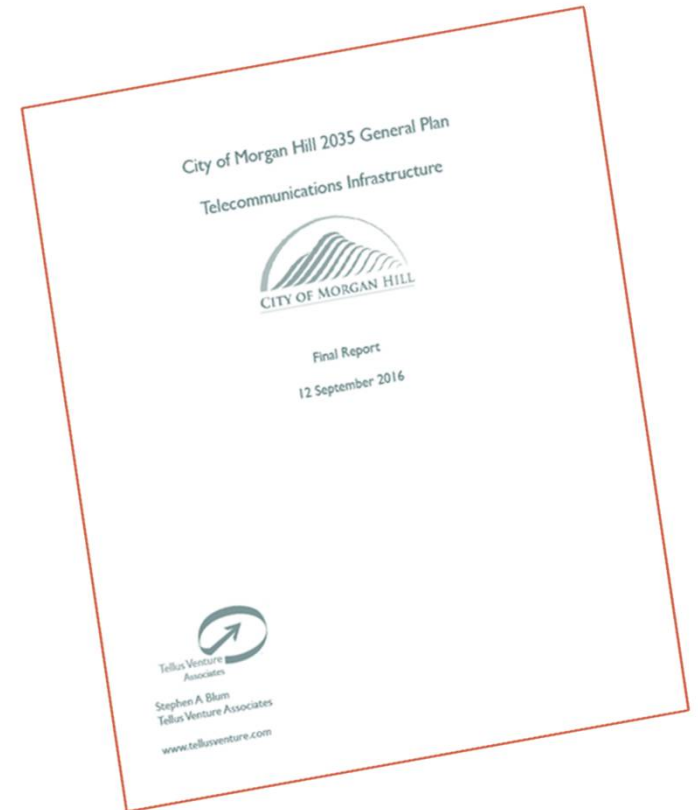
Background



Telecommunications Report 2016



- Poor Broadband infrastructure (in CPUC standards)
- Slower upload speeds by local providers (Charter and Frontier) compared to other providers in California
- 94% of Morgan Hill has access to broadband
- Poor commercial class internet infrastructure



Telecommunications Goals



- Improve speeds
- Improve connectivity/access
- Create redundancy/resiliency
- Support residents and employers
- Support economic sustainability by retaining companies



City's Efforts



- ü Developed Smart/Connected Homes design criteria for residential development
- ü Streamlined permitting process for Wireless
- ü Created master lease agreement for use of City light poles
- ü Provided access to WiFi in City Parks
- ü Created new development standards for Broadband
- ü Aligned Zoning code with Design standards

Broadband Business Models



Telecommunications/Broadband Deployment

Provider
Business Models



Community Needs/
Wants

Access to Internet
Private Good vs. Public Good

City Facilities



Dark Fiber intra-connectivity between City facilities

- q Police Station
- q City Hall
- q Centennial Recreation Center
- q Corporation Yard
- q Community and Cultural Center
- q Aquatics Center
- q Outdoor Sports Complex

- City contracts with Charter Business
- 10-year agreement expires 12/31/2022
- Service cost is \$5,200 per month
- Agreement has built in escalators

Request for Proposal



RFP core objectives:

- Connect City Facilities (establish new contract)
- Improve Speed & Service
- Negotiate a Cost-Effective Investment

If possible....

- Position City to Own Infrastructure
- Improve speed and availability of **residential** and mobile internet access
- Bring symmetrical gigabit access to the **business** parks

3-step Layered RFP Evaluation Process

Phase I 9 responses Pass/Fail Evaluation	• Experience deploying symmetrical gigabit service residents and businesses • Experience deploying services described throughout this RFP in a sustainable manner • Corporate overview that demonstrates fiscal stability and resources to invest in Morgan Hill
Phase II 8 responses	• Demonstrated approach that minimizes direct City funding (40%) • Demonstrated assets such as mid-mile and last-mile or the willingness to invest in bringing those assets to address the immediate needs of Morgan Hill (40%) • Demonstrated ability to engage in a partnership to assist the City in designing policies and standards to address long-term broadband connectivity (20%)
Phase III 7 RFP responses Final Proposal	• Approach & Methodology (20%) • Number of priorities achieved (i.e. City facilities, business parks, residential) (30%) • Timeline(s) to implement each priority (20%) • Costs to the City (30%)

RFP Results



- Wave Broadband's proposal most closely met the objectives and goals of the City's RFP
- In April 2020, City Council authorized City Manager to negotiate agreement with Wave
- Recommendation: Approve a 20-year agreement with Wave Broadband for dark fiber services and conduit build

Agreement for Council Consideration



Summary of Agreement

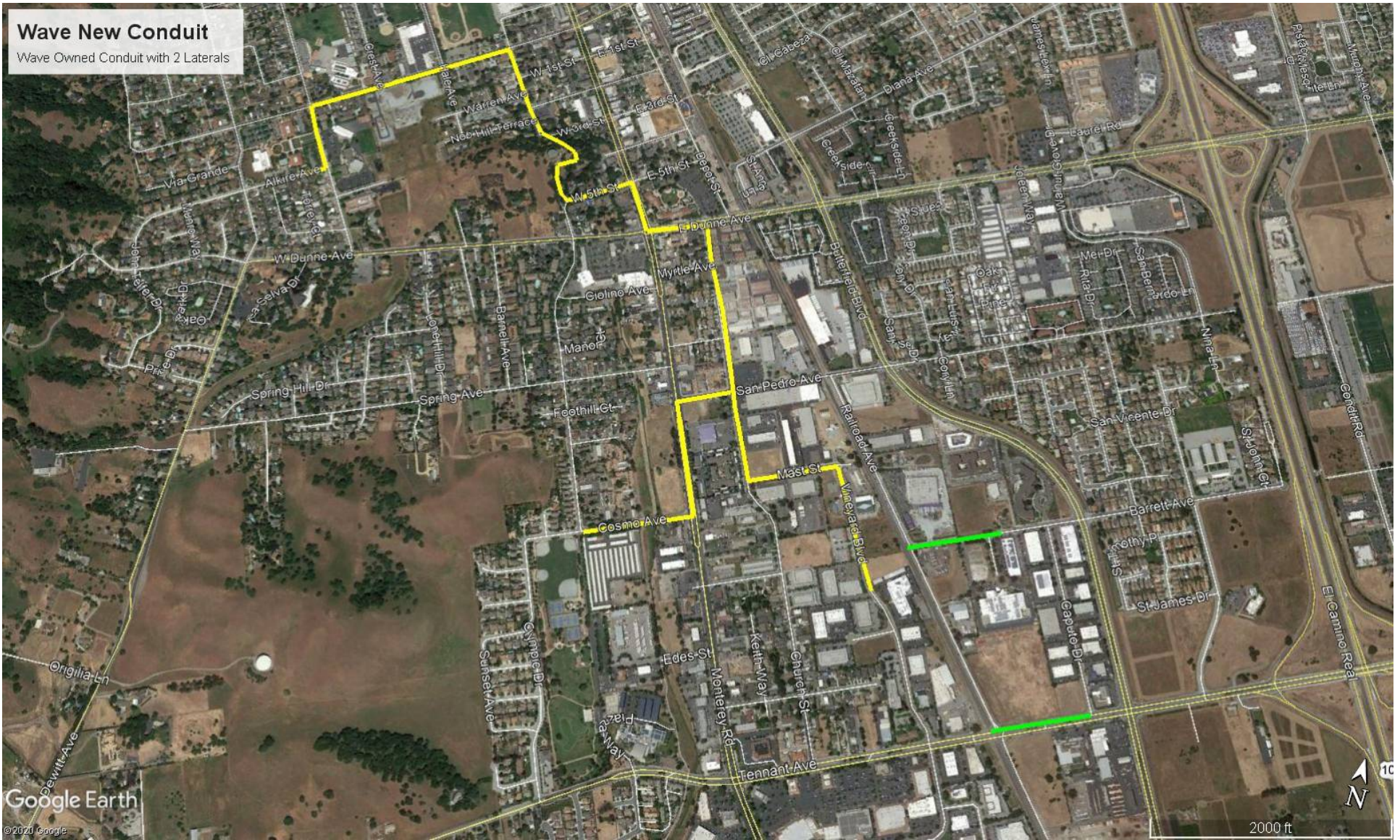


- q 20-year term
- q Project cost
\$2,400,000
- q Annual City cost
\$120,000
- q Dark fiber to City
Facilities
- q 2 conduit structures
 - One Wave owns
 - One City owns,
ownership transfers to
City in 20 years

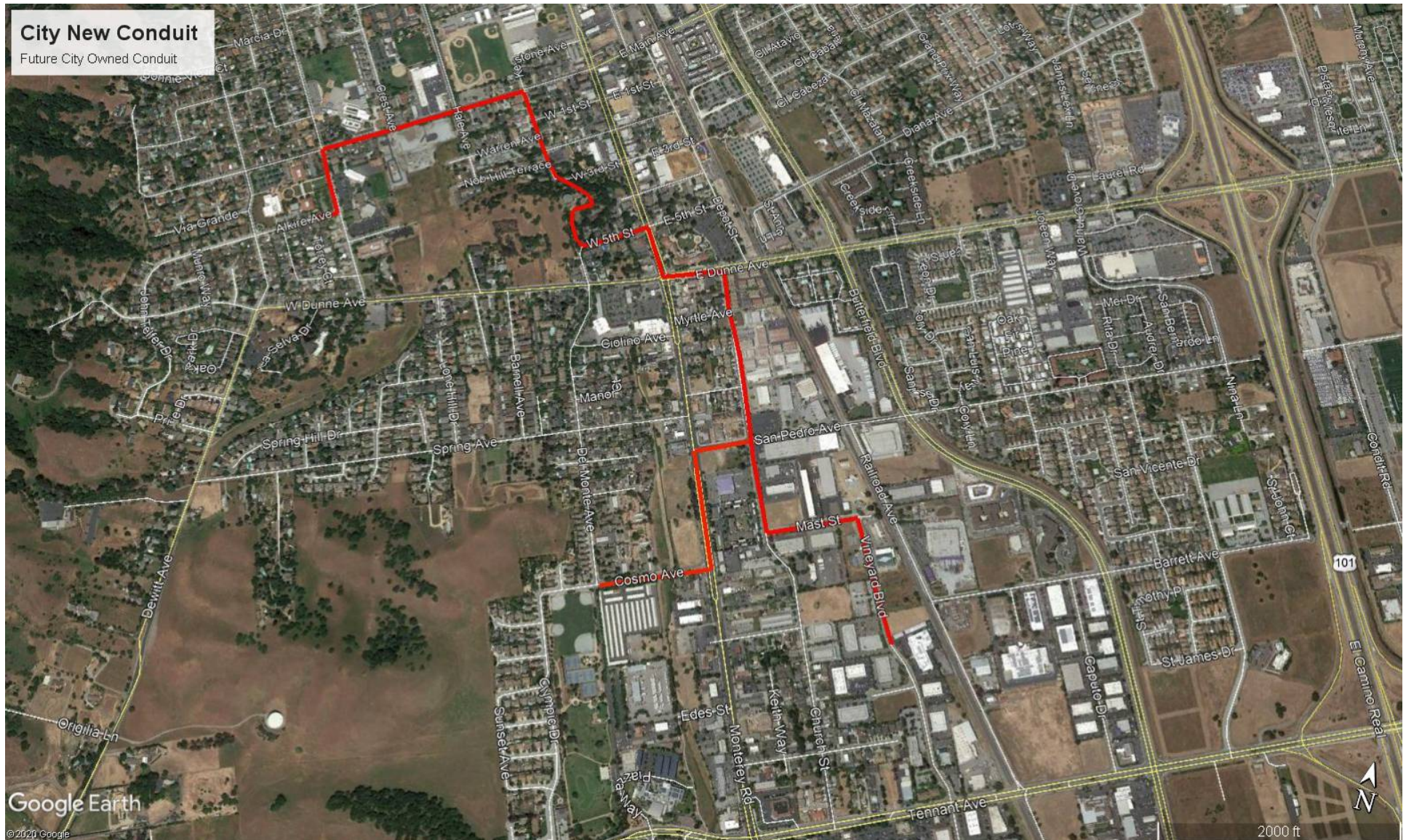
Added Value:

- q Installation of two (2)
laterals along San
Pedro & Tennant
Avenue

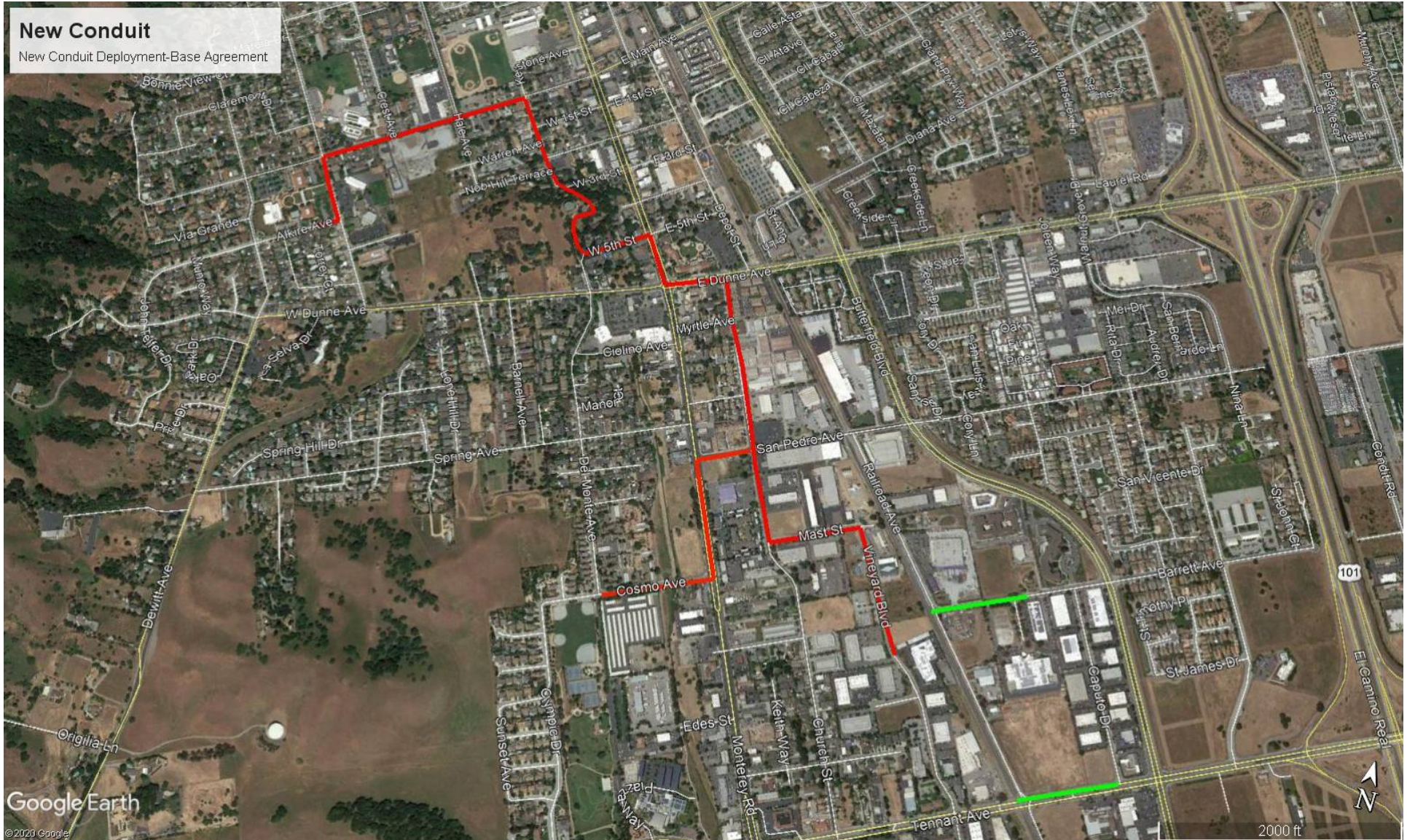
Infrastructure Build- Wave



Infrastructure Build- City



Base Agreement Build



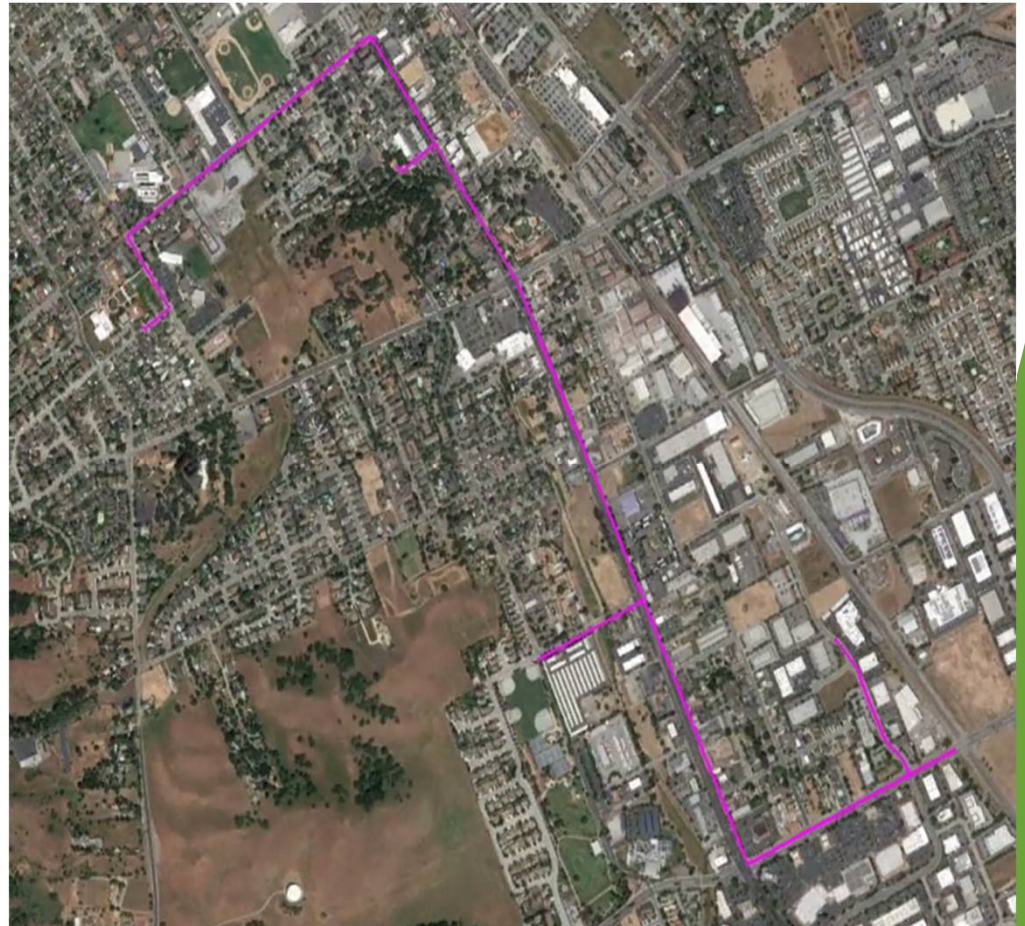
Option for Consideration





Monterey Road Conduit Construction Option

- New lateral extending through Downtown & Tennant Avenue
- Supports EDA Grant funding criteria
- City would own and do a lease back model with a service provider
- Upfront cost \$1.549 million



Summary of Agreement and Option



Summary of Base and Options



	Cost (20 years)	Description	Who is served	Ownership	Connectivity
Base Agreement	\$2.4 million (annually \$120,000)	• Wave Conduit to City Facilities • City Conduit to City Facilities • Laterals on San Pedro and Tennant Avenue	• City Facilities + Businesses	City Owns Conduit at end of term	Dark Fiber
Add On					
Option Monterey Road (add-ons)	\$1.549 million (upfront-not amortized over 20 years)	Lateral extending through downtown and Tennant Avenue, additional connectivity to Concord Circle	Community	City Owns	Dark Fiber

Recommendation for City Council



1. Authorize the City Manager and City Attorney to negotiate final terms and execute Master Services Agreement and Service Order with Wave Business Solutions, LLC for a period of 20 years in an amount not-to-exceed \$2,400,000 for a dark fiber lease for intranet connectivity between City facilities, and the installation of telecommunications conduit in the City; and
2. Authorize the inclusion of Monterey Road Conduit Construction Option and direct City Manager to apply and execute all related documents for the Economic Development Administration Infrastructure Grant.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 2, 2020

PREPARED BY: Adam Paszkowski, Principal Planner
APPROVED BY: City Manager

INTRODUCE ORDINANCE AMENDING SECTION 8.28.040 (ENUMERATION OF UNLAWFUL NOISES) OF CHAPTER 8.28 (NOISE) OF TITLE 8 (HEALTH AND SAFETY) AND AMENDING VARIOUS CODE PROVISIONS WITHIN TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING MINOR AMENDMENTS DUE TO CLERICAL ERRORS AND INCONSISTENCIES; AMENDING CHAPTER 18.52 (FENCES AND WALLS) OF TITLE 18 (ZONING) TO CLARIFY AND ESTABLISH DESIGN AND SCREENING REQUIREMENTS OF FENCES AND WALLS; AND TO ESTABLISH CHAPTER 18.115 (GENERAL PLAN AMENDMENTS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL ESTABLISHING PROCEDURES FOR AMENDING THE GENERAL PLAN (ZA2020-0001: MUNICIPAL CODE AMENDMENT)

RECOMMENDATION(S)

1. Open/close the public hearing;
2. Waive first and second reading of the Ordinance Amendment; and
3. Introduce Ordinance Amendment.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Advancing Regional Initiatives

GUIDING DOCUMENTS

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

As part of the implementation of the Zoning Ordinance and Noise Ordinances and yearly update, staff identified several clerical errors, inconsistencies between sections, and the need to update certain portions of the Municipal Code as well as provide further clarification or to expand on certain topics within the Code. The purpose of the proposed Ordinance is to correct these issues.

The Planning Commission held a public hearing regarding the proposed draft Ordinance on November 10, 2020 and recommended the following amendments to the Municipal Code:

- a. Reformat Subsection D of Section 8.28.040 (Enumeration of unlawful noises) within Chapter 8.28 (Noise) of Title 8 (Health and Safety) to be consistent with the rest of the Code. This section is also proposed to delete noise standards that were applicable up until November 30, 1998 but are no longer applicable.
- b. Change Subsection A of Section 18.18.020 (Land Use Regulations) of Chapter 18.18 (Residential Attached Zoning Districts) to eliminate reference to a footnote pertaining to accessory dwelling units (ADUs) which states ADUs are permitted only on lots occupied by one existing or proposed detached single family home. That requirement is not consistent with State law.
- c. Amend Chapter 18.22 (Mixed Use Zoning Districts) to eliminate the same footnote regarding ADUs listed in Section 18.18.020. A footnote is proposed to be added to Single-Family Detached Dwellings within Table 18.22-1 for the Neighborhood Mixed Use (MU-N) zoning district stating that Single-Family Detached Dwellings are permitted only on a lot of record existing prior to July 7, 2018. This change is proposed to be consistent with the residential attached zoning districts. Also, within Table 18.22-1 Large Home Day Care and Small Home Day Care are proposed to be combined and listed as permitted uses to be consistent with the residential zoning districts. Subsection C of Section 18.22.040 (Development Standards) is proposed to be moved to Table 18.22-3 (Setback Standards in Mixed Use Zoning Districts) as a footnote to the non-residential columns of the MU-N and Mixed Use Flex (MU-F) zoning districts indicating that if a property abuts a residential zoning district or residential land use designation, the property shall comply with increased setbacks and landscaping standards as specified in Section 18.92.130 (Residential Transition Standards).
- d. Change Table 18.24-2 (Development Standards in the Commercial Zoning Districts) within Section 18.24.030 (Development Standards) of Chapter 18.24 (Commercial Zoning Districts) to include a footnote for the minimum setback regarding increased setbacks and landscaping standards for properties adjacent to residential zoning districts or residential land use designations.
- e. Amend Chapter 18.26 (Industrial Zoning Districts) to allow Outdoor Vehicle Storage as a Conditional Use within the IL (Light Industrial) and IG (General Industrial) zoning districts within Table 18.26-1 (Permitted Land Uses in the Industrial Zoning Districts). Subsection B of Section 18.26.030 (Development Standards) is proposed to be moved to Table 18.26-2 (Industrial Zoning District Development Standards) to be consistent with other zoning districts. If a property abuts a residential zoning district or residential land use designation, the property shall comply with increased setbacks and landscaping standards as specified in Section 18.92.130 (Residential Transition Standards).
- f. Amend the height requirements for Single Family Attached Dwellings/Townhouses is proposed to be amended to correlate with the base zoning district, which is consistent with the other housing types (Duets, Courtyard Homes, Single Family Detached Dwellings, Duplexes and Multi-Family

Dwellings) listed in Table 18.40-2. Chapter 18.40 (Alternative Standards for Medium Density Residential Development) is an optional Chapter, not a requirement, available to developers and property owners of small lot developments. Within Table 18.40-2 (Medium Density Residential Development Standards) Single Family Attached Dwellings/Townhouses are the only housing product within the table that require a shorter height than the base zoning district.

- g. Change Table 18.44-2 (Minimum Accessory Structure Setbacks) of Section 18.44.030 (Accessory Structures in Residential Zoning Districts) of Chapter 18.44 (Accessory Structures and Uses) to clarify setbacks for decks since decks are listed twice in the table with different setback requirements.
- h. Modify Chapter 18.52 (Fences and Walls) to clarify that the term “fence” includes fences and walls. Section 18.52.030 (Measurement of Fence and Wall Height) is proposed to be amended to clarify that if a fence is constructed on top of a retaining wall the height of the fence is measured from the top of the retaining wall. Further, amend Section 18.52.060 (Materials) to provide consistency between the types of fencing and wall materials that are prohibited within residential, commercial, and industrial zoning districts. Establish a new section, Section 18.52.080 (Special Fence and Wall Requirements), to set standards for fence and wall design; requirements to screen outdoor storage, loading docks, and refuse areas; and screen commercial and industrial uses from residential uses.
- i. Clarify Section 18.56.040 (Lot Coverage Exceptions) of Chapter 18.56 (Height, Setback and Lot Coverage Exceptions) to correct a clerical error stating that the Community Development Director may increase (not decrease) the maximum lot coverage requirement by up to ten percent with the approval of a minor exception.
- j. Change Section 18.68.070 (Nonconforming Structures) of Chapter 18.68 (Nonconforming Uses and Structures) to require a Conditional Use Permit, not a Variance, for structural repairs, modifications, and additions that increase or exacerbate the nonconforming aspect of a structure.
- k. Create a new chapter, Chapter 18.115 (General Plan Amendments) to provide procedures for amending General Plan text and/or to change the General Plan land use designation of a parcel. In the development of this new Chapter, Chapter 18.114 (Zoning Code Amendments) was utilized as an outline. The new Chapter proposes Section 18.115.100 (Preliminary Review) which requires a preliminary review application prior to the submittal of a General Plan Amendment application, similar to the requirement for a preliminary review prior to the application for a Planned Development project.
- l. Change the term “Garage, Private”, as listed in Subsection G of Section 18.128.020 (Definitions) of Chapter 18.128 (General Terms), to correct the definition to be an attached or detached accessory structure, not a dwelling, for

the storage of passenger vehicles.

Complete details of the proposed amendments are provided in the draft Ordinance (Attachment 1) and in the Planning Commission staff report (Attachment 2). If the proposed Ordinance is approved, the Code Amendment becomes effective 30 days following the adoption of the Ordinance by the City Council.

Pursuant to Section 18.114.060 (Findings for Approval), the City Council may approve a zoning code amendment only if all of the following findings are made:

1. The proposed amendment is consistent with the General Plan and any applicable specific plan as provided by Government Code Section 65860.
2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.
3. The proposed amendment is internally consistent with other applicable provisions of the zoning code.

The proposed amendments are consistent with the above findings as they correct clerical errors and inconsistencies in the Municipal Code as well as establish standards for fences and walls and procedures for processing General Plan Amendments.

Planning Commission Action

The Planning Commission reviewed the project on November 10, 2020. Prior to the public hearing, the City received a letter from a member of the public expressing concerns with proposed amendments to Subsection E of Section 18.84.050 (Site and Design Standards) of Chapter 18.84 (Accessory Dwelling Units). The changes would have clarified setbacks for detached and attached ADUs. Upon further consideration this amendment has been pulled for further review and consultation with the California Department of Housing and Community Development (HCD). If changes to Chapter 18.84 (Accessory Dwelling Units) are found to be necessary, a separate item will be discussed at a future Planning Commission meeting.

During the review of the project, the Commission discussed and expressed concern regarding amendments to Subsection 6 (One Dwelling Unit Allowed Per Lot) of Subsection C of Section 18.30.040 (Hillside Combining District) which proposed to allow accessory structures if no portion of a lot contains slopes of less than twenty percent, and the lot is a legally-established lot of record. The Commission requested additional review of the proposed amendment and requested staff to bring back any changes to Section 18.30.040 (Hillside Combining District) as a separate item at a future meeting.

Following discussion of the project, the Planning Commission unanimously approved Resolution No. 20-13 (Attachment 3) recommending the City Council approve the proposed Amendments with the exception of those sections noted above.

COMMUNITY ENGAGEMENT: Inform

A 10-day public hearing notice was published in the Friday, November 20, 2020 edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notice

was also provided on the website and via social media. On November 10, 2020, the Planning Commission held a public hearing regarding the proposed ordinance amendments in which a 10-day public hearing notice was published in the Friday, October 30, 2020 edition of the Morgan Hill Times.

ALTERNATIVE ACTIONS:

If the City Council does not take action on the proposed ordinance amendments, the Municipal Code will remain as-is, and the clerical errors and inconsistencies within the Code will remain. The Council may also make modifications to the proposed amendments, or not approve certain sections that the Council deems appropriate.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 6, 2018, the City Council adopted Ordinance No. 2277 N.S., a comprehensive update of Title 18 – Zoning of the City of Morgan Hill Municipal Code. The update included an amendment to the City’s official zoning map consistent with the Morgan Hill 2035 General Plan.

In addition, Subsection D of Section 8.28.040 (Enumeration of unlawful noises) within Chapter 8.28 (Noise) of Title 8 (Health and Safety) was last updated in 1998 by the adoption of Ordinance No. 1405 N.S.

On November 10, 2020, the Planning Commission considered and recommended, unanimously, the City Council approve the proposed draft Ordinance (Attachment 1).

FISCAL AND RESOURCE IMPACT:

Staff regularly brings forward bundles of minor amendments as necessary to enhance, correct and/or refine the Code; and therefore, the cost is borne, and work is accommodated, within the respective division’s annual workplan and budget.

CEQA (California Environmental Quality Act):

This Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines. The proposed text amendments are covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed amendments consist of miscellaneous minor amendments to correct clerical errors and inconsistencies within the Municipal Code as well as establishing procedures for amending the General Plan.

LINKS/ATTACHMENTS:

1. Draft Ordinance
2. November 10, 2020 Planning Commission Staff Report (weblink)
3. Planning Commission Resolution No 20-13 (ZA2020-0001)
4. Staff Presentation

ORDINANCE NO. XXXX, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING SECTION 8.28.040 (ENUMERATION OF UNLAWFUL NOISES) OF CHAPTER 8.28 (NOISE) OF TITLE 8 (HEALTH AND SAFETY) AND AMENDING VARIOUS CODE PROVISIONS WITHIN TITLE 18 (ZONING CODE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING MINOR AMENDMENTS DUE TO CLERICAL ERRORS AND INCONSISTENCIES; AMENDING CHAPTER 18.52 (FENCES AND WALLS) OF TITLE 18 (ZONING) TO CLARIFY AND ESTABLISH DESIGN AND SCREENING REQUIREMENTS OF FENCES AND WALLS; AND TO ESTABLISH CHAPTER 18.115 (GENERAL PLAN AMENDMENTS) OF TITLE 18 (ZONING CODE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL ESTABLISHING PROCEDURES FOR AMENDING THE GENERAL PLAN

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

Section 1. Subsection D of Section 8.28.040 (Enumeration of Unlawful Noises) of Chapter 8.28 (Noise) of Title 8 (Health and Safety) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

D. ~~1. —~~ Construction ~~a~~Activities ~~as limited below.~~

1. "Construction activities" are defined as including but not limited to excavation, grading, paving, demolition, construction, alteration or repair of any building, site, street or highway, delivery or removal of construction material to a site, or movement of construction materials on a site. Construction activities are prohibited other than between the hours of seven a.m. and eight p.m., Monday through Friday and between the hours of nine a.m. to six p.m. on Saturday. Construction activities may not occur on Sundays or federal holidays. No third person, including but not limited to landowners, construction company owners, contractors, subcontractors, or employers, shall permit or allow any person working on construction activities which are under their ownership, control or direction to violate this provision. Construction activities may occur in the following cases without violation of this provision:

- a. In the event of urgent necessity in the interests of the public health and safety, and then only with a permit from the chief building official, which permit may be granted for a period of not to exceed three days or less while the emergency continues and which permit may be renewed for periods of three days or less while the emergency continues.
 - b. If the chief building official determines that the public health and safety will not be impaired by the construction activities between the hours of eight p.m. and seven a.m., and that loss or inconvenience would result to any party in interest, the chief building official may grant permission for such work to be done between the hours of eight p.m. and seven a.m. upon an application being made at the time the permit for the work is issued or during the progress of the work.
 - c. The city council finds that construction by the resident of a single residence does not have the same magnitude or frequency of noise impacts as a larger construction project. Therefore, the resident of a single residence may perform construction activities on that home during the hours in this subsection, as well as on Sundays and federal holidays from nine a.m. to six p.m., provided that such activities are limited to the improvement or maintenance undertaken by the resident on a personal basis.
 - d. Public work projects are exempt from this section and the public works director shall determine the hours of construction for public works projects.
 - ~~e. Until November 30, 1998, construction activities shall be permitted between the hours of ten a.m. to six p.m. on Sundays, subject to the following conditions. No power-driven vehicles, equipment or tools may be used during construction activities, except on the interior of a building or other structure which is enclosed by exterior siding (including windows and doors) and roofing, and which windows and doors are closed during construction activities. Construction activities must be situated at least one hundred fifty feet from the nearest occupied dwelling. No delivery or removal of construction material to a site, or movement of construction materials on a site, is permitted. No activity, including but not limited to the playing of radios, tape players, compact disc players or other devices, which creates a loud or unusual noise which offends, disturbs or harasses the peace and quiet of the persons of ordinary sensibilities beyond the confines of the property from which the sound emanates is allowed.~~
2. If it is determined necessary in order to ensure compliance with this section, the chief building official may require fences, gates or other barriers prohibiting access to a construction site by construction crews during hours in which construction is prohibited by this subsection. The project manager of each project shall be responsible for ensuring the fences, gates or barriers are locked and/or in place during hours in which no construction is

allowed. This subsection shall apply to construction sites other than public works projects or single dwelling units which are not a part of larger projects.

Section 2. Subsection A of Section 18.18.020 (Land Use Regulations) of Chapter 18.18 (Residential Attached Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

- A. Permitted Land Uses. Table 18.18-1 identifies land uses permitted in the residential attached zoning districts.

Table 18.18-1: Permitted Land Uses — Residential Attached Zoning Districts

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed	Zoning District			Additional Regulations
	RAL	RAM	RAH	
Residential Uses				
Accessory Dwelling Units	P [2]	P [2]	P [2]	Chapter 18.84
Duets and Duplexes	P	P	P	
Group Housing	C [1]	C	C	
Multi-Family Dwellings	P	P	P	
Nursing Homes and Long-Term Care	C	C	C	
Residential Care Facilities	C	C	C	
Residential Care Facilities, Small	P	P	P	
Single-Family Attached Dwellings	P	P	P	
Single-Family Detached Dwellings	P [32] , <u>43</u>	P <u>[43]</u>	P <u>[43]</u>	

Public and Quasi-Public Uses				
Community Assembly	C	C	C	
Cultural Institutions	C	C	C	
Day Care Centers	C	C	C	
Home Day Care, Large and Small	P	P	P	
Parks and Recreational Facilities [54]	C	C	C	
Public Safety Facilities	C	C	C	
Schools, Public and Private	C	C	C	
Transportation, Communication, and Utility Uses				
Wireless Communication Facilities	See Chapter 18.96			
Other Uses				
Accessory Uses and Structures	See Chapter 18.44			
Home Occupations	See Section 18.92.060			
Temporary Uses and Structures	See Section 18.92.150			
Urban Agriculture				
Home Gardens	P	P	P	
Community Gardens	A	A	A	
Urban Farms	C	C	C	

Notes:

[1] Limited to no more than eight residents.

~~[2] Permitted only on lots occupied by one existing or proposed detached single-family home.~~

[32] Up to twenty-five percent of homes within a development project may be small-lot single family homes with a maximum lot area of three thousand five hundred square feet.

[43] Permitted only on a lot of record existing prior to July 7, 2018.

[54] Park and recreational facilities accessory to a residential use (e.g., a clubhouse serving a residential subdivision) are permitted by right.

Section 3. Chapter 18.22 (Mixed Use Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

Chapter 18.22 - MIXED USE ZONING DISTRICTS

18.22.010 - Purpose of the mixed use zoning districts.

- A. General. The purpose of the mixed use zoning districts is to provide for active and inviting destinations in Morgan Hill with a diversity of residential and commercial land uses. In the mixed use zoning districts the design of development supports a welcoming, pedestrian-friendly public realm. A diversity of local and independent businesses, recreational amenities, and public spaces meet the needs of residents, workers, and visitors. New development respects Morgan Hill's history and reflects its unique small-town feel. The diversity of land uses, pedestrian-friendly development, and general level of activity in the mixed use zoning districts supports a range of transportation choices, including walking, biking, and transit.
- B. Specific.
 1. Downtown Mixed Use (MU-D). The purpose of the Downtown Mixed Use (MU-D) zoning district is to preserve and enhance Downtown as the heart of Morgan Hill and the center of the community. New development supports a walkable Downtown district with active storefronts and a diversity of commercial, residential, and public uses. The intensity of residential uses enhances economic vitality, increases housing options for residents of all ages, and support a vibrant and diverse destination for residents and visitors. The MU-D zoning district implements the community's vision for Downtown Morgan Hill as described in the Downtown Specific Plan.
 2. Neighborhood Mixed Use (MU-N). The purpose of the Neighborhood Mixed Use (MU-N) zoning district accommodates a range of residential and

commercial land uses in close proximity to Downtown. A range of housing types provide residents with affordable housing options and increase opportunities to live close to stores, services, jobs, and transit. The MU-N zoning district provides a transition from the higher intensity uses in the Downtown Core to lower density residential neighborhoods.

3. **Mixed Use Flex (MU-F).** The purpose of the MU-F zoning district is to accommodate a mixture of residential and commercial uses typically along the Monterey Road corridor north and south of Downtown. New mixed use development may be vertical (residences above ground floor commercial) or horizontal (separate buildings with different uses on a single site). Development in the MU-F zoning district creates attractive gateways into Morgan Hill, provides a range of housing options, and creates new centers of activity to serve surrounding neighborhoods.

18.22.020 - Land use regulations.

- A. **Permitted Land Uses.** Table 18.22-1 identifies land uses permitted in the MU-N and MU-F zoning districts. For permitted land uses in the MU-D zoning district, see Figure 8 in the Downtown Specific Plan.

Table 18.22-1: Permitted Land Uses — MU-N and MU-F Zoning Districts

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed	Zoning District		Additional Regulations
	MU-N	MU-F	
Residential Uses			Section 18.22.030
Accessory Dwelling Units	P- 1	P- 1	Chapter 18.84
Duets and Duplexes	P	C	
Group Housing	C	C	
Live/Work Unit	A	A	
Mixed Use Residential	P	P	
Multi-Family Dwellings	P	C	

Nursing Homes and Long-Term Care	C	C	
Residential Care Facilities	C	C	
Residential Care Facilities, Small	P	P	
Senior Housing, Independent Living	P	C	
Single-Family Attached Dwellings	P	C	
Single-Family Detached Dwellings	P <u>1</u>	C	
Public and Quasi-Public Uses			
College and Trade Schools	P	P	
Community Assembly	C	C	
Cultural Institutions	A	A	
Day Care Centers	C	C	
Emergency Shelters	—	C	Section 18.92.050
Government Offices	A	A	
Home Day Care, Large <u>and Small</u>	C <u>P</u>	C <u>P</u>	
Home Day Care, Small	P	P	
Hospitals	C	C	
Instructional Services	P	P	
Medical Offices and Clinics	P	P	
Parks and Recreational Facilities	P	P	
Public Safety Facilities	C	C	

Schools, Public and Private	C	C	
Social Services	—	C	
Commercial Uses			
Animal-Related Users			
Veterinarian Clinics and Hospitals	C	C	
Banks and Financial Institutions	P	P	
Business Support Services	P	P	
Cinemas and Theaters	A	A	
Commercial Recreation, Indoor			
≤ 15,000 sq. ft.	P	P	
> 15,000 sq. ft.	C	C	
Drive-Through Facilities	C	C	18.92.040
Eating and Drinking Uses			
Bars and Nightclubs	C	C	
Restaurant, Fast Food	P	P	
Restaurants, Sit Down	P	P	
Tasting Rooms	P	P	
Farmers Markets	A	A	
Lodging Facilities			
Bed and Breakfast	A	A	

Hotels and Motels	C	C	
Personal Services	P	P	
Professional Offices	P	P	
Retail			
Convenience Market	A	A	18.92.030
General Retail	P	P	
Vehicle-Related Uses			
Fuel and Service Stations	—	C	
Vehicle Rentals	—	C	
Vehicle Washing	—	C	
Industrial Uses			
Food and Beverage Production			
< 5,000 sq. ft. [3]	P	P	
5,000 sq. ft. to 10,000 sq. ft. [3]	C	C	
Transportation, Communication, and Utility Uses			
Parking Lots or Structures [2]	C	C	
Recycling Facilities			
Reverse Vending Machines	—	C	
Transportation Terminals	—	—	

Wireless Communications Facilities	See Chapter 18.96	
Other Uses		
Accessory Uses	See Chapter 18.44	
Home Occupations	See Section 18.92.060	
Temporary Uses	See Section 18.92.150	

Notes:

[1] ~~Permitted only on a lot of record existing prior to July 7, 2018. Permitted only on lots with one existing or proposed new detached single-family dwelling.~~

[2] When proposed as a primary use.

[3] On-site wholesale or retail sales required.

- B. Replacement Housing. Any proposed project that would replace existing rental housing occupied by a low or moderate-income household with commercial development or higher density residential uses shall comply with Municipal Code Chapter 15.30 (Replacement Housing).
- C. Additional Permits. In addition to permits identified in Table 18.22-1, development projects in the mixed use zoning districts may also require a design permit pursuant to Section 18.108.040 (Design Permits). Modifications to a historic resource may require a Historic Alteration pursuant to Chapter 18.60 (Historic Resources).
- D. Residential Building Allotments. All residential development must comply with the voter-approved residential development control system (RDCS) as established in Chapter 18.78 (Residential Development Control System). The RDCS requires proposed residential projects to first receive residential building allotments before applying for land use entitlements. Section 18.78.050.C (Exemptions from Allotments) identifies types of residential projects exempt from the requirement to obtain residential building allotments.

18.22.030 - Residential and mixed use in the MU-F zoning district.

Residential and residential mixed use is not allowed in the MU-F zoning district until the completion of a master plan for the Monterey Corridor.

18.22.040 - Development standards.

- A. General. Table 18.22-2 identifies development standards that apply in the mixed zoning districts.

Table 18.22-2: Development Standards in Mixed Use Zoning Districts

	MU-D	MU-N	MU-F	Additional Standards
Site Requirements				
Lot Area, Minimum	3,500 sq. ft.	6,000 sq. ft.	6,000 sq. ft.	
Lot Width, Minimum	40 ft.	60 ft.	60 ft.	
Lot Depth, Minimum	80 ft.	100 ft.	100 ft.	
Floor Area Ratio, Maximum	2.0 [1]	1.0	0.5	
Residential Density				
Minimum	None	8 du/acre	7 du/acre	
Maximum	None	20 du/acre	24 du/acre	
Building Coverage, Maximum	None	75%	50%	
Structure Requirements				
Setbacks	See Table 18.22-3			18.56.030
Height, Maximum	3 stories and 45 ft. [2]	35 ft. [3,4]	35 ft. [3]	18.56.020

Notes:

[1] 2.25 FAR permitted on sites 22,000 sq. ft. or more.

[2] Four stories and 55 ft. permitted on sites 22,000 sq. ft. or more.

[3] 45 ft. permitted with a minimum of 10 ft. devoted to a roof element.

[4] 40 ft. allowed for vertical mixed use, regardless of roof form.

- B. Setbacks. Table 18.22-3 identifies setback standards that apply in the mixed zoning districts. Within each zoning district, setback standards for residential uses are different from setback standards for non-residential and mixed use development. See Figure 18.24.

Table 18.22-3: Setback Standards in Mixed Use Zoning Districts

	MU-D		MU-N		MU-F	
Setback	Res.	Non-Res. [1]	Res.	Non-Res. [1] [5]	Res.	Non-Res. [1] [5]
Front	Min: 6 ft. [2] Max: 15 ft.	Min: 0 ft. Max: 10 ft.	Min: 6 ft. [2] Max: 15 ft.	Min: 0 ft. [3] Max: 10 ft.	Min: 15 ft. [2] Max: None	Min: 10 ft. [4] Max: None
Rear, Min.	0 ft.	10 ft.	0 ft.	10 ft.	20 ft.	10 ft.
Interior Side, Min.	5 ft.	0 ft.	5 ft.	0 ft.	5 ft.	0 ft.
Street Side, Min.	6 ft.	0 ft.	6 ft.	0 ft.	10 ft.	10 ft. [4]

Notes:

[1] Includes mixed use buildings with residential uses above ground floor commercial.

[2] Residential porches and similar entry features may project five feet into the front setback. See Figure 18.22-1.

[3] Building wall must be setback a minimum of ten feet from the edge of curb. See Figure 18.22-2.

[4] Outdoor seating, courtyards, and other publicly-accessible spaces may project five feet into the front setback.

~~[5]C. Residential Transition Standards — MU-N and MU-F.~~ Where a property ~~zoned MU-N or MU-F~~ abuts a residential zoning district or residential land use designation, ~~the property projects~~ shall comply with increased setbacks, upper story stepbacks, and landscaping standards as specified in Section 18.92.130 (Residential Transition Standards).

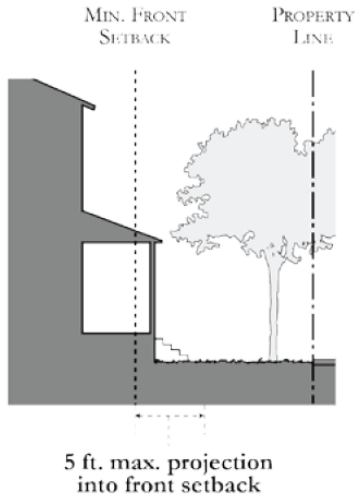


Figure 18.22-1: Permitted Projection Into Front Setback — Residential Uses

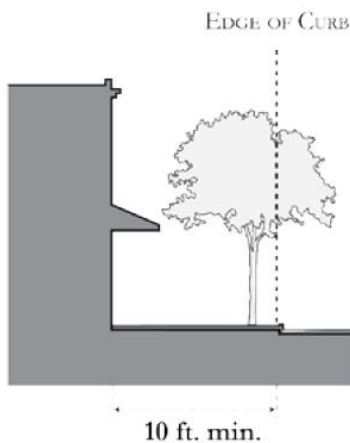


Figure 18.22-2: Minimum Setback From Curb — MU-N Zoning District

Section 4. Section 18.24.030 (Development Standards) of Chapter 18.24 (Commercial Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

- A. General. Table 18.24-2 identifies development standards that apply in the commercial zoning districts.
- B. Residential Transition Standards. Where a property zoned in a commercial zoning district abuts a residential zoning district, projects shall comply with increased setbacks, upper story stepbacks, and landscaping standards as specified in Section 18.92.130 (Residential Transition Standards).

Table 18.24-2: Development Standards in the Commercial Zoning Districts

	CO	CN	CG	CH	CS	Additional Standards
Site Requirements						
Lot Area, Minimum	6,000 sq. ft.	10,000 sq. ft.	10,000 sq. ft.	20,000 sq. ft.	10,000 sq. ft.	
Lot Width, Minimum	60 ft.	100 ft.	100 ft.	70 ft.	100 ft.	
Lot Depth, Minimum	100 ft.	100 ft.	100 ft.	125 ft.	100 ft.	
Building Coverage, Maximum	50%	50%	50%	40%	50%	
Structure Requirements						
Setbacks, Minimum <u>[1]</u>						18.56.030
Front	20 ft.	25 ft.	25 ft.	40 ft.	25 ft.	
Rear	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.	
Interior Side	10 ft.	0 ft.	0 ft.	0 ft.	0 ft.	
Street Side	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	
Height, Maximum	3 stories or 30 ft., whichever is less	2½ stories or 30 ft., whichever is less	3 stories or 35 ft., whichever is less	4 stories or 55 ft., whichever is less	3 stories or 35 ft., whichever is less	18.24.030.B; 18.56.020

[1] Where a property abuts a residential zoning district or residential land use designation, the property shall comply with increased setbacks, upper story

stepbacks, and landscaping standards as specified in Section 18.92.130 (Residential Transition Standards).

Section 5. Chapter 18.26 (Industrial Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

18.26.010 - Purpose of the industrial zoning districts.

- A. General. The purpose of the industrial zoning districts is to provide locations to maintain and focus industrial development in economically and geographically strategic locations in Morgan Hill. Permitted land uses in the industrial zoning districts are limited to avoid potential conflicts that would adversely impact industrial activities. Development is designed to enhance the economic vitality of industrial areas and limit impacts on adjacent development.
- B. Specific.
 - 1. Commercial Industrial (CI). The purpose of the CI zoning district is to promote job-generating development of lands by allowing flexibility in the mix of industrial, office, and commercial uses that are compatible with existing development. Lodging uses (e.g., hotels) that support primary job generating uses within business districts are allowed.
 - 2. Light Office Industrial (IO). The purpose of the IO zoning district is to provide areas for mixed administrative and executive office uses in appropriate areas within the community.
 - 3. Campus Industrial (IC). The purpose of the IC zoning district is to provide an environment exclusively for and conducive to the development and protection of modern administrative facilities, research institutions and specialized manufacturing operations.
 - 4. Light Industrial (IL). The purpose of the IL zoning district is to provide areas for research, administrative, lighter manufacturing, wholesale and heavy service commercial uses not suitable in commercial districts.
 - 5. General Industrial (IG). The purpose of the IG zoning district is to provide areas for general industrial, manufacturing, wholesale and service uses needed by the city and region subject to regulations necessary to protect other nearby uses from hazards and noise and other disturbances.

18.26.020 - Land use regulations.

- A. Permitted Land Uses. Table 18.26-1 identifies land uses permitted in the industrial zoning districts.

Table 18.26-1 Permitted Land Uses in the Industrial Zoning Districts

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed	Zoning District					Additional Regulations
	CI	IO	IC	IL	IG	
Residential Uses						
Caretaker Quarters	—	—	—	C	C	
Public and Quasi-Public Uses						
Colleges and Trade Schools	C	C	C	C	C	
Community Assembly	C	—	—	C	C	
Instructional Services	A	—	—	—	—	
Medical Offices and Clinics	A	—	—	—	—	
Parks and Recreational Facilities	C	—	—	C	C	
Public Safety Facilities	C	—	—	C	C	
Commercial Uses						
Adult Businesses	—	—	P	P	P	18.92.020
Animal-Related Commercial Uses						
Animal Boarding	C	—	—	C	C	
Veterinarian Clinics and Hospitals	A	A	A	C	C	
Banks and Financial Institutions	C [4]	—	—	—	—	

Business Support Services	P	C	P	P	P	
Cinemas and Theaters	A	—	—	—	—	
Commercial Recreation, Indoor						
≤ 15,000 sq. ft.	P	C	C	C	C	
> 15,000 sq. ft.	C	C	C	C	C	
Eating and Drinking Uses						
Restaurants, Fast Food	C [4]	— [5]	— [5]	— [5]	— [5]	
Restaurants, Sit-Down	C [4]	— [5]	— [5]	— [5]	— [5]	
Tasting Rooms	P [6]	—	—	A [6]	A [6]	
Lodging Facilities						
Hotels and Motels	P	—	—	—	—	
Mini-Storage	—	—	—	C	C	18.92.100
Personal Service	C [4]	— [5]	— [5]	— [5]	— [5]	
Plant Nurseries	C	—	—	P	P	
Professional Offices	P	P	P	P	P	
Retail						
Building Materials	C	—	—	P	P	
Convenience Markets	C	—	—	— [5]	— [5]	

	[4]	[5]	[5]			
General Retail	C [4]	— [5]	— [5]	— [5]	— [5]	
Home Improvement Centers	C	—	—	C	C	
Large Commodity Retail	C	—	—	C	C	
Vehicle-Related Uses						
Towing and Impound	—	—	—	C	P	
Vehicle Repair and Maintenance, Major	—	—	—	C	P	
Vehicle Repair and Maintenance, Minor	—	—	—	P	P [1]	
Wholesaling	P	—	—	P	P	
Industrial Uses						
Construction and Material Yards	C	C	C	P	P	18.36.030.C
Food and Beverage Production						
< 5,000 sq. ft. [7]	A [2]	A [2]	A [2]	P [2]	P [2]	
5,000 sq. ft. to 10,000 sq. ft. [7]	C [2]	C [2]	C [2]	P [2]	P [2]	
> 10,000 sq. ft.	C	C	C	P [2,8]	P [2,8]	
Manufacturing, Light	P	C [3]	C	P	P	
Manufacturing, General	—	—	—	—	C	

Research and Development	P	P	P	P	P	
Salvage and Wrecking	—	—	—	—	C	
<u>Vehicle Storage, Outdoor</u>	<u>=</u>	<u>=</u>	<u>=</u>	<u>C</u>	<u>C</u>	<u>18.52.080.B</u>
Warehousing and Distribution						
Warehousing and Distribution, Large	C	C [3]	C [3]	C	P	
Warehousing and Distribution, Small	C	C [3]	C [3]	P	P	
Warehousing and Distribution with Outdoor Storage	C	—	—	C	C	
Heavy Distribution	—	—	—	—	—	
Parcel Sorting Facilities	—	—	—	—	—	
Parcel Hub Small < 75,000 sq. ft.	—	—	—	—	—	
Parcel Hub Large > 75,000 sq. ft.	—	—	—	—	—	
Recycling Facilities						
Reverse Vending Machine	P	C	C	P	P	
Recycling Collection Facility	C	—	—	C	C	
Recycling Processing Facility	—	—	—	—	C	
Utilities, Major	—	—	—	C	C	
Wireless Communications Facilities	See Chapter 18.96					
Agriculture and Natural Resource Uses						

Crop Cultivation	—		—			
Other Uses						
Accessory Uses	See Chapter 18.44					
Temporary Uses	See Section 18.92.150					

Notes:

- [1] Retail sale of automotive products allowed only when ancillary to a vehicle repair and maintenance use. Retail display areas for automotive products may not exceed twenty-five percent of the building floor area.
 - [2] Must be one hundred fifty feet or more from a residential zoning district, otherwise requires a CUP.
 - [3] Permitted only when ancillary to another permitted use.
 - [4] Allowed as a primary use only when the planning commission finds that the use supports the primary job-generating uses within a business park setting.
 - [5] Allowed when accessory to a permitted primary use subject to the limitations in Section 18.26.020.D (Accessory Uses).
 - [6] Allowed only when accessory to a brewery, winery, or other alcoholic beverage production facility. Tasting rooms must be located within the building occupied by the primary use and may not exceed five thousand square feet or ten percent of the gross floor area of the building, whichever is less.
 - [7] On-site wholesale or retail sales required.
 - [8] Conditional use permit required when the type of food being produced will emit a generally offensive odor. Examples include primary processing of seafood, coffee roasting, pickled foods, or processes involving primarily fat and oils.
- B. Additional Permits. In addition to permits identified in Table 18.26-1, development projects in the industrial districts may also require a design permit pursuant to Section 18.108.040 (Design Permits). Modifications to a historic resource may require a Historic Alteration pursuant to Chapter 18.60 (Historic Resources).
- C. Outdoor Uses.
- 1. In the IO zoning district, all uses shall be conducted wholly within a completely enclosed building. Outdoor uses are prohibited.
 - 2. In all other industrial zoning districts, outdoor uses shall be screened from public view and the area containing the outdoor use shall meet the minimum

design standards applicable to off-street parking facilities as specified in Section 18.72.060 (Parking Design and Development Standards).

D. Accessory Uses.

1. In all industrial zoning districts, retail, personal service, recreation, restaurants, and other similar uses are permitted as an accessory use provided the following conditions are met:
 - a. The use is conducted within the building occupied by the primary use; and
 - b. The use is to serve only employees and guests of the primary use; and
 - c. The use is limited to no more than three thousand square feet or ten percent of the floor area of the primary use, whichever is less.
2. Tasting rooms associated with a brewery, winery, or other alcoholic beverage production facility are allowed in industrial zoning districts as specified in Table 18.26-1.

18.26.030 - Development standards.

- A. General. Table 18.26-2 identifies development standards that apply in the industrial zoning districts.

Table 18.26-2: Industrial Zoning District Development Standards

	CI	IO	IC	IL	IG	Additional Standards
Site Requirements						
Lot Area, Minimum	20,000 sq. ft.	40,000 sq. ft.	5 acres	20,000 sq. ft.	20,000 sq. ft.	
Lot Width, Minimum	100 ft.	100 ft.	300 ft.	100 ft.	150 ft.	
Lot Depth, Minimum	100 ft.	100 ft.	300 ft.	100 ft.	100 ft.	
Floor Area Ratio, Maximum	0.5/0.6 [1]	0.6	0.5	0.6	0.6	
Building Coverage,	60%	40%	40%	50%	60%	

Maximum						
Structure Requirements						
Setbacks, Minimum [2]						Chapter 18.56
Front	30 ft.	40 ft.	50 ft.	30 ft.	30 ft.	
Rear	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.	
Interior Side	10 ft.	10 ft.	25 ft.	10 ft.	15 ft.	
Street Side	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	
Height, Maximum	4 stories or 55 ft., whichever is less	35 ft.	50 ft.	50 ft.	50 ft.	18.56 18.26.030.B

Notes:

[1] An FAR of 0.6 is allowed for industrial uses. An FAR of 0.5 is allowed for non-industrial land uses.

[2] Where a property abuts a residential zoning district or residential land use designation, the property shall comply with increased setbacks, upper story setbacks, and landscaping standards as specified in Section 18.92.130 (Residential Transition Standards).

~~B. Residential Transition Standards. Where a property in an industrial zoning district abuts a residential zoning district, projects shall comply with increased setbacks, upper story setbacks, and landscaping standards as specified in Section 18.92.130 (Residential Transition Standards).~~

~~CB.~~ Cul-De-Sac Lot Width. In all industrial zoning districts except for the IC zoning district, the minimum width of a cul-de-sac lot is eighty feet as measured along the radius of the front property line.

D. Joint Access Agreement — IL, IG Zoning Districts. For parcels of less than forty thousand square feet in area, a joint mutual access agreement between adjoining parcels shall be required for reasonable vehicular and pedestrian passage.

Section 6. Section 18.40.050 (Development Standards) of Chapter 18.40 (Alternative Standards for Medium Density Residential Development) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

- A. General. Minimum lot sizes and dimensions for specific housing types are shown in Table 18.40-2. Lot sizes, dimensions, coverage limits, and setback standards may vary based on the use within the specified zoning district.

Table 18.40-2: Medium Density Residential Development Standards

	Housing Type					
	Duet	Courtyard	SFD	TH	Duplex	Multi
Lot Area (min sq. ft.) [1] [2]	3,000	1,920— 2,999	4,500— 5,500	1,440— 3,999	6,000	6,000
Lot Width (min)	30 ft.	24 ft.	40 ft.	24 ft.	60 ft.	60 ft.
Lot Depth (min)	85 ft.	60 ft.	80 ft.	60 ft.	85 ft.	85 ft.
Lot Coverage (max) [3]	50%	45%	N/A	55%	1 story: 40% 2+ story: 50%	60%
Floor Area Ratio (max)	N/A	N/A	52%	N/A	N/A	N/A
Height	See base zoning district See 18.40.050.B See base zoning district <u>See base zoning district</u>					
Setbacks						
Front [4]	10 ft.	N/A	15 feet	N/A	20 ft.	15
Interior Side	3 ft. [5]	5 ft. [7]	4 ft. [6]	N/A	5 ft. [7]	5 ft.
Street Side	6 ft.	5 ft.	8 ft.	5 ft.	10 ft.	15 ft.
Rear	10 ft.	N/A	15 ft.	N/A	15 ft.	20 ft.

Notes:

- [1] Subject to the density requirements specified in the General Plan.
- [2] Standards are for individual lots and not for the subdivision as a whole.
- [3] Lot coverage limits apply to individual, subdivided parcels and to accessory structures as well as the primary residential structure on the site. Development in the RAL and RAM zoning districts is also subject to an aggregate lot coverage limit for the entire subdivision. See Section 18.18.060.A.
- [4] Additional requirements apply for street-facing garages. See Section 18.40.070.H.7.
- [5] A reduced setback (as low as zero feet) is acceptable on one side yard; provided, that the sum of both side yard setbacks is at least six feet and one setback is at least four feet.
- [6] A reduced setback (as low as zero feet) is acceptable on one side yard; provided, that the sum of both side yard setbacks is at least eight feet.
- [7] A reduced setback (as low as zero feet) is acceptable on one side yard; provided, that the sum of both side yard setbacks is at least ten feet.

~~B. Townhouse Height.~~

- ~~1. The maximum building plate height of a townhouse is thirty feet. Building plate height is measured as the vertical distance from the average contact ground level at the front wall of the building to the plate line of the exterior walls which is the horizontal plane where the exterior walls meet the roof rafters or trusses~~
- ~~2. Roof elements with a minimum 5:12 roof pitch may exceed the building plate height by up to eight feet.~~

Section 7. Table 18.44-2 (Minimum Accessory Structure Setbacks) of Section 18.44.030 (Accessory Structures in Residential Zoning Districts) of Chapter 18.44 (Accessory Structures and Uses) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

Table 18.44-2: Minimum Accessory Structure Setbacks

Accessory Structure	Minimum Setbacks from Property Lines	
	Front	Side and Rear
Roofed structures such as detached garages and sheds and open, unroofed structures such as decks		

and trellises		
Height 12 ft. or less	Same as <u>minimum</u> primary structure <u>setback</u>	5 ft.
Height greater than 12 ft.		Same as <u>minimum</u> primary structure <u>setback</u>
Mechanical equipment and mechanical equipment enclosures		50 percent of minimum primary structure setback
Patios and Decks [2]		
Height 18 in. or less (<u>unroofed only</u>)	5 ft.	1 ft.
Height greater than 18 in. and less than 6 ft.	15 ft.	5 ft.
Height <u>greater than</u> 6 ft. to 12 ft.	20 ft. <u>or same as</u> <u>minimum primary</u> <u>structure setback,</u> <u>whichever is less</u>	12.5 ft. <u>or same as</u> <u>minimum primary</u> <u>structure setback,</u> <u>whichever is less</u>
In ground pools, spas and hot tubs	Same as <u>minimum</u> primary structure <u>setback</u>	4 ft.
Above ground pools, spas, hot tubs and related equipment, accessories, and improvements	Same as <u>minimum</u> primary structure <u>setback</u>	5 ft.
Ponds less than 18 in. in depth	10 ft.	1 ft.
Fireplaces, barbeque structures, statuary and fountains [1]		
Height 8 ft. or less	3 ft.	3 ft.

Height 8 ft. to 12 ft.	5 ft.	5 ft.
------------------------	-------	-------

Notes:

[1] All openings for freestanding fireplaces and built-in barbeques shall meet all Uniform Building Code and Uniform Fire Code requirements.

[2] Height measured from ground to walking surface.

Section 8. Chapter 18.52 (Fences and Walls) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

Chapter 18.52 - FENCES AND WALLS

18.52.010 - Purpose and applicability.

This chapter establishes standards for fences and walls that apply in all zoning districts. For the purposes of this Title, the term "fence" includes fences or walls. Walls that are required by a mitigation measure and designed and approved through a discretionary permit for noise attenuation are exempt from this Chapter.

18.52.020 - Required permits and approvals.

- A. No Planning Permit Required. Fences and walls consistent with this chapter are permitted by-right without the requirement to obtain any planning permit unless otherwise stated.
- B. Building Permit. Fences and walls may require a building permit as required by California Building Code.
- C. Encroachment Permit. A fence or wall in the public right-of-way requires approval of an encroachment permit consistent with Municipal Code Chapter 12.08 (Excavation and Encroachment).
- D. Minor Exception. The community development director may grant a minor exception to increase the maximum permit height of a fence or wall as described in Section 18.52.050 (Exceptions to Height Limits).

18.52.030 - Measurement of fence and wall height.

- A. Measurement of Height. The height of a fence or wall is measured from the finished grade at the base of the fence or wall to the top edge of the fence or wall.
- B. Fences on Retaining Walls. If a fence or wall is atop a retaining wall, the height of the fence or wall shall be determined exclusive of the height of the retaining wall such that the top of the retaining wall is considered the finished grade~~the fence height is measured from the base of the fence.~~

- C. Different Finished Grades. If the adjacent finished grade is different on opposite sides of a fence or wall, the height is measured from the side with the lowest finished grade to the highest point on the fence or wall.

18.52.040 - Height limits.

- A. Maximum Height. Fences and walls may not exceed the maximum height shown in Table 18.52-1 and Figure 18.52-1 except as allowed by Section 18.52.050 (Exceptions to Fence Height Limit).

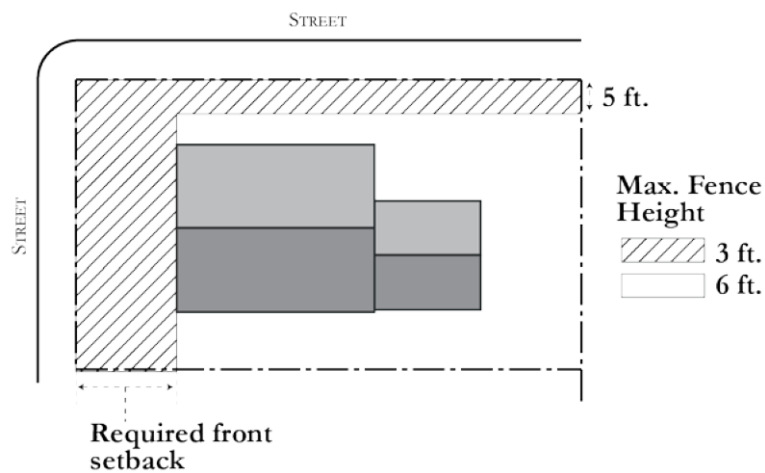
Table 18.52-1: Maximum Fence and Wall Height

Fence and Wall Height	Maximum Height
Fence in front setback area	3 ft.
Fence within 5 ft. of street side property line	3 ft.
Fence within all other areas of a lot	6 ft. [1]

Notes:

- [1] An additional one foot of fence height up to a maximum of seven feet is permitted for lattice work and other decorative features uniformly open to the passage of light and air.

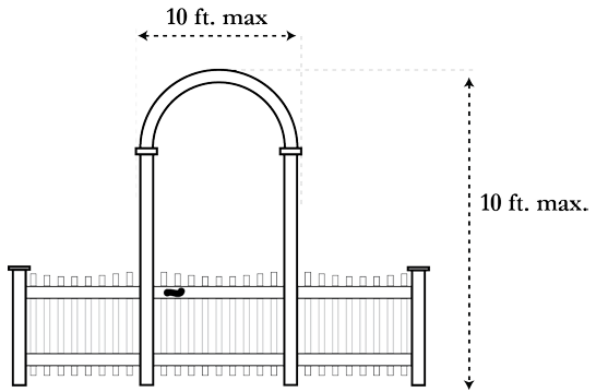
Figure 18.52-1: Maximum Fence and Wall Height



- B. Decorative Features. A decorative arch, gate, trellis or other entry feature located along a street frontage may exceed the height limit shown in Table 18.52-1. Decorative features shall be limited to ten feet in width and ten feet in height. Only one decorative feature is permitted per street frontage. See Figure 18.52-2.

- C. Clear Triangle. Walls and fences shall comply with clear triangle requirements in Section 18.92.080 (Intersection Site Distance).

Figure 18.52-2: Decorative Entry Features



18.52.050 - Exceptions to height limits.

The community development director may approve a minor exception (Section 18.108.070) to allow an increase to the maximum permitted height of a fence or wall as described below.

- A. Open Space and Residential Estate Zoning Districts.
 1. Within the open space and residential estate zoning districts, the community development director may grant a minor exception to increase the maximum height of a fence in the front setback area to a maximum six feet in height.
 2. This exception applies only to open, wrought iron or decorative fences that are at least seventy percent open to the passage of light and air.
 3. Chain link, chain link with wood or vinyl slats, solid board fences, or any other type of view obstructing fencing may not exceed three feet in height in the front setback area.
- B. All Zoning Districts. The community development director may grant a minor exception to increase the maximum height of a fence or wall by two feet in the front setback area and one foot behind the front setback line in the following cases:
 1. The topography of sloping sites or a difference in grade between adjoining sites warrants such increase in height to maintain privacy, security, or effectiveness of screening.
 2. A property is located adjacent to public parks, other public spaces or adjacent to private common area parks and open space where an increase in fence or wall height would not unreasonably affect desirable views or vistas or the open space value of abutting sites.

18.52.060 - Materials.

The following fence and wall materials and types are prohibited unless otherwise approved by the planning commission:

- A. Residential zoning districts: Barbed wire, razor wire, chain link, sheet metal, and electric fences.
- B. Commercial zoning districts: Chain link and sheet metal fences. Barbed wire, razor wire and electric fences within the front setback area or where a property abuts a residential zoning district or residential land use designation.
- C. Industrial zoning districts: Barbed wire, razor wire, chain link, sheet metal and electric fences within the front setback area.

18.52.070 - Nonconforming fences and walls.

See Chapter 18.68 (Nonconforming Uses and Structures).

18.52.080 – Special fence and wall requirements

- A. Fence and Wall Design. Fences and walls shall be constructed of attractive, long-lasting materials (e.g., masonry, wood, tubular steel, fiberglass, or stone). Walls shall consist of a decorative design and/or be screened with landscaping.
- B. Public Frontage Fencing of Nonresidential and Multi-Family Projects. Where fencing is proposed along public frontages of nonresidential and multi-family projects, such fencing shall be open view unless otherwise required to be solid for noise attenuation. Open view fencing shall also be required when located adjacent to open space areas.
- C. Screening of Outdoor Storage. Outdoor storage shall be fenced or screened from view. Such screening shall utilize enclosures including, but not limited to, fences, walls, landscaping, or earthen berms. Screening shall be visually compatible with the primary buildings and landscape on the property.
- D. Screening for Commercial or Industrial Uses Adjacent to Residential Zones. Commercial and industrial uses shall be screened from adjacent residential zones by a decorative or landscaped masonry wall with a minimum height of seven (7) feet to screen the commercial or industrial use. This requirement is not intended to preclude the development of pedestrian/bicycle access points between commercial and residential.
- E. Screening of Loading Docks and Refuse Areas. Loading docks and refuse storage areas shall be screened from public view, adjoining public streets and rights-of-way, and residentially zoned areas. The method of screening shall be architecturally compatible with other on-site development in terms of colors and materials.

F. Maintenance. Fences and walls shall be continuously maintained in an orderly and good condition.

Section 9. Section 18.56.040 (Lot Coverage Exceptions) of Chapter 18.56 (Height, Setback and Lot Coverage Exceptions) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

The community development director may ~~decrease~~increase the maximum lot coverage requirement by up to ten percent with the approval of a minor exception. See Section 18.108.070 (Minor Exception).

Section 10. Section 18.68.070 (Nonconforming Structures) of Chapter 18.68 (Nonconforming Uses and Structures) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

This section identifies allowed modifications to nonconforming structures, summarized in Table 18.68-1.

Table 18.68-1: Allowed Modifications to Nonconforming Structures

Project Affecting a Nonconforming Structure	Permit Required [1]
Nonstructural repairs, maintenance, and interior alterations	None
Structural repairs, modifications, and additions that do not alter or affect the nonconforming aspect of the structure	None
Structural repairs, modifications, and additions that alter or affect the nonconforming aspect of the structure	Design Permit
Structural repairs, modifications, and additions that increase or exacerbate the nonconforming aspect of the structure	Variance <u>Conditional Use Permit</u>
Reconstruction of an involuntarily damaged or destroyed residential structure	Design Permit

Notes:

[1] The proposed project may require permits and approvals for other reasons not related to its nonconforming status. For example, additions or enlargements to a single-family dwelling often requires a design permit.

A. Alterations Permitted By-Right.

1. Maintenance, nonstructural repairs, and nonstructural interior alterations to any portion of a nonconforming structure are permitted if the changes and improvements do not enlarge or extend the structure.
 2. Structural modifications to a nonconforming structure that do not alter or affect the nonconforming aspect of the structure are permitted. For example, an addition to a structure with a non-conforming setback is permitted if no structural changes are made to the portion of the structure projecting into the required setback, and if the addition complies with all setback, height, floor area ratio, and other applicable development standards.
- B. Alterations Requiring a Design Permit.
1. Structural repairs and improvements that affect the nonconforming aspect of a nonconforming structure are allowed with a design permit if the improvement does not increase or exacerbate the nonconformity. For example, structural repairs to a building wall within a required setback are permitted with a design permit if the wall is not moved closer to the property line and the length of the wall within the required setback is not increased.
 2. To approve such an alteration, the community development director shall make all design permit findings (Section 18.108.040) in addition to the findings in Section 18.68.080 (Findings).
- C. Alterations Requiring a ~~Variance~~ Conditional Use Permit
1. Alterations to a non-conforming structure that increase or exacerbate the nonconformity requires a ~~variance~~ conditional use permit. For example, a remodel that increases the length of an existing building wall located within a required setback is allowed only with the approval of a ~~variance~~ conditional use permit.
 2. To approve such an alteration, the planning commission shall make all variance findings (Section 18.108.100) in addition to the findings in Section 18.68.080 (Findings).
- D. Damage or Destruction. Except as allowed by Subsection E below, a nonconforming structure damaged or destroyed for any reason shall be brought into full compliance with the requirements of the zoning code if the cost of reconstruction exceeds fifty percent of its market value as determined by the county assessor on the last equalized assessment roll at the time of its destruction.
- E. Involuntary Damage or Destruction — Residential Structures.
1. If a legally established nonconforming building occupied by a residential use is damaged or destroyed by earthquake, fire, flood, or other calamity, the structure may be reconstructed as it existed and may be continued as a legal nonconforming structure with the approval of a design permit.
 2. "Reconstructed" means rebuilding a damaged or destroyed structure in a manner similar but not identical to the original structure. A reconstructed structure generally recreates the original building footprint, mass, and height,

but may deviate from design details such as architectural design and the arrangement of doors, windows, and rooflines.

3. The city may attach conditions of approval as necessary to protect the public health, safety and welfare, including requirements to reduce or eliminate previously existing nonconformities.
 4. Reconstruction of damaged or destroyed buildings may not increase or exacerbate previously existing nonconformities or create new nonconformities.
 5. The construction of the replacement structure must begin within twenty-four months of the date of the calamity which damaged or destroyed the structure.
- F. Moved Structures. A nonconforming structure that is moved to a new location shall conform to all standards of the applicable zoning district.
- G. Nonconforming Screening, Fences, and Landscaping.
1. Legally established nonconforming screening, fences, and landscaping may continue and remain except as required by Paragraph 2 below.
 2. For additions or renovations that increase by twenty-five percent or more the floor area or market value of one or more buildings on a property, any nonconforming screening, fences, and landscaping shall be brought into compliance with the requirements of the applicable zoning district.

Section 11. Chapter 18.115 (General Plan Amendments) of Title 18 (Zoning) is hereby to read as follows (additions in underline, deletions in ~~strikeout~~):

Chapter 18.115 – GENERAL PLAN AMENDMENTS

18.115.010 – Purpose.

This chapter establishes procedures for amending the General Plan text (e.g., goals, policies, or implementation programs) or to change the General Plan land use designation on any parcel(s).

18.115.020 – Initiation.

A General Plan Amendment may be initiated by motion of the Planning Commission or City Council, by application of property owner(s) of parcel(s) to be affected by the General Plan Amendment, or by recommendation of the Development Services Director to clarify text, address changes mandated by state law, maintain internal General Plan consistency, address boundary adjustments affecting land use designation(s), or for any other reason beneficial to the city.

18.115.030 Application.

An application for a general plan amendment shall be filed and reviewed in compliance with Chapter 18.104 (Common Permit Requirements). The application shall

include the information and materials required by the development services department, together with all required application fees. For amendments submitted by a resident, property owner, or business owner it is the responsibility of the applicant to provide evidence in support of the findings required by Section 18.115.060 (Findings for Approval).

18.115.040 – Planning commission hearing and action.

- A. General. The planning commission shall hold a public hearing on a proposed general plan amendment in compliance with Section 18.104.090 (Notice of Hearings).
- B. Recommendation of Approval. The planning commission may recommend to the city council the approval or conditional approval of the proposed general plan amendment, based upon the findings specified in Section 18.115.060 (Findings for Approval). The planning commission shall forward a written recommendation, and the reasons for the recommendation, to the city council within 90 days after the date the hearing was closed to the public. A recommendation for approval shall be made by a majority vote of the total membership of the planning commission.
- C. Denial. The planning commission may deny the proposed general plan amendment based upon the findings specified in Section 18.118.060 (Findings for Approval). For a land use diagram amendment, if the action of the planning commission is to recommend denial, the city council is not required to take further action on the proposed amendment unless an interested party requests a hearing in writing with the city clerk within ten days after the planning commission recommendation is filed with the city council.

18.115.050 – City council hearing and action.

- A. General. After receipt of the planning commission's recommendation to approve a proposed general plan amendment, the city council shall hold a public hearing on the proposal in compliance with Section 18.104.090 (Notice of Hearing).
- B. Approval or Denial. The city council may approve, conditionally approve, or deny the proposed general plan amendment based upon the findings specified in Section 18.115.060 (Findings for Approval).
- C. Finality of Action. The action by the city council shall be made by a majority vote of the total membership of the city council and shall be final and conclusive.
- D. Referral to Planning Commission. If the city council proposes to adopt a substantial modification to the general plan amendment not previously considered by the planning commission, the proposed modification shall be first referred to the planning commission for its recommendation.

- E. Failure to Report. The failure of the planning commission to report back to the city council within forty days after the reference, or within the time set by the city council, shall be deemed a recommendation of approval.

18.115.060 – Findings for approval.

The city council may approve a general plan amendment only if all of the following findings are made:

- A. The city council must find that the proposed amendment meets the letter and intent of the General Plan goals and policies.

18.115.070 – Effective date.

A General Plan Amendment becomes effective immediately following the approval of the resolution by the city council.

18.115.080 – Limitations on resubmittal after denial.

If the city denies a general plan amendment, the city may not accept an application for the same or substantially similar general plan amendment for one year following such denial, except in the following cases:

- A. Upon initiation by the city council or planning commission; or
- B. The application requests a different general plan land use designation than that previously requested.

18.115.090 – Frequency of amendment.

Pursuant to Government Code Section 65358, no mandatory element of the General Plan may be amended more frequently than four times during any calendar year. Subject to that limitation, an amendment may be made at any time and may include more than one change to the General Plan.

18.115.100 – Preliminary review.

- A. When Required. Prior to submittal of an application for a General Plan Amendment, an application must receive preliminary input from the planning commission on the proposed general plan amendment.
- B. Application. A preliminary review application for a proposed general plan amendment shall be submitted with the development services department in accordance with Chapter 18.104 (Common Permit Requirements). The application shall include, at a minimum, the following information and materials:

1. A statement describing the proposed project and how it complies with the findings required for the approval of a general plan amendment in Section 18.115.060 (Findings for Approval).
 2. Project plans, diagrams, and graphics as needed to illustrate the overall development concept, including proposed land uses, buildings, circulation, open space, and any other significant elements in the project.
- C. Public Hearing. The planning commission shall consider the preliminary review application and a public hearing noticed in accordance with Section 18.104.090 (Notice of Hearing).
- D. Preliminary input.
1. The planning commission shall provide preliminary input on project compliance with findings required for the approval of a General Plan Amendment in Section 18.115.060 (Findings for Approval).
 2. Planning commission input shall not be construed as a recommendation for approval or denial of the project. Any recommendation to the applicant is advisory only and shall not be binding on either the applicant or the city.

Section 12. Subsection G of Section 18.128.020 (Definitions) of Chapter 18.128 (General Terms) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

G. "G" Terms.

1. Garage, Private. An attached or detached accessory ~~dwelling-structure~~ on a lot developed with a residential dwelling used by residents for the storage of passenger vehicles, and other vehicles and equipment permitted on the lot.
2. Garage, Public. A structure other than a private garage used for the storage, sale, hire, or care of motor vehicles.
3. General Plan. The general plan of the city of Morgan Hill, California.
4. Guest House. A building containing living space that is heated/cooled, with a full bath, without kitchen facilities, and used to house occasional visitors or nonpaying guests of the occupant of the primary dwelling unit. A guest house with a kitchen facility is considered a secondary dwelling unit.

Section 13. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 14. Effective Date; Posting. This Ordinance shall take effect on _____, 20____. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

This ordinance was introduced at a meeting of the City Council held on the _____ day of _____, 20____, and adopted at a meeting held on the _____ day of _____, 20____, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

IRMA TORREZ, City Clerk

RICHARD CONSTANTINE, Mayor

CERTIFICATE OF THE CITY CLERK

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

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

DATE: _____

IRMA TORREZ, City Clerk

RESOLUTION NO. 20-13

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF ZONING AMENDMENT ZA2020-0001: MUNICIPAL CODE AMENDMENT AMENDING SECTION 8.28.040 (ENUMERATION OF UNLAWFUL NOISES) OF CHAPTER 8.28 (NOISE) OF TITLE 8 (HEALTH AND SAFETY) AND AMENDING VARIOUS CODE PROVISIONS WITHIN TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING MINOR AMENDMENTS DUE TO CLERICAL ERRORS AND INCONSISTENCIES; AMENDING CHAPTER 18.52 (FENCES AND WALLS) OF TITLE 18 (ZONING) TO CLARIFY AND ESTABLISH DESIGN AND SCREENING REQUIREMENTS OF FENCES AND WALLS; AND TO ESTABLISH CHAPTER 18.115 (GENERAL PLAN AMENDMENTS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL ESTABLISHING PROCEDURES FOR AMENDING THE GENERAL PLAN

WHEREAS, this proposed Ordinance (Zoning Amendment ZA2020-0001) was considered by the Planning Commission of the City of Morgan Hill at its regular meeting of November 10, 2020;

WHEREAS, the Planning Commission has reviewed recommendations contained in the November 10, 2020, staff report on this item;

WHEREAS, the amendments proposed by this Ordinance are necessary to correct clerical errors and inconsistencies in the Municipal Code as well as establish procedures for amending the General Plan;

WHEREAS, this ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, as the proposed text amendments to the Morgan Hill Zoning Code is not a project with potential for causing a significant effect on the environment requiring California Environmental Quality Act (CEQA) analysis; and

WHEREAS, testimony received at a duly noticed public hearing, along with exhibits and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The proposed amendment is consistent with the General Plan and any applicable specific plan as provided by Government Code Section 65860.

The proposed text amendment is consistent with the General Plan in that it corrects clerical errors and inconsistencies found in the Code, as well as establishes procedures for General Plan Amendments.

SECTION 2. The proposed amendments will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

The proposed text amendment consists of correcting clerical errors and inconsistencies found in the Code, as well as establishes procedures for General Plan Amendments, and, therefore, will not be detrimental to the City.

SECTION 3. The proposed amendment is internally consistent with other applicable provisions of the zoning code.

The proposed revisions corrects existing inconsistencies in the Code, and, therefore, are internally consistent with the overall zoning code.

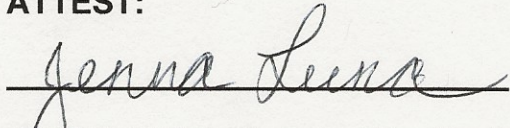
SECTION 4. The Planning Commission hereby recommends approval of changes to the text of the Morgan Hill Municipal Code amending Section 8.28.040 (Enumeration of Unlawful Noises) of Chapter 8.28 (Noises) of Title 8 (Health and Safety) and amending various Code provisions within Title 18 (Zoning) as well as establishing Chapter 18.115 (General Plan Amendments) of Title 18 (Zoning) of the Municipal Code which are shown by strike-out text for deletions and underline text for additions as described in the attached Exhibit "A", and by this reference incorporated herein.

PASSED AND ADOPTED THIS 10th DAY OF NOVEMBER 2020, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

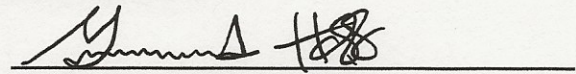
AYES:	COMMISSIONERS:	HABIB, KUMAR, MUELLER, TANDA, GONZALEZ-ESCOTO, MUNOZ-MORRIS
NOES:	COMMISSIONERS:	NONE
ABSTAIN:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	DOWNEY

City of Morgan Hill
Resolution No. 20-13
Page 3 of 4

ATTEST:


JENNA LUNA, Deputy City Clerk

APPROVED:



MOHAMMAD HABIB, Chair

Date: 11/13/2020

EXHIBIT A

Zoning Amendment ZA2020-0001

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 8.28.040 (ENUMERATION OF UNLAWFUL NOISES) OF CHAPTER 8.28 (NOISE) OF TITLE 8 (HEALTH AND SAFETY) AND AMENDING VARIOUS CODE PROVISIONS WITHIN TITLE 18 (ZONING CODE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING MINOR AMENDMENTS DUE TO CLERICAL ERRORS AND INCONSISTENCIES; AMENDING CHAPTER 18.52 (FENCES AND WALLS) OF TITLE 18 (ZONING) TO CLARIFY AND ESTABLISH DESIGN AND SCREENING REQUIREMENTS OF FENCES AND WALLS; AND TO ESTABLISH CHAPTER 18.115 (GENERAL PLAN AMENDMENTS) OF TITLE 18 (ZONING CODE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL ESTABLISHING PROCEDURES FOR AMENDING THE GENERAL PLAN

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

Section 1. Subsection D of Section 8.28.040 (Enumeration of Unlawful Noises) of Chapter 8.28 (Noise) of Title 8 (Health and Safety) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

D. ~~1. —~~ Construction ~~a~~Activities ~~as limited below.~~

1. "Construction activities" are defined as including but not limited to excavation, grading, paving, demolition, construction, alteration or repair of any building, site, street or highway, delivery or removal of construction material to a site, or movement of construction materials on a site. Construction activities are prohibited other than between the hours of seven a.m. and eight p.m., Monday through Friday and between the hours of nine a.m. to six p.m. on Saturday. Construction activities may not occur on Sundays or federal holidays. No third person, including but not limited to landowners, construction company owners, contractors, subcontractors, or employers, shall permit or allow any person working on construction activities which are under their ownership, control or direction to violate this provision. Construction activities may occur in the following cases without violation of this provision:

- a. In the event of urgent necessity in the interests of the public health and safety, and then only with a permit from the chief building official, which permit may be granted for a period of not to exceed three days or less while the emergency continues and which permit may be renewed for periods of three days or less while the emergency continues.
 - b. If the chief building official determines that the public health and safety will not be impaired by the construction activities between the hours of eight p.m. and seven a.m., and that loss or inconvenience would result to any party in interest, the chief building official may grant permission for such work to be done between the hours of eight p.m. and seven a.m. upon an application being made at the time the permit for the work is issued or during the progress of the work.
 - c. The city council finds that construction by the resident of a single residence does not have the same magnitude or frequency of noise impacts as a larger construction project. Therefore, the resident of a single residence may perform construction activities on that home during the hours in this subsection, as well as on Sundays and federal holidays from nine a.m. to six p.m., provided that such activities are limited to the improvement or maintenance undertaken by the resident on a personal basis.
 - d. Public work projects are exempt from this section and the public works director shall determine the hours of construction for public works projects.
 - ~~e. Until November 30, 1998, construction activities shall be permitted between the hours of ten a.m. to six p.m. on Sundays, subject to the following conditions. No power-driven vehicles, equipment or tools may be used during construction activities, except on the interior of a building or other structure which is enclosed by exterior siding (including windows and doors) and roofing, and which windows and doors are closed during construction activities. Construction activities must be situated at least one hundred fifty feet from the nearest occupied dwelling. No delivery or removal of construction material to a site, or movement of construction materials on a site, is permitted. No activity, including but not limited to the playing of radios, tape players, compact disc players or other devices, which creates a loud or unusual noise which offends, disturbs or harasses the peace and quiet of the persons of ordinary sensibilities beyond the confines of the property from which the sound emanates is allowed.~~
2. If it is determined necessary in order to ensure compliance with this section, the chief building official may require fences, gates or other barriers prohibiting access to a construction site by construction crews during hours in which construction is prohibited by this subsection. The project manager of each project shall be responsible for ensuring the fences, gates or barriers are locked and/or in place during hours in which no construction is

allowed. This subsection shall apply to construction sites other than public works projects or single dwelling units which are not a part of larger projects.

Section 2. Subsection A of Section 18.18.020 (Land Use Regulations) of Chapter 18.18 (Residential Attached Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

- A. Permitted Land Uses. Table 18.18-1 identifies land uses permitted in the residential attached zoning districts.

Table 18.18-1: Permitted Land Uses — Residential Attached Zoning Districts

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed	Zoning District			Additional Regulations
	RAL	RAM	RAH	
Residential Uses				
Accessory Dwelling Units	P [2]	P [2]	P [2]	Chapter 18.84
Duets and Duplexes	P	P	P	
Group Housing	C [1]	C	C	
Multi-Family Dwellings	P	P	P	
Nursing Homes and Long-Term Care	C	C	C	
Residential Care Facilities	C	C	C	
Residential Care Facilities, Small	P	P	P	
Single-Family Attached Dwellings	P	P	P	
Single-Family Detached Dwellings	P [32] , <u>43</u>	P <u>[43]</u>	P <u>[43]</u>	

Public and Quasi-Public Uses				
Community Assembly	C	C	C	
Cultural Institutions	C	C	C	
Day Care Centers	C	C	C	
Home Day Care, Large and Small	P	P	P	
Parks and Recreational Facilities [54]	C	C	C	
Public Safety Facilities	C	C	C	
Schools, Public and Private	C	C	C	
Transportation, Communication, and Utility Uses				
Wireless Communication Facilities	See Chapter 18.96			
Other Uses				
Accessory Uses and Structures	See Chapter 18.44			
Home Occupations	See Section 18.92.060			
Temporary Uses and Structures	See Section 18.92.150			
Urban Agriculture				
Home Gardens	P	P	P	
Community Gardens	A	A	A	
Urban Farms	C	C	C	

Notes:

[1] Limited to no more than eight residents.

~~[2] Permitted only on lots occupied by one existing or proposed detached single-family home.~~

[32] Up to twenty-five percent of homes within a development project may be small-lot single family homes with a maximum lot area of three thousand five hundred square feet.

[43] Permitted only on a lot of record existing prior to July 7, 2018.

[54] Park and recreational facilities accessory to a residential use (e.g., a clubhouse serving a residential subdivision) are permitted by right.

Section 3. Chapter 18.22 (Mixed Use Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

Chapter 18.22 - MIXED USE ZONING DISTRICTS

18.22.010 - Purpose of the mixed use zoning districts.

- A. General. The purpose of the mixed use zoning districts is to provide for active and inviting destinations in Morgan Hill with a diversity of residential and commercial land uses. In the mixed use zoning districts the design of development supports a welcoming, pedestrian-friendly public realm. A diversity of local and independent businesses, recreational amenities, and public spaces meet the needs of residents, workers, and visitors. New development respects Morgan Hill's history and reflects its unique small-town feel. The diversity of land uses, pedestrian-friendly development, and general level of activity in the mixed use zoning districts supports a range of transportation choices, including walking, biking, and transit.
- B. Specific.
 1. Downtown Mixed Use (MU-D). The purpose of the Downtown Mixed Use (MU-D) zoning district is to preserve and enhance Downtown as the heart of Morgan Hill and the center of the community. New development supports a walkable Downtown district with active storefronts and a diversity of commercial, residential, and public uses. The intensity of residential uses enhances economic vitality, increases housing options for residents of all ages, and support a vibrant and diverse destination for residents and visitors. The MU-D zoning district implements the community's vision for Downtown Morgan Hill as described in the Downtown Specific Plan.
 2. Neighborhood Mixed Use (MU-N). The purpose of the Neighborhood Mixed Use (MU-N) zoning district accommodates a range of residential and

commercial land uses in close proximity to Downtown. A range of housing types provide residents with affordable housing options and increase opportunities to live close to stores, services, jobs, and transit. The MU-N zoning district provides a transition from the higher intensity uses in the Downtown Core to lower density residential neighborhoods.

3. **Mixed Use Flex (MU-F).** The purpose of the MU-F zoning district is to accommodate a mixture of residential and commercial uses typically along the Monterey Road corridor north and south of Downtown. New mixed use development may be vertical (residences above ground floor commercial) or horizontal (separate buildings with different uses on a single site). Development in the MU-F zoning district creates attractive gateways into Morgan Hill, provides a range of housing options, and creates new centers of activity to serve surrounding neighborhoods.

18.22.020 - Land use regulations.

- A. **Permitted Land Uses.** Table 18.22-1 identifies land uses permitted in the MU-N and MU-F zoning districts. For permitted land uses in the MU-D zoning district, see Figure 8 in the Downtown Specific Plan.

Table 18.22-1: Permitted Land Uses — MU-N and MU-F Zoning Districts

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed	Zoning District		Additional Regulations
	MU-N	MU-F	
Residential Uses			Section 18.22.030
Accessory Dwelling Units	P- 1	P- 1	Chapter 18.84
Duets and Duplexes	P	C	
Group Housing	C	C	
Live/Work Unit	A	A	
Mixed Use Residential	P	P	
Multi-Family Dwellings	P	C	

Nursing Homes and Long-Term Care	C	C	
Residential Care Facilities	C	C	
Residential Care Facilities, Small	P	P	
Senior Housing, Independent Living	P	C	
Single-Family Attached Dwellings	P	C	
Single-Family Detached Dwellings	P <u>1</u>	C	
Public and Quasi-Public Uses			
College and Trade Schools	P	P	
Community Assembly	C	C	
Cultural Institutions	A	A	
Day Care Centers	C	C	
Emergency Shelters	—	C	Section 18.92.050
Government Offices	A	A	
Home Day Care, Large <u>and Small</u>	C <u>P</u>	C <u>P</u>	
Home Day Care, Small	P	P	
Hospitals	C	C	
Instructional Services	P	P	
Medical Offices and Clinics	P	P	
Parks and Recreational Facilities	P	P	
Public Safety Facilities	C	C	

Schools, Public and Private	C	C	
Social Services	—	C	
Commercial Uses			
Animal-Related Users			
Veterinarian Clinics and Hospitals	C	C	
Banks and Financial Institutions	P	P	
Business Support Services	P	P	
Cinemas and Theaters	A	A	
Commercial Recreation, Indoor			
≤ 15,000 sq. ft.	P	P	
> 15,000 sq. ft.	C	C	
Drive-Through Facilities	C	C	18.92.040
Eating and Drinking Uses			
Bars and Nightclubs	C	C	
Restaurant, Fast Food	P	P	
Restaurants, Sit Down	P	P	
Tasting Rooms	P	P	
Farmers Markets	A	A	
Lodging Facilities			
Bed and Breakfast	A	A	

Hotels and Motels	C	C	
Personal Services	P	P	
Professional Offices	P	P	
Retail			
Convenience Market	A	A	18.92.030
General Retail	P	P	
Vehicle-Related Uses			
Fuel and Service Stations	—	C	
Vehicle Rentals	—	C	
Vehicle Washing	—	C	
Industrial Uses			
Food and Beverage Production			
< 5,000 sq. ft. [3]	P	P	
5,000 sq. ft. to 10,000 sq. ft. [3]	C	C	
Transportation, Communication, and Utility Uses			
Parking Lots or Structures [2]	C	C	
Recycling Facilities			
Reverse Vending Machines	—	C	
Transportation Terminals	—	—	

Wireless Communications Facilities	See Chapter 18.96	
Other Uses		
Accessory Uses	See Chapter 18.44	
Home Occupations	See Section 18.92.060	
Temporary Uses	See Section 18.92.150	

Notes:

[1] ~~Permitted only on a lot of record existing prior to July 7, 2018. Permitted only on lots with one existing or proposed new detached single-family dwelling.~~

[2] When proposed as a primary use.

[3] On-site wholesale or retail sales required.

- B. Replacement Housing. Any proposed project that would replace existing rental housing occupied by a low or moderate-income household with commercial development or higher density residential uses shall comply with Municipal Code Chapter 15.30 (Replacement Housing).
- C. Additional Permits. In addition to permits identified in Table 18.22-1, development projects in the mixed use zoning districts may also require a design permit pursuant to Section 18.108.040 (Design Permits). Modifications to a historic resource may require a Historic Alteration pursuant to Chapter 18.60 (Historic Resources).
- D. Residential Building Allotments. All residential development must comply with the voter-approved residential development control system (RDCS) as established in Chapter 18.78 (Residential Development Control System). The RDCS requires proposed residential projects to first receive residential building allotments before applying for land use entitlements. Section 18.78.050.C (Exemptions from Allotments) identifies types of residential projects exempt from the requirement to obtain residential building allotments.

18.22.030 - Residential and mixed use in the MU-F zoning district.

Residential and residential mixed use is not allowed in the MU-F zoning district until the completion of a master plan for the Monterey Corridor.

18.22.040 - Development standards.

- A. General. Table 18.22-2 identifies development standards that apply in the mixed zoning districts.

Table 18.22-2: Development Standards in Mixed Use Zoning Districts

	MU-D	MU-N	MU-F	Additional Standards
Site Requirements				
Lot Area, Minimum	3,500 sq. ft.	6,000 sq. ft.	6,000 sq. ft.	
Lot Width, Minimum	40 ft.	60 ft.	60 ft.	
Lot Depth, Minimum	80 ft.	100 ft.	100 ft.	
Floor Area Ratio, Maximum	2.0 [1]	1.0	0.5	
Residential Density				
Minimum	None	8 du/acre	7 du/acre	
Maximum	None	20 du/acre	24 du/acre	
Building Coverage, Maximum	None	75%	50%	
Structure Requirements				
Setbacks	See Table 18.22-3			18.56.030
Height, Maximum	3 stories and 45 ft. [2]	35 ft. [3,4]	35 ft. [3]	18.56.020

Notes:

[1] 2.25 FAR permitted on sites 22,000 sq. ft. or more.

[2] Four stories and 55 ft. permitted on sites 22,000 sq. ft. or more.

[3] 45 ft. permitted with a minimum of 10 ft. devoted to a roof element.

[4] 40 ft. allowed for vertical mixed use, regardless of roof form.

- B. Setbacks. Table 18.22-3 identifies setback standards that apply in the mixed zoning districts. Within each zoning district, setback standards for residential uses are different from setback standards for non-residential and mixed use development. See Figure 18.24.

Table 18.22-3: Setback Standards in Mixed Use Zoning Districts

	MU-D		MU-N		MU-F	
Setback	Res.	Non-Res. [1]	Res.	Non-Res. [1] [5]	Res.	Non-Res. [1] [5]
Front	Min: 6 ft. [2] Max: 15 ft.	Min: 0 ft. Max: 10 ft.	Min: 6 ft. [2] Max: 15 ft.	Min: 0 ft. [3] Max: 10 ft.	Min: 15 ft. [2] Max: None	Min: 10 ft. [4] Max: None
Rear, Min.	0 ft.	10 ft.	0 ft.	10 ft.	20 ft.	10 ft.
Interior Side, Min.	5 ft.	0 ft.	5 ft.	0 ft.	5 ft.	0 ft.
Street Side, Min.	6 ft.	0 ft.	6 ft.	0 ft.	10 ft.	10 ft. [4]

Notes:

[1] Includes mixed use buildings with residential uses above ground floor commercial.

[2] Residential porches and similar entry features may project five feet into the front setback. See Figure 18.22-1.

[3] Building wall must be setback a minimum of ten feet from the edge of curb. See Figure 18.22-2.

[4] Outdoor seating, courtyards, and other publicly-accessible spaces may project five feet into the front setback.

~~[5]C. Residential Transition Standards—MU-N and MU-F.~~ Where a property ~~zoned MU-N or MU-F~~ abuts a residential zoning district or residential land use designation, ~~the property projects~~ shall comply with increased setbacks, upper story stepbacks, and landscaping standards as specified in Section 18.92.130 (Residential Transition Standards).

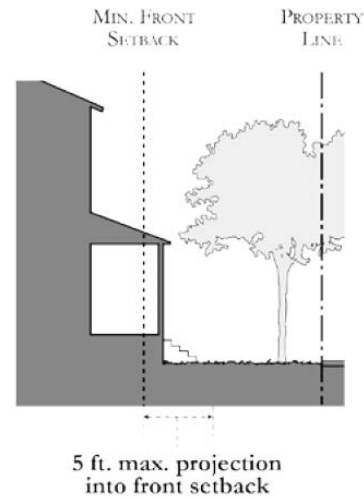
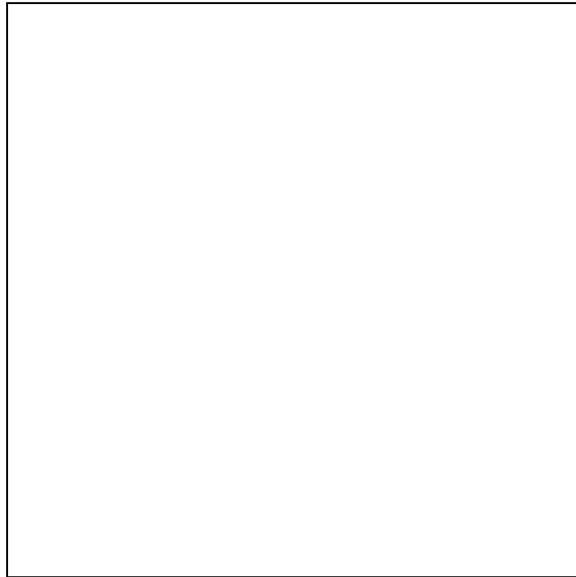


Figure 18.22-1: Permitted Projection Into Front Setback — Residential Uses

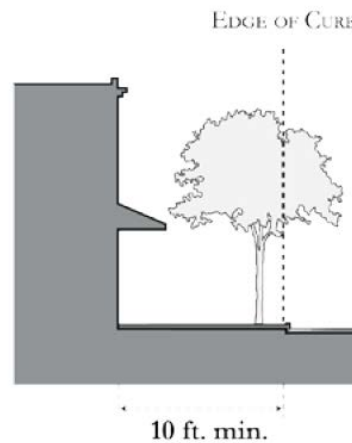
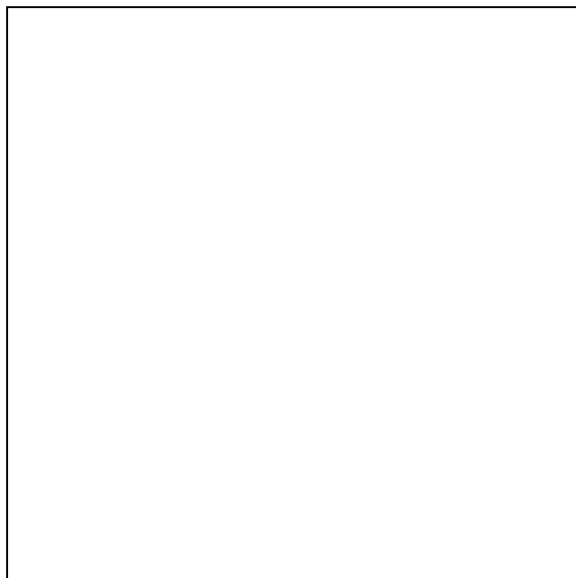


Figure 18.22-2: Minimum Setback From Curb — MU-N Zoning District

Section 4. Section 18.24.030 (Development Standards) of Chapter 18.24 (Commercial Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

- A. General. Table 18.24-2 identifies development standards that apply in the commercial zoning districts.

- B. Residential Transition Standards. Where a property zoned in a commercial zoning district abuts a residential zoning district, projects shall comply with increased setbacks, upper story stepbacks, and landscaping standards as specified in Section 18.92.130 (Residential Transition Standards).

Table 18.24-2: Development Standards in the Commercial Zoning Districts

	CO	CN	CG	CH	CS	Additional Standards
Site Requirements						
Lot Area, Minimum	6,000 sq. ft.	10,000 sq. ft.	10,000 sq. ft.	20,000 sq. ft.	10,000 sq. ft.	
Lot Width, Minimum	60 ft.	100 ft.	100 ft.	70 ft.	100 ft.	
Lot Depth, Minimum	100 ft.	100 ft.	100 ft.	125 ft.	100 ft.	
Building Coverage, Maximum	50%	50%	50%	40%	50%	
Structure Requirements						
Setbacks, Minimum [1]						18.56.030
Front	20 ft.	25 ft.	25 ft.	40 ft.	25 ft.	
Rear	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.	
Interior Side	10 ft.	0 ft.	0 ft.	0 ft.	0 ft.	
Street Side	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	
Height,	3 stories or 30 ft.,	2½ stories or 30 ft.,	3 stories or 35 ft.,	4 stories or 55 ft.,	3 stories or 35 ft.,	18.24.030.B;

Maximum	whichever is less	whichever is less	whichever is less	whichever is less	whichever is less	18.56.020
---------	-------------------	-------------------	-------------------	-------------------	-------------------	-----------

[1] Where a property abuts a residential zoning district or residential land use designation, the property shall comply with increased setbacks, upper story setbacks, and landscaping standards as specified in Section 18.92.130 (Residential Transition Standards).

Section 5. Chapter 18.26 (Industrial Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

18.26.010 - Purpose of the industrial zoning districts.

- A. General. The purpose of the industrial zoning districts is to provide locations to maintain and focus industrial development in economically and geographically strategic locations in Morgan Hill. Permitted land uses in the industrial zoning districts are limited to avoid potential conflicts that would adversely impact industrial activities. Development is designed to enhance the economic vitality of industrial areas and limit impacts on adjacent development.
- B. Specific.
 - 1. Commercial Industrial (CI). The purpose of the CI zoning district is to promote job-generating development of lands by allowing flexibility in the mix of industrial, office, and commercial uses that are compatible with existing development. Lodging uses (e.g., hotels) that support primary job generating uses within business districts are allowed.
 - 2. Light Office Industrial (IO). The purpose of the IO zoning district is to provide areas for mixed administrative and executive office uses in appropriate areas within the community.
 - 3. Campus Industrial (IC). The purpose of the IC zoning district is to provide an environment exclusively for and conducive to the development and protection of modern administrative facilities, research institutions and specialized manufacturing operations.
 - 4. Light Industrial (IL). The purpose of the IL zoning district is to provide areas for research, administrative, lighter manufacturing, wholesale and heavy service commercial uses not suitable in commercial districts.
 - 5. General Industrial (IG). The purpose of the IG zoning district is to provide areas for general industrial, manufacturing, wholesale and service uses needed by the city and region subject to regulations necessary to protect other nearby uses from hazards and noise and other disturbances.

18.26.020 - Land use regulations.

- A. Permitted Land Uses. Table 18.26-1 identifies land uses permitted in the industrial zoning districts.

Table 18.26-1 Permitted Land Uses in the Industrial Zoning Districts

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed	Zoning District					Additional Regulations
	CI	IO	IC	IL	IG	
Residential Uses						
Caretaker Quarters	—	—	—	C	C	
Public and Quasi-Public Uses						
Colleges and Trade Schools	C	C	C	C	C	
Community Assembly	C	—	—	C	C	
Instructional Services	A	—	—	—	—	
Medical Offices and Clinics	A	—	—	—	—	
Parks and Recreational Facilities	C	—	—	C	C	
Public Safety Facilities	C	—	—	C	C	
Commercial Uses						
Adult Businesses	—	—	P	P	P	18.92.020
Animal-Related Commercial Uses						
Animal Boarding	C	—	—	C	C	

Veterinarian Clinics and Hospitals	A	A	A	C	C	
Banks and Financial Institutions	C [4]	—	—	—	—	
Business Support Services	P	C	P	P	P	
Cinemas and Theaters	A	—	—	—	—	
Commercial Recreation, Indoor						
≤ 15,000 sq. ft.	P	C	C	C	C	
> 15,000 sq. ft.	C	C	C	C	C	
Eating and Drinking Uses						
Restaurants, Fast Food	C [4]	— [5]	— [5]	— [5]	— [5]	
Restaurants, Sit-Down	C [4]	— [5]	— [5]	— [5]	— [5]	
Tasting Rooms	P [6]	—	—	A [6]	A [6]	
Lodging Facilities						
Hotels and Motels	P	—	—	—	—	
Mini-Storage	—	—	—	C	C	18.92.100
Personal Service	C [4]	— [5]	— [5]	— [5]	— [5]	
Plant Nurseries	C	—	—	P	P	
Professional Offices	P	P	P	P	P	

Retail						
Building Materials	C	—	—	P	P	
Convenience Markets	C [4]	— [5]	— [5]	— [5]	— [5]	
General Retail	C [4]	— [5]	— [5]	— [5]	— [5]	
Home Improvement Centers	C	—	—	C	C	
Large Commodity Retail	C	—	—	C	C	
Vehicle-Related Uses						
Towing and Impound	—	—	—	C	P	
Vehicle Repair and Maintenance, Major	—	—	—	C	P	
Vehicle Repair and Maintenance, Minor	—	—	—	P	P [1]	
Wholesaling	P	—	—	P	P	
Industrial Uses						
Construction and Material Yards	C	C	C	P	P	18.36.030.C
Food and Beverage Production						
< 5,000 sq. ft. [7]	A [2]	A [2]	A [2]	P [2]	P [2]	
5,000 sq. ft. to 10,000 sq. ft. [7]	C [2]	C [2]	C [2]	P [2]	P [2]	
> 10,000 sq. ft.	C	C	C	P [2,8]	P [2,8]	

Manufacturing, Light	P	C [3]	C	P	P	
Manufacturing, General	—	—	—	—	C	
Research and Development	P	P	P	P	P	
Salvage and Wrecking	—	—	—	—	C	
<u>Vehicle Storage, Outdoor</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>C</u>	<u>C</u>	<u>18.52.080.B</u>
Warehousing and Distribution						
Warehousing and Distribution, Large	C	C [3]	C [3]	C	P	
Warehousing and Distribution, Small	C	C [3]	C [3]	P	P	
Warehousing and Distribution with Outdoor Storage	C	—	—	C	C	
Heavy Distribution	—	—	—	—	—	
Parcel Sorting Facilities	—	—	—	—	—	
Parcel Hub Small < 75,000 sq. ft.	—	—	—	—	—	
Parcel Hub Large > 75,000 sq. ft.	—	—	—	—	—	
Recycling Facilities						
Reverse Vending Machine	P	C	C	P	P	
Recycling Collection Facility	C	—	—	C	C	
Recycling Processing Facility	—	—	—	—	C	
Utilities, Major	—	—	—	C	C	

Wireless Communications Facilities	See Chapter 18.96				
Agriculture and Natural Resource Uses					
Crop Cultivation	—		—		
Other Uses					
Accessory Uses	See Chapter 18.44				
Temporary Uses	See Section 18.92.150				

Notes:

- [1] Retail sale of automotive products allowed only when ancillary to a vehicle repair and maintenance use. Retail display areas for automotive products may not exceed twenty-five percent of the building floor area.
 - [2] Must be one hundred fifty feet or more from a residential zoning district, otherwise requires a CUP.
 - [3] Permitted only when ancillary to another permitted use.
 - [4] Allowed as a primary use only when the planning commission finds that the use supports the primary job-generating uses within a business park setting.
 - [5] Allowed when accessory to a permitted primary use subject to the limitations in Section 18.26.020.D (Accessory Uses).
 - [6] Allowed only when accessory to a brewery, winery, or other alcoholic beverage production facility. Tasting rooms must be located within the building occupied by the primary use and may not exceed five thousand square feet or ten percent of the gross floor area of the building, whichever is less.
 - [7] On-site wholesale or retail sales required.
 - [8] Conditional use permit required when the type of food being produced will emit a generally offensive odor. Examples include primary processing of seafood, coffee roasting, pickled foods, or processes involving primarily fat and oils.
- B. Additional Permits. In addition to permits identified in Table 18.26-1, development projects in the industrial districts may also require a design permit pursuant to Section 18.108.040 (Design Permits). Modifications to a historic resource may require a Historic Alteration pursuant to Chapter 18.60 (Historic Resources).
- C. Outdoor Uses.

1. In the IO zoning district, all uses shall be conducted wholly within a completely enclosed building. Outdoor uses are prohibited.
2. In all other industrial zoning districts, outdoor uses shall be screened from public view and the area containing the outdoor use shall meet the minimum design standards applicable to off-street parking facilities as specified in Section 18.72.060 (Parking Design and Development Standards).

D. Accessory Uses.

1. In all industrial zoning districts, retail, personal service, recreation, restaurants, and other similar uses are permitted as an accessory use provided the following conditions are met:
 - a. The use is conducted within the building occupied by the primary use; and
 - b. The use is to serve only employees and guests of the primary use; and
 - c. The use is limited to no more than three thousand square feet or ten percent of the floor area of the primary use, whichever is less.
2. Tasting rooms associated with a brewery, winery, or other alcoholic beverage production facility are allowed in industrial zoning districts as specified in Table 18.26-1.

18.26.030 - Development standards.

- A. General. Table 18.26-2 identifies development standards that apply in the industrial zoning districts.

Table 18.26-2: Industrial Zoning District Development Standards

	CI	IO	IC	IL	IG	Additional Standards
Site Requirements						
Lot Area, Minimum	20,000 sq. ft.	40,000 sq. ft.	5 acres	20,000 sq. ft.	20,000 sq. ft.	
Lot Width, Minimum	100 ft.	100 ft.	300 ft.	100 ft.	150 ft.	
Lot Depth, Minimum	100 ft.	100 ft.	300 ft.	100 ft.	100 ft.	
Floor Area Ratio,	0.5/0.6 [1]	0.6	0.5	0.6	0.6	

Maximum						
Building Coverage, Maximum	60%	40%	40%	50%	60%	
Structure Requirements						
Setbacks, Minimum [2]						Chapter 18.56
Front	30 ft.	40 ft.	50 ft.	30 ft.	30 ft.	
Rear	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.	
Interior Side	10 ft.	10 ft.	25 ft.	10 ft.	15 ft.	
Street Side	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	
Height, Maximum	4 stories or 55 ft., whichever is less	35 ft.	50 ft.	50 ft.	50 ft.	18.56 18.26.030.B

Notes:

[1] An FAR of 0.6 is allowed for industrial uses. An FAR of 0.5 is allowed for non-industrial land uses.

[2] Where a property abuts a residential zoning district or residential land use designation, the property shall comply with increased setbacks, upper story setbacks, and landscaping standards as specified in Section 18.92.130 (Residential Transition Standards).

~~B. Residential Transition Standards. Where a property in an industrial zoning district abuts a residential zoning district, projects shall comply with increased setbacks, upper story setbacks, and landscaping standards as specified in Section 18.92.130 (Residential Transition Standards).~~

~~CB.~~ Cul-De-Sac Lot Width. In all industrial zoning districts except for the IC zoning district, the minimum width of a cul-de-sac lot is eighty feet as measured along the radius of the front property line.

- D. Joint Access Agreement — IL, IG Zoning Districts. For parcels of less than forty thousand square feet in area, a joint mutual access agreement between adjoining parcels shall be required for reasonable vehicular and pedestrian passage.

Section 6. Section 18.40.050 (Development Standards) of Chapter 18.40 (Alternative Standards for Medium Density Residential Development) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

- A. General. Minimum lot sizes and dimensions for specific housing types are shown in Table 18.40-2. Lot sizes, dimensions, coverage limits, and setback standards may vary based on the use within the specified zoning district.

Table 18.40-2: Medium Density Residential Development Standards

	Housing Type					
	Duet	Courtyard	SFD	TH	Duplex	Multi
Lot Area (min sq. ft.) [1] [2]	3,000	1,920— 2,999	4,500— 5,500	1,440— 3,999	6,000	6,000
Lot Width (min)	30 ft.	24 ft.	40 ft.	24 ft.	60 ft.	60 ft.
Lot Depth (min)	85 ft.	60 ft.	80 ft.	60 ft.	85 ft.	85 ft.
Lot Coverage (max) [3]	50%	45%	N/A	55%	1 story: 40% 2+ story: 50%	60%
Floor Area Ratio (max)	N/A	N/A	52%	N/A	N/A	N/A
Height	See base zoning district See 18.40.050.B See base zoning district <u>See base zoning district</u>					
Setbacks						
Front [4]	10 ft.	N/A	15 feet	N/A	20 ft.	15
Interior Side	3 ft. [5]	5 ft. [7]	4 ft. [6]	N/A	5 ft. [7]	5 ft.

Street Side	6 ft.	5 ft.	8 ft.	5 ft.	10 ft.	15 ft.
Rear	10 ft.	N/A	15 ft.	N/A	15 ft.	20 ft.

Notes:

[1] Subject to the density requirements specified in the General Plan.

[2] Standards are for individual lots and not for the subdivision as a whole.

[3] Lot coverage limits apply to individual, subdivided parcels and to accessory structures as well as the primary residential structure on the site. Development in the RAL and RAM zoning districts is also subject to an aggregate lot coverage limit for the entire subdivision. See Section 18.18.060.A.

[4] Additional requirements apply for street-facing garages. See Section 18.40.070.H.7.

[5] A reduced setback (as low as zero feet) is acceptable on one side yard; provided, that the sum of both side yard setbacks is at least six feet and one setback is at least four feet.

[6] A reduced setback (as low as zero feet) is acceptable on one side yard; provided, that the sum of both side yard setbacks is at least eight feet.

[7] A reduced setback (as low as zero feet) is acceptable on one side yard; provided, that the sum of both side yard setbacks is at least ten feet.

~~B. Townhouse Height.~~

- ~~1. The maximum building plate height of a townhouse is thirty feet. Building plate height is measured as the vertical distance from the average contact ground level at the front wall of the building to the plate line of the exterior walls which is the horizontal plane where the exterior walls meet the roof rafters or trusses~~
- ~~2. Roof elements with a minimum 5:12 roof pitch may exceed the building plate height by up to eight feet.~~

Section 7. Table 18.44-2 (Minimum Accessory Structure Setbacks) of Section 18.44.030 (Accessory Structures in Residential Zoning Districts) of Chapter 18.44 (Accessory Structures and Uses) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

Table 18.44-2: Minimum Accessory Structure Setbacks

Accessory Structure	Minimum Setbacks from Property Lines
---------------------	--------------------------------------

	Front	Side and Rear
Roofed structures such as detached garages and sheds and open, unroofed structures such as decks and trellises		
Height 12 ft. or less	Same as <u>minimum</u> primary structure <u>setback</u>	5 ft.
Height greater than 12 ft.		Same as <u>minimum</u> primary structure <u>setback</u>
Mechanical equipment and mechanical equipment enclosures		50 percent of minimum primary structure setback
Patios and Decks [2]		
Height 18 in. or less (<u>unroofed only</u>)	5 ft.	1 ft.
Height greater than 18 in. and less than 6 ft.	15 ft.	5 ft.
Height <u>greater than</u> 6 ft. to 12 ft.	20 ft. <u>or same as minimum primary structure setback, whichever is less</u>	12.5 ft. <u>or same as minimum primary structure setback, whichever is less</u>
In ground pools, spas and hot tubs	Same as <u>minimum</u> primary structure <u>setback</u>	4 ft.
Above ground pools, spas, hot tubs and related equipment, accessories, and improvements	Same as <u>minimum</u> primary structure <u>setback</u>	5 ft.
Ponds less than 18 in. in depth	10 ft.	1 ft.

Fireplaces, barbeque structures, statuary and fountains [1]		
Height 8 ft. or less	3 ft.	3 ft.
Height 8 ft. to 12 ft.	5 ft.	5 ft.

Notes:

[1] All openings for freestanding fireplaces and built-in barbeques shall meet all Uniform Building Code and Uniform Fire Code requirements.

[2] Height measured from ground to walking surface.

Section 8. Chapter 18.52 (Fences and Walls) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

Chapter 18.52 - FENCES AND WALLS

18.52.010 - Purpose and applicability.

This chapter establishes standards for fences and walls that apply in all zoning districts. For the purposes of this Title, the term "fence" includes fences or walls. Walls that are required by a mitigation measure and designed and approved through a discretionary permit for noise attenuation are exempt from this Chapter.

18.52.020 - Required permits and approvals.

- A. No Planning Permit Required. Fences and walls consistent with this chapter are permitted by-right without the requirement to obtain any planning permit unless otherwise stated.
- B. Building Permit. Fences and walls may require a building permit as required by California Building Code.
- C. Encroachment Permit. A fence or wall in the public right-of-way requires approval of an encroachment permit consistent with Municipal Code Chapter 12.08 (Excavation and Encroachment).
- D. Minor Exception. The community development director may grant a minor exception to increase the maximum permit height of a fence or wall as described in Section 18.52.050 (Exceptions to Height Limits).

18.52.030 - Measurement of fence and wall height.

- A. Measurement of Height. The height of a fence or wall is measured from the finished grade at the base of the fence or wall to the top edge of the fence or wall.
- B. Fences on Retaining Walls. If a fence or wall is atop a retaining wall, the height of the fence or wall shall be determined exclusive of the height of the retaining wall such that the top of the retaining wall is considered the finished grade~~the fence height is measured from the base of the fence.~~
- C. Different Finished Grades. If the adjacent finished grade is different on opposite sides of a fence or wall, the height is measured from the side with the lowest finished grade to the highest point on the fence or wall.

18.52.040 - Height limits.

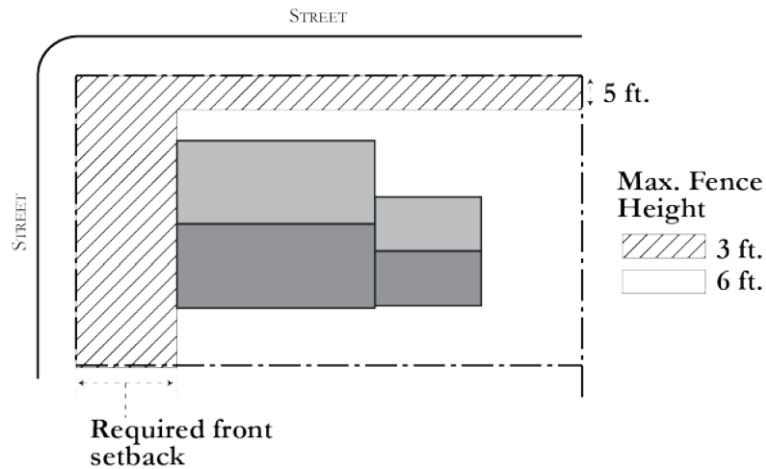
- A. Maximum Height. Fences and walls may not exceed the maximum height shown in Table 18.52-1 and Figure 18.52-1 except as allowed by Section 18.52.050 (Exceptions to Fence Height Limit).

Table 18.52-1: Maximum Fence and Wall Height

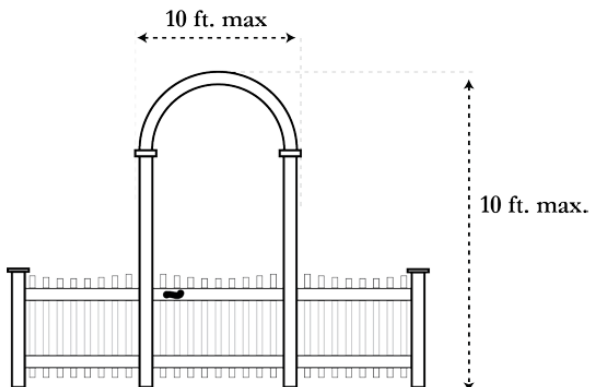
Fence and Wall Height	Maximum Height
Fence in front setback area	3 ft.
Fence within 5 ft. of street side property line	3 ft.
Fence within all other areas of a lot	6 ft. [1]

Notes:

- [1] An additional one foot of fence height up to a maximum of seven feet is permitted for lattice work and other decorative features uniformly open to the passage of light and air.

Figure 18.52-1: Maximum Fence and Wall Height

- B. Decorative Features. A decorative arch, gate, trellis or other entry feature located along a street frontage may exceed the height limit shown in Table 18.52-1. Decorative features shall be limited to ten feet in width and ten feet in height. Only one decorative feature is permitted per street frontage. See Figure 18.52-2.
- C. Clear Triangle. Walls and fences shall comply with clear triangle requirements in Section 18.92.080 (Intersection Site Distance).

Figure 18.52-2: Decorative Entry Features

18.52.050 - Exceptions to height limits.

The community development director may approve a minor exception (Section 18.108.070) to allow an increase to the maximum permitted height of a fence or wall as described below.

- A. Open Space and Residential Estate Zoning Districts.
 - 1. Within the open space and residential estate zoning districts, the community development director may grant a minor exception to increase the maximum height of a fence in the front setback area to a maximum six feet in height.

2. This exception applies only to open, wrought iron or decorative fences that are at least seventy percent open to the passage of light and air.
 3. Chain link, chain link with wood or vinyl slats, solid board fences, or any other type of view obstructing fencing may not exceed three feet in height in the front setback area.
- B. All Zoning Districts. The community development director may grant a minor exception to increase the maximum height of a fence or wall by two feet in the front setback area and one foot behind the front setback line in the following cases:
1. The topography of sloping sites or a difference in grade between adjoining sites warrants such increase in height to maintain privacy, security, or effectiveness of screening.
 2. A property is located adjacent to public parks, other public spaces or adjacent to private common area parks and open space where an increase in fence or wall height would not unreasonably affect desirable views or vistas or the open space value of abutting sites.

18.52.060 - Materials.

The following fence and wall materials and types are prohibited unless otherwise approved by the planning commission:

- A. Residential zoning districts: Barbed wire, razor wire, chain link, sheet metal, and electric fences.
- B. Commercial zoning districts: Chain link and sheet metal fences. Barbed wire, razor wire and electric fences within the front setback area or where a property abuts a residential zoning district or residential land use designation.
- C. Industrial zoning districts: Barbed wire, razor wire, chain link, sheet metal and electric fences within the front setback area.

18.52.070 - Nonconforming fences and walls.

See Chapter 18.68 (Nonconforming Uses and Structures).

18.52.080 – Special fence and wall requirements

- A. Fence and Wall Design. Fences and walls shall be constructed of attractive, long-lasting materials (e.g., masonry, wood, tubular steel, fiberglass, or stone). Walls shall consist of a decorative design and/or be screened with landscaping.
- B. Public Frontage Fencing of Nonresidential and Multi-Family Projects. Where fencing is proposed along public frontages of nonresidential and multi-family projects, such fencing shall be open view unless otherwise required to be solid for noise attenuation. Open view fencing shall also be required when located adjacent to open space areas.

- C. Screening of Outdoor Storage. Outdoor storage shall be fenced or screened from view. Such screening shall utilize enclosures including, but not limited to, fences, walls, landscaping, or earthen berms. Screening shall be visually compatible with the primary buildings and landscape on the property.
- D. Screening for Commercial or Industrial Uses Adjacent to Residential Zones. Commercial and industrial uses shall be screened from adjacent residential zones by a decorative or landscaped masonry wall with a minimum height of seven (7) feet to screen the commercial or industrial use. This requirement is not intended to preclude the development of pedestrian/bicycle access points between commercial and residential.
- E. Screening of Loading Docks and Refuse Areas. Loading docks and refuse storage areas shall be screened from public view, adjoining public streets and rights-of-way, and residentially zoned areas. The method of screening shall be architecturally compatible with other on-site development in terms of colors and materials.
- F. Maintenance. Fences and walls shall be continuously maintained in an orderly and good condition.

Section 9. Section 18.56.040 (Lot Coverage Exceptions) of Chapter 18.56 (Height, Setback and Lot Coverage Exceptions) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

The community development director may ~~decrease~~increase the maximum lot coverage requirement by up to ten percent with the approval of a minor exception. See Section 18.108.070 (Minor Exception).

Section 10. Section 18.68.070 (Nonconforming Structures) of Chapter 18.68 (Nonconforming Uses and Structures) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

This section identifies allowed modifications to nonconforming structures, summarized in Table 18.68-1.

Table 18.68-1: Allowed Modifications to Nonconforming Structures

Project Affecting a Nonconforming Structure	Permit Required [1]
Nonstructural repairs, maintenance, and interior alterations	None
Structural repairs, modifications, and additions that do not alter	None

or affect the nonconforming aspect of the structure	
Structural repairs, modifications, and additions that alter or affect the nonconforming aspect of the structure	Design Permit
Structural repairs, modifications, and additions that increase or exacerbate the nonconforming aspect of the structure	Variance <u>Conditional Use Permit</u>
Reconstruction of an involuntarily damaged or destroyed residential structure	Design Permit

Notes:

[1] The proposed project may require permits and approvals for other reasons not related to its nonconforming status. For example, additions or enlargements to a single-family dwelling often requires a design permit.

A. Alterations Permitted By-Right.

1. Maintenance, nonstructural repairs, and nonstructural interior alterations to any portion of a nonconforming structure are permitted if the changes and improvements do not enlarge or extend the structure.
2. Structural modifications to a nonconforming structure that do not alter or affect the nonconforming aspect of the structure are permitted. For example, an addition to a structure with a non-conforming setback is permitted if no structural changes are made to the portion of the structure projecting into the required setback, and if the addition complies with all setback, height, floor area ratio, and other applicable development standards.

B. Alterations Requiring a Design Permit.

1. Structural repairs and improvements that affect the nonconforming aspect of a nonconforming structure are allowed with a design permit if the improvement does not increase or exacerbate the nonconformity. For example, structural repairs to a building wall within a required setback are permitted with a design permit if the wall is not moved closer to the property line and the length of the wall within the required setback is not increased.
2. To approve such an alteration, the community development director shall make all design permit findings (Section 18.108.040) in addition to the findings in Section 18.68.080 (Findings).

C. Alterations Requiring a ~~Variance~~ Conditional Use Permit

1. Alterations to a non-conforming structure that increase or exacerbate the nonconformity requires a ~~variance~~ conditional use permit. For example, a remodel that increases the length of an existing building wall located within a

required setback is allowed only with the approval of a ~~variance~~conditional use permit.

2. To approve such an alteration, the planning commission shall make all variance findings (Section 18.108.100) in addition to the findings in Section 18.68.080 (Findings).
- D. Damage or Destruction. Except as allowed by Subsection E below, a nonconforming structure damaged or destroyed for any reason shall be brought into full compliance with the requirements of the zoning code if the cost of reconstruction exceeds fifty percent of its market value as determined by the county assessor on the last equalized assessment roll at the time of its destruction.
- E. Involuntary Damage or Destruction — Residential Structures.
1. If a legally established nonconforming building occupied by a residential use is damaged or destroyed by earthquake, fire, flood, or other calamity, the structure may be reconstructed as it existed and may be continued as a legal nonconforming structure with the approval of a design permit.
 2. "Reconstructed" means rebuilding a damaged or destroyed structure in a manner similar but not identical to the original structure. A reconstructed structure generally recreates the original building footprint, mass, and height, but may deviate from design details such as architectural design and the arrangement of doors, windows, and rooflines.
 3. The city may attach conditions of approval as necessary to protect the public health, safety and welfare, including requirements to reduce or eliminate previously existing nonconformities.
 4. Reconstruction of damaged or destroyed buildings may not increase or exacerbate previously existing nonconformities or create new nonconformities.
 5. The construction of the replacement structure must begin within twenty-four months of the date of the calamity which damaged or destroyed the structure.
- F. Moved Structures. A nonconforming structure that is moved to a new location shall conform to all standards of the applicable zoning district.
- G. Nonconforming Screening, Fences, and Landscaping.
1. Legally established nonconforming screening, fences, and landscaping may continue and remain except as required by Paragraph 2 below.
 2. For additions or renovations that increase by twenty-five percent or more the floor area or market value of one or more buildings on a property, any nonconforming screening, fences, and landscaping shall be brought into compliance with the requirements of the applicable zoning district.

Section 11. Chapter 18.115 (General Plan Amendments) of Title 18 (Zoning) is hereby to read as follows (additions in underline, deletions in ~~strikeout~~):

Chapter 18.115 – GENERAL PLAN AMENDMENTS

18.115.010 – Purpose.

This chapter establishes procedures for amending the General Plan text (e.g., goals, policies, or implementation programs) or to change the General Plan land use designation on any parcel(s).

18.115.020 – Initiation.

A General Plan Amendment may be initiated by motion of the Planning Commission or City Council, by application of property owner(s) of parcel(s) to be affected by the General Plan Amendment, or by recommendation of the Development Services Director to clarify text, address changes mandated by state law, maintain internal General Plan consistency, address boundary adjustments affecting land use designation(s), or for any other reason beneficial to the city.

18.115.030 Application.

An application for a general plan amendment shall be filed and reviewed in compliance with Chapter 18.104 (Common Permit Requirements). The application shall include the information and materials required by the development services department, together with all required application fees. For amendments submitted by a resident, property owner, or business owner it is the responsibility of the applicant to provide evidence in support of the findings required by Section 18.115.060 (Findings for Approval).

18.115.040 – Planning commission hearing and action.

- A. General. The planning commission shall hold a public hearing on a proposed general plan amendment in compliance with Section 18.104.090 (Notice of Hearings).
- B. Recommendation of Approval. The planning commission may recommend to the city council the approval or conditional approval of the proposed general plan amendment, based upon the findings specified in Section 18.115.060 (Findings for Approval). The planning commission shall forward a written recommendation, and the reasons for the recommendation, to the city council within 90 days after the date the hearing was closed to the public. A recommendation for approval shall be made by a majority vote of the total membership of the planning commission.
- C. Denial. The planning commission may deny the proposed general plan amendment based upon the findings specified in Section 18.118.060 (Findings for Approval). For a land use diagram amendment, if the action of the planning commission is to recommend denial, the city council is not required to take further action on the proposed amendment unless an interested party requests a hearing in writing with the city clerk within ten days after the planning commission recommendation is filed with the city council.

18.115.050 – City council hearing and action.

- A. General. After receipt of the planning commission's recommendation to approve a proposed general plan amendment, the city council shall hold a public hearing on the proposal in compliance with Section 18.104.090 (Notice of Hearing).
- B. Approval or Denial. The city council may approve, conditionally approve, or deny the proposed general plan amendment based upon the findings specified in Section 18.115.060 (Findings for Approval).
- C. Finality of Action. The action by the city council shall be made by a majority vote of the total membership of the city council and shall be final and conclusive.
- D. Referral to Planning Commission. If the city council proposes to adopt a substantial modification to the general plan amendment not previously considered by the planning commission, the proposed modification shall be first referred to the planning commission for its recommendation.
- E. Failure to Report. The failure of the planning commission to report back to the city council within forty days after the reference, or within the time set by the city council, shall be deemed a recommendation of approval.

18.115.060 – Findings for approval.

The city council may approve a general plan amendment only if all of the following findings are made:

- A. The city council must find that the proposed amendment meets the letter and intent of the General Plan goals and policies.

18.115.070 – Effective date.

A General Plan Amendment becomes effective immediately following the approval of the resolution by the city council.

18.115.080 – Limitations on resubmittal after denial.

If the city denies a general plan amendment, the city may not accept an application for the same or substantially similar general plan amendment for one year following such denial, except in the following cases:

- A. Upon initiation by the city council or planning commission; or
- B. The application requests a different general plan land use designation than that previously requested.

18.115.090 – Frequency of amendment.

Pursuant to Government Code Section 65358, no mandatory element of the General Plan may be amended more frequently than four times during any calendar year. Subject to that limitation, an amendment may be made at any time and may include more than one change to the General Plan.

18.115.100 – Preliminary review.

- A. When Required. Prior to submittal of an application for a General Plan Amendment, an application must receive preliminary input from the planning commission on the proposed general plan amendment.
- B. Application. A preliminary review application for a proposed general plan amendment shall be submitted with the development services department in accordance with Chapter 18.104 (Common Permit Requirements). The application shall include, at a minimum, the following information and materials:
 - 1. A statement describing the proposed project and how it complies with the findings required for the approval of a general plan amendment in Section 18.115.060 (Findings for Approval).
 - 2. Project plans, diagrams, and graphics as needed to illustrate the overall development concept, including proposed land uses, buildings, circulation, open space, and any other significant elements in the project.
- C. Public Hearing. The planning commission shall consider the preliminary review application and a public hearing noticed in accordance with Section 18.104.090 (Notice of Hearing).
- D. Preliminary input.
 - 1. The planning commission shall provide preliminary input on project compliance with findings required for the approval of a General Plan Amendment in Section 18.115.060 (Findings for Approval).
 - 2. Planning commission input shall not be construed as a recommendation for approval or denial of the project. Any recommendation to the applicant is advisory only and shall not be binding on either the applicant or the city.

Section 12. Subsection G of Section 18.128.020 (Definitions) of Chapter 18.128 (General Terms) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

G. "G" Terms.

- 1. Garage, Private. An attached or detached accessory ~~dwelling structure~~ on a lot developed with a residential dwelling used by residents for the storage of passenger vehicles, and other vehicles and equipment permitted on the lot.

2. Garage, Public. A structure other than a private garage used for the storage, sale, hire, or care of motor vehicles.
3. General Plan. The general plan of the city of Morgan Hill, California.
4. Guest House. A building containing living space that is heated/cooled, with a full bath, without kitchen facilities, and used to house occasional visitors or nonpaying guests of the occupant of the primary dwelling unit. A guest house with a kitchen facility is considered a secondary dwelling unit.

Section 13. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 14. Effective Date; Posting. This Ordinance shall take effect on _____, 20____. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

This ordinance was introduced at a meeting of the City Council held on the _____ day of _____, 20____, and adopted at a meeting held on the _____ day of _____, 20____, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

IRMA TORREZ, City Clerk

RICHARD CONSTANTINE, Mayor

CERTIFICATE OF THE CITY CLERK

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

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

DATE: _____

IRMA TORREZ, City Clerk



ZA2020-0001

Miscellaneous Code Amendments



Miscellaneous Code Amendments

Project:

Zoning Amendment Amending

- Section 8.28.040.D within Chapter 8.28 (Noise)
- Title 18 (Zoning), various Sections

Request:

Adopt Ordinance approving Ordinance Amendments as recommended by Planning Commission on November 10, 2020

Miscellaneous Code Amendments

Section 8.28.040.D (Enumeration of unlawful noises), Chapter 8.28 (Noises)

- Fix format
- Remove noise standards applicable until November 30, 1998

Section 18.18.020.A (Land Use Regulations), Chapter 18.18 (Residential Attached Zoning Districts)

- Remove footnote associated with ADUs

Miscellaneous Code Amendments

Chapter 18.22 (Mixed Use Zoning Districts)

- Remove footnote associated with ADUs
- Add footnote to Single-Family Detached Dwellings (permitted on lot existing prior to July 7, 2018)
- List Large and Small Home Day Care uses as permitted
- List Section 18.22.040.C as a footnote instead of a subsection, requiring increased setbacks and landscaping when adjacent to residential

Miscellaneous Code Amendments

Table 18.24-2 (Development Standards in the Commercial Zoning District)

- Add footnote requiring increased setbacks and landscaping when adjacent to residential

Chapter 18.26 (Industrial Zoning Districts)

- Allow Outdoor Vehicle Storage as a Conditional Use Permit within IL and IG zoning districts
- List Section 18.26.030.B as a footnote instead of a subsection, requiring increased setbacks and landscaping when adjacent to residential

Miscellaneous Code Amendments

Table 18.40-2 (Medium Density Residential Development Standards)

- Allow the height of Single Family Attached Dwellings/Townhouses to correlate with the base zoning district

Miscellaneous Code Amendments

Table 18.44-2 (Minimum Accessory Structure Setbacks)

Accessory Structure	Minimum Setbacks from Property Lines	
	Front	Side and Rear
Roofted structures such as detached garages and sheds and open, unroofed structures such as decks and trellises		
Height 12 ft. or less		5 ft.
Height greater than 12 ft.	Same as <u>minimum</u> primary structure <u>setback</u>	Same as <u>minimum</u> primary structure <u>setback</u>
Mechanical equipment and mechanical equipment enclosures		50 percent of minimum primary structure setback
Patios and Decks [2]		
Height 18 in. or less (unroofed only)	5 ft.	1 ft.
Height greater than 18 in. and less than 6 ft.	15 ft.	5 ft.
Height <u>greater than 6 ft. to 12 ft.</u>	20 ft. <u>or same as minimum primary structure setback, whichever is less</u>	12.5 ft. <u>or same as minimum primary structure setback, whichever is less</u>
In ground pools, spas and hot tubs	Same as <u>minimum</u> primary structure <u>setback</u>	4 ft.
Above ground pools, spas, hot tubs and related equipment, accessories, and improvements	Same as <u>minimum</u> primary structure <u>setback</u>	5 ft.
Ponds less than 18 in. in depth	10 ft.	1 ft.
Fireplaces, barbeque structures, statuary and fountains [1]		
Height 8 ft. or less	3 ft.	3 ft.
Height 8 ft. to 12 ft.	5 ft.	5 ft.

Miscellaneous Code Amendments

Chapter 18.52 (Fences and Walls)

- Clarify “Fence” means fences and walls
- Clarify when a fence is constructed on a retaining wall, the top of the retaining wall is considered the grade
- Provide consistency on types of prohibited fencing and wall materials
- Add Section 18.52.080 (Special Fence and Wall Requirements) establishing standards for design and screening

Miscellaneous Code Amendments

Section 18.56.040 (Lot Coverage Exceptions)

- Replace the word “Decrease” with “Increase”, allowing director to increase the maximum lot coverage by up to 10%

Section 18.68.070 (Nonconforming Structures)

- Replace Variance with Conditional Use Permit for repairs, modifications, and additions that increase or exacerbate a nonconforming aspect

Miscellaneous Code Amendments

Chapter 18.115 (General Plan Amendments)

- Establish procedures for General Plan Amendments (text and land use diagram)
- Require Preliminary Review application prior to General Plan Amendment

Section 18.128.020.G (Definitions)

- Correct the definition for the term “Garage, Private” to mean an attached or detached accessory ‘structure’, not a ‘dwelling’, for the storage of passenger vehicles

Miscellaneous Code Amendments

Recommendation

1. Open/close public hearing
2. Waive first reading of the Ordinance Amendment
3. Introduce the Ordinance Amendment

Findings

1. The proposed amendment is consistent with the General Plan and any applicable specific plan as provided by GC Section 65860
2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City
3. The proposed amendment is internally consistent with other provisions of the zoning code

Questions?



Item # 10

AGENDA DATE: 12/02/2020

SUPPLEMENT # 1

From: Rosy Bergin <[REDACTED]>

Sent: Monday, November 30, 2020 12:22 PM

To: Christina Turner <Christina.Turner@morganhill.ca.gov>; Michelle Bigelow
<Michelle.Bigelow@morganhill.ca.gov>

Subject: Fwd: FW: Request to agendize recognition of Steve Tate at 12/2/2020 Council meeting

Christina and Michelle,

Thank you for your consideration of this recognition.

Sincerely,
Rosy Bergin

From: Roger Knopf <[REDACTED]>

Date: Tuesday, November 24, 2020 at 3:18 PM

To: Christina Turner <Christina.Turner@morganhill.ca.gov>, City of Morgan Hill
<michelle.bigelow@morganhill.ca.gov>

Subject: Request to agendize recognition of Steve Tate at 12/2/2020 Council meeting

Dear Christina and Michelle,

On behalf of several Morgan Hill citizens, who represent many others, I respectfully request that the attached letter of request go the City Council on December 2, 2020 for action. The attached letter fully explains our request.

Most respectfully requested,

Roger Knopf

Mayor Constantine, Councilmembers and City Staff,

November, 24, 2020

Morgan Hill is a wonderful community, and we are proud to be long-standing active members of this community. But we also recognize that what we all love about Morgan Hill is not by chance. It takes leadership and vision, values and hard work to achieve goals and the quality-of-life that is precious to us all. And when we have city leaders that devote themselves to our community, we should recognize them.

It is with a sense of community pride that we request the city of Morgan Hill pass a resolution to recognize former Mayor Steve Tate by renaming the Morgan Hill Library to the Steve Tate Morgan Hill Library.

Mayor Tate served Morgan Hill in elected office for 20 years, 12 as Mayor. The City of Morgan Hill has much to be proud of during these years of service, but perhaps nothing more meaningful as the Morgan Hill Library. Libraries and library services continue to be a passion of Mayor Tate. Early in his time as a councilmember he eagerly took on the assignment as Morgan Hill's representative to the Santa Clara County Library District and served on the Joint Powers Authority Board for 20 years. He volunteered countless hours as a library volunteer with the Friends of the Morgan Hill Library. He led efforts to be sure every child in Morgan Hill has a library card. And he is a long-standing user of the library services himself.

When Morgan Hill needed to rebuild our library, we turned to Steve Tate to create a budget and political plan to gain support and get the job done. When the County's library district needed to seek new funding, it was Steve Tate who stepped up and ran a countywide campaign to raise much-needed tax dollars to rebuild libraries across the county.

We can think of no better recognition for former Mayor Steve Tate. It is rare in today's political climate that someone can serve in elected office for 20 years, indeed it is unlikely to happen ever again.

Timing is important as the Morgan Hill library is near completion of a much-anticipated expansion program. The completion of the expansion will be the perfect time to rename the facility in honor of Steve Tate's 20 years of serve to our community. We request that an agenda item be placed on the December 2, 2020 agenda in order to publicly approve the necessary authority to rename the library the Steve Tate Morgan Hill Library.

On behalf of Mary and Mike Cox; Cricket and Mike Rubino; Dana and Elaine Ditmore; Linnie Lee; Rosy and Rich Bergin; Mario Banuelos and Fawn Myers; Carol O'Hare; Margo and Rich Hinnenkamp; Claudia Rossi and Jim Levis.

We thank you,

The block contains two handwritten signatures in blue ink. The first signature is 'Roger Knopf' and the second is 'Janie Knopf'. They are written in a cursive, flowing style.

Roger and Janie Knopf, rjknopf@garlic.com, 408-621-3617

-----Original Message-----

From: John Hansell <[REDACTED]>
Sent: Saturday, November 28, 2020 6:46 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Steve Tate

Steve, thank you for being our Morgan Hill treasure. Cheers! John and Kathy Hansell

Sent from my iPad

-----Original Message-----

From: Roger Malech <[REDACTED]>
Sent: Saturday, November 28, 2020 8:28 AM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Library name

I would highly recommend naming the Morgan Hill library the Steve Tate Morgan Hill library. Steve has served our city very well for decades and this would be a wonderful honor to him.

Roger Malech
Intero Real Estate

-----Original Message-----

From: Michael S. Thompson <[REDACTED]>
Sent: Saturday, November 28, 2020 8:09 AM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Steve Tate Library

Hi Michelle

Please include my recommendation that the Morgan Hill library be renamed to include Steve Tate's name to honor him for all of his good work.

Mike Thompson

Michael S. Thompson

CPA, CVA, MAFF, CFF

-----Original Message-----

From: J. Daniel McCranie <[REDACTED]>

Sent: Saturday, November 28, 2020 6:28 AM

To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>

Subject: Renaming Morgan Hill Library to Steve Tate Morgan Hill Library

Dear Michelle Bigelow,

My name is Dan McCranie, and I am the owner of Ladera Grill, Colibri Gallery and, hopefully, the new art gallery to be built on Monterey and 2nd Street. I was a resident in Morgan Hill from 1980 to 1994, but am currently not a resident.

I am writing in support of the proposed renaming of our Morgan Hill Library to the Steve Tate Morgan Hill Library. Steve's devotion and service to Morgan Hill for the past several decades as been unparalleled in Morgan Hill history, and I think a recognition of this magnitude is certainly warranted.

Thanks, Michelle

J. Daniel McCranie

-----Original Message-----

From: Leonette Stafford <[REDACTED]>

Sent: Friday, November 27, 2020 9:09 PM

To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>

Subject: Supporting Steve Tate

I am among many that supports Who Steve Tate for his 20 + years of service. I am the Morgan Hill Chamber of Commerce Ambassador Chair person for the last 11+ years and Steve has been our Key Ambassador for over 20 years.

Leonette Stafford

Sent from my iPhone

-----Original Message-----

From: CHUCK BERGHOFF <[REDACTED]>

Sent: Friday, November 27, 2020 8:21 PM

To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>

Subject: Support renaming Library the "Steve Tate Morgan Hill Library"

We support renaming the Morgan Hill library the " Steve Tate Morgan Hill Library".

Regards,

Chuck & Sue Berghoff

-----Original Message-----

From: arleneg <[REDACTED]>
Sent: Friday, November 27, 2020 8:01 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Honoring Steve Tate

Michelle:

I am in support of honoring Steve Tate for his many year of involvement with the Library and believe it is appropriate to rename the library after him. I understand the City Council will be discussing this at the upcoming meeting. I hope the decision is made to honor Steve.

Arlene

Arlene Greenberg

-----Original Message-----

From: Patty Crone <[REDACTED]>
Sent: Friday, November 27, 2020 7:59 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Steve Tate

I fully support naming the library after former Mayor Steve Tate. He has contributed so much to our community and this would be a wonderful way to acknowledge him

Patty Crone

Sent from my iPhone

-----Original Message-----

From: Theresa Kiernan <[REDACTED]>
Sent: Wednesday, November 25, 2020 3:33 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Honors to Former Mayor Steve Tate

Hi Michelle and Christina,

I would like to add my name to the list of those supporting this recognition.

A very Happy Thanksgiving to you and yours!

Mayor Constantine, Councilmembers and City Staff,

November, 24, 2020

Morgan Hill is a wonderful community, and we are proud to be long-standing active members of this community. But we also recognize that what we all love about Morgan Hill is not by chance. It takes leadership and vision, values and hard work to achieve goals and the quality-of-life that is precious to us all. And when we have city leaders that devote themselves to our community, we should recognize them.

It is with a sense of community pride that we request the city of Morgan Hill pass a resolution to recognize former Mayor Steve Tate by renaming the Morgan Hill Library to the Steve Tate Morgan Hill Library.

Mayor Tate served Morgan Hill in elected office for 20 years, 12 as Mayor. The City of Morgan Hill has much to be proud of during these years of service, but perhaps nothing more meaningful as the Morgan Hill Library. Libraries and library services continue to be a passion of Mayor Tate. Early in his time as a councilmember he eagerly took on the assignment as Morgan Hill's representative to the Santa Clara County Library District and served on the Joint Powers Authority Board for 20 years. He volunteered countless hours as a library volunteer with the Friends of the Morgan Hill Library. He led efforts to be sure every child in Morgan Hill has a library card. And he is a long-standing user of the library services himself.

When Morgan Hill needed to rebuild our library, we turned to Steve Tate to create a budget and political plan to gain support and get the job done. When the County's library district needed to seek new funding, it was Steve Tate who stepped up and ran a countywide campaign to raise much-needed tax dollars to rebuild libraries across the county.

We can think of no better recognition for former Mayor Steve Tate. It is rare in today's political climate that someone can serve in elected office for 20 years, indeed it is unlikely to happen ever again.

Timing is important as the Morgan Hill library is near completion of a much-anticipated expansion program. The completion of the expansion will be the perfect time to rename the facility in honor of Steve Tate's 20 years of serve to our community. We request that an agenda item be placed on the December 2, 2020 agenda in order to publicly approve the necessary authority to rename the library the Steve Tate Morgan Hill Library.

On behalf of Mary and Mike Cox; Cricket and Mike Rubino; Dana and Elaine Ditmore; Linnie Lee; Rosy and Rich Bergin; Mario Banuelos and Fawn Myers; Carol O'Hare; Margo and Rich Hinnenkamp; Claudia Rossi and Jim Levis.

We thank you,



Roger and Janie Knopf, rjknopf@garlic.com, 408-621-3617

Fondly,

Theresa

Theresa B. Kiernan
TK & Associates

-----Original Message-----

From: Allen Palmer <[REDACTED]>
Sent: Sunday, November 29, 2020 9:12 AM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: renaming the MH library

I am against renaming the MH library. Leave the name as it is. Local heroes come and go, but names hang around. Allen Palmer 408 779 1247

Allen j Palmer

-----Original Message-----

From: Swanee Edwards <[REDACTED]>
Sent: Sunday, November 29, 2020 2:39 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; 'Mary Cox' <marycox555@gmail.com>
Subject: Steve Tate

Hi Michelle,

I love this idea for Steve to be recognized for his service to the City of Morgan Hill and for his many years in public service. We are so very lucky to have Steve as Mayor and a very important person in our Community for all of these years. He followed in the large footsteps of Dennis Kennedy and proved his Leadership in so many ways! In these times of great uncertainty, and political chaos, we need to remember and honor this man for everything he has done for Morgan Hill, and all of that live here.

Please add my name to the growing list of supporters in honoring his work and dedication to our City!

Ever Onward,

Swanee

-----Original Message-----

From: mhellie@ [REDACTED] <[REDACTED]>
Sent: Sunday, November 29, 2020 11:19 AM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Cc: 'Roger Knopf' <rknopf@morganhillhistoricalsociety.com>; mhellie@ [REDACTED]
Subject: Renaming The Morgan Hill Library

Good Morning Michelle,

I have supported Steve Tate from the first time he ran for a Council seat in Morgan Hill, following him through his retirement as Mayor. I certainly support, Steve Tate Morgan Hill Library!

Best Regards,

Ellie Weston

-----Original Message-----

From: Laura Lundy <[REDACTED]>
Sent: Sunday, November 29, 2020 10:53 AM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Library

Yes I am in support of renaming to Steve Tate Morgan Hill Library in honor of the selfless and diligent service Mayor Tate gave our community.

Laura Lundy

Sent from AT&T Yahoo Mail on Android

-----Original Message-----

From: Peter Anderson <[REDACTED]>
Sent: Sunday, November 29, 2020 10:14 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: MH Library name

I heartily support the suggestion to re-name the MH Library after Steve Tate. There is no one alive in our community who has contributed more to its establishment 20+ years ago and to expanding its service.

I can think of only one other MH Citizen with such dedication, and we honored him by putting his name on the Aquatics Center.

Peter Anderson

-----Original Message-----

Michele, **From:** "Miller, Cindy" <[REDACTED]>
Date: November 30, 2020 at 6:45:33 AM PST
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Steve Tate Library

I wish to add my voice to our community that acknowledges Steve's dedication to our beautiful library, asking that the library be renamed in his honor.

CINDY MILLER

CalRE#01338104

Coldwell Banker

950 Tennant Station

Morgan Hill, CA 95037

-----Original Message-----

From: "Rutledge, Eric" <[REDACTED]>

Date: November 30, 2020 at 8:50:42 AM PST

To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>

Subject: Recognition of Retired Morgan Hill City Mayor Steve Tate

Hello Michelle,

I am emailing you to confirm my support for renaming our library as the Steve Tate Morgan Hill Library. Steve has been a tremendous force in shaping Morgan Hill over the past 20 years into a community that we can all be very proud of. I believe this gesture has been well earned and hopefully will be adopted. I appreciate the consideration.

Best Regards,

Eric

-----Original Message-----

From: Jan Dean <[REDACTED]>

Date: November 30, 2020 at 8:19:26 AM PST

To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>

Subject: Morgan Hill Library

Recognize Retired Morgan Hill City Mayor Steve Tate For His 20 Years Of Service To The Morgan Hill Community

I am in favor of renaming the Library to honor Steve Tate

Jan Dean

-----Original Message-----

From: Robin Shepherd <[REDACTED]>

Date: November 30, 2020 at 7:55:23 AM PST

To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>

Subject: In favor of the Steve Tate Library of Morgan Hill

Dear Mayor and City Council Members of Morgan Hill,

I am writing today to express my full support of renaming the Morgan Hill Library in honor of Steve Tate. He has been a passionate and effective supporter of the Morgan Hill Library and its vital role in our community. I know this firsthand, as I've seen him working in the Library, on Christmas Eve, taking book donations for the Friends of the Library. And as a local journalist, I learned about Steve's love of the Library while interviewing him in 2018. He understands that a community library is about more than shelves of books. What a fantastic idea to honor his legacy in this way. I hope it comes to pass.

Sincerely,

Robin Shepherd

-----Original Message-----

From: Megan Thompson <[REDACTED]>
Date: November 30, 2020 at 9:27:39 AM PST
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Steve Tate Morgan Hill Library

Hi Michelle,

I am writing to show my support for this initiative. Steve has been a great asset to Morgan Hill and is just generally a great guy and I think it is very fitting for him to be recognized in this manner. Thank you!

Megan Thompson

CPA, CVA, CFF

-----Original Message-----

From: Lisa DeSilva <[REDACTED]>
Date: November 30, 2020 at 10:33:19 AM PST
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Naming library in honor of Steve Tate

Hi Michelle,

I am honored to join my voice and name with so many others who would love to see the Morgan Hill Library - a community treasure - be named in honor of Steve Tate, another community treasure. Certainly, Steve's efforts to get the library built were nothing short of incredible; he didn't allow setbacks to deter him and would not stop until the effort was successful.

It is thanks to Steve's dedication and leadership that we are all able to enjoy the many gifts the library has to offer. It would truly be a gift to have it bear his name.

Regards,

Lisa DeSilva

-----Original Message-----

From: Gene Guglielmo <[REDACTED]>

Sent: Monday, November 30, 2020 11:47 AM

To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>

Subject: Steve Tate Morgan Hill Library

Dear Michelle and the Honorable City Council,

I am writing you to express our overwhelming support to name the Morgan Hill Library after ex-mayor Steve Tate. His tireless efforts and contributions to making our community and our City the best it can be for

Over 20 years more than qualifies him for this recognition. We are truly grateful for all he has done and hope you feel the same. Thank you for your consideration of the renaming.

Sincerely yours,

The Guglielmo Family

Mayor Constantine, Councilmembers and City Staff,

November 29, 2020

Please add our names to those in agreement with the letter submitted by Roger and Janie Knopf.

For all the he has done for our city, we fully support recognition of former Mayor Steve Tate's many years of leadership, service and accomplishments by renaming the Morgan Hill Library to the Steve Tate Morgan Hill Library.

Sincerely,

Brian & Kathy Sullivan | mhbrian942@gmail.com | 408-230-7875

Mayor Constantine, Councilmembers and City Staff,

November, 24, 2020

Morgan Hill is a wonderful community, and we are proud to be long-standing active members of this community. But we also recognize that what we all love about Morgan Hill is not by chance. It takes leadership and vision, values and hard work to achieve goals and the quality-of-life that is precious to us all. And when we have city leaders that devote themselves to our community, we should recognize them.

It is with a sense of community pride that we request the city of Morgan Hill pass a resolution to recognize former Mayor Steve Tate by renaming the Morgan Hill Library to the Steve Tate Morgan Hill Library.

Mayor Tate served Morgan Hill in elected office for 20 years, 12 as Mayor. The City of Morgan Hill has much to be proud of during these years of service, but perhaps nothing more meaningful as the Morgan Hill Library. Libraries and library services continue to be a passion of Mayor Tate. Early in his time as a councilmember he eagerly took on the assignment as Morgan Hill's representative to the Santa Clara County Library District and served on the Joint Powers Authority Board for 20 years. He volunteered countless hours as a library volunteer with the Friends of the Morgan Hill Library. He led efforts to be sure every child in Morgan Hill has a library card. And he is a long-standing user of the library services himself.

When Morgan Hill needed to rebuild our library, we turned to Steve Tate to create a budget and political plan to gain support and get the job done. When the County's library district needed to seek new funding, it was Steve Tate who stepped up and ran a countywide campaign to raise much-needed tax dollars to rebuild libraries across the county.

We can think of no better recognition for former Mayor Steve Tate. It is rare in today's political climate that someone can serve in elected office for 20 years, indeed it is unlikely to happen ever again.

Timing is important as the Morgan Hill library is near completion of a much-anticipated expansion program. The completion of the expansion will be the perfect time to rename the facility in honor of Steve Tate's 20 years of service to our community. We request that an agenda item be placed on the December 2, 2020 agenda in order to publicly approve the necessary authority to rename the library the Steve Tate Morgan Hill Library.

On behalf of Mary and Mike Cox; Cricket and Mike Rubino; Dana and Elaine Ditmore; Linnie Lee; Rosy and Rich Bergin; Mario Banuelos and Fawn Myers; Carol O'Hare; Margo and Rich Hinnenkamp; Claudia Rossi and Jim Lewis.

We thank you,



Roger and Janie Knopf, rjknopf@garlic.com, 408-621-3617

From: Mary Cox <[REDACTED]>
Sent: Wednesday, November 25, 2020 1:49 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Cc: Roger Knopf ([REDACTED]) <[REDACTED]>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Mike Cox <[REDACTED]>
Subject: Recognition for Steve Tate

Hi Michelle, we have attached a letter in support of recognizing Steve Tate for the many years of service to Morgan Hill.

We request that our letter be included with the request submitted by Roger Knopf exemplifying Steve's work.

Happy Thanksgiving & thank you,

Mary E. Cox
VP Regulatory Affairs, Anaerobe Systems

Mike Cox
CEO, Anaerobe Systems



15906 Concord Circle Morgan Hill, CA 95037



Dear Mayor Constantine, Councilmembers, and City Staff,

Mike and I were extremely pleased to hear of support for the “Steve Tate Morgan Hill Library” in our community and asked what we could do to help make this happen.

It is more than fitting and the perfect time to rename our library the “Steve Tate Morgan Hill Library”.

During the 15 years we have known Steve Tate, the one Morgan Hill organization that was a constant topic was the library. His support was far reaching:

- Active advocate for funding to build the new library which opened in 2007
- Worked with planners to assure a large space for community use such as lectures and meetings
- Modernized library use, supporting the addition of many computers, considering those children and families who did not have technical resources at home
- Advocated for and helped raise community funds for artwork in and outside the library
- Volunteer member of Friends of the Library
- Made sure the library remained open when funding was reduced during the recession and was vigilant to help bring funding back
- Continues as an active library user and supporter

I was in the Morgan Hill Library on Opening Day and was amazed at the space, the functionality, the beauty and the preservation and modernization of our library services when other libraries were reducing services. The photo above shows community enthusiasm for our library.

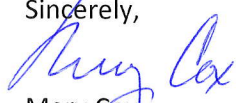
I also attend monthly AAUW Programs (open to the public) and many other lectures at the library. It is a perfect space for community education.

Let's not take this for granted.

We are so thankful that Steve Tate's interest and support of library services over many years resulted in an active, broad reaching community hub.

We are especially thankful for Steve Tate's 20 years of dedicated public service to Morgan Hill. We believe recognizing Steve Tate by renaming our library the “Steve Tate Morgan Hill Library” is most appropriate and the perfect time to do so. Please approve the authorization for this recognition.

Sincerely,


Mary Cox
marycox@anaerobesystems.com
408-591-8814

11-25-20


Mike Cox
mcox@anaerobesystems.com
408-591-5001

11-25-20

-----Original Message-----

From: Joan Sullivan <jbsullivan@charter.net>

Sent: Saturday, November 28, 2020 3:52 PM

To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>

Subject: Library

I agree with all that is said in the following letter requesting our Morgan Hill library be named for Steve Tate. As a long time resident of Morgan Hill I have known Steve, and all he has done for the City, for many years. It is a fitting and deserving tribute.

Joan Sullivan

Sent from my iPhone

Mayor Constantine, Councilmembers and City Staff,

November, 24, 2020

Morgan Hill is a wonderful community, and we are proud to be long-standing active members of this community. But we also recognize that what we all love about Morgan Hill is not by chance. It takes leadership and vision, values and hard work to achieve goals and the quality-of-life that is precious to us all. And when we have city leaders that devote themselves to our community, we should recognize them.

It is with a sense of community pride that we request the city of Morgan Hill pass a resolution to recognize former Mayor Steve Tate by renaming the Morgan Hill Library to the Steve Tate Morgan Hill Library.

Mayor Tate served Morgan Hill in elected office for 20 years, 12 as Mayor. The City of Morgan Hill has much to be proud of during these years of service, but perhaps nothing more meaningful as the Morgan Hill Library. Libraries and library services continue to be a passion of Mayor Tate. Early in his time as a councilmember he eagerly took on the assignment as Morgan Hill's representative to the Santa Clara County Library District and served on the Joint Powers Authority Board for 20 years. He volunteered countless hours as a library volunteer with the Friends of the Morgan Hill Library. He led efforts to be sure every child in Morgan Hill has a library card. And he is a long-standing user of the library services himself.

When Morgan Hill needed to rebuild our library, we turned to Steve Tate to create a budget and political plan to gain support and get the job done. When the County's library district needed to seek new funding, it was Steve Tate who stepped up and ran a countywide campaign to raise much-needed tax dollars to rebuild libraries across the county.

We can think of no better recognition for former Mayor Steve Tate. It is rare in today's political climate that someone can serve in elected office for 20 years, indeed it is unlikely to happen ever again.

Timing is important as the Morgan Hill library is near completion of a much-anticipated expansion program. The completion of the expansion will be the perfect time to rename the facility in honor of Steve Tate's 20 years of serve to our community. We request that an agenda item be placed on the December 2, 2020 agenda in order to publicly approve the necessary authority to rename the library the Steve Tate Morgan Hill Library.

On behalf of Mary and Mike Cox; Cricket and Mike Rubino; Dana and Elaine Ditmore; Linnie Lee; Rosy and Rich Bergin; Mario Banuelos and Fawn Myers; Carol O'Hare; Margo and Rich Hinnenkamp; Claudia Rossi and Jim Levis.

We thank you,

The image shows two handwritten signatures in blue ink. The first signature is 'Roger Knopf' and the second is 'Janie Knopf'. They are written in a cursive, flowing style.

Roger and Janie Knopf, rjknopf@garlic.com, 408-621-3617

Item # 10

AGENDA DATE: 12/02/2020

SUPPLEMENT # 2

From: [D. Muirhead](#)
To: [CC Public Comment](#)
Subject: comment City Council Dec 2 2020 Item #10. Rename Morgan Hill Library
Date: Friday, November 27, 2020 8:36:01 AM

Comment for consideration by City Council Meeting December 2, 2020.

Consent Calendar

Agenda Item #10. Rename Morgan Hill Library for Former Mayor Steve Tate.

This item should be withdrawn from consideration at this time.

It violates several norms of transparent and participatory governance.

- 1) No other County Library is named for anything but the location of the facility.
- 2) What "extraordinary circumstances" are claimed for Mr. Tate and the County Library facility in Morgan Hill?
The City Facility Naming policy is quite explicit that
II. Procedures for Naming Existing Facilities
The City does not normally rename existing parks, buildings, and other facilities. In the event that extraordinary circumstances result in the need to rename an existing facility, consideration shall primarily be given to:
 1. An individual (living or deceased) who ...
 2. An individual (living or deceased) who has contributed outstanding civic service to the City and who has not served in elected City office for a period of at least one year.

[Note that this naming policy was changed on Sept 2 2015 to allow the Aquatics Center to be renamed for former Mayor Dennis Kennedy on Sept 15 2015]

[Note that the policy included in the agenda item (Revised Sept 2 2015) is not the one found under CC Policies on the web site (Reviewed June 27 2007) and these policies do not contain revision histories]
- 3) It is on Consent Calendar so default is no visibility nor discussion.
- 4) This renames a public facility without resident awareness let alone actual discussion of appropriateness at this time.
"Community Engagement: Inform" is meaningless for this action.
- 5) It is proposed by a few individual influencers and put on the agenda by the City Manager. Why now? Why the decision to have these particular people decide this issue for the rest of us?
- 6) I do not see that honoring a former Mayor has anything to do with Fostering Positive Organizational Culture. Enlighten me.

The Report Narrative states, and I concur, that Mayor Steve Tate had and has a passion for community access to libraries and library services.

For Council Members who spoke so strongly about desiring to engage with the community following budget discussions, you are not walking the walk. No member reports. Now a surprise Consent agenda item.

Consider this practical advice:

Just because you can do something
does not mean you should do something.

I am disappointed.

Doug Muirhead, Morgan Hill

WARNING: This message is from an external user. Confidential information such as social security numbers, credit card numbers, bank routing numbers, gift card numbers, wire transfer information and other personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.

Item # 10

AGENDA DATE: 12/02/2020
SUPPLEMENT # 3

-----Original Message-----

From: Ken Meagor <[REDACTED]>
Sent: Monday, November 30, 2020 4:12 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: MH Library - Steve Tate

Hi Michelle – I am writing to provide my support and enthusiasm for the initiative to put Steve Tate's name on the Morgan Hill Library.

Hope this helps!

Ken Meagor

SVP, Sr. Relationship Manager

Pinnacle Bank

-----Original Message-----

From: Craig van Keulen <[REDACTED]>
Date: November 30, 2020 at 5:17:10 PM PST
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Cc: Dana Ditmore <dditmore@earthlink.net>
Subject: craig van Keulen in support of steve tate library

Hi Michelle,

Please let the City Council know that I strongly support naming the MH Library after Past Mayor Steve Tate for all that he has done for our Community over the last 20 years and his love of, and his commitment to, our Morgan Hill Library.

Very truly yours,

Craig C. van Keulen

-----Original Message-----

From: Sherry Hemingway <[REDACTED]>
Sent: Wednesday, November 25, 2020 3:23 PM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Tate recognition

Christina,

I heartily endorse this effort to honor Steve Tate tonight. He deserves every honor we can give him.

Sherry Hemingway

-----Original Message-----

From: Terry Moriyama <[REDACTED]>
Sent: Tuesday, December 1, 2020 11:30 AM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Council Agenda - Steve Tate Morgan Hill Library

Good morning Michelle,

I wholeheartedly recommend the renaming of the Morgan Hill Library to the Steve Tate Morgan Hill Library!

Mayor Tate served Morgan Hill in elected office for 20 years, the final 12 of those years as the City Mayor. The City of Morgan Hill has much to be proud of during these years of service, but perhaps nothing more meaningful than the Morgan Hill Library. Libraries and library services continue to be a passion of Mayor Tate. Early in his time as a City Councilmember he eagerly took on the assignment as Morgan Hill's representative to the Santa Clara County Library District and served on the Joint Power Authority Board for 20 years. He volunteered countless hours as a library volunteer with the Friends of the Morgan Hill Library. He led efforts to be sure every child in Morgan Hill has a library card. And, he is a long-standing user of library services himself.

When Morgan Hill needed to rebuild our library, the community turned to Steve Tate to create a budget and political plan to gain support and get the job done. When the County's library district needed to seek new funding, it was Steve Tate who stepped up and ran a countywide campaign to raise much-needed tax dollars to rebuild libraries across Santa Clara County.

Those of us who have been privileged to know Steve during the period of these efforts can think of no better recognition for former Mayor Steve Tate than to rename our library as the Steve Tate Morgan Hill Library. It is rare in today's political climate that someone can serve in elected office for 20 years, and indeed it is unlikely to happen ever again.

Terry

-----Original Message-----

From: Ken Hulick <[REDACTED]>
Sent: Tuesday, December 1, 2020 12:39 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Library Named for Steve Tate

I am fully in support of the effort to name the Morgan Hill Library in honor of Steve Tate.

Ken Hulick

Morgan Hill resident for 15 years

Item # 10

AGENDA DATE: 12/02/2020
SUPPLEMENT # 4

-----Original Message-----

From: Armando Be [REDACTED]

Sent: Tuesday, December 1, 2020 6:14 PM

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Larry Carr

<Larry.Carr@morganhill.ca.gov>; Yvonne Martinez Beltran

<yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John

McKay <john.mckay@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>

Subject: Consent Calendar Item #10: Renaming the Library

Dear City Manager and City Council Members,

The renaming of a library is a significant event. The library building is extremely significant because it is a center point that brings the community together and is a beacon of knowledge. Before CO-VID 19, families and children from throughout Morgan Hill would visit the library. It was an afterschool gathering place for students to study and socialize and wait for their parents to pick them up to drive them home.

Now, It seems that a small group of community members have made a request that the library be renamed in favor of former Mayor Tate. The request is dated November 24, 2020 and the item was fast tracked for tomorrow on the consent calendar. There was an extraordinary rush job to agendize the item.

Please note that Mayor Tate's own policy in place on the subject directs that the city does not "normally" rename existing buildings, except in "extraordinary circumstances". "Outstanding civic service" is an extraordinary factor to consider and being out of office for one year. Even though Mayor Tate has been out of office for one year, he still enmeshes himself in local politics. For example, this 2020 election he endorsed and campaigned for a candidate running against Councilman Spring.

Do we need to slow the process down? Why would you want to proceed at warp speed? Now it may be that tomorrow you should start the conversation as to whether extraordinary circumstances have arisen that would justify a name change to an already named building.. The conversation can even include discussion about the appropriateness of changing the library name. What about that very important factor that is presently lacking-community input? In the rush to place this item before the council, the City staff have not reported efforts made to gauge city-wide community input regarding the recommendation to change the name. Instead of accepting the recommendation that you approve for the City staff to proceed with renaming the library with Mayor Tate's name, you can direct the city staff to gauge city-wide community input about changing the name to the proposed name and to report the findings in a future council meeting. Why not ask the community if there are other names that should be considered? Community input should be paramount in this decision that should be made only in extraordinary circumstances..

I note that the library commission has not even weighed in on the matter. It may be worthwhile to discern what the commission members think about the matter.

I understand the zeal of the small group of proponents who in their minds Mayor Tate's service has been "outstanding" that it would rise to the level of an extraordinary event warranting a name change. But I would suggest that you need and should demand city wide community input on the subject matter.

Since the item was posted I have spoken to many community members and they all have expressed disappointment at the process- moving along at warped speed without little to none city wide community input.

You can and should correct those deficiencies tomorrow

Regards,

Armando Benavides

-----Original Message-----

From: Diana Gill <[REDACTED]>

Date: December 1, 2020 at 7:18:06 PM PST

To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>

Subject: Steve Tate Library

Hello Michelle,

I am writing to express my support of renaming the Morgan Hill Library to the Steve Tate Morgan Hill Library in recognition of his service and efforts.

--

Kind regards,

Diana Gill

CSMH Family Engagement Coordinator

-----Original Message-----

From: Tim Thornton <[REDACTED]>

Sent: Wednesday, December 2, 2020 9:09 AM

To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>

Subject: Steve Tate service to community

Hi, Michelle,

I am adding our compliments to the many others for Steve Tate's years of service to our very unique community. Although Marianne and I are long time "county" residents, since 1961, we have watched Steve's many abilities to listen and manage to "get everyone on the same page" for the many issues that we have faced, especially in the past several years of incredible growth. We thank the Cox's and Knopf's for "getting the ball rolling, again, on Steve's behalf. WELL DONE! Tim and Marianne Thornton
Sent from my iPhone

Item # 10

**AGENDA DATE: 12/02/2020
SUPPLEMENT # 5**

-----Original Message-----

From: Jayson Stebbins <[REDACTED]>
Sent: Wednesday, December 2, 2020 1:47 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Recognizing steve tate

I support and request that the City Council look at naming the Library after Steve Tate in honor of his years of service to Morgan Hill and the youth of the south bay.

-----Original Message-----

From: Tracy Newquist <[REDACTED]>
Sent: Wednesday, December 2, 2020 1:46 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Steve Tate

I support the naming of the Morgan Hill Library after Steve Tate.

Thank you,

Tracy Newquist

-----Original Message-----

From: Janene Towner-Chernoff <[REDACTED]>
Sent: Wednesday, December 2, 2020 1:45 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Steve Tate

Hello,

I support changing the name of the library to the Steve Tate Library. Thank you!

-----Original Message-----

From: Garth Gilmour <[REDACTED]>
Sent: Wednesday, December 2, 2020 1:57 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Support for naming the Library in honor of Steve Tate.

Michelle;

Hope that this email finds you well. I would like to voice my support in favor of naming the library in honor of Steve Tate. Steve was an excellent mayor and still remains very committed and active in the Morgan Hill community and I strongly support the naming in his honor.

Thank you.

Garth Gilmour

-----Original Message-----

From: Teri Nelson <[REDACTED]>
Sent: Wednesday, December 2, 2020 2:01 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Steve Tate

Hi Michelle

I am writing this in support of Steve Tate having the library named after him. He has been such a huge support to the community and the many children he has helped through his outreach. I have worked in many areas with Steve and his knowledge, hard work and dedication to the improvement of the community he serves has been outstanding. He serves with an unselfish heart.

Please positively consider Steve for this honor.

Sincerely,

Teri Nelson
Intero Real Estate Services

-----Original Message-----

From: Dan Makinster <[REDACTED]>
Sent: Wednesday, December 2, 2020 2:01 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Steve Tate Library

Ms. Bigelow,

As a Morgan Hill resident for over 28 years I have really enjoyed Morgan Hill as a community and a safe place to raise our family.

I have been fortunate to know Steve through Rotary and CLEF. While we all have our own suggestions, directives, hopes and dreams, Steve has tried to place the citizens of Morgan Hill first.

To that, I whole heartedly suggest the city adopt and re-name the Morgan Hill Library with Steve's name attached.

He has shown all of us how to be a better citizen, friend and leader.

We are lucky to have Steve in our little corner of the world!

Best

Dan Makinster

-----Original Message-----

From: Mary Hiland <[REDACTED]>
Sent: Wednesday, December 2, 2020 2:04 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: naming the library

Hello Michelle -

I am emailing to let you know that we support the naming of the library after Steve Tate.

Mary and Bill Hiland (Morgan Hill residents and business owners)

-----Original Message-----

From: Gina Varela-Domenichini <[REDACTED]>
Sent: Wednesday, December 2, 2020 2:06 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Vote for Steve Tate Morgan Hill Library

Hello,

Please add my name to the many supporters in Morgan Hill recognizing Steve Tate for his many years of service to our Community, especially in the area of youth and education. I would greatly encourage the vote of re-naming our library to the Steve Tate Morgan Hill Library.

Regards,
Gina Varela-Domenichini

-----Original Message-----

From: Rosy Bergin <[REDACTED]>
Sent: Wednesday, December 2, 2020 2:16 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Naming of the Morgan Hill Library

Thank you for your consideration of re-naming the Morgan Hill Library.

Naming this tremendous resource the Steve Tate Morgan Hill Library is a positive reflection on

- the years of service Steve Tate selflessly gave to our city
- the compassion this community shows for its own citizens

Sincerely,
Rosy Bergin

-----Original Message-----

From: JAN REED <[REDACTED]>
Sent: Wednesday, December 2, 2020 2:41 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Steve Tate

Hello Michelle,

I would like to offer my full support to Steve Tate, naming the library in his honor. I also hope to join in tonight's City Council meeting as this honor is bestowed on him.

Jan Reed

-----Original Message-----

From: Mike Withrow <[REDACTED]>

Sent: Wednesday, December 2, 2020 3:18 PM

To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>

Subject: I SUPPORT STEVE TATE

Our best mayor for many years.

Mike Withrow

Item # 10

AGENDA DATE: 12/02/2020
SUPPLEMENT # 6

-----Original Message-----

From: Patricia Kindred <[REDACTED]>
Sent: Wednesday, December 2, 2020 3:36 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Recognition of Steve Tate

Stephen Tate, has been a most affable and tenacious workhorse for Morgan Hill. Always ready to listen with a smile and it is my pleasure to know him.

Best regards,
Patricia

-----Original Message-----

From: Arlene Noodleman <[REDACTED]>
Sent: Wednesday, December 2, 2020 4:02 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Steve Tate

Dear Michelle,
I am writing this email to you in support of recognizing Steve Tate for his many years of service to our Community especially in the area of youth and education by naming our library to: the "Steve Tate Morgan Hill Library."

Thank you,

Arlene Noodleman

-----Original Message-----

-----Original Message-----

From: Greg Sellers <[REDACTED]>

Date: December 2, 2020 at 5:42:17 PM PST

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Larry Carr <Larry.Carr@morganhill.ca.gov>

Subject: Support for Item 10 renaming Morgan Hill Library

Dear Councilmembers,

I am writing to strongly support Item #10 on tonight's agenda renaming the Morgan Hill Library the Morgan Hill Steve Tate Library.

I served with Steve Tate all 12 years I was on the City Council. While Steve was active in many aspects of our local community as Councilmember and Mayor, he was particularly passionate about our libraries. He served on the Board of the County Library District, fought hard for measures aimed at providing funding for libraries, and led the effort to build our current library. I can say unequivocally that without Steve Tate's efforts we would not have the amazing library facility our community enjoys today.

Just as it was appropriate to name the Aquatics Center after Dennis Kennedy, in honor of both his significant, long-term commitment to our community and his specific advocacy for the facility that bears his name, so too is it appropriate to name our library after Steve Tate. I urge you to support this measure on tonight's agenda.

-Greg

Greg Sellers, CEO

-----Original Message-----

From: Ken Murray <[REDACTED]>

Sent: Wednesday, December 2, 2020 7:26 PM

To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Dana Ditmore <dditmore.earthlink.net@clubrunner.email>; Roger Knopf <rjknopf@garlic.com>

Subject: Support for Steve

I support the renaming of the library!

Regards

Ken

-----Original Message-----

From: Ira Marshall <[REDACTED]>
Sent: Wednesday, December 2, 2020 8:14 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Morgan Hill Library

Michelle,

I wanted to send a note to let you know that my wife, Wanda and I support having the library renamed in honor of Steve Tate. Steve has done so much to support the library and its recent expansion. It would be great to recognize him for all that he has done for our Morgan Hill Library.

Cordially,

Ira B. Marshall
Registered Investment Advisor
Business, Insurance and Financial Planning

-----Original Message-----

From: John Foster <[REDACTED]>
Sent: Friday, December 4, 2020 12:56 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Steve Tate

We support



Bob and Nancy Foster
Sent from my iPhone



City Council Meeting

Item #18

Monthly Budget Update



December 2, 2020

Overview



- Monthly Budget Update
- Staff does not recommend any budget adjustments at this time

General Fund



- No material change since last update
- State and County restriction may negatively impact sales tax, recreation services, and TOT
- Recreation Services: The additional \$1.6 million loss may become a reality

Development Services



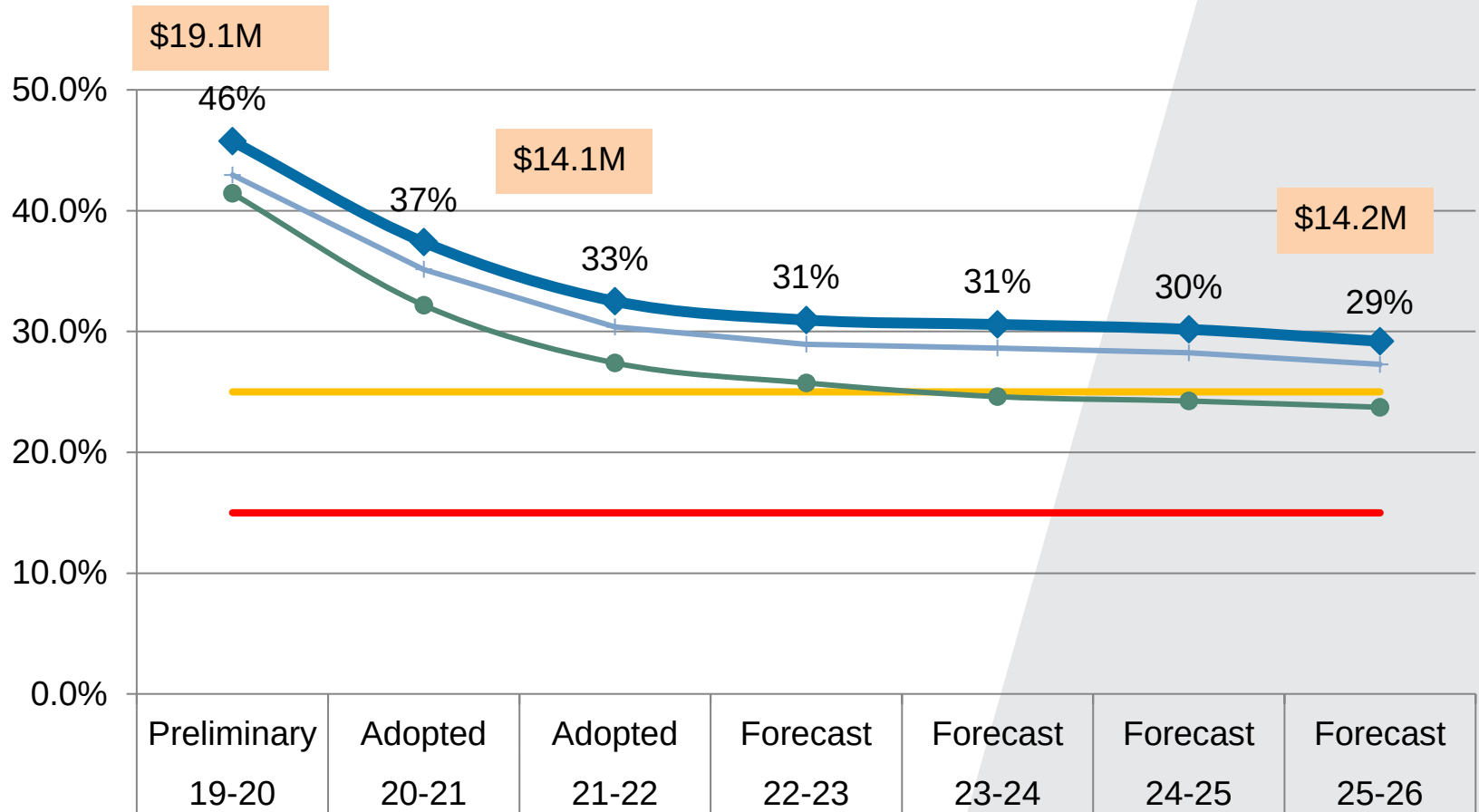
- Revenues are tracking higher than budget
- \$1.6 million received to date vs. \$1.5 million prior year
- No significant impact to development services is expected from County moving back into the “Purple Tier”

Enterprise Funds



- No material change since last update
- Number of accounts delinquent steady but with higher balance
- Final pricing for wastewater bonds

Updated General Fund Forecast



- ◆ GF Six Year Forecast October 21, 2020
- Fund Balance Goal of 25% of Revenues
- Fund Balance Minimum Level of 15% of Revenues
- GF Six Year Forecast Budget Adoption June 17, 2020
- + GF Six Year Forecast July 22, 2020

Questions?



CITY OF MORGAN HILL



Special - 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, December 2, 2020 5:30 p.m.

Virtual Meeting

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/120220CityCouncilMtg> or by calling in to: (669) 900-9128, then enter the meeting id: 814 9338 1114.

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.

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:30 pm for the purpose of conducting an Affordable Housing and Homelessness Workshop.

5:30 p.m. Workshop

7:00 p.m. Regular Meeting

SPECIAL MEETING

5:30 P.M. Workshop

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow

WORKSHOP

1. AFFORDABLE HOUSING AND HOMELESSNESS WORKSHOP

Recommendation:

1. Receive report;
2. Approve the BEGIN downpayment assistance guidelines;
3. Adopt resolution authorizing the City to become a member of the California Community Housing Agency JPA; supporting the California Community Housing Agency's Issuance of Tax-Exempt Bonds for the production, preservation, and protection of Middle-Income Rental Housing; and Authorizing the City Manager or Designee to enter into purchase option agreements with the California Community Housing Agency for middle-income rental housing created within City limits;
4. Adopt resolution endorsing the 2020 Community Plan to End Homelessness; and
5. Direct City Manager to return to City Council with the Morgan Hill Inclusionary Housing Ordinance (IHO) amended to require low, lower moderate- and moderate-income units in all new ownership developments.

Any City Council actions will be taken during item 20 during the regular meeting.

REGULAR MEETING

7:00 P.M.

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.

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)

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

2. ACCEPT COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2020

Recommendation:

Accept the City's Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2020.

3. ADOPT RESOLUTION APPROVING AND MAKING FINDINGS RELATED TO THE AB 1600 DEVELOPMENT IMPACT FEE ANNUAL REPORT FOR FISCAL YEAR 2019-20

Recommendation:

Adopt resolution making findings for unexpended development impact fees and accept the annual development impact fee report.

4. ACCEPT THE ANNUAL SB 165 REPORT FOR COMMUNITY FACILITIES DISTRICT NO. 2014-1 (FISHER CREEK)

Recommendation:

Accept and file the report.

5. ACCEPT DOWNTOWN CROSSWALK SAFETY IMPROVEMENTS PROJECT

Recommendation:

1. Accept as complete the Downtown Crosswalk Safety Improvements Project in the final amount of \$123,309;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

6. ACCEPT TENNANT AVENUE SEWER PROJECT

Recommendation:

1. Accept as complete the Tennant Avenue Sewer Main Project in the final amount of \$2,287,821;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

7. ACCEPT MORGAN HILL LIBRARY ADDITION PROJECT

Recommendation:

1. Accept as complete the Morgan Hill Library Addition Project in the final amount of \$2,072,574;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

8. ADOPT RESOLUTION INITIATING 2021 HAZARDOUS VEGETATION PROGRAM

Recommendation:

Adopt resolution declaring weeds and brush to be a nuisance and setting the hazardous vegetation public hearing on February 3, 2021.

9. ADOPT RESOLUTION AMENDING THE MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES RESOLUTION AND SALARY SCHEDULE TO INCLUDE APPOINTED CITY CLERK POSITION (THIS RESOLUTION RESCINDS RESOLUTION NO. 20-048)

Recommendation:

Adopt resolution amending the Management, Professional, and Confidential Employees Resolution and salary schedule to include appointed City Clerk position.

10. APPROVE THE RENAMING OF THE MORGAN HILL LIBRARY IN HONOR OF FORMER MAYOR STEVE TATE

Recommendation:

Approve the renaming of the Morgan Hill Library in honor of Former Mayor Steve Tate.

11. APPROVE IMPROVEMENT AGREEMENT WITH BW MORGAN HILL, LLC (BLUEWAVE EXPRESS CARWASH)

Recommendation:

1. Approve and authorize the City Manager to execute and administer an Improvement Agreement with BW Morgan Hill, LLC; and
2. Authorize the recordation of the Improvement Agreement.

12. APPROVE GENERATOR MAINTENANCE SERVICES AGREEMENT

Recommendation:

Approve and authorize the City Manager to execute and administer a three year agreement with Odyssey Power Corporation in the not-to-exceed amount of \$225,000 for annual, preventive maintenance, and emergency repair and rentals for the City's 28 standby generators.

13. APPROVE INCENTIVE AND FEE FREEZE AGREEMENTS FOR A NEW AUTOMOBILE DEALERSHIP

Recommendation:

1. Adopt resolution authorizing the City Manager to execute and administer an Incentive Agreement, consistent with the Auto Dealer Economic Development Strategy, with TSC Motors, Inc. for a new automobile dealership at the Auto Mall Planned Development Site on Condit Road;
2. Make findings of consistency with Section 53083(a)(6)(b) of the Government Code (AB 562); and
3. Direct the City Manager to execute an Impact Fee Freeze Agreement with TSC Motors, Inc. for the development of a 27,000 square foot new vehicle dealership to be located at 17085 Condit Road.

14. APPROVE AMENDED AND RESTATED IMPROVEMENT AGREEMENT WITH MONUMENT LAND COMPANY LLC AND ACCEPT PUBLIC IMPROVEMENTS AT THE INTERSECTION OF MONTEREY ROAD AND COCHRANE ROAD

Recommendation:

1. Approve an Amended and Restated Improvement Agreement with Monument Land Company LLC Relating to Reimbursement for Right-of-Way Improvements Constructed for City by Developer/Property Owner;
2. Authorize the City Manager to execute the Amended and Restated Improvement Agreement;
3. Authorize the recordation of the Amended and Restated Improvement Agreement;
4. Adopt resolution amending the Fiscal Year 2020-21 budget to appropriate \$191,145 from Local Drainage (303), Local Drainage – Non AB1600 (304), Sewer Operations (640), Water Operations (650), and Water Impact (651) funds to reimburse the Developer for the public improvements at the intersection of Monterey Road and Cochrane Road;
5. Accept the Public Improvements at the intersection of Monterey Road and Cochrane Road;
6. Authorize the City Engineer to sign a Notice of Completion; and
7. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

15. APPROVE PURCHASE OF FEE TITLE LAND AND A PUBLIC SERVICE EASEMENT FOR HALE AVENUE EXTENSION PROJECT

Recommendation:

1. Approve the purchase of Fee Title Land and a Public Service Easement of portions of APN 764-16-028 for a total amount of \$94,000 plus escrow and closing costs from the Morgan Hill Unified School District for the Hale Avenue Extension Project; and
2. Authorize the City Manager to execute all documents and make minor modifications as necessary in order to complete the transaction.

16. APPROVE THE NOVEMBER 18, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

17. DELEGATE THE COMPLETION AND ACCEPTANCE AUTHORITY OF PUBLIC IMPROVEMENTS MADE SUBJECT TO CITY COUNCIL APPROVED IMPROVEMENT AGREEMENTS FROM THE CITY COUNCIL TO THE CITY ENGINEER

Recommendation:

Delegate the completion and acceptance authority of public improvements made subject to the City Council approved Improvement Agreements from the City Council to the City Engineer.

18. RECEIVE MONTHLY BUDGET UPDATE AND OCTOBER 2020 FINANCIAL AND INVESTMENT REPORTS

Recommendation:

Accept and file report.

19. REJECT PROPOSALS FOR WATER WELL AND PUMP STATION REPAIRS, MAINTENANCE, AND REHABILITATION SERVICES AND REBID THE PROJECT

Recommendation:

1. Reject proposals for Water Well and Pump Station Repairs, Maintenance, and Rehabilitation Services per Municipal Code Section 3.04.170; and
2. Approve and authorize the City Manager to execute an amendment for the current service agreement with Salinas Pump for these services to extend the term to June 30, 2021 and increase the amount by \$240,000, to a new not-to-exceed amount of \$898,967.

OTHER BUSINESS

20. APPROVE BEGIN PROGRAM GUIDELINES, AND ADOPT RESOLUTIONS TO JOIN CALIFORNIA COMMUNITY HOUSING AGENCY'S JOINT POWERS AGREEMENT AND ENDORSING THE SANTA CLARA COUNTY'S 2020 COMMUNITY PLAN TO END HOMELESSNESS

Recommendation:

1. Approve the BEGIN downpayment assistance guidelines;
2. Adopt resolution authorizing the City to become a member of the California Community Housing Agency JPA; supporting the California Community Housing Agency's Issuance of Tax-Exempt Bonds for the production, preservation, and protection of Middle-Income Rental Housing; and Authorizing the City Manager or Designee to enter into purchase option agreements with the California Community Housing Agency for middle-income rental housing created within City limits;
3. Adopt resolution endorsing the 2020 Community Plan to End Homelessness; and
4. Direct City Manager to return to City Council with the Morgan Hill Inclusionary Housing Ordinance (IHO) amended to require low, lower moderate- and moderate-income units in all new ownership developments.

Estimated Time: 60 Minutes

21. APPROVE SERVICE AGREEMENTS FOR BROADBAND SERVICES FOR THE CITY OF MORGAN HILL

Recommendation:

1. Authorize the City Manager and City Attorney to negotiate final terms and execute Master Services Agreement and Service Order with Wave Business Solutions, LLC for a period of 20 years in an amount not-to-exceed \$2,400,000 for a dark fiber lease for intranet connectivity between City facilities, and the installation of telecommunications conduit in the City; and
2. Authorize the inclusion of Monterey Road Conduit Construction Option and direct City Manager to apply and execute all related documents for the Economic Development Administration Infrastructure Grant.

Estimated Time: 60 Minutes

PUBLIC HEARING

22. INTRODUCE ORDINANCE AMENDING SECTION 8.28.040 (ENUMERATION OF UNLAWFUL NOISES) OF CHAPTER 8.28 (NOISE) OF TITLE 8 (HEALTH AND SAFETY) AND AMENDING VARIOUS CODE PROVISIONS WITHIN TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING MINOR AMENDMENTS DUE TO CLERICAL ERRORS AND INCONSISTENCIES; AMENDING CHAPTER 18.52 (FENCES AND WALLS) OF TITLE 18 (ZONING) TO CLARIFY AND ESTABLISH DESIGN AND SCREENING REQUIREMENTS OF FENCES AND WALLS; AND TO ESTABLISH CHAPTER 18.115 (GENERAL PLAN AMENDMENTS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL ESTABLISHING PROCEDURES FOR AMENDING THE GENERAL PLAN (ZA2020-0001: MUNICIPAL CODE AMENDMENT)

Recommendation:

1. Open/close the public hearing;
2. Waive first and second reading of the Ordinance Amendment; and
3. Introduce Ordinance Amendment.

Estimated Time: 45 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 LEGAL COUNSEL--ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9.

One case

CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION (Govt. Code 54956.9(d)(1))

Name of case: City of Morgan Hill v. Bushey (Case No. 16-CV-292595)

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



These strategic priorities were established prior to the COVID-19 pandemic. In light of recent events, we recognize that all of these goals and priorities will be viewed through the lens of the global pandemic, and we will continue to have equity, public health, and financial responsibility in mind.



AFFORDABLE HOUSING & HOMELESSNESS WORKSHOP



DECEMBER 2, 2020

Agenda



- Housing Program Mission
- What is Affordable Housing?
- Affordable Housing Projects in Pipeline
- Regional Housing Needs Allocation (RHNA)
- Morgan Hill Below Market Rate Program Accomplishments
- California Community Housing Agency (CalCHA)
- BEGIN Program Guidelines
- Inclusionary Housing Ordinance
- CDBG
- 2020 Legislative Update
- Homelessness Efforts Update
- Santa Clara County Community Plan to End Homelessness

Housing Mission

- Improve, preserve, and create safe, quality, rental and ownership housing in Morgan Hill for residents at all income levels
- Implementation of the Housing Element as part of its General Plan demonstrating how the community will meet the existing and projected housing needs of residents at all income levels
- Demonstrate the City's ability to provide for its "fair share" of affordable housing, comply with and support social justice and anti-discrimination housing practices, and support those that currently find themselves homeless

Housing Mission (Cont'd)



- The Regional Housing Need Allocation (RHNA) is the number of new homes that a city is "assigned" to produce in a Housing Element cycle
- The City is in its fifth RHNA Housing Element Cycle. The current Housing Element is compliant until January 31, 2023
- The current housing element “cycle” is for the Planning Period: January 31, 2015 – January 31, 2023. The last construction permits that can be counted for this fifth cycle planning period will be December 31, 2022

Housing Element Strategy

2015-2023



- Build new housing to meet the full range of future community housing needs, including affordability and accessibility
- Build housing for groups with special needs
- Ensure a range of housing types for all age groups, served by transit, recreational amenities, shopping and health and personal services, that allow residents to age in place
- Preserve and rehabilitate existing affordable housing in the community

What is Considered Affordable Housing?



- Housing that a household can pay for, while still having money left over for other necessities like food, transportation, and health care. This means that what is considered “affordable” depends on a household’s income
- Consumes no more than 30 percent of a household’s gross monthly income
- To qualify for affordable, income-restricted housing, individual or family income must fall within a specified range
- Most income-restricted rental housing in Santa Clara County is affordable to households who make less than 80% of area median income (AMI)

What is Considered Affordable Housing? (Cont'd)



- The U.S. Department of Housing and Urban Development (HUD) annually releases income limits that determine eligibility for various housing and community development funds
- The County of Santa Clara has one of the highest area median incomes (AMI's) in the country, at \$141,600 for a family of four
- Area Median Income (AMI) – The median income of each county or adjacent counties based on all wage earners in the area, published separately by HUD and HCD to determine household eligibility for various federal, State, and State-governed housing programs, and updated annually

What is Considered Affordable Housing? (Cont'd)



- Households earning 30% of the area median income and below are considered Extremely Low Income (ELI)
- Households earning between 31-50% of area median income are considered Very Low Income (VLI)
- Households earning between 51-80% are considered Low Income (LI)
- Households earning between 81-120% are considered moderate income (MOD)

HCD 2020 - Maximum Income Limits for Santa Clara County Effective 04/30/2020 (Applied to Morgan Hill Homeownership)



Household size	1	2	3	4	5	6	7	8
Extremely Low	\$33,150	\$37,900	\$42,650	\$47,350	\$51,150	\$54,950	\$58,750	\$62,550
Very Low	\$55,300	\$63,200	\$71,100	\$78,950	\$85,300	\$91,600	\$97,900	\$104,250
Lower	\$78,550	\$89,750	\$100,950	\$112,150	\$121,150	\$130,100	\$139,100	\$148,050
Median	\$99,100	\$113,300	\$127,450	\$141,600	\$152,950	\$164,250	\$175,600	\$186,900
Moderate	\$118,950	\$135,900	\$152,900	\$169,900	\$183,500	\$197,100	\$210,700	\$224,250

HCD - BELOW MARKET RATE (BMR) RENTAL RATES

# of Bedrooms	Extremely Low (30%)	Very Low (50%)	Lower (80%)	*Moderate (120%)	*Median (100%)
0 Bedroom	\$743	\$1,239	\$1,487	\$2,725	\$2,478
1 Bedroom	\$850	\$1,416	\$1,700	\$3,116	\$2,833
2 Bedrooms	\$956	\$1,593	\$1,912	\$3,505	\$3,186
3 Bedrooms	\$1,062	\$1,770	\$2,124	\$3,894	\$3,540
4 Bedrooms	\$1,147	\$1,912	\$2,294	\$4,206	\$3,824

Morgan Hill BMR Homeownership Program Pricing for 2020-2021



Unit Size	Low Income	Moderate Income
Studio	\$379,000	\$454,800
1 Bedroom	\$439,000	\$526,800
2 Bedroom	\$499,000	\$598,800
3 Bedroom	\$563,000	\$675,600
4 Bedroom	\$613,000	\$735,600
5 Bedroom	\$602,000	\$794,400

Affordable Housing Project Updates



Pipeline of Projects



- There are six, 100%- rental, affordable projects in the City's development pipeline
 - Primarily SB 330 projects that are either fully entitled or are seeking entitlements, tax credits, and bonds
 - Could yield 554, 100% affordable units, of which approximately 256 are very low-income rentals
1. Urban Housing Communities (UHC): 73-unit project, 23 very low-income units, located at 15480 Watsonville Road (the old mushroom farm site on the corner of Monterey and Watsonville Road), designed to serve agriculture workers and families at risk of homelessness
 2. First Community Housing (FCH): 66-unit modular project, 32 very low-income, called The Magnolias, located at 17965 Monterey Road (next to the RV repair), designed to serve homeless families and individuals

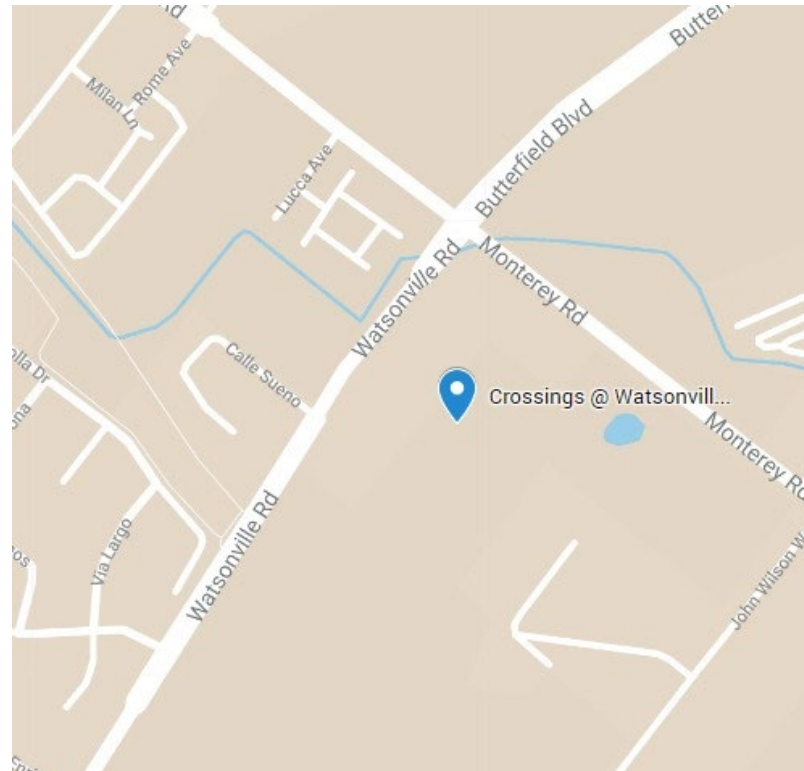
Pipeline of Projects (Cont'd)



3. Jemcor: 249-unit project, 75 very low-income, located at 18960 Monterey and Madrone (wrecking yard site)
4. Beacon, Human Good: 83-unit project, 41 are very low-income, Morgan Hill Senior Housing, located on the southeast corner of San Pedro and Monterey, next to the post office)
5. Braddock and Logan (previously known as MWest): 78 units very low-income project, (part of the 389-unit apartment project) located at the northwest corner of Monterey Rd. and Jarvis
6. EDEN Housing, Depot: an existing project of 13 units that will undergo rehabilitation of the existing units, and the addition of 7 very low-income units

Crossings at Watsonville Road (UHC)

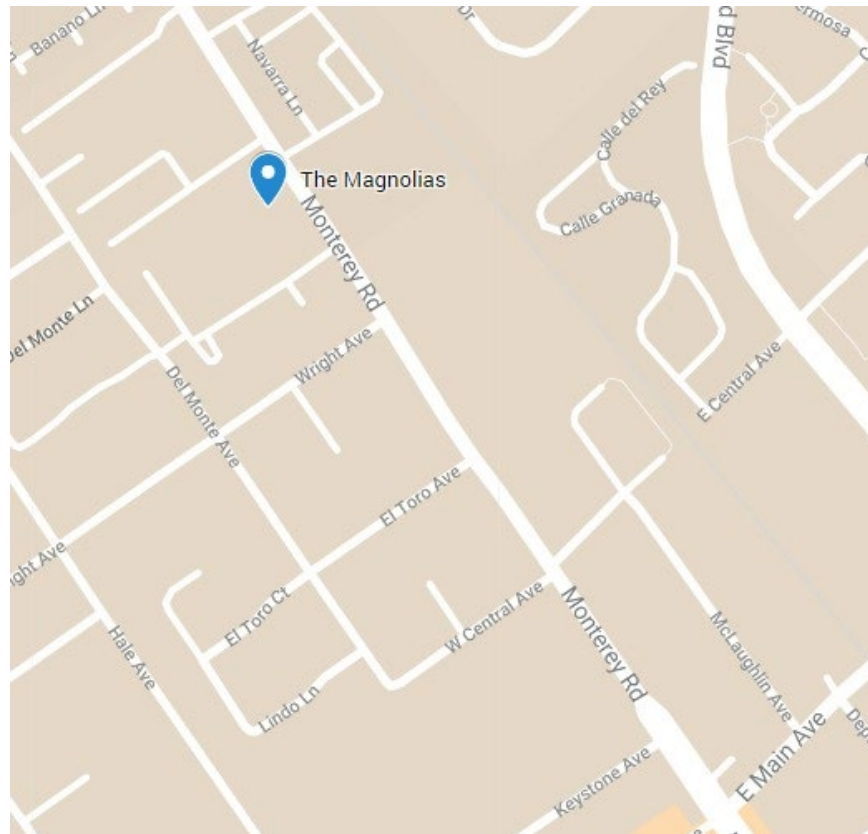
- 73 units - 100% Affordable - SB330
- Application Pending



The Magnolias

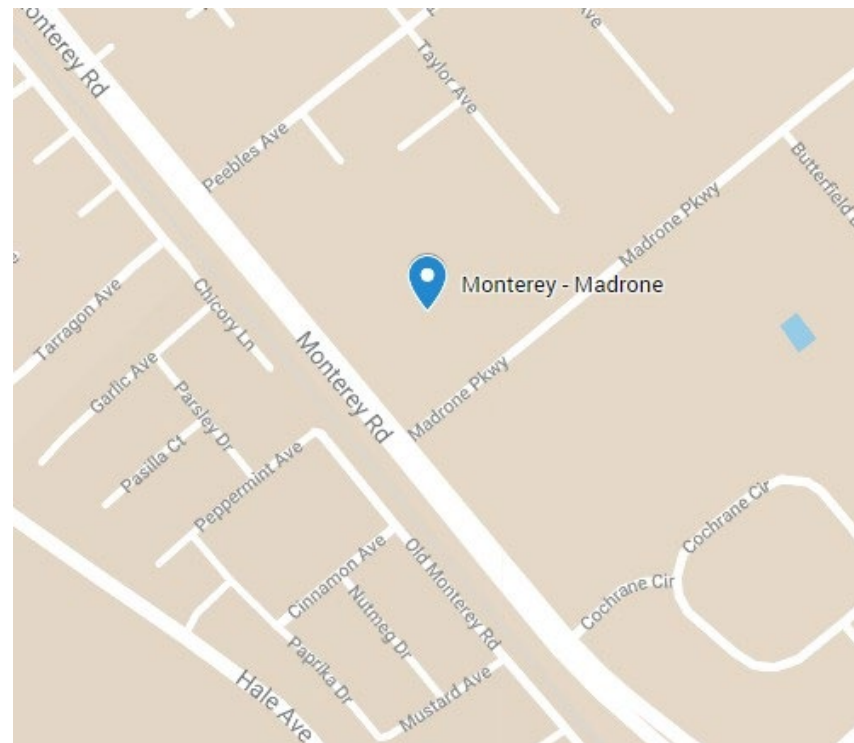
(First Community Housing)

- 66 units - 100% Affordable - SB330
- Application Pending



Monterey-Madrone (Jemcor)

- 249 units - 100% Affordable - SB330
- Application Pending



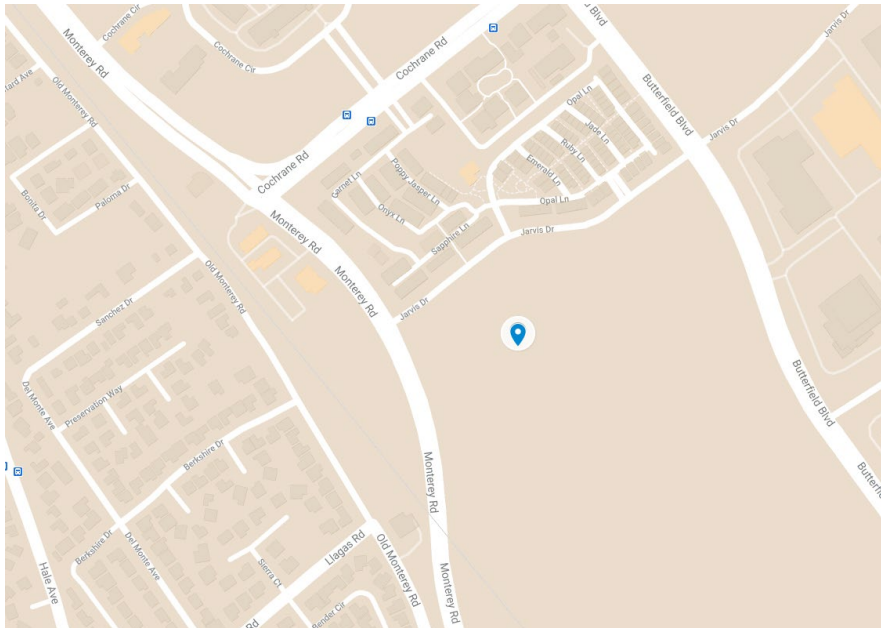
Morgan Hill Senior Housing (Human Good)

- 83 units - 100% Affordable - SB330



Morgan Hill Apartments (Braddock and Logan)

- 389 Apartments, including 78 very low-income
- Design Permit approved, grading underway
- <http://www.morgan-hill.ca.gov/1959/Morgan-Hill-Apartments>



Current RHNA Cycle



- In the current RHNA cycle the City only “needs” 193 very low-income units; the six projects could yield 256 very low-income (surplus of 63)
- If a building permit is pulled before December of 2022, it will aid in meeting City goals for this current RHNA cycle
- All projects in this pipeline will maintain a mix of traditional affordability levels ranging from 30% to 80% AMI (For example, for a household of 1 this is an income range of \$33,150 to \$78,550, and for a household of 4, this is an income range of \$47,350 to \$112,150)
- As of December 2019, the City had already exceeded its goals in the low, moderate, and above moderate categories for this 8-year cycle. At the end of 2019, the low-income category was satisfied at 123%, the moderate at 216%, and the above moderate at 441%

Preliminary RHNA for the Next 8-Year Housing Cycle



	Variant					
	Baseline	2050 Households (Blueprint) - Unmodified Allocation				
	Income Group	VLI	LI	MOD	MOD+	Total
County	Jurisdiction					
Santa Clara	Campbell	1,020	580	660	1,700	3,960
	Cupertino	1,620	930	1,020	2,650	6,220
	Gilroy	410	240	230	590	1,470
	Los Altos	580	330	380	980	2,270
	Los Altos Hills	140	80	90	230	540
	Los Gatos	520	300	310	800	1,930
	Milpitas	1,650	950	1,110	2,870	6,580
	Monte Sereno	50	30	30	80	190
	Morgan Hill	290	170	190	490	1,140
	Mountain View	2,880	1,660	1,910	4,940	11,390
	Palo Alto	2,570	1,480	1,670	4,330	10,050
	San Jose	16,390	9,440	11,340	29,350	66,520
	Santa Clara	3,020	1,740	2,030	5,260	12,050
	Saratoga	560	320	340	880	2,100
	Sunnyvale	3,230	1,860	2,210	5,710	13,010
	Unincorporated Santa Clara	1,110	640	660	1,720	4,130

Below Market Rate Program Accomplishments



- Since July 2015, the City has contracted with Nyanda and Associates, LLC, dba HouseKeys, for program administration
- The BMR portfolio continues to thrive with a total of 558 owner-occupied units
- In the past 12 months, the Program has contracted for the sale of 22 homes, performed 22 Escrow/Closings, held new homebuyer education workshops for 1,251 registrants, refined and restructured processes to offer online homebuyer orientations as a result of COVID-19, created user friendly FAQ Broadcasts and Zoom Orientation Webinars
- Since moving the BMR orientation workshops to an online platform, combined with today's low interest rates, the homebuyer workshop attendance has soared from an average of 60 attendees to 270

Julius Nyanda, HouseKeys

Essential Middle-Income Rental Housing in Morgan Hill



Allison Arnold & Jordan Moss

A Growing Crisis



Priced Out – Essential workers (nurses, teachers, first responders, civil servants and others) earn in excess of traditional affordable housing income limits yet are increasingly priced out of the very communities they serve

Ripple Effects – Ripple effects of housing shortfalls include congestion, pollution, crime, homelessness, health impacts, congestion and social dislocation

***We cannot have fully functioning communities
without affordably housing our essential workforce***

Our Solution



The **California Community Housing Agency** (CalCHA) is a joint powers authority whose sole purpose is the furtherance of middle-income housing production across the state

Through its **essential middle-income rental housing program** CalCHA fully finances the production of middle-income housing through the sale of its own governmental revenue bonds

These existing market-rate rental communities are then **converted to rent-restricted units** for Low-Income, Median-Income, and Moderate-Income households earning no more than 120% of AMI.

Public Benefit



Highlights of CalCHA's middle-income housing program include:

No City subsidy

No City liability

No displacement of existing tenants

Immediate affordability

4% cap on annual rent increases

Surplus cash flows granted to City

Purchase option granted to City

City Participation



Local approvals for CalCHA's essential middle-income rental housing program are granted through **the adoption of a single resolution:**

1. **CalCHA Membership**
2. **CalCHA bond issuance**
3. **City acceptance of surplus economics**

Building Equity and Growth in Neighborhoods (BEGIN) Down Payment Assistance



- The City of Morgan Hill received a grant from the California Department of Housing and Community Development (HCD) for the BEGIN down payment assistance program
- These grants have been used to aid as 2nd mortgage loans for down payment purposes to qualifying first-time homebuyers of low- and moderate-incomes purchasing newly constructed homes at Madrone Plaza
- Homebuyers can receive 20% up to \$50,000 of the purchase price in down payment assistance

Building Equity and Growth in Neighborhoods (BEGIN) Down Payment Assistance (Cont'd)



- There are approximately \$865,400 in the City's BEGIN reuse account; funds generated from the repayment of loans
- Staff is recommending that the reuse funds be administered by the City's BMR Administrator HouseKeys, and that the reuse funds be designated to applicants of the City's BMR Program

Inclusionary Housing Ordinance (IHO)



- July 25, 2018, the City Council adopted Ordinance No. 2278
- While most BMR units are required to be built, under certain circumstances the ordinance permits residential projects to pay a “housing in-lieu fee” as an alternative means of compliance
- Housing in-lieu fees are needed to address situations in which the application of the inclusionary requirement results in a fraction of a unit. They are also useful to better align with some specific projects, provide local match dollars, to leverage 100% affordable projects, and provide the housing program with funds for rehabilitating units, program management and other housing and homeless support activities
- The value of the IHO obligation based on the fee and square footage (unique to each project) must be met with equivalency or greater than for any alternatives that are approved by Council

Inclusionary Housing Ordinance

(Cont'd)



- This report includes a recommendation to direct the City Manager to amend the Inclusionary Housing Ordinance to require lower-moderate and low-income units as well as moderate income units in all new ownership housing developments
- Currently, the Inclusionary Housing Ordinance requires only moderate income at 120% in the ownership program, which the team also recommends modifying to cap at 110%
- Requiring projects to set-aside both Low and Moderate-income units increases the financial cost to developers and would translate into a need to proportionately increase the in-lieu fee in order to establish the financial burden of the in-lieu fee to be equivalent to the burden of providing on-site BMR Units

Inclusionary Housing Ordinance

Existing Parameters

Ownership BMR Units

	Downtown Projects	Non-Downtown Projects
% Affordable Set-aside obligation	10%	15%
Income Range of Buyers	Up to 120% of AMI	Up to 120% of AMI
Affordable Housing Cost Formula	35% of 120% of AMI	35% of 120% of AMI

Inclusionary Housing Ordinance Recommendation - Outside Downtown

% Affordable Set-aside Obligation	<u>Purchase Price Calculation</u>	<u>Estimated 2020 Prices</u>	
5%	<i>Low Income – 70% of Median x 30% to get Max Housing Payment</i>	Studio	152,339
		1 Bedroom	187,062
		2 Bedroom	216,477
		3 Bedroom	245,028
		4 Bedroom	266,395
		5 Bedroom	287,846
5%	<i>Lower end of Moderate Income – 90% of Median x 35% to get Max Housing Payment</i>	Studio	283,293
		1 Bedroom	336,782
		2 Bedroom	384,895
		3 Bedroom	432,144
		4 Bedroom	468,509
		5 Bedroom	504,892
5%	<i>Upper end of Moderate Income – 110% of Median x 35% to get Max Housing Payment</i>	Studio	370,596
		1 Bedroom	436,594
		2 Bedroom	497,173
		3 Bedroom	556,888
		4 Bedroom	603,251
		5 Bedroom	649,589
Total Obligation= 15%			

Inclusionary Housing Ordinance Recommendation – Inside Downtown

% Affordable Set-aside	Income of Buyers	Affordable Housing Cost Formula for Setting Home Prices
4%	Low Income - Up to 80% of AMI	30% of 70% of AMI
6%	Moderate Income - Up to 120% of AMI	35% of 110% of AMI
Total = 10%		

Community Development Block Grant (CDBG)



- Annual Federal grants provided on a formula basis to states, cities, and counties
- Because Morgan Hill's population is below 50,000 – CDBG grant dollars come to Morgan Hill from the County as a member of the Urban County Consortium

FY 2020-21 CDBG Morgan Hill Grant Allocations:

- Rebuilding Together - \$300,000 (Urban Countywide – includes Morgan Hill)
- El Toro Boys and Girls Club - \$12,118
- Community Solutions - \$23,353 (South County - includes Morgan Hill)
- Live Oak Adult Day Services - \$22,000 (Los Gatos & Morgan Hill)

Community Development Block Grant (CDBG) (Cont'd)



- Project Sentinel - \$123,894 (Urban Countywide – includes Morgan Hill)
- Senior Adults Legal Assistance (SALA) - \$36,490 – (Morgan Hill, Campbell, Saratoga, & Los Gatos)
- Sacred Hearts Community Services - \$22,118 (South County – includes Morgan Hill)
- Morgan Hill Capital Improvement Project – New concrete sidewalk near Britton Middle School - \$350,120
- COVID-19 impact dollars (additional) – Sacred Heart Quarantine and Isolation program - \$250,000 (South County) – County allocation of \$435,030 (Urban County Consortium cities) towards rent relief program and other homelessness strategies

Fair Housing



Effective January 1, 2019, Assembly Bill 686 (AB 686) introduced a duty to affirmatively further fair housing into California state law

Home Repair Program Rebuilding Together



Morgan Hill Senior Grant & Blight Busters Program

Since 2016, program has provided rehab services to income eligible seniors and/or disabled recipients whose gross annual income may not exceed 80% of the Santa Clara County Average Median Income (AMI)

Outcomes between 2016 and June 2020

- 125 low income mobile and single-family homes rehabbed
- 2020-21 FY Rebuilding Together grant allocation
- Senior Rehabilitation Grant - \$50,000
- Blight Busters Program - \$30,000
- Administration - \$20,000
- Additional Morgan Hill homes rehabbed using CDBG funds (FY 2018-19 – 42 homes and FY 2019-20 - 34 homes)

2020 Housing Legislative Update



- 2020 was early declared to be the year of “housing production” by many in Sacramento. The prior year had been dominated by bills designed to streamline local government permitting processes and create new housing permitting pathways by eliminating discretion in the local permitting process.
- Interestingly, most of the major housing initiatives were cut short by timing problems created by the pandemic, and a shortened and at times restricted legislative season
- Expect many, if not all of these bills to resurface in 2021

2020 Housing Legislative Update (Cont'd)



1. Eliminating/changing single family zoning to permit multiple units in single family zoned areas
2. Creating new requirements for Housing Elements in each City, including up-zoning, further entitlement streamlining and elimination of fees
3. Creating pathways to convert non-performing commercially zoned land to housing at minimum densities of 20 – 30 units per acre
4. Requiring regional and local entities to bear responsibility for housing homeless

Homelessness



- According to the 2019 Point-in-Time count, there are 9,706 people experiencing homelessness in Santa Clara County
- 114 were homeless in Morgan Hill, and 704 were homeless in Gilroy
- There are disproportionately high rates of homelessness among specific racial and ethnic groups
- Morgan Hill's Bi-annual Homeless Count from previous years indicated 61 people counted in 2013, 81 in 2015, 388 in 2017, and 114 in 2019

Homelessness (Cont'd)



- Over the past 15 months 264 unhoused Morgan Hill individuals have been interviewed and assessed by an outreach worker or community-based organization using an assessment and survey tool to determine health, housing and social risk factors
- Of the 264 assessed (surveyed), 160 people officially enrolled with the County with the *intent* to be housed using either a Permanent Supportive Housing strategy or a Rapid Rehousing strategy
- Out of the 160 enrolled, 139 of them have been housed successfully
- Morgan Hill housed more people than we counted in 2019! 114 people counted and 139 housed!

Homelessness (Cont'd)



Current Efforts:

- Deployment of County/Abode nonprofit Homeless Outreach Workers who conduct interviews and assessments to determine the medical and social risk factors of the homeless on the streets in the City. The City contributes \$25,000 to this larger Countywide effort
- Ongoing County Rapid Rehousing Program, a Homeless Prevention (financial rental assistance) Program for families, targeting families with children in the school district at risk of homelessness. The City contributes \$25,000 to this much larger Countywide effort
- City Code Compliance Homeless Prevention Program, 3-day emergency hotel stay, if a household receives a notice of violation or “red tag” resulting in homelessness – City budgeted amount \$7,000

Homelessness (Cont'd)



Current Efforts (Cont'd):

- Ongoing operation of Safe Park Program (FOCUS), Faith-based community volunteers offering an eight space, pet friendly overnight respite at a local church for eight homeless families (25 people max) living in their cars where they are receiving coordinated assessment, services, meals, and support with the goal of providing some stability while they wait for permanent housing
- 2019 was the establishment of a new Inclement Cold Weather Shelter, a partnership with Community Christian and their steadfast volunteers. This is a free shelter bed night for single men during inclement weather days. The City contributes \$25,000 toward overnight security and the referral and assessment coordination is conducted by the Compassion Center
- Ongoing identification of affordable housing opportunities and the priority to create very low-income and extremely low-income units

Homelessness (Cont'd)



Progress to Date and Next Steps:

- Destination Home launched a COVID-19 Financial Assistance Program to provide emergency financial assistance to lower income households (\$395,850 in rental assistance was provided to Morgan Hill residents and \$543,383 provided to Gilroy)
- Endorse Community Plan
- Direct the City Manager to return with a proposed, detailed implementation work plan to deploy locally tailored solutions

Homelessness (Cont'd)



Progress to Date and Next Steps (Cont'd):

- Work to secure a capacity building grant that will allow the team to add a Full Time Case Manager to work directly with our unhoused community members, and to take the Community Plan and move from a countywide conceptual framework to focused and tailored solutions for Morgan Hill, and South County collectively
- Explore additional opportunities for smaller scale inclement cold weather shelters to serve single women and families in partnership with the faith-based community
- Secure a second safe car parking site for single men, develop an intermittent hygiene service and develop transportation options



SANTA CLARA COUNTY COMMUNITY PLAN TO END HOMELESSNESS



SANTA CLARA COUNTY

COMMUNITY PLAN TO END HOMELESSNESS

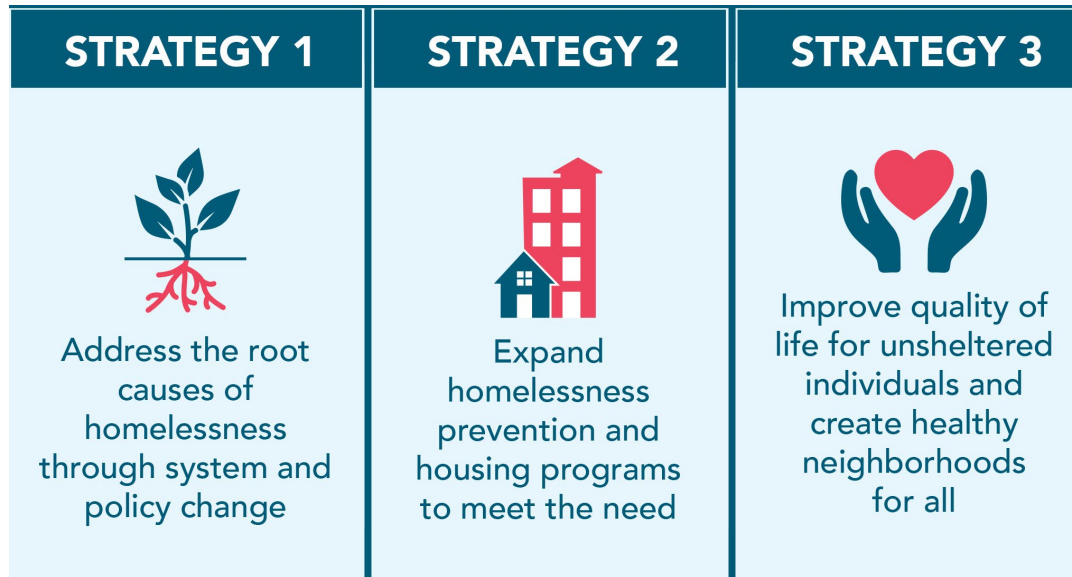
2020–2025



Kathryn (KJ) Kaminski, SCC Office of Supportive Housing

& Ray Bramson, Destination Home

PLAN BUILT ON 3 CORE STRATEGIES





STRATEGY 1

ADDRESS ROOT CAUSES

1. Ensure that people accessing safety net services have the support they need to obtain and maintain housing.
2. Ensure that people involved in the criminal justice system do not become homeless.
3. Create the conditions to develop enough affordable housing to meet the need in our community.
4. Protect residents from evictions, displacement, and housing discrimination.
5. Ensure all residents who are able to work have access to living wage employment.
6. Expand public and private sector support for ending and preventing homelessness.



STRATEGY 2

EXPAND PROGRAMS

1. Increase the capacity of supportive housing programs for people experiencing homelessness.
 - 7,000 people housed in Permanent Supportive Housing programs
 - 10,000 people housed through Rapid Rehousing programs
 - 3,000 people housed through Housing Problem Solving
2. Provide a broad range of supports to prevent homelessness
 - Expand the Homelessness Prevention System to prevent homelessness for an additional 7,000 households who are at risk by providing targeted financial assistance and supportive services.
3. Create a state-of-the-art supportive housing system
 - Center the voices of people who have lived experience of homelessness, especially people of color, in the policy and program design decisions of the supportive housing system.
 - Invest in professional development and competitive pay to attract and retain a highly qualified workforce of homeless service provider staff



STRATEGY 3

IMPROVE QUALITY OF LIFE

1. Double the number of year-round temporary housing beds and offer a variety of welcoming temporary housing options throughout the county
2. Increase street outreach, hygiene services, and transportation options to match the needs of unsheltered residents, Increase access to basic hygiene resources, including bathrooms, showers, and laundry
3. Increase mental health and substance use services
4. Increase the number of mobile crisis teams with clinical staff, and expand their hours, to support individuals experiencing severe mental health and substance use crises
5. Engage a cross-section of community partners to address the needs of unsheltered residents
6. Ensure that community spaces are safe and welcoming for housed and unhoused residents

Next Steps



ENDORSEMENT TODAY



SHARE & PROMOTE THE
PLAN

<https://bit.ly/CommPlan2020>



IMPLEMENTATION



REPORT ON PROGRESS

Recommendations



(RECOMMENDED ACTIONS WILL BE CONSIDERED DURING TONIGHT'S REGULAR CITY COUNCIL MEETING
AGENDA ITEM# 20)

1. Approve the BEGIN program guidelines;
2. Adopt a resolution authorizing the City to become an Additional Member of the California Community Housing Agency; supporting the CCHA Issuance of Tax-Exempt Bonds for the production, preservation, and protection of Middle-Income Rental Housing; and Authorizing the City Manager or Designee to enter into purchase option agreements with the CCHA for middle-income rental housing created within City limits;
3. Adopt resolution endorsing the 2020 Community Plan to End Homelessness and direct staff to return with a local implementation plan;
4. Direct City Manager to Amend the Inclusionary Housing Ordinance to require low-income, lower moderate income as well as moderate income units in all new ownership housing developments, and return to City Council for consideration; and
5. Direct staff to change the upper limit of the moderate income to 110%.



AFFORDABLE HOUSING & HOMELESSNESS WORKSHOP



DECEMBER 2, 2020

Agenda



- Housing Program Mission
- What is Affordable Housing?
- Affordable Housing Projects in Pipeline
- Regional Housing Needs Allocation (RHNA)
- Morgan Hill Below Market Rate Program Accomplishments
- California Community Housing Agency (CalCHA)
- BEGIN Program Guidelines
- Inclusionary Housing Ordinance
- CDBG
- 2020 Legislative Update
- Homelessness Efforts Update
- Santa Clara County Community Plan to End Homelessness

Housing Mission

- Improve, preserve, and create safe, quality, rental and ownership housing in Morgan Hill for residents at all income levels
- Implementation of the Housing Element as part of its General Plan demonstrating how the community will meet the existing and projected housing needs of residents at all income levels
- Demonstrate the City's ability to provide for its "fair share" of affordable housing, comply with and support social justice and anti-discrimination housing practices, and support those that currently find themselves homeless

Housing Mission (Cont'd)



- The Regional Housing Need Allocation (RHNA) is the number of new homes that a city is "assigned" to produce in a Housing Element cycle
- The City is in its fifth RHNA Housing Element Cycle. The current Housing Element is compliant until January 31, 2023
- The current housing element "cycle" is for the Planning Period: January 31, 2015 – January 31, 2023. The last construction permits that can be counted for this fifth cycle planning period will be December 31, 2022

Housing Element Strategy

2015-2023



- Build new housing to meet the full range of future community housing needs, including affordability and accessibility
- Build housing for groups with special needs
- Ensure a range of housing types for all age groups, served by transit, recreational amenities, shopping and health and personal services, that allow residents to age in place
- Preserve and rehabilitate existing affordable housing in the community

What is Considered Affordable Housing?



- Housing that a household can pay for, while still having money left over for other necessities like food, transportation, and health care. This means that what is considered “affordable” depends on a household’s income
- Consumes no more than 30 percent of a household’s gross monthly income
- To qualify for affordable, income-restricted housing, individual or family income must fall within a specified range
- Most income-restricted rental housing in Santa Clara County is affordable to households who make less than 80% of area median income (AMI)

What is Considered Affordable Housing? (Cont'd)



- The U.S. Department of Housing and Urban Development (HUD) annually releases income limits that determine eligibility for various housing and community development funds
- The County of Santa Clara has one of the highest area median incomes (AMI's) in the country, at \$141,600 for a family of four
- Area Median Income (AMI) – The median income of each county or adjacent counties based on all wage earners in the area, published separately by HUD and HCD to determine household eligibility for various federal, State, and State-governed housing programs, and updated annually

What is Considered Affordable Housing? (Cont'd)



- Households earning 30% of the area median income and below are considered Extremely Low Income (ELI)
- Households earning between 31-50% of area median income are considered Very Low Income (VLI)
- Households earning between 51-80% are considered Low Income (LI)
- Households earning between 81-120% are considered moderate income (MOD)

HCD 2020 - Maximum Income Limits for Santa Clara County Effective 04/30/2020 (Applied to Morgan Hill Homeownership)



Household size	1	2	3	4	5	6	7	8
Extremely Low	\$33,150	\$37,900	\$42,650	\$47,350	\$51,150	\$54,950	\$58,750	\$62,550
Very Low	\$55,300	\$63,200	\$71,100	\$78,950	\$85,300	\$91,600	\$97,900	\$104,250
Lower	\$78,550	\$89,750	\$100,950	\$112,150	\$121,150	\$130,100	\$139,100	\$148,050
Median	\$99,100	\$113,300	\$127,450	\$141,600	\$152,950	\$164,250	\$175,600	\$186,900
Moderate	\$118,950	\$135,900	\$152,900	\$169,900	\$183,500	\$197,100	\$210,700	\$224,250

HCD - BELOW MARKET RATE (BMR) RENTAL RATES

# of Bedrooms	Extremely Low (30%)	Very Low (50%)	Lower (80%)	*Moderate (120%)	*Median (100%)
0 Bedroom	\$743	\$1,239	\$1,487	\$2,725	\$2,478
1 Bedroom	\$850	\$1,416	\$1,700	\$3,116	\$2,833
2 Bedrooms	\$956	\$1,593	\$1,912	\$3,505	\$3,186
3 Bedrooms	\$1,062	\$1,770	\$2,124	\$3,894	\$3,540
4 Bedrooms	\$1,147	\$1,912	\$2,294	\$4,206	\$3,824

Morgan Hill BMR Homeownership Program Pricing for 2020-2021



Unit Size	Low Income	Moderate Income
Studio	\$379,000	\$454,800
1 Bedroom	\$439,000	\$526,800
2 Bedroom	\$499,000	\$598,800
3 Bedroom	\$563,000	\$675,600
4 Bedroom	\$613,000	\$735,600
5 Bedroom	\$602,000	\$794,400

Affordable Housing Project Updates



Pipeline of Projects



- There are six, 100%- rental, affordable projects in the City's development pipeline
 - Primarily SB 330 projects that are either fully entitled or are seeking entitlements, tax credits, and bonds
 - Could yield 554, 100% affordable units, of which approximately 256 are very low-income rentals
1. Urban Housing Communities (UHC): 73-unit project, 23 very low-income units, located at 15480 Watsonville Road (the old mushroom farm site on the corner of Monterey and Watsonville Road), designed to serve agriculture workers and families at risk of homelessness
 2. First Community Housing (FCH): 66-unit modular project, 32 very low-income, called The Magnolias, located at 17965 Monterey Road (next to the RV repair), designed to serve homeless families and individuals

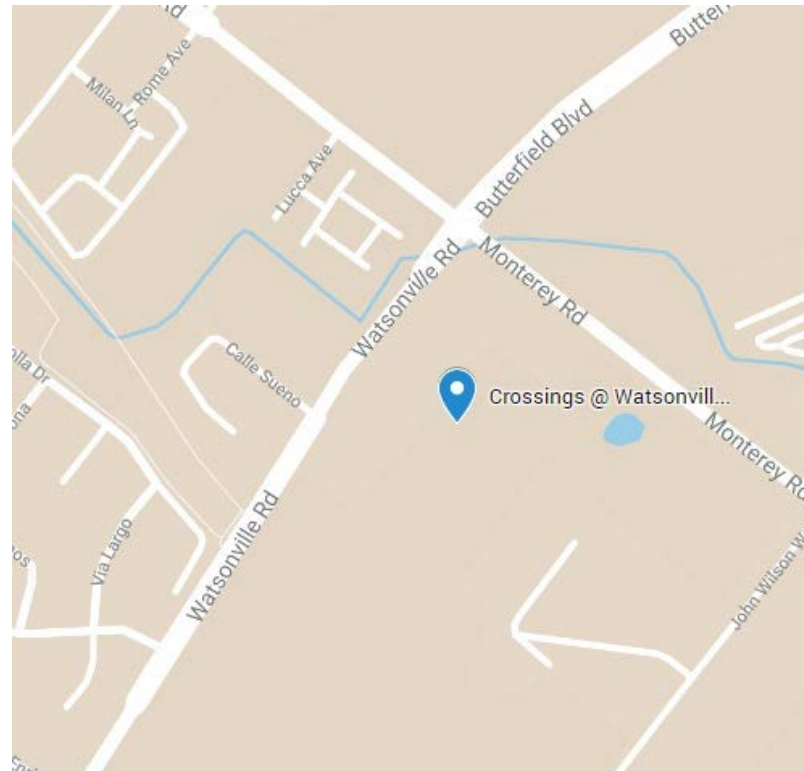
Pipeline of Projects (Cont'd)



3. Jemcor: 249-unit project, 75 very low-income, located at 18960 Monterey and Madrone (wrecking yard site)
4. Beacon, Human Good: 83-unit project, 41 are very low-income, Morgan Hill Senior Housing, located on the southeast corner of San Pedro and Monterey, next to the post office)
5. Braddock and Logan (previously known as MWest): 78 units very low-income project, (part of the 389-unit apartment project) located at the northwest corner of Monterey Rd. and Jarvis
6. EDEN Housing, Depot: an existing project of 13 units that will undergo rehabilitation of the existing units, and the addition of 7 very low-income units

Crossings at Watsonville Road (UHC)

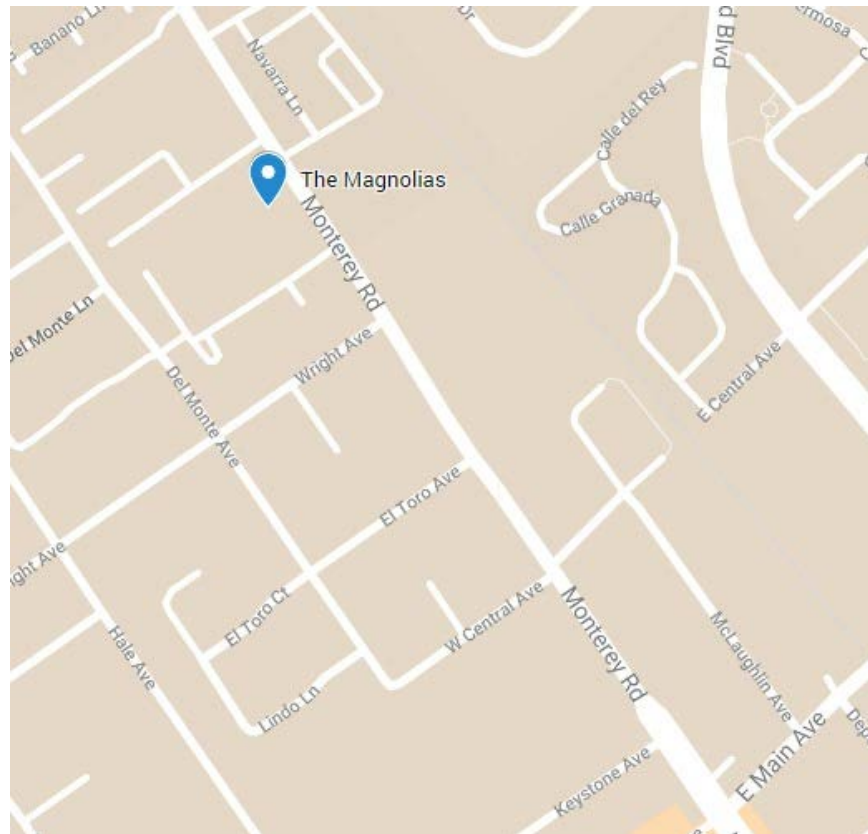
- 73 units - 100% Affordable - SB330
- Application Pending



The Magnolias

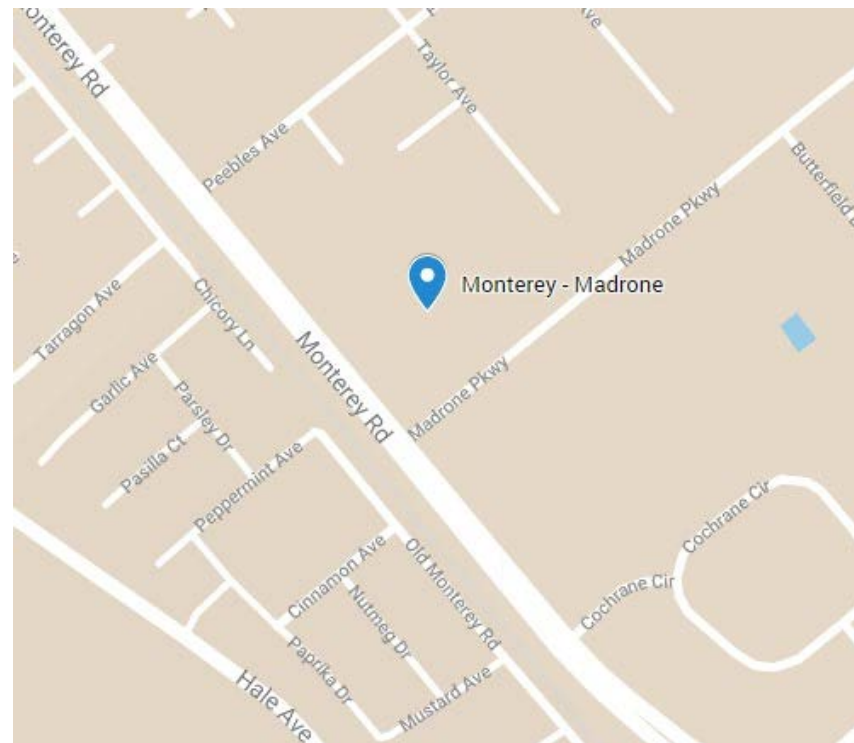
(First Community Housing)

- 66 units - 100% Affordable - SB330
- Application Pending



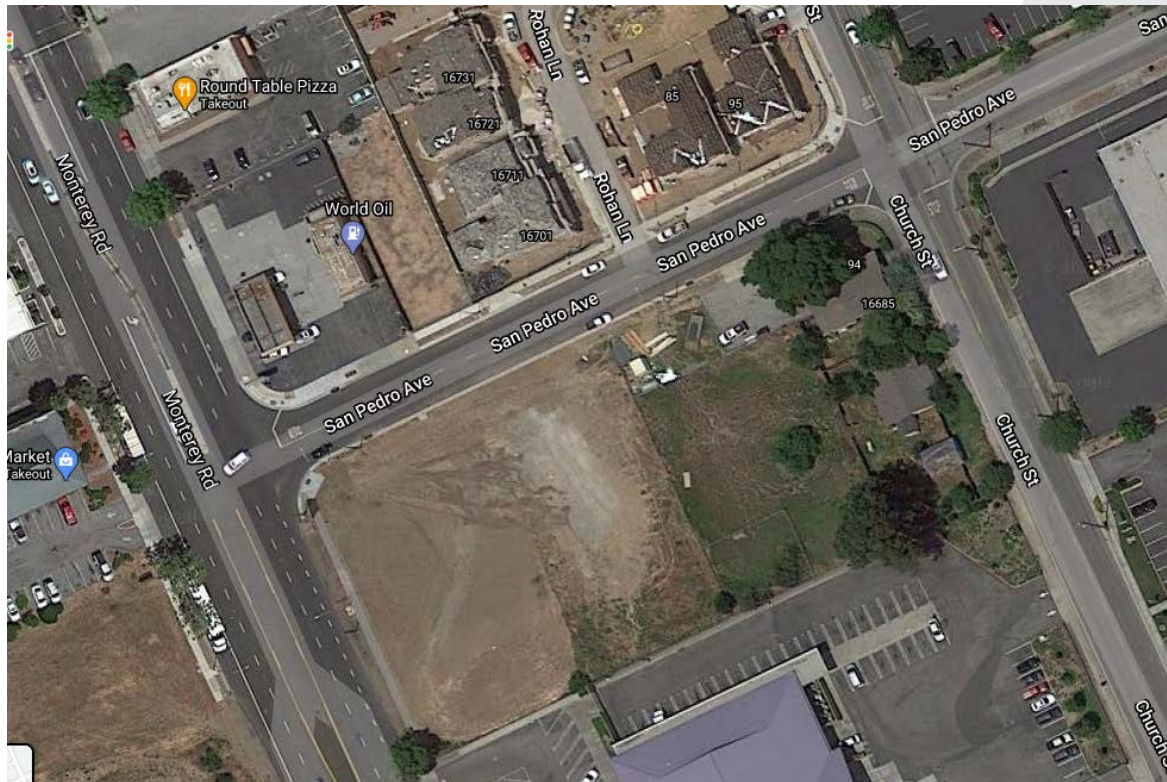
Monterey-Madrone (Jemcor)

- 249 units - 100% Affordable - SB330
- Application Pending



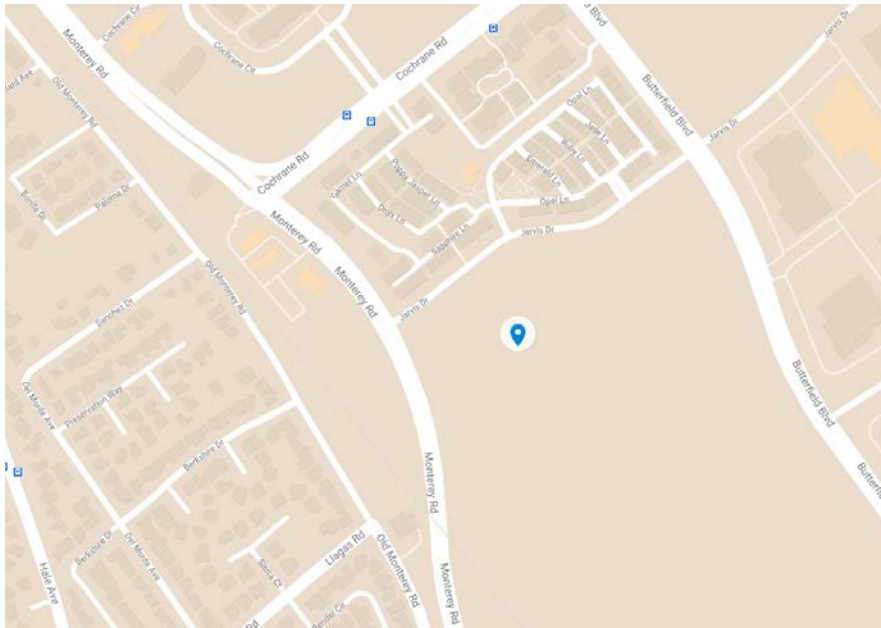
Morgan Hill Senior Housing (Human Good)

- 83 units - 100% Affordable - SB330



Morgan Hill Apartments (Braddock and Logan)

- 389 Apartments, including 78 very low-income
- Design Permit approved, grading underway
- <http://www.morgan-hill.ca.gov/1959/Morgan-Hill-Apartments>



Current RHNA Cycle



- In the current RHNA cycle the City only “needs” 193 very low-income units; the six projects could yield 256 very low-income (surplus of 63)
- If a building permit is pulled before December of 2022, it will aid in meeting City goals for this current RHNA cycle
- All projects in this pipeline will maintain a mix of traditional affordability levels ranging from 30% to 80% AMI (For example, for a household of 1 this is an income range of \$33,150 to \$78,550, and for a household of 4, this is an income range of \$47,350 to \$112,150)
- As of December 2019, the City had already exceeded its goals in the low, moderate, and above moderate categories for this 8-year cycle. At the end of 2019, the low-income category was satisfied at 123%, the moderate at 216%, and the above moderate at 441%

Preliminary RHNA for the Next 8-Year Housing Cycle



	Variant					
	Baseline	2050 Households (Blueprint) - Unmodified Allocation				
	Income Group	VLI	LI	MOD	MOD+	Total
County	Jurisdiction					
Santa Clara	Campbell	1,020	580	660	1,700	3,960
	Cupertino	1,620	930	1,020	2,650	6,220
	Gilroy	410	240	230	590	1,470
	Los Altos	580	330	380	980	2,270
	Los Altos Hills	140	80	90	230	540
	Los Gatos	520	300	310	800	1,930
	Milpitas	1,650	950	1,110	2,870	6,580
	Monte Sereno	50	30	30	80	190
	Morgan Hill	290	170	190	490	1,140
	Mountain View	2,880	1,660	1,910	4,940	11,390
	Palo Alto	2,570	1,480	1,670	4,330	10,050
	San Jose	16,390	9,440	11,340	29,350	66,520
	Santa Clara	3,020	1,740	2,030	5,260	12,050
	Saratoga	560	320	340	880	2,100
	Sunnyvale	3,230	1,860	2,210	5,710	13,010
	Unincorporated Santa Clara	1,110	640	660	1,720	4,130

Below Market Rate Program Accomplishments



- Since July 2015, the City has contracted with Nyanda and Associates, LLC, dba HouseKeys, for program administration
- The BMR portfolio continues to thrive with a total of 558 owner-occupied units
- In the past 12 months, the Program has contracted for the sale of 22 homes, performed 22 Escrow/Closings, held new homebuyer education workshops for 1,251 registrants, refined and restructured processes to offer online homebuyer orientations as a result of COVID-19, created user friendly FAQ Broadcasts and Zoom Orientation Webinars
- Since moving the BMR orientation workshops to an online platform, combined with today's low interest rates, the homebuyer workshop attendance has soared from an average of 60 attendees to 270

Julius Nyanda, HouseKeys

Essential Middle-Income Rental Housing in Morgan Hill



Allison Arnold & Jordan Moss

A Growing Crisis



Priced Out – Essential workers (nurses, teachers, first responders, civil servants and others) earn in excess of traditional affordable housing income limits yet are increasingly priced out of the very communities they serve

Ripple Effects – Ripple effects of housing shortfalls include congestion, pollution, crime, homelessness, health impacts, congestion and social dislocation

***We cannot have fully functioning communities
without affordably housing our essential workforce***

Our Solution



The **California Community Housing Agency** (CalCHA) is a joint powers authority whose sole purpose is the furtherance of middle-income housing production across the state

Through its **essential middle-income rental housing program** CalCHA fully finances the production of middle-income housing through the sale of its own governmental revenue bonds

These existing market-rate rental communities are then **converted to rent-restricted units** for Low-Income, Median-Income, and Moderate-Income households earning no more than 120% of AMI.

Public Benefit



Highlights of CalCHA's middle-income housing program include:

No City subsidy

No City liability

No displacement of existing tenants

Immediate affordability

4% cap on annual rent increases

Surplus cash flows granted to City

Purchase option granted to City

City Participation



Local approvals for CalCHA's essential middle-income rental housing program are granted through **the adoption of a single resolution:**

1. **CalCHA Membership**
2. **CalCHA bond issuance**
3. **City acceptance of surplus economics**

Building Equity and Growth in Neighborhoods (BEGIN) Down Payment Assistance



- The City of Morgan Hill received a grant from the California Department of Housing and Community Development (HCD) for the BEGIN down payment assistance program
- These grants have been used to aid as 2nd mortgage loans for down payment purposes to qualifying first-time homebuyers of low- and moderate-incomes purchasing newly constructed homes at Madrone Plaza
- Homebuyers can receive 20% up to \$50,000 of the purchase price in down payment assistance

Building Equity and Growth in Neighborhoods (BEGIN) Down Payment Assistance (Cont'd)



- There are approximately \$865,400 in the City's BEGIN reuse account; funds generated from the repayment of loans
- Staff is recommending that the reuse funds be administered by the City's BMR Administrator HouseKeys, and that the reuse funds be designated to applicants of the City's BMR Program

Inclusionary Housing Ordinance (IHO)



- July 25, 2018, the City Council adopted Ordinance No. 2278
- While most BMR units are required to be built, under certain circumstances the ordinance permits residential projects to pay a “housing in-lieu fee” as an alternative means of compliance
- Housing in-lieu fees are needed to address situations in which the application of the inclusionary requirement results in a fraction of a unit. They are also useful to better align with some specific projects, provide local match dollars, to leverage 100% affordable projects, and provide the housing program with funds for rehabilitating units, program management and other housing and homeless support activities
- The value of the IHO obligation based on the fee and square footage (unique to each project) must be met with equivalency or greater than for any alternatives that are approved by Council

Inclusionary Housing Ordinance

(Cont'd)



- This report includes a recommendation to direct the City Manager to amend the Inclusionary Housing Ordinance to require lower-moderate and low-income units as well as moderate income units in all new ownership housing developments
- Currently, the Inclusionary Housing Ordinance requires only moderate income at 120% in the ownership program, which the team also recommends modifying to cap at 110%
- Requiring projects to set-aside both Low and Moderate-income units increases the financial cost to developers and would translate into a need to proportionately increase the in-lieu fee in order to establish the financial burden of the in-lieu fee to be equivalent to the burden of providing on-site BMR Units

Inclusionary Housing Ordinance

Existing Parameters

Ownership BMR Units

	Downtown Projects	Non-Downtown Projects
% Affordable Set-aside obligation	10%	15%
Income Range of Buyers	Up to 120% of AMI	Up to 120% of AMI
Affordable Housing Cost Formula	35% of 120% of AMI	35% of 120% of AMI

Inclusionary Housing Ordinance Recommendation - Outside Downtown

% Affordable Set-aside Obligation	<u>Purchase Price Calculation</u>	<u>Estimated 2020 Prices</u>	
5%	<i>Low Income – 70% of Median x 30% to get Max Housing Payment</i>	Studio	152,339
		1 Bedroom	187,062
		2 Bedroom	216,477
		3 Bedroom	245,028
		4 Bedroom	266,395
		5 Bedroom	287,846
5%	<i>Lower end of Moderate Income – 90% of Median x 35% to get Max Housing Payment</i>	Studio	283,293
		1 Bedroom	336,782
		2 Bedroom	384,895
		3 Bedroom	432,144
		4 Bedroom	468,509
		5 Bedroom	504,892
5%	<i>Upper end of Moderate Income – 110% of Median x 35% to get Max Housing Payment</i>	Studio	370,596
		1 Bedroom	436,594
		2 Bedroom	497,173
		3 Bedroom	556,888
		4 Bedroom	603,251
		5 Bedroom	649,589
Total Obligation= 15%			

Inclusionary Housing Ordinance Recommendation – Inside Downtown

% Affordable Set-aside	Income of Buyers	Affordable Housing Cost Formula for Setting Home Prices
4%	Low Income - Up to 80% of AMI	30% of 70% of AMI
6%	Moderate Income - Up to 120% of AMI	35% of 110% of AMI
Total = 10%		

Community Development Block Grant (CDBG)



- Annual Federal grants provided on a formula basis to states, cities, and counties
- Because Morgan Hill's population is below 50,000 – CDBG grant dollars come to Morgan Hill from the County as a member of the Urban County Consortium

FY 2020-21 CDBG Morgan Hill Grant Allocations:

- Rebuilding Together - \$300,000 (Urban Countywide – includes Morgan Hill)
- El Toro Boys and Girls Club - \$12,118
- Community Solutions - \$23,353 (South County - includes Morgan Hill)
- Live Oak Adult Day Services - \$22,000 (Los Gatos & Morgan Hill)

Community Development Block Grant (CDBG) (Cont'd)



- Project Sentinel - \$123,894 (Urban Countywide – includes Morgan Hill)
- Senior Adults Legal Assistance (SALA) - \$36,490 – (Morgan Hill, Campbell, Saratoga, & Los Gatos)
- Sacred Hearts Community Services - \$22,118 (South County – includes Morgan Hill)
- Morgan Hill Capital Improvement Project – New concrete sidewalk near Britton Middle School - \$350,120
- COVID-19 impact dollars (additional) – Sacred Heart Quarantine and Isolation program - \$250,000 (South County) – County allocation of \$435,030 (Urban County Consortium cities) towards rent relief program and other homelessness strategies

Fair Housing



Effective January 1, 2019, Assembly Bill 686 (AB 686) introduced a duty to affirmatively further fair housing into California state law

Home Repair Program Rebuilding Together



Morgan Hill Senior Grant & Blight Busters Program

Since 2016, program has provided rehab services to income eligible seniors and/or disabled recipients whose gross annual income may not exceed 80% of the Santa Clara County Average Median Income (AMI)

Outcomes between 2016 and June 2020

- 125 low income mobile and single-family homes rehabbed
- 2020-21 FY Rebuilding Together grant allocation
- Senior Rehabilitation Grant - \$50,000
- Blight Busters Program - \$30,000
- Administration - \$20,000
- Additional Morgan Hill homes rehabbed using CDBG funds (FY 2018-19 – 42 homes and FY 2019-20 - 34 homes)

2020 Housing Legislative Update



- 2020 was early declared to be the year of “housing production” by many in Sacramento. The prior year had been dominated by bills designed to streamline local government permitting processes and create new housing permitting pathways by eliminating discretion in the local permitting process.
- Interestingly, most of the major housing initiatives were cut short by timing problems created by the pandemic, and a shortened and at times restricted legislative season
- Expect many, if not all of these bills to resurface in 2021

2020 Housing Legislative Update (Cont'd)



1. Eliminating/changing single family zoning to permit multiple units in single family zoned areas
2. Creating new requirements for Housing Elements in each City, including up-zoning, further entitlement streamlining and elimination of fees
3. Creating pathways to convert non-performing commercially zoned land to housing at minimum densities of 20 – 30 units per acre
4. Requiring regional and local entities to bear responsibility for housing homeless

Homelessness



- According to the 2019 Point-in-Time count, there are 9,706 people experiencing homelessness in Santa Clara County
- 114 were homeless in Morgan Hill, and 704 were homeless in Gilroy
- There are disproportionately high rates of homelessness among specific racial and ethnic groups
- Morgan Hill's Bi-annual Homeless Count from previous years indicated 61 people counted in 2013, 81 in 2015, 388 in 2017, and 114 in 2019

Homelessness (Cont'd)



- Over the past 15 months 264 unhoused Morgan Hill individuals have been interviewed and assessed by an outreach worker or community-based organization using an assessment and survey tool to determine health, housing and social risk factors
- Of the 264 assessed (surveyed), 160 people officially enrolled with the County with the *intent* to be housed using either a Permanent Supportive Housing strategy or a Rapid Rehousing strategy
- Out of the 160 enrolled, 139 of them have been housed successfully
- Morgan Hill housed more people than we counted in 2019! 114 people counted and 139 housed!

Homelessness (Cont'd)



Current Efforts:

- Deployment of County/Abode nonprofit Homeless Outreach Workers who conduct interviews and assessments to determine the medical and social risk factors of the homeless on the streets in the City. The City contributes \$25,000 to this larger Countywide effort
- Ongoing County Rapid Rehousing Program, a Homeless Prevention (financial rental assistance) Program for families, targeting families with children in the school district at risk of homelessness. The City contributes \$25,000 to this much larger Countywide effort
- City Code Compliance Homeless Prevention Program, 3-day emergency hotel stay, if a household receives a notice of violation or “red tag” resulting in homelessness – City budgeted amount \$7,000

Homelessness (Cont'd)



Current Efforts (Cont'd):

- Ongoing operation of Safe Park Program (FOCUS), Faith-based community volunteers offering an eight space, pet friendly overnight respite at a local church for eight homeless families (25 people max) living in their cars where they are receiving coordinated assessment, services, meals, and support with the goal of providing some stability while they wait for permanent housing
- 2019 was the establishment of a new Inclement Cold Weather Shelter, a partnership with Community Christian and their steadfast volunteers. This is a free shelter bed night for single men during inclement weather days. The City contributes \$25,000 toward overnight security and the referral and assessment coordination is conducted by the Compassion Center
- Ongoing identification of affordable housing opportunities and the priority to create very low-income and extremely low-income units

Homelessness (Cont'd)



Progress to Date and Next Steps:

- Destination Home launched a COVID-19 Financial Assistance Program to provide emergency financial assistance to lower income households (\$395,850 in rental assistance was provided to Morgan Hill residents and \$543,383 provided to Gilroy)
- Endorse Community Plan
- Direct the City Manager to return with a proposed, detailed implementation work plan to deploy locally tailored solutions

Homelessness (Cont'd)



Progress to Date and Next Steps (Cont'd):

- Work to secure a capacity building grant that will allow the team to add a Full Time Case Manager to work directly with our unhoused community members, and to take the Community Plan and move from a countywide conceptual framework to focused and tailored solutions for Morgan Hill, and South County collectively
- Explore additional opportunities for smaller scale inclement cold weather shelters to serve single women and families in partnership with the faith-based community
- Secure a second safe car parking site for single men, develop an intermittent hygiene service and develop transportation options



SANTA CLARA COUNTY COMMUNITY PLAN TO END HOMELESSNESS



SANTA CLARA COUNTY

COMMUNITY PLAN TO END HOMELESSNESS

2020–2025



Kathryn (KJ) Kaminski, SCC Office of Supportive Housing

& Ray Bramson, Destination Home

PLAN BUILT ON 3 CORE STRATEGIES





STRATEGY 1

ADDRESS ROOT CAUSES

1. Ensure that people accessing safety net services have the support they need to obtain and maintain housing.
2. Ensure that people involved in the criminal justice system do not become homeless.
3. Create the conditions to develop enough affordable housing to meet the need in our community.
4. Protect residents from evictions, displacement, and housing discrimination.
5. Ensure all residents who are able to work have access to living wage employment.
6. Expand public and private sector support for ending and preventing homelessness.



STRATEGY 2

EXPAND PROGRAMS

1. Increase the capacity of supportive housing programs for people experiencing homelessness.
 - 7,000 people housed in Permanent Supportive Housing programs
 - 10,000 people housed through Rapid Rehousing programs
 - 3,000 people housed through Housing Problem Solving
2. Provide a broad range of supports to prevent homelessness
 - Expand the Homelessness Prevention System to prevent homelessness for an additional 7,000 households who are at risk by providing targeted financial assistance and supportive services.
3. Create a state-of-the-art supportive housing system
 - Center the voices of people who have lived experience of homelessness, especially people of color, in the policy and program design decisions of the supportive housing system.
 - Invest in professional development and competitive pay to attract and retain a highly qualified workforce of homeless service provider staff



STRATEGY 3

IMPROVE QUALITY OF LIFE

1. Double the number of year-round temporary housing beds and offer a variety of welcoming temporary housing options throughout the county
2. Increase street outreach, hygiene services, and transportation options to match the needs of unsheltered residents, Increase access to basic hygiene resources, including bathrooms, showers, and laundry
3. Increase mental health and substance use services
4. Increase the number of mobile crisis teams with clinical staff, and expand their hours, to support individuals experiencing severe mental health and substance use crises
5. Engage a cross-section of community partners to address the needs of unsheltered residents
6. Ensure that community spaces are safe and welcoming for housed and unhoused residents

Next Steps



ENDORSEMENT TODAY



SHARE & PROMOTE THE
PLAN

<https://bit.ly/CommPlan2020>



IMPLEMENTATION



REPORT ON PROGRESS

Recommendations



(RECOMMENDED ACTIONS WILL BE CONSIDERED DURING TONIGHT'S REGULAR CITY COUNCIL MEETING
AGENDA ITEM# 20)

1. Approve the BEGIN program guidelines;
2. Adopt a resolution authorizing the City to become an Additional Member of the California Community Housing Agency; supporting the CCHA Issuance of Tax-Exempt Bonds for the production, preservation, and protection of Middle-Income Rental Housing; and Authorizing the City Manager or Designee to enter into purchase option agreements with the CCHA for middle-income rental housing created within City limits;
3. Adopt resolution endorsing the 2020 Community Plan to End Homelessness and direct staff to return with a local implementation plan;
4. Direct City Manager to Amend the Inclusionary Housing Ordinance to require low-income, lower moderate income as well as moderate income units in all new ownership housing developments, and return to City Council for consideration; and
5. Direct staff to change the upper limit of the moderate income to 110%.

John Hansell
Roger Malech
Michael S. Thompson
J. Daniel McCranie
Leonette Stafford
CHUCK BERGHOFF
Arlene Greenberg
Patty Crone
Theresa Kiernan
Allen Palmer
Swanee Edwards
Ellie Weston
Laura Lundy
Peter Anderson
Miller, Cindy
Rutledge, Eric
Jan Dean
Brian and Kathy Sullivan
Joan Sullivan
Mary Cox
Megan Thompson
Lisa DeSilva
Gene Guglielmo
Rosy Bergin
Roger Knopf

Ken Meagor
Craig van Keulen
Sherry Hemingway
Terry Moriyama
Ken Hulick

Armando Benavides
Diana Gill
Tim Thornton

Jayson Stebbins
Tracy Newquist
Janene Towner-Chernoff
Garth Gilmour
Teri Nelson
Dan Makinster
Mary Hiland
Gina Varela-Domenichini

Rosy Bergin
Jan Reed

Patricia Kindred
Arlene Noodleman



City Council Meeting Item #18 Monthly Budget Update



December 2, 2020

Overview



- Monthly Budget Update
- Staff does not recommend any budget adjustments at this time

General Fund



- No material change since last update
- State and County restriction may negatively impact sales tax, recreation services, and TOT
- Recreation Services: The additional \$1.6 million loss may become a reality

Development Services



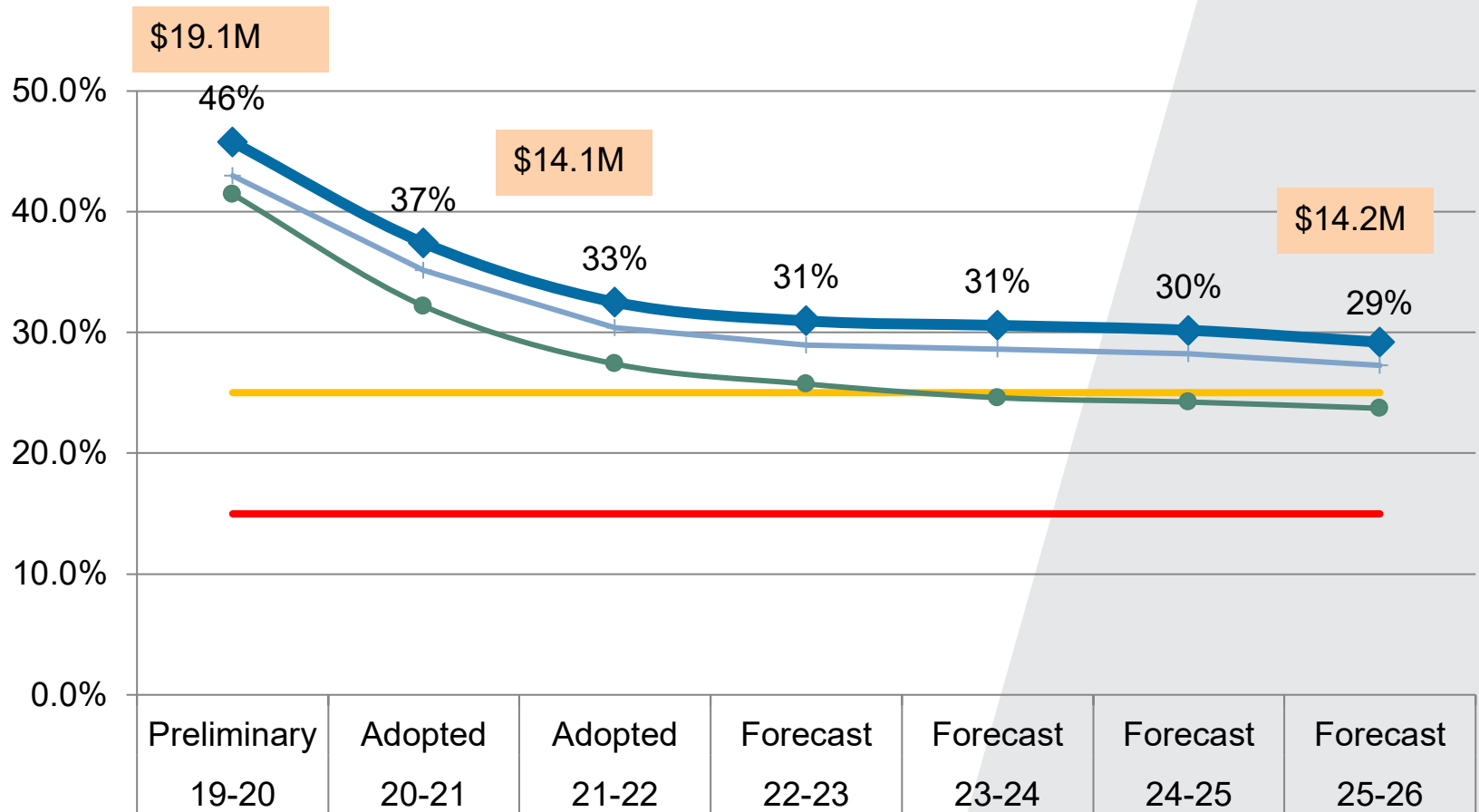
- Revenues are tracking higher than budget
- \$1.6 million received to date vs. \$1.5 million prior year
- No significant impact to development services is expected from County moving back into the “Purple Tier”

Enterprise Funds



- No material change since last update
- Number of accounts delinquent steady but with higher balance
- Final pricing for wastewater bonds

Updated General Fund Forecast



- GF Six Year Forecast October 21, 2020
- Fund Balance Goal of 25% of Revenues
- Fund Balance Minimum Level of 15% of Revenues
- GF Six Year Forecast Budget Adoption June 17, 2020
- GF Six Year Forecast July 22, 2020

Questions?



Supplement & Presentation List

December 2, 2020

City Council Meeting

Supplements

Item 10- Supplement 1 – Library- Emails of support from the public

Item 10- Supplement 2 – Library- Email from Doug Muirhead

Item 10- Supplement 3 – Library- Emails of support from the public

Item 10- Supplement 4 – Library- Emails of support from the public

Item 10- Supplement 5 – Library- Emails of support from the public

Item 10- Supplement 6 – Library- Emails of support from the public

Presentations

Workshop- Staff Presentation

Item 18- Staff Presentation

-----Original Message-----

From: Greg Sellers <[REDACTED]>

Date: December 2, 2020 at 5:42:17 PM PST

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Larry Carr <Larry.Carr@morganhill.ca.gov>

Subject: Support for Item 10 renaming Morgan Hill Library

Dear Councilmembers,

I am writing to strongly support Item #10 on tonight's agenda renaming the Morgan Hill Library the Morgan Hill Steve Tate Library.

I served with Steve Tate all 12 years I was on the City Council. While Steve was active in many aspects of our local community as Councilmember and Mayor, he was particularly passionate about our libraries. He served on the Board of the County Library District, fought hard for measures aimed at providing funding for libraries, and led the effort to build our current library. I can say unequivocally that without Steve Tate's efforts we would not have the amazing library facility our community enjoys today.

Just as it was appropriate to name the Aquatics Center after Dennis Kennedy, in honor of both his significant, long-term commitment to our community and his specific advocacy for the facility that bears his name, so too is it appropriate to name our library after Steve Tate. I urge you to support this measure on tonight's agenda.

-Greg

Greg Sellers, CEO

-----Original Message-----

From: Ken Murray <[REDACTED]>

Sent: Wednesday, December 2, 2020 7:26 PM

To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Dana Ditmore <dditmore.earthlink.net@clubrunner.email>; Roger Knopf <rjknopf@garlic.com>

Subject: Support for Steve

I support the renaming of the library!

Regards

Ken

-----Original Message-----

From: Ira Marshall <[REDACTED]>
Sent: Wednesday, December 2, 2020 8:14 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Morgan Hill Library

Michelle,

I wanted to send a note to let you know that my wife, Wanda and I support having the library renamed in honor of Steve Tate. Steve has done so much to support the library and its recent expansion. It would be great to recognize him for all that he has done for our Morgan Hill Library.

Cordially,

Ira B. Marshall
Registered Investment Advisor
Business, Insurance and Financial Planning

-----Original Message-----

From: John Foster <[REDACTED]>
Sent: Friday, December 4, 2020 12:56 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Steve Tate

We support



Bob and Nancy Foster
Sent from my iPhone