



Regular Meeting Agenda

City Council

Rich Constantine - Mayor
John McKay - Mayor Pro Tem
Gino Borgioli - Council Member
Yvonne Martinez Beltran - Council Member
Rene Spring - Council Member

Wednesday, August 4, 2021 7:00 p.m.

Virtual Meeting

VIRTUAL MEETING GUIDELINES AND PUBLIC COMMENT

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. Physical meetings will not be in the City Council Chamber until further notice.

City Council meetings will be live streamed on Channel 17, on the City's website and on the City's Facebook page. Those members of the community that would like to participate in the meetings remotely may do so by joining the virtual meeting at: <https://bit.ly/MHCityCouncilMeeting> or by calling in to: (669) 900-9128, then enter the webinar id: 873 3200 8380#.

Public comment may be provided in the following ways:

- Join the virtual City Council meeting via the link above, when public comment is opened, raise your virtual hand and be called upon to speak for up to 3 minutes
 - In order to speak, please be sure that your version of Zoom is up to date.
- Join the virtual meeting by calling in to the number above, dial *9 to raise your hand and be called upon to speak for up to 3 minutes
- Send public comments in writing to the City Clerk at ccpubliccomment@morganhill.ca.gov [<mailto:ccpubliccomment@morganhill.ca.gov>](mailto:ccpubliccomment@morganhill.ca.gov)

* Please note that comments made on Facebook are not considered public comment.

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

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2

City Clerk Michelle Bigelow

CITY COUNCIL REPORTS

Mayor Constantine

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PUBLIC COMMENT

Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the City Council is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. ACCEPT MADRONE CHANNEL TRAIL IMPROVEMENTS PHASE I PROJECT

Recommendation:

1. Accept as complete the Madrone Channel Trail Improvements Phase I Project;
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.

2. APPROVE FISCAL YEAR 2021-22 WORK PLANS FOR PARKS AND RECREATION AND LIBRARY, CULTURE AND ARTS COMMISSIONS

Recommendation:

1. Approve the proposed Parks and Recreation Commission FY 2021-22 Work Plan; and
2. Approve the proposed Library, Culture and Arts Commission FY 2021-22 Work Plan.

3. APPROVE PARK AND RECREATION LAND PURCHASE AND TRANSFER OF EXISTING PARKS AND RECREATION PROPERTY TO THE AGRICULTURE AND OPEN SPACE FUND

Recommendation:

1. Authorize the City Manager to enter into a purchase and sale agreement for the purchase of a 19.58-acre site (APN 817-06-001) located on Monterey Road south of Butterfield Boulevard for use for future park and recreation purposes for a total price of \$3 million;
2. Approve the transfer of \$5,383,018 from the Agriculture and Open Space Preservation Fund to the Park Impact Fund to transfer existing City owned property on Tennant Avenue (APNs 817-14-004, 817-14-009 and 817-14-005) from future use for parks and recreation purposes to future use for agriculture and open space preservation purposes; and
3. Adopt resolution appropriating funds for the purchase and transfer of the properties.

4. APPROVE AN EXTENSION OF THE TRAFFIC AND SEWER IMPACT FEES CREDIT PROGRAM

Recommendation:

Adopt resolution amending the Reduction of Traffic and Sewer Impact Fees program resolution (Resolution No. 6080) to extend the Sewer Impact Fees Credit Program until December 31, 2025.

5. APPROVE THE JUNE 23, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

PUBLIC HEARING

6. INTRODUCE ORDINANCE TO APPROVE A DEVELOPMENT AGREEMENT AMENDMENT FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 764-24-061 LOCATED AT 18755 OLD MONTEREY ROAD AT THE SOUTHWEST CORNER OF OLD MONTEREY ROAD AND MUSTARD AVENUE (AAE2021-0002: OLD MONTEREY - APPLETREE (KELLY VO))

Recommendation:

1. Open and close public hearing;
2. Waive first and second reading of Development Agreement Ordinance; and
3. Introduce Development Agreement Ordinance.

Estimated Time: 15 Minutes

OTHER BUSINESS

7. APPROVE CONDITIONAL FUNDING FOR ROYAL OAKS VILLAGE AFFORDABLE HOUSING PROJECT BY URBAN HOUSING COMMUNITIES/IKAIKA OHANA (UHC) FROM DESIGNATED HOUSING FUNDS

Recommendation:

Approve conditional funding for the UHC Housing Project, "Royal Oaks Village," in the amount of \$400,000, contingent on UHC's ability to obtain the remaining gap funds, subject to an agreement negotiated by the City Attorney.

Estimated Time: 20 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

SUSTAINABLE MORGAN HILL



VISION

To sustain a safe, equitable, 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 Equity, Diversity, and Inclusiveness
- Advancing Regional Initiatives
- Advocating for Local Control

2020-2021 Strategic Priorities

- **Fiscal Sustainability**
- Affordable Housing and Homelessness
- Community Outreach, 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: August 4, 2021

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

ACCEPT MADRONE CHANNEL TRAIL IMPROVEMENTS PHASE I PROJECT

RECOMMENDATION(S)

1. Accept as complete the Madrone Channel Trail Improvements Phase I Project;
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

Supporting Our Youth
Seniors
and Entire Community

2020-2021 Strategic Priorities

Transportation

GUIDING DOCUMENTS

Bikeways
Trails
Parks
and Recreation Masterplan

REPORT NARRATIVE:

The Madrone Channel Trail Improvements Phase I Project is identified in the 2017 Bikeways, Trails, Parks and Recreation Master Plan and is included in the adopted Capital Improvement Program for this project (#117018). This project is located along the Madrone Channel from Cochrane Road to Main Avenue (See Vicinity Map Attachment 1)

On March 4, 2020, the City Council awarded the construction contract for the Madrone Channel Trail Improvements Phase I Project to Terramark General Engineering Contractors, Inc. in the amount of \$254,400 with an authorized contingency of \$25,440. The original project scope called for the construction of an 8' wide asphalt concrete trail (with 2' wide Class II aggregate base shoulders) along the Madrone Channel from Cochrane Road to East Main Avenue (See Vicinity Map Attachment 1). However, to provide room for Valley Water to access the channel with their maintenance equipment and avoid damaging the trail improvements, the trail was reduced to 6 feet in width and the Class II aggregate base shoulder was eliminated on one side of the trail.

The Madrone Channel Trail Improvements Phase I Project began in October 2020 and

was substantially completed in June 2021. One change order was authorized for a deduct of \$19,676 due to the reduction in scope for the project (Attachment 2). The final construction contract with Terramark General Engineering Contractors, Inc. is \$234,724.

Staff recommends the acceptance of this project as it is complete in accordance with updated plans and specifications and directing City Clerk to file the Notice of Completion (Attachment 3).

COMMUNITY ENGAGEMENT: Involve and Inform

During the planning and design stages of the project, adding a paved bike and pedestrian trail to the Madrone Channel Trail was discussed in the Development of the Bikeways, Trails, Parks and Recreation Master Plan. Additionally, the local Morgan Hill Bicycle and Pedestrian Advocacy Group supported and advocated for a paved pathway on the Madrone Channel Trail to provide a better connection from the Downtown to the northwestern section of Morgan Hill and the Coyote Creek Trailhead.

During construction, staff informed the community regarding the progress of the project using media, social media, and 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:

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

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

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

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

March 4, 2020 – Awarded Madrone Channel Trail Improvements Phase I Project

FISCAL AND RESOURCE IMPACT:

The final contract amount for the Madrone Channel Trail Improvements Project is \$234,724. The project was awarded to Terramark General Engineering Contractors, Inc. in the amount of \$254,400 with an authorized contingency of \$25,440 (Total of \$279,840).

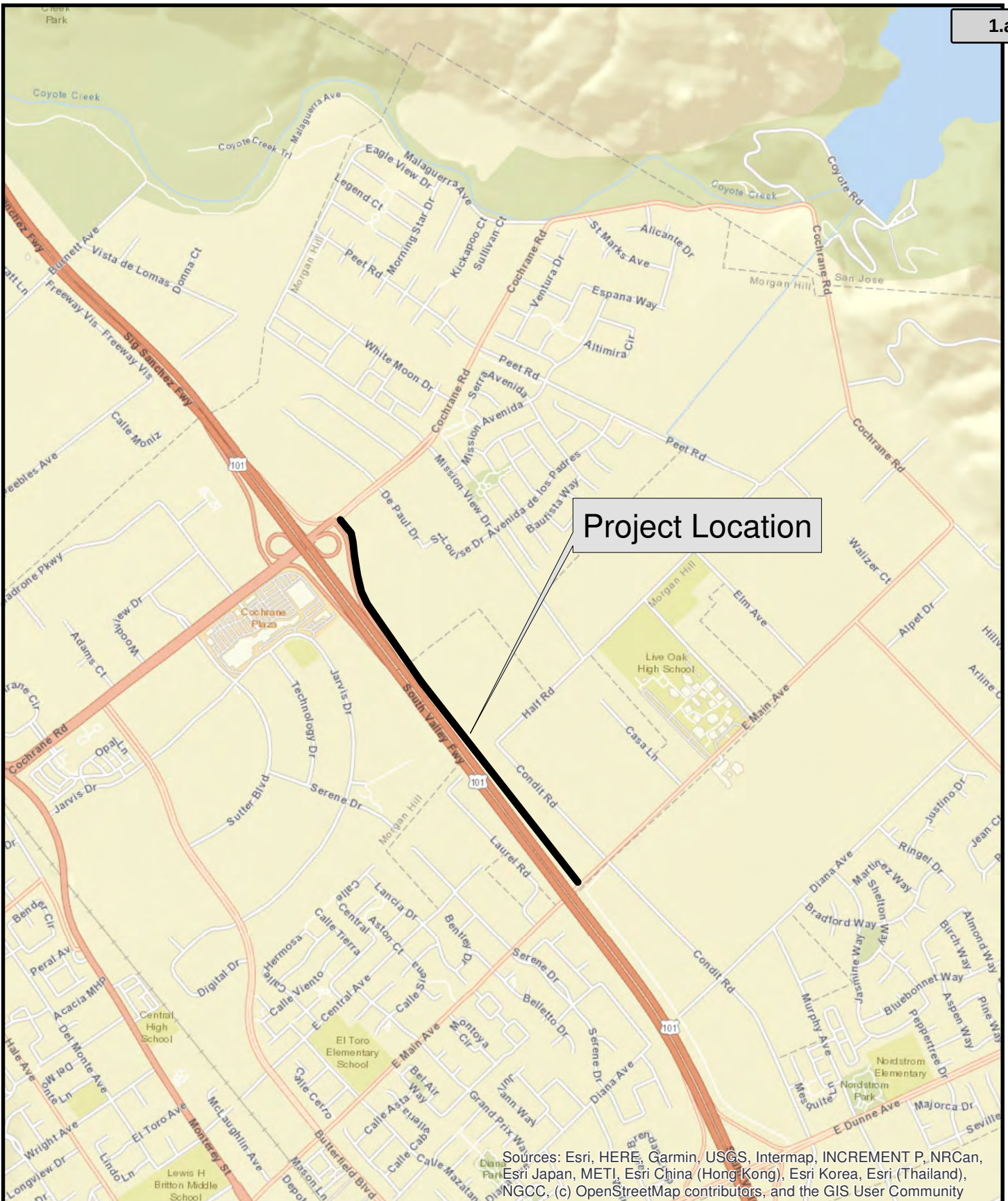
CEQA (California Environmental Quality Act): Categorically Exempt.

The proposed improvements of the Madrone Channel Trail Improvements Phase I Project are categorically exempt from CEQA under Section 15304, Minor Alterations to

Land, which covers minor public or private alterations to the condition of land, water, and/or vegetation which do not include removal of healthy, mature, scenic trees for forestry or agricultural purposes, including the creation of bicycle lanes on existing right-of-way.

LINKS/ATTACHMENTS:

1. Vicinity Map 8-4-21
2. Funding Closeout Statement-Terramark 8-4-21
3. Notice of Completion-Terramark 8-4-21



Attachment: Vicinity Map 8-4-21 (3147 : Acceptance of Madrone Channel Trail Improvements Phase I Project)



CITY OF MORGAN HILL
Engineering and Utilities Department
CIP Engineering Division

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

MADRONE CHANNEL TRAIL IMPROVEMENTS PHASE 1 PROJECT



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

CIP Contract Acceptance Funding Closeout Statement

Project:	Madrone Channel Trail Improvements Phase I Project		
Project No:	117018		
Date of Project Award:	4-Mar-20	Project Award Amount:	\$254,400
Funding Source:	F301	Contingency Authorized:	\$25,440
Date of Project Acceptance:	4-Aug-21	Total Authorized:	\$279,840
		Actual Base Contract Spent:	\$254,400

Change Orders				
	Description	Date	Council Approval Req'd? (Y/N)	
C.O. #1:	Deductive Change Order due to Reduction in Scope of Work	4-Nov-20	N	-\$19,676
Total C.O.:				-\$19,676

Additional Appropriations		
Source	Amount	Date
None		

Construction Fund Balance:	\$45,116	Total Construction Amount (Base Contract plus CO's):	\$234,724
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Attachment: Funding Closeout Statement-Terramark 8-4-21 [Revision 1] (3147 : Acceptance of Madrone Channel Trail Improvements Phase I

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
Civil Code §§ 8182, 8184, 9204, and 9208

NOTICE IS HEREBY GIVEN THAT:

1. The undersigned is the Owner or agent of the Project described below.
2. Owner's full name is City of Morgan Hill.
3. Owner's address is 17575 Peak Avenue, Morgan Hill, CA 95037.
4. The nature of Owner's interest in the Project is:
☐ Fee ownership ☐ Lessee ☒ Other: Valley Water with Joint Use
 Agreement with City of Morgan Hill
5. Construction work on the Project performed on Owner's behalf is generally described as follows: 6 foot wide trail with 2' wide aggregate base shoulder along Madrone Channel from Cochrane Road to Main Avenue
6. The name of the original Contractor for the Project is: Terramark General Engineering Contractors, Inc.
7. The Project was completed on: June 1, 2021.
8. The Project is located at: Along Madrone Channel between Cochrane Road and Main Avenue

Verification: In signing this document, I, the undersigned, declare under penalty of perjury under the laws of the State of California that I have read this notice, and I know and understand the contents of this notice, and that the facts stated in this notice are true and correct.

Date and Place

Signature

Scott Creer, City Engineer



CITY COUNCIL STAFF REPORT

MEETING DATE: August 4, 2021

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

APPROVE FISCAL YEAR 2021-22 WORK PLANS FOR PARKS AND RECREATION AND LIBRARY, CULTURE AND ARTS COMMISSIONS

RECOMMENDATION(S)

1. Approve the proposed Parks and Recreation Commission FY 2021-22 Work Plan; and
2. Approve the proposed Library, Culture and Arts Commission FY 2021-22 Work Plan.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving
Open Space and Agricultural Land
Maintaining Infrastructure
Supporting Our Youth
Seniors
and Entire Community
Preserving Our Community History
Enhancing Equity
Diversity and Inclusiveness

2020-2021 Strategic Priorities

Economic Development
Fiscal Sustainability
Regional Initiatives

GUIDING DOCUMENTS

Bikeways
Trails
Parks
and Recreation Masterplan
Economic Blueprint
Vision Zero

REPORT NARRATIVE:

Annually, the Library, Culture and Arts Commission (LCAC) and the Parks and Recreation Commission (PRC) submit Work Plans for approval by the City Council. After approval by the Council, the Commissions use these Work Plans to guide their work over the next year.

City staff believe that the Work Plans can be achieved without significant impact on staff resources. As has been the case in past years, many commissioners have volunteered to take much of the legwork associated with the specific Work Plan items. This is most important with the significant number of volunteer led activities within the LCAC's Work Plan.

Both Work Plans include several items carried forward from the previous fiscal year. This was due in part to Covid-19 slowing down efforts to make progress on some items and in part because many items are multi-year in nature.

COMMUNITY ENGAGEMENT: Consult

The development of the Work Plans occurred at noticed public meetings of the PRC and the LCAC. Specific Work Plan items will include appropriate public engagement.

ALTERNATIVE ACTIONS:

The Council could alternatively modify a Commission's Work Plan to eliminate, add, or change specific items within a Work Plan.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The PRC approved their Work Plan for City Council review on June 16, 2021 and the LCAC approved their Work Plan for City Council review on July 6, 2021.

FISCAL AND RESOURCE IMPACT:

There is no direct fiscal impact associated with the approval of the Commission Work Plans. Each Work Plan identifies the estimated staff resources necessary to support the specific Work Plan items. Supporting the LCAC and PRC is an ongoing activity for the Community Services Department.

CEQA (California Environmental Quality Act): Not a Project

Development of Commission Work Plans is an administrative activity of government that will not result in direct or indirect physical changes in the environment. While some projects on the Work Plans may result in changes to the physical environment, those projects would undergo appropriate environmental review on a project by project basis to meet CEQA requirements.

LINKS/ATTACHMENTS:

1. PRC 21-22 Workplan Draft for Council
2. LCAC 21-22 Workplan Draft for Council

Parks & Recreation Commission

FY 2021-22 Work Plan – Draft for Council Review

Project (Commissioner Responsible)	City Council Priority Supported	Staff Resources Required	Desired Outcome
1. Get youth more active in Parks and Recreation	Supporting Our Youth, Seniors & Entire Community	Recreation Manager (Minimal)	Review program opportunities for new youth programming. (Locicero/Lovato)
2. Support bicycle and trails development efforts	Supporting Our Youth, Seniors & Entire Community	PS Director (Minimal)	1. Support the VTA Bicycle and Pedestrian Advisory Committee. (Berman) 2. Work to coordinate with community members on bicycle and trails issues with volunteer Bicycle and Pedestrian Advocacy Group. (Grzan-Pieracci)
3. Support efforts to create an inclusive playground	Supporting Our Youth, Seniors & Entire Community	PS Director (Significant) CS Supervisor (Moderate)	Support the group that has formed for the creation of an inclusive playground in Morgan Hill. Support in the planning and fundraising efforts. (Locicero/Berman/Scott)
4. Support planning for updated sports facilities and partnerships	Supporting Our Youth, Seniors & Entire Community Economic Development	PS Director (Moderate) Recreation Manager (Minimal)	1. Evaluate opportunities to construct sand volleyball facilities in partnership with a facility operator, including support for upcoming feasibility study. (Berman) 2. Monitor Outdoor Sports Center transition to new operator. (van Keulen) 3. Monitor Centennial Recreation Center Expansion programming. (van Keulen)
5. Support City in grant opportunities	Supporting Our Youth, Seniors & Entire Community	PS Director (Significant) Mngt Analyst (Significant)	Support City staff in identifying and evaluating grant opportunities and associated projects. (Scott/Berman)
6. Increase volunteer Adopt a Park Program participation	Supporting Our Youth, Seniors & Entire Community Maintaining Fiscal Responsibility	PS Director (Minimal) CS Supervisor (Minimal)	As an exploratory committee, evaluate the opportunity to recreate ongoing volunteer groups to support park maintenance. (Scott/Lovato)

Project (Commissioner Responsible)	City Council Priority Supported	Staff Resources Required	Desired Outcome
7. Evaluate opportunities to increase youth involvement in park planning	Supporting Our Youth, Seniors & Entire Community	PS Director (Minimal) Rec Coord (Minimal)	Work with City staff to review opportunities to more formally include youth in park planning projects. (Grzan-Pieracci/Moniz)
8. Support City park planning efforts	Supporting Our Youth, Seniors & Entire Community	PS Director (Minimal)	1. Evaluate future opportunities for parkland acquisition and development. (van Keulen/Lovato) 2. Research opportunities for the creation of additional dog parks in existing or new park spaces (Moniz).
9. Review pedestrian access to park space for low income housing areas	Supporting Our Youth, Seniors & Entire Community	PS Director (Minimal)	Review affordable housing areas near Monterey Road for pedestrian connections to park space. (Grzan-Pieracci/Moniz)
Staff Resources Required: 0-50 hours = Minimal 51-100 hours = Moderate 100+ hours = Significant			

Library, Culture & Arts Commission

FY 2021-2022 Work Plan**Draft – Pending City Council Approval**

Overall Mission: To assist the City Council in accomplishing its goals by fostering an environment conducive to and supportive of the arts, culture, and life-long learning in Morgan Hill, working with existing community groups to promote resources, and facilitate partnerships.

Project Area	City Council Goal Supported	Staff Resources Required	Specific Task / Commissioners Assigned
Community Outreach	Supporting our Youth, Seniors and Entire Community Enhancing Diversity and Inclusiveness Community Engagement and Messaging	PS Director (minimal) CS Supervisor (moderate)	(1) Participate with other groups to support community outreach and support arts and culture in the community (including Valle del Sur, El Toro Arts, SV Creates, Poppy Jasper Film Festival, Morgan Hill Diwali Festival, Coyote Creek Music Festival, Morgan Hill Art School, DTA Wine Art and Music Stroll, SJMA Let's Look at Art, Movimiento de Arte y Cultura Latino Americana) (All) (2) Explore development of a calendar relating to library, culture and arts events and/or development of a publication plan for upcoming events. (Khera/Borchers) (3) Explore opportunities for art programming in conjunction with the new Morgan Hill Magical Bridge Playground. (Khera/Chabra/Santiago) (4) Review City Commission website for opportunities for improvement and explore use of social media for promotion of Commission initiatives (Chabra/Borchers) (5) Develop outreach program to the Latinx community through art programming (Lake/Lyn) (6) Develop open art studio program (physical or virtual) (Lake/Ganapathy/Borchers) (7) Create a Morgan Hill coloring book in partnership with local artists (Santiago/Ganapathy)
Art and Culture Events	Supporting our Youth, Seniors and Entire Community Enhancing Diversity and Inclusiveness	PS Director (minimal) CS Coordinator (minimal) CS Supervisor (minimal)	(1) Facilitate the Art a la Carte event (Lake/Chabra are the leads/all members will support) (2) Partner with artists on a children's art show with the Taste of Morgan Hill or International Celebration (Khera/Chabra) (3) Evaluate the opportunity to create an international festival utilizing entertainment and food from various cultures (All)

Project Area	City Council Goal Supported	Staff Resources Required	Specific Task / Commissioners Assigned
Permanent and Proposed Public Art	Supporting our Youth, Seniors and Entire Community Preserving Our Cultural Heritage	PS Director (minimal) Maintenance Coordinator (minimal)	(1) Implementing a utility box art program (Ganapathy/Chabra/Borchers/Lyn) (2) Celebration/unveiling of Poppy Jasper Art (Ganapathy/Khera) (3) Celebration/unveiling of Never Forgotten Sculpture (Lyn/Santiago/Lake) (4) Form subcommittees as needed to support specific art requests that come forward (All) (5) Review art inventory and complete updates to historical items list (Borchers/Lyn) (6) Creating an artist registry (Khera/Borchers/Lyn) (7) Develop google map of existing public art (Borchers) (8) Develop and recommend a plan for the use of Public Arts Funds (All) (9) Explore public art related to a homelessness outreach mural (Santiago)
Library Outreach and Support	Supporting our Youth, Seniors and Entire Community Enhancing Diversity and Inclusiveness	Library Staff (moderate)	(1) Support Library outreach and advocacy as needed (All) (2) Coordinate Commissioner's Corner in Library to provide book recommendations (Khera/Ganapathy/Lyn) (3) Participate in annual Library Commissioners Forum (All) (4) Support incorporation of Children's art into the Library (Lake/Chabra/Lyn) (5) Explore other opportunities for Library art contests in other media (examples: poetry, photography, literature) (Ganapathy/Borchers/Lyn)
Support of Historical Resources	Preserving our Cultural Heritage	PS Director (minimal)	(1) Explore opportunities for the Commission to support the Morgan Hill Historical Society partnership, including supporting the Black History Project (Ganapathy/Lyn) (2) Support outreach and advocacy for the Historical Society as needed (All)

Staff Resources Required:

0-30 hours: Minimal; 31-60 hours: Moderate; 60+ hours: Significant



CITY COUNCIL STAFF REPORT

MEETING DATE: August 4, 2021

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

APPROVE PARK AND RECREATION LAND PURCHASE AND TRANSFER OF EXISTING PARKS AND RECREATION PROPERTY TO THE AGRICULTURE AND OPEN SPACE FUND

RECOMMENDATION(S)

1. Authorize the City Manager to enter into a purchase and sale agreement for the purchase of a 19.58-acre site (APN 817-06-001) located on Monterey Road south of Butterfield Boulevard for use for future park and recreation purposes for a total price of \$3 million;
2. Approve the transfer of \$5,383,018 from the Agriculture and Open Space Preservation Fund to the Park Impact Fund to transfer existing City owned property on Tennant Avenue (APNs 817-14-004, 817-14-009 and 817-14-005) from future use for parks and recreation purposes to future use for agriculture and open space preservation purposes; and
3. Adopt resolution appropriating funds for the purchase and transfer of the properties.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving
Open Space and Agricultural Land
Supporting Our Youth
Seniors
and Entire Community
Advancing Regional Initiatives

2020-2021 Strategic Priorities

Fiscal Sustainability

GUIDING DOCUMENTS

Bikeways
Trails
Parks
and Recreation Masterplan

REPORT NARRATIVE:

In July 2015, the City Council authorized the purchase of 25.8 acres for a future baseball/softball field facility (Ball Field Property). The property is located south of the intersection of Condit Road and Tennant Avenue, adjacent to Highway 101. The property is within the unincorporated County. The purchase was made to “land bank” the property until a time when the City would have funding to develop the property. At the time of purchase for the property, it was believed that future annexation would bring the properties within the City limits, but it was also understood that if the properties were

not annexed that they could be developed by the City in the County.

In 2016, the property was part of the annexation request made to the Santa Clara County Local Area Formation Commission (LAFCO). The annexation was denied by LAFCO. Several entities including the County of Santa Clara and the Santa Clara Valley Open Space Authority have noted preferences for continued use of the site for agriculture. Using intergovernmental immunity, the City could attempt to develop the property in conformance with its own land use designations and permitting process. However, in February 2019, the City Council directed City staff to look at the opportunity to find an alternate more suitable recreation site that could allow the existing site to continue to be used for agriculture.

Finding an alternate site is critical as the funding used to purchase the Ball Field Property was purchased with Park Impact Funds. The City has worked to identify an alternate site and now has an opportunity to purchase this additional property that would provide for future park and recreation use. The property proposed for purchase is 19.58 acres located on Monterey Road just south of Butterfield Boulevard (Attachment 1). The property is adjacent to 8 acres of City owned property already planned for park and recreation purposes, which will create a site approximately 27.6 acres in size. The property is located within the County but has had no agricultural use for decades and is surrounded on nearly three sides by the City with the fourth side adjacent to the Railroad tracks. The City has communicated with the County, Open Space Authority and other entities on the proposed purchase.

City staff is recommending that the City Council Authorize the City Manager to enter into a purchase and sale agreement (Attachment 2) and to execute all necessary documents to purchase the property. The property has been appraised and the \$3 million asking price is just slightly higher than the appraised value of \$2,980,000. City staff have completed the due diligence on the site and has conducted an initial environmental assessment of the site. A thorough environmental assessment will take place during the escrow period to ensure there are no issues with the property.

Future development of the property would only occur after a site master planning process, appropriate environmental analysis, and additional community input. The City would work with the County and other regional entities prior to development. The property could be developed by the City for a public purpose through a future annexation or with the property remaining in the County. The property would be land banked until this work is completed and there are available funds to develop the property.

With the acquisition of the new site, the Ball Field Property would be repurposed for ongoing agriculture purposes. To make this transfer the City is required to “repay” the Park Impact Fund for \$5,383,018 used to purchase the site originally. The City has adequate funding in the Agriculture and Open Space preservation fund for this purpose. Without this transfer the City would not have adequate funds to purchase the new property.

Future action by the City Council and other entities will be needed to permanently preserve the former Ball Field Property for agriculture through an easement or other means. Staff will follow-up with the next steps in this process. Additionally, it should be noted the original seller of the property still holds some interest in 3.6 acres on northern end of the Ball Field Property through a buyback option.

COMMUNITY ENGAGEMENT: Inform

Planning for the proposed sports facilities is a major component of the Bikeways, Trails, Parks and Recreation Master Plan, which encompassed significant community outreach to develop policies and strategies for new facility development. City staff contacted local sports groups to inform them this item would be on the Council Agenda.

ALTERNATIVE ACTIONS:

The Council may choose to not move forward with the purchase of the property and provide staff with alternative direction.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

July 15, 2015 – The City Council authorized purchase of the Ball Field Site.

February 6, 2019 – The City Council provided direction on development of the Ball Field Site.

FISCAL AND RESOURCE IMPACT:

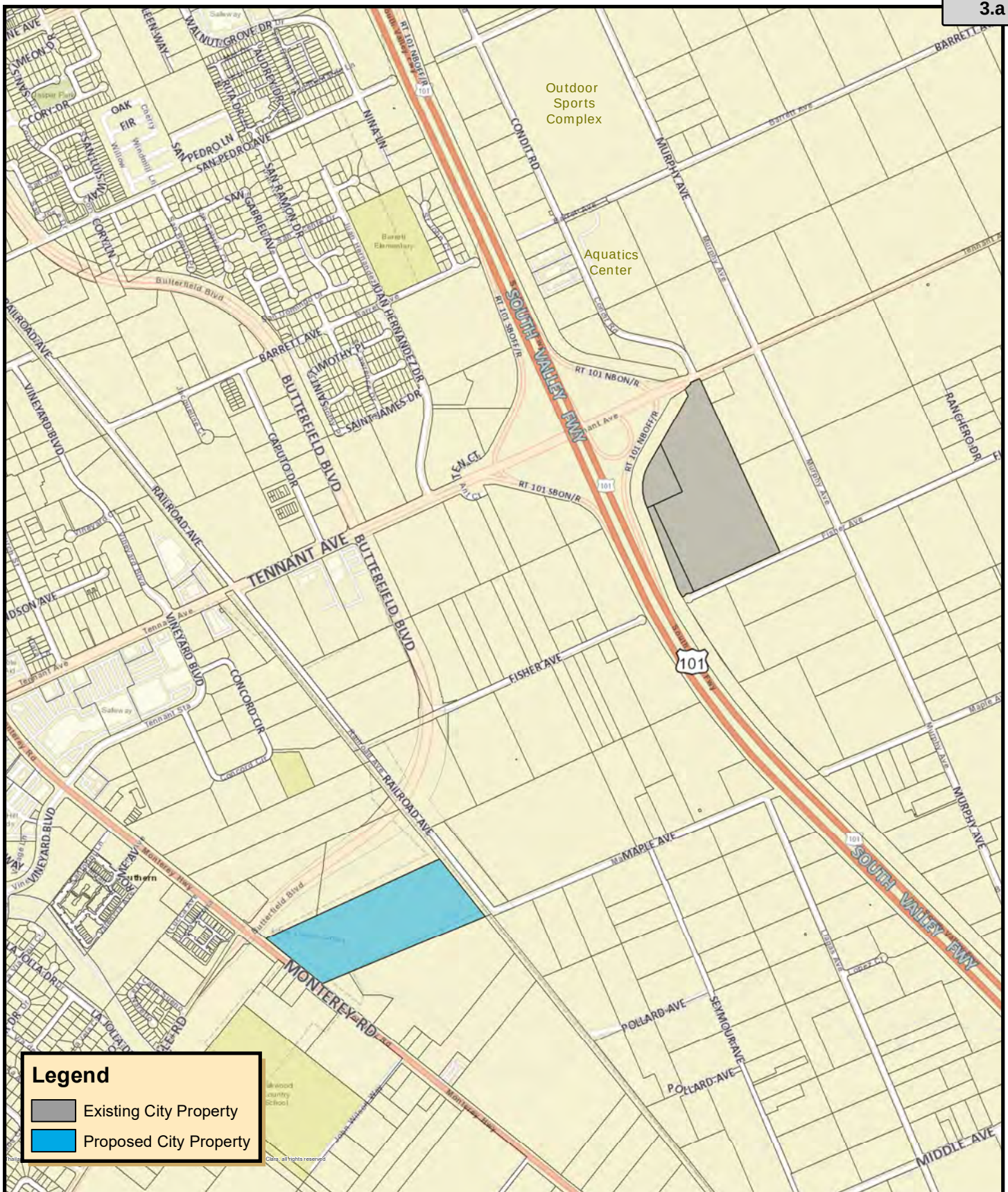
By transferring \$5,383,018 from the Agricultural Preservation Fund to the Park Impact Fund there will be adequate funds to make this purchase. After the transfer it will be required to appropriate \$3,000,000 in the Park Impact Fund under CIP Project 110097 Park Land Purchase and Development.

CEQA (California Environmental Quality Act): Not a Project

Purchase of the property is not a project and there will be no immediate change in use of the property. Future CEQA analysis will be required for use of the property and for its development as a recreation facility.

LINKS/ATTACHMENTS:

1. Site Locations
2. Purchase Agreement
3. Budget Amendment Resolution and Scorecard



Attachment: Site Locations (3150 : Park and Recreation Land Purchase and Transfer of Existing Parks and Recreation Property to Ag)



Community Services Department

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Site Map Proposed City Property



PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AGREEMENT ("Agreement") is entered into as of _____ ("Effective Date"), by and between John C. Chu and May-Jih C. Chu, Trustees of the Chu Family Trust Agreement dated September 20, 2002, the property owner ("Seller"), and the CITY OF MORGAN HILL, a municipal corporation, ("Buyer").

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. PROPERTY

Subject to the terms and conditions in this Agreement, Seller agrees to sell and Buyer agrees to buy the certain real property ("Real Property") roughly located on the east side of Monterey Road, between Butterfield Boulevard and the Maple Leaf RV Park property in the unincorporated County of Santa Clara, specifically APN 817-16-001 described in attached **Exhibit A**, and all structures and improvements located on the Real Property, together with all rights, privileges, easements, and appurtenances; all personal property, equipment, supplies, and fixtures owned by Seller and located at the Real Property; the names under which the Real Property is operated; and Seller's interest as lessor in any leases of the Real Property (collectively, the "Property"). Seller specifically represents that the land is in a natural, undeveloped state, with no structures or improvements.

2. ACCEPTANCE

Seller's execution of this Agreement shall constitute the offer and the full execution of this Agreement by both Seller and Buyer shall constitute the Acceptance. The date of Acceptance shall be the date the Buyer receives a mutually executed copy of this Agreement.

3. PURCHASE PRICE

- A. Purchase Price.** The purchase price ("Purchase Price") for the Property shall be Three Million Dollars (\$3,000,000) and shall be payable all in cash upon Close of Escrow.

4. DUE DILIGENCE

- A. Property Information.** Within five (5) days after the last date that this Agreement is executed (Execution Date), Seller shall provide to Buyer all property information described in all sub-paragraphs listed below that is in Seller's possession or reasonable control (collectively, the "Property Information"). Seller represents that the land is in a natural, undeveloped state, with no structures or improvements and therefore some of the documentation below does not exist. Upon the completion of the delivery of all Property Information, the Seller shall certify to the Buyer that "all Property Information as defined in paragraph 4 of the Purchase Agreement has been delivered to the Buyer" and such certification shall be dated the date of the delivery of the written certificate ("Delivery Date").

- i. Copies of all reports including, but not limited to, environmental, soil, structural engineering and drainage reports, assessments, audits or surveys (including any ALTA or other form of land survey) related to the Property.
- ii. Copies of any and all "as-built" construction, architectural, mechanical, electrical, plumbing, landscaping, grading plans or specifications relating to the Property and any major capital repairs or tenant improvements.
- iii. Copies of any and all warranties or guarantees, permits, certificates of occupancy, licenses and other approvals related to the Property.

PURCHASE AGREEMENT

- iv. Copies of any and all management, maintenance, service, supply, equipment rental and other contracts effecting the Property or used or useful in the operation and/or maintenance thereof.
 - v. Copies of any and all leases, subleases or licenses of all or any portion of the Real Property, including amendments and exhibits, together with copies of any communications with tenants and documentation of security deposits, if any, held by Seller (the "Leases") and a rent roll.
 - vi. Copies of all easements affecting all or any portion of the Real Property.
 - vii. Listing of any tenancies, occupancy or rights let or assigned to any third party not evidenced by documents described in v. and vi. above.
 - viii. An inventory of all personal property to be sold under this Agreement, if any, and a complete schedule of all service contracts related to the Property that Seller does not intend to cancel before the Close of Escrow.
 - ix. Full written disclosure of all facts which materially affect the value or desirability of the Property.
- B. Ongoing Duty to Disclose.** Seller shall have a continuing obligation to promptly provide Buyer with any additional Property Information that comes into Seller's possession or reasonable control as well as any inaccuracies discovered in the Property Information.
- C. Due Diligence Period.** The term "Due Diligence Period" shall mean the period commencing on the Delivery Date and ending forty-five (45) days after the Delivery Date during which Buyer may investigate the condition of the Property. Due Diligence shall no way extend the Close of Escrow date specified in paragraph 9c. If additional time is needed, extension of time shall occur upon mutual agreement only, and shall be extended by up to 90 days.
- D. Inspections, Tests and Studies.** Subject to the terms of this Agreement, during the Due Diligence Period, Buyer shall have the right to conduct such economic, title, survey, environmental, physical and structural examinations, inspections, tests, studies and investigations of the Property as Buyer deems necessary. Seller shall permit Buyer and its authorized agents and representatives to enter upon the Property at all reasonable times during normal business hours to inspect and conduct reasonably necessary tests and studies of the Property. Such entry, inspections, studies and tests may be conducted only during the Due Diligence Period. Buyer shall notify Seller by telephone or fax, of its intention or the intention of its authorized agents or representatives to enter upon the Property at least twenty-four (24) hours prior to such intended entry. At Seller's option, Seller may be present for any inspections, tests or studies. Buyer shall bear the cost of all such inspections, tests and studies. In conducting any inspections, tests or studies, Buyer and its authorized agents and representatives shall (a) not unreasonably interfere with the operation, use and maintenance of the Property, (b) not damage any part of the Property, (c) not injure or otherwise cause bodily harm to Seller or any of its respective agents, contractors and employees or other third party, (d) promptly pay when due the cost of all inspections, tests or studies, (e) not permit any liens to attach to the Property by reason of the exercise of the rights under this Paragraph, (f) fully restore the Property to the condition in which the same was found before any such inspections, tests or studies were undertaken, and (g) not reveal or disclose to any third-party any information obtained as a result of such tests, inspections and studies concerning the Property except as may otherwise be permitted in this Agreement or as may be required by law.
- E.** Buyer shall, during the term of this Agreement and at all times during which access is available to it, require Buyer Authorized Agents, to maintain the following insurance: Comprehensive General Liability or Commercial General Liability Insurance, with limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and not less than One Million Dollars (\$1,000,000) on a general aggregate basis, for bodily injury, death and property damage, and Excess (umbrella) liability insurance with liability insurance with limits of not less than Two Million Dollars (\$2,000,000)

PURCHASE AGREEMENT

per occurrence. Each policy of insurance shall name Seller as an additional insured. Further, each policy of insurance shall state that such policy is primary and noncontributing with any insurance carried by Seller and shall contain severability of interest and cross-liability clauses. A certificate, together with any endorsements to the policy required to evidence the coverage, which is to be obtained hereunder, shall be delivered to Seller prior to entry on the Real Property. The certificate shall expressly provide that no less than thirty (30) days prior written notice shall be given Seller in the event of any material alteration to or cancellation of the coverage evidenced by said certificate. Any policies required by the provisions of this Section may be made a part of a blanket policy of insurance with a "per project, per location endorsement" so long as such blanket policy contains all of the provisions required herein and does not reduce the coverage, impair the rights of the other Party to this Agreement or negate the requirements of this Agreement. Such insurance shall be limited to activities conducted by City of Morgan Hill's employees, agents, and subcontractors in the performance of inspections, site visits, tests, and studies pursuant to City's intent to purchase the property.

- F. In the event, prior to the Closing, Buyer believes in good faith that it is required by any legal requirement to disclose the results of any of its Inspections to any governmental agency, then Buyer shall immediately notify Seller of such belief and the reasons for such belief. If Seller within ten (10) days after receipt of such notice, advises Buyer that sent the notice that Seller shall itself disclose the information, then Buyer shall not make such disclosure (unless Buyer reasonably believes that it must disclose such information by law). If Buyer reasonably believes that such disclosure is required to be made in less than the ten (10) day period, then the notice to Seller shall so state and Seller's time to respond will be reduced accordingly.
- G. Buyer shall indemnify, save and hold Seller and Seller's officers, agents, employees, directors, trustees, invitees, successors, and assigns (collectively "Indemnitees") harmless against all losses, costs, expenses, liabilities, claims, litigation, demands, proceedings and damages (including but not limited to attorney's fees) suffered or incurred by Seller or any such Indemnitees arising out of and limited to the Inspections, provided that Buyer shall not incur any liability due to its discovery, without exacerbation of the condition of any Hazardous Materials or other physical condition or circumstances at the Real Property including conditions that might require disclosure by Seller to governmental agencies or remedial actions or that otherwise may impact the present or future use or value of the Real Property. Buyer waives any claims against Seller arising out of the Inspections or this Agreement other than claims to the extent caused by or arising from any negligence or willful misconduct of Seller. Buyer hereby assumes all responsibility for claims against Seller by the Buyer Authorized Agents other than claims to the extent that are caused by or arising from Seller's negligence or willful misconduct.
- H. Should the escrow for the transaction was not closed due to no fault of Seller, Buyer shall, prior to the cancellation of the escrow, deliver a copy of all the inspection, test and study reports to Seller free of charge.

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- I. Termination.** Buyer may, at any time prior to 5:00 p.m. on the last day of the Due Diligence Period, terminate this Agreement in its sole and absolute discretion for any reason or no reason, by sending to Seller written notice indicating Buyer's election to so terminate the Agreement. If Buyer fails to terminate this Agreement prior to 5:00 p.m. on the last day of the Due Diligence Period in accordance with the provisions of this paragraph 4E, then Buyer shall have no further right to terminate pursuant to this paragraph 4E, and the only remaining contingencies to Buyer's obligation to consummate the transaction contemplated herein shall be the Conditions Precedent to Purchase and Sale as set forth in paragraph 5 below or as otherwise provided herein.

5. CONDITIONS TO PURCHASE

Conditions Precedent to Purchase. The obligation of Buyer to purchase the Property is expressly conditioned upon the satisfaction of each of the conditions set forth in this paragraph ("Condition Precedent"). Each Condition Precedent is for the sole benefit of Buyer and may be approved, disapproved, or waived by Buyer in the good faith exercise of Buyer's sole and absolute discretion.

- A. No Termination.** Buyer shall not have terminated this Agreement in accordance with paragraph 4E or pursuant to provisions of paragraph 10A.
- B. Title.** This purchase is contingent upon Buyer's good faith approval or disapproval of the Preliminary Title Report and all recorded exceptions to title prior to the expiration of the Due Diligence Period unless extended by Buyer as specified herein.
- C. Certificate of Acceptance.** This purchase is contingent upon a resolution of the City Council of the City of Morgan Hill authorizing the recordation of the Grant Deed and the deposit of a properly executed Certificate of Acceptance into escrow prior to the Close of Escrow.
- D. Seller Performance.** This purchase is contingent upon Seller's satisfactory and timely performance of all of its obligations under this Agreement prior to the Close of Escrow unless extended by Buyer as specified herein.
- E. Seller Representations.** This purchase is contingent upon Seller's providing Buyer with true, correct and complete representations and warranties as required herein, prior to the Close of Escrow.

6. SELLER REPRESENTATIONS AND WARRANTIES

Seller represents and warrants to Buyer that the following matters are true, correct and complete in all material respects as of the date of execution of this Agreement and will also be true and correct in all material respects as of the Closing Date, and shall survive the delivery of the Grant Deed, and Close of Escrow:

- A. Organization Authority.** Seller under this Agreement has the full power and authority to execute and deliver this Agreement and all documents now or hereinafter to be executed and delivered by it pursuant to this Agreement and to perform all obligations arising under this Agreement and such performance does not conflict with any obligations of the Seller thereunder. The individuals executing this Agreement and the instruments referred to herein on behalf of Seller, have the legal power, rights and actual authority to bind Seller to the terms and conditions thereof.
- B. No Violations.** Neither the execution, delivery or performance of this Agreement by Seller will result in the breach of any terms, conditions or provisions of, or conflict with or constitute a default under the terms of any indenture, deed to secure debt, mortgage, deed of trust, note, evidence of indebtedness, court order or any other agreement or instrument by which Seller or the Property is bound.

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- C. No Litigation.** Seller has no knowledge of any pending or threatened litigation, actions, applications, orders, protests, proceedings, or complaints against or affecting title to the Property or Seller's interest therein, or any regulatory, administrative or legal complaints, enforcement actions, clean up orders or other proceedings concerning Hazardous Substances on the Property.
- D. Compliance with Laws.** Seller has received no written notice alleging violations of any federal, state or municipal laws or ordinances with regard to any portion of the Property.
- E. Existing Leases.** Except as specifically disclosed to Buyer in writing, there are no other contracts or agreements with respect to the occupancy of the Property or any portion thereof which will be binding upon Buyer or which will impose an obligation of providing relocation assistance under California Government Code Section 7260 after the Closing Date. To the best of Seller's knowledge, there is no outstanding and uncured claim of default made against Seller by any tenants under any lease of the Property prior to the date hereof.
- F. Service Contracts.** To the best of Seller's knowledge, there are no service contracts related to the Property which will be binding upon Buyer after the Closing Date.
- G. Seller Not a Foreign Person.** Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.
- H. Environmental Conditions.**
- i. **No Environmental Conditions.** Except as specifically disclosed to Buyer in writing, Seller has no knowledge of and has not received written notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal written notice alleging that conditions on the Property are or have been in violation of any Hazardous Substance Laws, or informing Seller that the Property is subject to investigation or inquiry regarding Hazardous Substances on the Property or the potential violation of any Hazardous Substance Laws, or informing or indicating: (i) the presence of any Hazardous Substances (as defined below) at, on, under and/or affecting the Property; (ii) any spills, releases, discharges, or disposal of Hazardous Substances that have occurred or are presently occurring on or onto the Property; (iii) any spills or disposal of Hazardous Substances that have occurred or are occurring off the Property as a result of any construction on, or operation in use of the Property; (iv) the presence of any PCB transformers serving or stored on the Property; (v) underground storage tanks located on the Property; or (vi) any failure to comply with all applicable local, state and federal environmental laws, regulations, ordinances and administrative and judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport and disposal of any Hazardous Substances in connection with the operation and use of the Property.
 - ii. **Hazardous Substances.** As used in this Agreement, "Hazardous Substances" shall mean any chemical, compounds, material, substance, or other matter that: (a) is defined as a hazardous substance, hazardous material, hazardous waste or toxic substance under any Hazardous Substances Laws; (b) is controlled or governed by any Hazardous Substances Laws or gives rise to any reporting, notice or publication requirement hereunder, or gives rise to any liability, responsibility or duty on the part of any party hereto with respect to any third person; or (c) any asbestos or asbestos-containing material.
 - iii. **Hazardous Substances Laws.** As used in this Agreement, "Hazardous Substances Laws" mean any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law" relating to Hazardous Substances including,

PURCHASE AGREEMENT

without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Toxic Substance Control Act, California Health & Safety Code section 25117, sections 6680-6685 of Title 22 of the California Administrative Code, Division 4, Chapter 30, and any amendments to the foregoing, and any similar federal, state or local laws, ordinances, rules, decrees, orders or regulations.

7. TITLE

- A. **Preliminary Report.** Buyer shall obtain and review a current Preliminary Title Report for the Property.
- B. **Title.** Title to the Property shall be conveyed to Buyer upon the Close of Escrow. Seller shall deliver title by grant deed, free and clear of all liens except for: (i) liens securing real property taxes and assessments which constitute liens not yet due and payable; and (ii) such other exceptions and reservations shown on the Preliminary Title Report which are approved by Buyer.
- C. **Title Policy.** The Title Company shall issue a California Land Title Association ("CLTA") Owner's Policy of Title Insurance in the amount of the purchase price insuring fee simple title to the Property vested in Buyer subject only to any approved exceptions and Title Company's standard pre-printed exceptions, with liability in the amount of the purchase price ("Title Policy").

8. FINAL VERIFICATION OF CONDITION

Buyer shall have the right to make a final inspection of the Property within five (5) days prior to Close of Escrow to review the condition of the Property and Seller's compliance with the terms of this Agreement, prior to closing.

9. ESCROW

- A. **Opening Escrow.** Promptly after Acceptance of this Agreement, Buyer shall open an escrow with the Escrow Holder for the purpose of consummating the purchase and sale contemplated by this Agreement ("Escrow") by depositing an executed copy of this Agreement with the Escrow Holder. This Agreement shall constitute escrow instructions to Escrow Holder. The Escrow Holder for purposes of this Agreement shall be Old Republic Title Company located at 17485 Monterey Road Suite 101 in Morgan Hill, CA 95037. References to Escrow Agent shall be deemed to be reference to the Escrow Holder.
- B. **Additional Escrow Instructions.** Seller and Buyer shall, promptly upon request by Escrow Holder, execute such additional escrow instructions as may be reasonably required by Escrow Holder, including Escrow Holder's standard printed conditions and stipulations with respect to escrows concerning the purchase and sale of real property; provided, however, that if there is any conflict between the provisions of this Agreement and the provisions of any such additional instructions, the provisions of this Agreement shall prevail.
- C. **Closing Date.** Escrow shall close, and the Grant Deed shall be recorded in the Office of the County Recorder of Santa Clara County, California immediately after the expiration of the Due Diligence Period ("Close of Escrow") but no later than December 31, 2021, unless extended pursuant to terms of this Agreement or by mutual agreement of the parties.
- D. **Seller Deliveries to Escrow.** Prior to the Close of Escrow, Seller shall deliver to Escrow Holder, all of the following documents and items:
 - i. The duly executed and acknowledged Grant Deed.

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- ii. Such certifications, declarations or other documents as may be required under Internal Revenue Code §1445 and California Revenue and Tax Code §18662, together with any and all other documents required by law pertaining to foreign or out-of-state sellers.
- iii. Any certificate of occupancy for the Property and all assignable licenses and permits relating to the use, occupancy or operation of the Property.
- iv. All books, records, booklets, catalogs, advertising material and manuals relating to the use or operation of the Property.
- v. Such funds as required to pay Seller's share of the costs to close escrow.
- vi. If any Leases are in effect for the Property, then:
 - a. All original Leases and any contract(s) to be assumed by Buyer, copies of all originals of the books and records of account, contracts, copies of correspondence with the tenants, unpaid bills and other papers or documents that pertain to the Property.
 - b. An executed and acknowledged Assignment of Leases evidencing the assignment to Buyer of all of Seller's right, title and interest in and to any Leases in effect for the Property.
 - c. Tenant estoppel certificates, in a form provided by the Buyer.
 - d. One executed letter addressed to all the tenants of the Property advising them of the consummation of the purchase and sale of the Property and directing the tenants to pay the rent and other charges due under the Leases to Buyer.

E. Buyer Deliveries to Escrow. Prior to the Close of Escrow, Buyer shall deliver to Escrow Holder, all of the following documents and items:

- i. The cash amount of the Purchase Price together with an additional sum sufficient to cover Buyer's closing costs.
- ii. A properly executed Certificate of Acceptance.
- iii. An original executed letter to the Santa Clara County Tax Assessor, pursuant to Revenue and Taxation Code section 5082.1 providing notification of the apportionment date and requesting cancellation of taxes pursuant to Revenue and Taxation Code section 5086.1.

F. Escrow Charges. Escrow and title charges shall be paid in the manner provided below.

- i. **Seller shall pay:** (a) its own attorneys' fees incurred in connection with this Transaction and (b) ½ Escrow fees.
- ii. **Buyer shall pay:** (a) the cost of the Title Policy, (b) all recording fees, (c) ½ Escrow fees, (d) the full cost of any and all documentary transfer tax or stamp or other sales tax; and (e) its attorneys' fees incurred in connection with this Transactions.

G. Pro-Rated Taxes. Taxes for the year in which this Escrow closes shall be cleared and paid current in the manner required by Section 5086 of the Revenue and Taxation code, if unpaid as of the close of Escrow. All taxes, assessments and other charges attributable to the Property shall be pro-rated as of the Closing Date based on a three hundred sixty-five-day year (365).

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- H. Operating Expenses and Security Deposits.** All ordinary operating expenses and charges of the Property, including without limitation, public utility charges, maintenance and other service charges shall be pro-rated at the Close of Escrow effective as of 11:59 p.m., on the date prior to the Closing Date. If the exact amount of any item to be pro-rated is not known as of the Closing Date, the proration shall be based on a reasonable estimate thereof made by Seller and Buyer, and as soon after the Closing Date as the exact amount of the item is known, the proration shall be adjusted, if necessary, and appropriate cash adjustments shall be made by Buyer and Seller if necessary. Rent and other charges under the Leases for the calendar month in which the Closing Date falls shall be pro-rated between Buyer and Seller as of 11:59 p.m., on the day prior to the Closing Date. The amount of all unapplied security deposits under the Leases shall be credited to Buyer.
- I. Closing Escrow.** When the Conditions Precedent have been satisfied or waived by Buyer and Seller; the Escrow Agent has received all necessary cash and documents; the title company is ready to issue the Title Policy; and neither party has terminated the Agreement; then Escrow Agent shall immediately close Escrow by doing the following:
- i. Record the Grant Deed.
 - ii. Deliver the following items, documents and monies to the parties as set forth below:
 - a. **To Seller:** the cash portion of the Purchase Price except as reduced by the amount of Seller's closing costs or other expenses.
 - b. **To Buyer:** the Title Policy, the Tenant Estoppel Certificate, the Assignment of Leases, and all other documents deposited into Escrow by Seller.
 - c. **To Buyer and Seller,** a signed copy of the Escrow Agent's closing statement showing all receipts and disbursements of the Escrow.
- J. Closing Date.** The date upon which the Grant Deed is recorded shall be deemed the "Closing Date".
- K. Default.** If Escrow fails to close as a result of the default of this Agreement by a party, the defaulting party shall pay all title and escrow charges in addition to all other rights and remedies of the non-defaulting party.

10. REMEDIES

A. Buyer's Remedies.

- i. **Failure of Condition Precedent.** If any of the Conditions Precedent are not satisfied, Buyer shall, in the exercise of good faith, have the right to do any of the following within the applicable time period:
 - a. **Waive** the condition in question and proceed with the purchase of the Property pursuant to all other terms of this Agreement. If Buyer does not provide Seller with written disapproval of any of the Conditions Precedent within the applicable time period, Buyer shall be deemed to have approved the Condition Precedent and waived the contingency.
 - b. **Extend** the Close of Escrow for a period of time by mutual agreement of Buyer and Seller, not to exceed forty five (45) days, to allow said conditions to be satisfied, by providing written notice to Seller, subject to Buyer's further rights to terminate this Agreement upon the expiration of the period of such extension if all said conditions have not then been satisfied.

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- c. **Terminate** this Agreement by giving written notice thereof to Seller and Escrow Agent in which event and except for those provisions which survive the termination of this Agreement, no party hereto shall have any other or further rights or obligations hereunder.
- ii. **Seller Default.** If Seller fails to perform any of its obligations or is otherwise in default under this Agreement prior to the Close of Escrow, Buyer shall have the right to give notice to Seller specifically setting forth the nature of said failure and stating that Seller shall have a period of three calendar days to cure such failure. If Seller has not cured such failure within such period or, if such failure is not capable of being cured within three (3) calendar days, then Buyer's remedies shall include the following:
- Waive** such failure and proceed to close escrow pursuant to all of the other terms of this Agreement, by providing written notice thereof to Seller.
 - File an action** for damages against Seller and/or for specific performance to cause Seller to convey the Property to the Buyer pursuant to the terms and conditions of this Agreement and/or seek any other remedies as may be available at law or in equity.
 - Terminate** this Agreement by giving written notice thereof to Seller and Escrow Agent in which event and except for those provisions which survive the termination of this Agreement, no party hereto shall have any other or further rights or obligations hereunder.

B. Seller's Remedies. If Buyer fails to perform any of its obligations or is otherwise in default under this Agreement, Seller shall have the right to give notice to Buyer specifically setting forth the nature of said failure and stating that Buyer shall have a period of five (5) calendar days to cure such failure. If Buyer has not cured such failure within such period or, if such failure is not capable of being cured within five (5) calendar days but in no case later than 10 calendar days, Seller may terminate this Agreement by giving written notice thereof to Buyer and Escrow Agent, in which event and except for those provisions of this Agreement which survive the termination of this Agreement, no party hereto shall have any other or further rights or obligations hereunder.

Seller's initials

Purchaser's initials

11. **Possession.** Seller shall deliver possession of the Property to Buyer at noon on the Closing Date, except as to those portions of the Property that are subject to any Leases disclosed to Buyer.
12. **Brokers.** Buyer represents and warrants that, there are no brokers' fees or finders' fees arising out of this transaction. Buyer acknowledges that Seller is represented by Max C. Chiang, its' Attorney, and is responsible for commissions and fees due to Attorney from this transaction. Each party shall indemnify, defend, and hold the other and the other's officers directors, agents, and employees harmless from any claim, loss, cost, damage or expense including, without limitation, attorney's and expert fees and costs and court costs arising out of or incurred in connection with any claim by any broker, finder or other person or entity for any brokerage commission, finder's fee or other amount in connection with any acts or dealings with such indemnifying party with any such broker, finder or other person or entity.
13. **Risk of Loss.**
- A. Major Damage.** If the Property, or any portion thereof, is damaged or destroyed prior to the Close of Escrow from any cause whatsoever, whether an insured risk or not, including but not limited to, fire, flood, earthquake, accident or other casualty which, according to the Buyer's best estimate, would cost more than ten thousand (\$10,000.00) dollars to repair ("Major Damage"), Buyer shall have the option, upon written notice to Seller, to either (i) terminate this Agreement, or (ii) purchase the Property.

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- i. If Buyer elects to terminate this Agreement, Escrow shall immediately terminate upon Seller's receipt of Buyer's notice of election to terminate and Escrow Holder shall thereupon promptly return all documents, items and monies in its possession to the party who shall have deposited same with Escrow Holder. In the event of such termination, each party shall pay one-half (1/2) of the Escrow fees.
- ii. If Buyer elects to purchase the Property, Buyer shall be entitled to, and Seller shall assign to Buyer, all insurance proceeds covering such damage or destruction. In addition, the difference between the amount of insurance proceeds available and the cost of repair shall be deducted from the cash portion of the Purchase Price.

B. Minor Damage. In the event that Buyer's best estimate of the cost of repair is less than ten thousand dollars (\$10,000.00), Buyer shall purchase the Property and be entitled to, and Seller shall assign to Buyer, all insurance proceeds covering such damage or destruction. In addition, the difference between the amount of insurance proceeds available and the cost of repair shall be deducted from the cash portion of the Purchase Price.

C. Extension. Should any damage or destruction occur prior to the Close of Escrow, the date scheduled for the Close of Escrow shall be extended for a period of time not to exceed thirty (30) days, for the purpose of allowing Buyer and Seller sufficient time to estimate the cost of repair. If Buyer fails to notify Seller of its election under this paragraph, Buyer shall be deemed to have elected to purchase the Property.

14. SURVIVAL AFTER CLOSE OF ESCROW

All representations, warranties, covenants, conditions, agreements and obligations contained in or relating to this Agreement shall survive the Close of Escrow and the recordation of the Grant Deed and shall not merge therein unless specifically stated otherwise in this Agreement.

15. GENERAL PROVISIONS

- A. Entire Agreement** This Agreement including all exhibits hereto contains all of the covenants, conditions, and agreements between the parties and shall supersede all prior correspondence, agreements, and understandings both verbal and written. No addition or modification of any term or provision shall be effective unless set forth in writing and signed by all parties.
- B. Attorney Fees and Costs.** In the event of any legal action to interpret or enforce the terms hereof, or to obtain money damages arising out of this agreement, the prevailing party shall be awarded its reasonable attorney's fees, costs and expenses incurred therein.
- C. 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, which is the exclusive venue for any action or dispute arising out of this Agreement.
- D. Public Purpose.** Grantee requires the Project Property for a public use, for the Project, and Grantee can acquire the Project Property through the exercise of the power of eminent domain. Both Grantor and Grantee recognize the expense, time, effort and risk to both Grantor and Grantee in resolving a dispute with respect to compensation for the Project Property by eminent domain litigation; and, the compensation set forth herein is in compromise and settlement, in lieu of such litigation.
- E. Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the parties hereto. No rule of construction or interpretation shall apply against any 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

PURCHASE AGREEMENT

construed and interpreted in a neutral manner.

- F. Preservation of Agreement.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in the document, and the document shall be construed as if such invalid, illegal or unenforceable provision had never been contained therein and the rest of the Agreement shall remain in full force and effect.
- G. Successors Bound.** The terms of this Agreement shall be binding upon and shall benefit the parties hereto and their respective heirs, successors and assigns.
- H. No Waiver.** No delay or omission by any party hereto in exercising any right under this Agreement shall operate as a waiver of such right.
- I. Time of the Essence.** Time is of the essence with regard to all matters contained in this Agreement.
- J. Captions.** All captions and headings in this Agreement are for the purposes of reference and convenience and shall be disregarded for all other purposes, including the construction or enforcement of this Agreement or any of its provisions.
- K. No Third-Party Beneficiaries Intended.** This Agreement is made solely for the benefit of the parties hereto and their permitted heirs, successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement.
- L. Joint and Several.** If more than one person or entity share the same obligations herein, the obligations of each and all of them under this Agreement shall be joint and several.
- M. Notices.** Any notice or communication required or permitted to be given under this Agreement will be written and shall be given by personal delivery, or by overnight delivery by a nationally recognized overnight courier service (such as UPS or Federal Express). Notice will be deemed given upon actual receipt in the case of personal delivery, or the next business day after the notice is sent via a courier service. Notices shall be delivered and/or addressed to the parties as follows:

i. To Seller:

John C. Chu and May-Jih C. Chu
3034 Ridgegate Drive
San Jose, CA 95133

Telephone: 408.687.8056

ii. To Buyer:

Chris Ghione
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Telephone: 408.782.9154

City Attorney
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Telephone: (408) 779-7271
Facsimile: (408) 779-1592

Any party may, from time to time in the manner herein provided, specify a different address for notice purposes.

PURCHASE AGREEMENT

- N. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all counterparts shall constitute one agreement.
- O. 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.

SELLER

John C. Chu and May-Jih C. Chu, Trustees of
the Chu Family Trust Agreement dated
September 20, 2002

By: _____
John C. Chu

Date: _____

By: _____
Mary-Jih C. Chu

Date: _____

BUYER

City of Morgan Hill,
a municipal corporation

By: _____
Christina A. Turner
City Manager

Date: _____

APPROVED AS TO FORM

_____,
Donald A. Larkin
City Attorney

P:\Forms\Purchase Agreement City Buyer 4-15-10.Docx

Attachment: Purchase Agreement (3150 : Park and Recreation Land Purchase and Transfer of Existing Parks and Recreation Property to Ag)

**EXHIBIT A
LEGAL DESCRIPTION**

The land referred to is situated in the unincorporated area of the County of Santa Clara, State of California, and is described as follow:

APN: 817-06-001

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2021-22 BUDGET IN THE AGRICULTURE AND OPEN SPACE FUND (NO. 306) AND PARK IMPACT FUND (NO. 301) TO TRANSFER \$5,383,018 FROM FUND 306 TO FUND 301 AND TO APPROPRIATE \$3,000,000 IN FUND 301

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 recommended amendments proposed to the City's previously adopted Budget for Fiscal Year 2021-22, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Park and Recreation Land Purchase and Transfer of Existing Parks and Recreation Property to the Agriculture and Open Space Fund" submitted for City Council consideration at its meeting of August 4, 2021, 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 2021-22, as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

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

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

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

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

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

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

- a. That the City's previously adopted Fiscal Year 2021-22 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 2021-22 Budget of City.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 4th day of August, 2021 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:

DATE: August 4, 2021

Rich Constantine, MAYOR

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.21-XXX , adopted by the City Council at the meeting held on August 4, 2021.

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

DATE: _____

Michelle Bigelow CITY CLERK

AGENDA BUDGET SCORECARD**FISCAL YEAR 2021-2022****ADJUSTMENT #**

002

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

301	Park Impact Fund
8051	Park Development
86360	CONSTRUCTION

AGENDA DATE:

08/04/21

AGENDA ITEM TITLE:

Park and Recreation Land Purchase and Transfer of Existing Parks and Recreation Property to the Agriculture and Open Space Fund

	07/01/21 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/22 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	674,109	1,748,480	2,175,934	246,655
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		5,383,018	3,000,000	2,383,018
RESULT OF RECOMMENDED ACTION	674,109	7,131,498	5,175,934	2,629,673

AGENDA BUDGET SCORECARD**FISCAL YEAR 2020-21****ADJUSTMENT #**

003

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

306	Agricultural Preservation and Open Space Fund
8063	Open Space
49209	TRANSFER OUT-301 (PARK DEVELOPMENT)

AGENDA DATE:

08/04/21

AGENDA ITEM TITLE:

Park and Recreation Land Purchase and Transfer of Existing Parks and Recreation Property to the Agriculture and Open Space Fund

	07/01/21 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/22 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	6,004,034	180,385	96,735	6,087,684
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		-	5,383,018	(5,383,018)
RESULT OF RECOMMENDED ACTION	<u>6,004,034</u>	<u>180,385</u>	<u>5,479,753</u>	<u>704,666</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: August 4, 2021

PREPARED BY: Edith Ramirez, Assistant City Manager
APPROVED BY: City Manager

APPROVE AN EXTENSION OF THE TRAFFIC AND SEWER IMPACT FEES CREDIT PROGRAM

RECOMMENDATION(S)

Adopt resolution amending the Reduction of Traffic and Sewer Impact Fees program resolution (Resolution No. 6080) to extend the Sewer Impact Fees Credit Program until December 31, 2025.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure

2020-2021 Strategic Priorities

Economic Development

Fiscal Sustainability

GUIDING DOCUMENTS

Economic Blueprint

Morgan Hill 2035 General Plan

POLICY CONSIDERATION:

Should the City Council extend or terminate the Traffic and Sewer Impact Fees Credit program?

REPORT NARRATIVE:

On January 17, 2007, the City Council and the former Morgan Hill Redevelopment Agency Board adopted Resolution 6080, authorizing a \$14 million investment for the expansion of the Wastewater treatment facility, and creating a Sewer Impact Fee Credit Program for certain properties located within the former Ojo de Agua Redevelopment Project Area. This infrastructure investment has supported the commercial and industrial growth in the Redevelopment Project Area and residential development within the Downtown. The prior resolution makes reference to Traffic Impact fees, however this is not applicable to the extension since those funds have been exhausted.

The Sewer Credit Program started with a balance of \$14 million and it expired on December 31, 2020. To date, nearly all funds have been exhausted with a remaining available balance of \$200,980. Of the remaining balance, there are a number of projects that are eligible for sewer fee credit and have been provided sewer fee credit estimates as part of their building application fee estimate. In order for these projects to access the sewer fee credits, the Council needs to extend the program. If the Council chooses not to extend the program, these funds will not be able to be used for the purpose of which they were intended and will need to be returned to the taxing agencies.

Staff recommends extending the program until December 31, 2025 by adoption of the attached Resolution (Attachment No. 1). It is anticipated that these funds will be exhausted before the end of the calendar year.

COMMUNITY ENGAGEMENT: Inform

This Council item has been noticed as part of the Council Agenda.

ALTERNATIVE ACTIONS:

The Council may choose to end the program and return the remaining funds to other taxing agencies.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On January 17, 2007, the City Council authorized the creation of the Sewer Impact Fees Credit Program and allocated \$14 million to the Wastewater Facility expansion to benefit commercial and industrial development in the former Redevelopment Project Area and residential development within Downtown.

On May 16, 2012, the City Council authorized the extension of the Sewer Impact Fees Credit Program (Resolution No. 6082) to include the site located on the southeast corner of Church Street and Dunne Avenue.

FISCAL AND RESOURCE IMPACT:

If the Council chooses not to extend the program, the City will lose access to \$200,980 to support local projects.

CEQA (California Environmental Quality Act): Not a Project

The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment is not considered a Project under CEQA.

LINKS/ATTACHMENTS:

1. Resolution Extending Sewer Credits
2. Resolution No. 6080

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING RESOLUTION NO. 6080 TO EXTEND THE ADJUSTMENT OF SEWER DEVELOPMENT IMPACT FEES FOR AN ADDITIONAL FIVE YEARS

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, on January 17, 2007, the City Council authorized the creation of the Sewer Impact Fee Credit Program and allocated \$14 million to the Wastewater Facility expansion to benefit commercial and industrial development in the former Redevelopment Project Area and residential development within Downtown.

WHEREAS, the Sewer Impact Fee Credit Program was set to expire on December 31, 2020, and the fund has a remaining balance of \$200,980 that has not been expended; and

WHEREAS, the City Council desires to extend the program to allow the remaining funds to be used for the benefit of Morgan Hill projects.

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:

Notwithstanding any other provisions of Ordinance No. 6080, the Sewer Credit Program will remain in effect until December 31, 2025 or until all funds are exhausted, whichever comes first.

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

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 4th day of August 2021.

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATION ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 21-XXX, adopted by the City Council at the meeting held on August 4, 2021.

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

DATE: _____

Michelle Bigelow, CITY CLERK

RESOLUTION NO. 6080**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MORGAN HILL ADJUSTING TRAFFIC AND SEWER
DEVELOPMENT IMPACT FEES**

WHEREAS, new development within the City of Morgan Hill will result in additional population and business growth, and such growth will place additional burdens on various city facilities, infrastructure and services, requiring construction of expanded and/or new city facilities and services; and,

WHEREAS, all development within the City of Morgan Hill should bear a proportionate financial burden in the construction and improvement of public facilities and services which are necessary to serve the growth engendered by such development; and,

WHEREAS, the imposition of development impact fees is the preferred method of ensuring that new development bears its proportionate share of the cost of public facilities and service improvements; and,

WHEREAS, imposition of impact fees to finance public facilities and service improvements required by new development is necessary in order to avoid adversely impacting existing facilities and services; and,

WHEREAS, consistent with these principles, Chapter 3.56 of the Municipal Code of the City of Morgan Hill establishes Development Impact Mitigation Fees; and,

WHEREAS, Section 3.56.060 of the Municipal Code of the City of Morgan Hill provides for revision of established fees, including increases, by resolution; and,

WHEREAS, Resolutions 5592, 5686, and 5837, as adopted by the City Council, have set various fee rates for development impact fees; and,

WHEREAS, the City Council of the City of Morgan Hill has received and duly considered the reports entitled "Development Impact Fee Study," dated May 9, 2002, authored by DMG Maximus, and additional analysis conducted by City of Morgan Hill staff, and presented to the City Council on January 17, 2007; and,

WHEREAS, the DMG Maximus study analyzed the City's existing land use patterns and zoning, and the goals and objectives of the City's general plan; and,

WHEREAS, the DMG Maximus study determined the public facilities and service improvements engendered by anticipated future development in light of the General Plan and existing and projected land use patterns and zoning; and,

WHEREAS, as the DMG Maximus study and further staff analysis demonstrate, the development impact fees established by this resolution are based upon estimated costs for new public facilities and service improvements, which will be required, incrementally, by new development within the City; and,

WHEREAS, as the DMG Maximus study and City staff analysis demonstrate, the development impact fees established by this resolution do not exceed the reasonable cost of providing public facilities and service improvements occasioned by development projects within the City; and,

WHEREAS, the fees established by the DMG Maximus report and staff analysis rationally relate to the reasonable cost of providing public facilities occasioned by the development projects and service improvements within the City; and,

WHEREAS, concurrently herewith the Morgan Hill Redevelopment Agency and the City of Morgan Hill have adopted resolutions making findings that the installation and construction of the traffic improvements and expansion of the waste water treatment facility will primarily benefit or directly benefit the Project Area by remedying the lack of adequate public improvements, assisting in the revitalization of the Project Area, and encouraging private sector investment in the Project Area, thereby facilitating and accelerating the redevelopment of and elimination of blight in the Project Area; and

WHEREAS, since the Morgan Hill Redevelopment Agency will finance approximately \$38 million in traffic improvement costs, and it is appropriate to eliminate the costs of those improvements from the list of improvements to be paid for by new development through traffic development impact fees; and

WHEREAS, since the Morgan Hill Redevelopment Agency will finance the expansion of the waste water treatment facility to expand sewer capacity in the Project Area until December 31, 2020, and it is appropriate to eliminate the costs of the expansion to be paid for by new development through sewer development impact fees for those commercial and industrial projects located in the Project Area and those residential projects located in the downtown area as defined by the downtown Residential Development Control System; and

WHEREAS, Morgan Hill Municipal Code section 3.56.060, concerning development impact mitigation fees, provides that "The amount of each fee established pursuant to this chapter may be more specifically set and revised periodically by resolution of the city council, with this chapter being considered as enabling and directive in this regard"; and,

City of Morgan Hill
Resolution No. 6080
Page 3 of 6

WHEREAS, the City Council has received and duly considered all written and verbal comments provided to it by staff and the public, which comments are hereby incorporated into the record on this matter; and,

WHEREAS, the City Council deems it necessary that development impact fees be adjusted to ensure that new development in the city pays its proportionate share of public facilities and service improvements necessary to accommodate such development in order to promote the public health, safety and welfare; and,

WHEREAS, the City Council hereby incorporates the findings made in Municipal Code section 3.56.010, and applies them in support of the adoption of this Resolution.

NOW, THEREFORE, the City Council of the City of Morgan Hill, based upon all documents, statements and facts known to the City, does hereby resolve:

SECTION 1. Findings. The City Council hereby finds as follows:

- A. All provisions set forth above are true and correct, and are hereby incorporated herein as findings of this Council by reference.
- B. The purpose of the fees set forth herein is to finance public facilities and to reduce the impacts of development on public services and facilities caused by new development.
- C. The traffic and sewer development impact fees collected pursuant to this Resolution shall be used to finance only traffic and sewer related public facilities.
- D. There is a need for public facilities which have not yet been constructed and are required to be constructed to be consistent with the City's General Plan, and to protect the public's health, safety and welfare.
- E. The facts and evidence presented to the City Council establish that there is a reasonable relationship between the need for the described public facilities and the impacts from the type of development described to the City Council for which the corresponding fee is charged.
- F. The facts and evidence presented to the City Council establish that the cost estimates set forth are reasonable cost estimates, and the fees expected to be generated by new development will not exceed these costs.

- G. The fees set forth herein are consistent with the City's General Plan and the Council has considered the effect of the fees on the City's housing needs, as established in the Housing Element of the General Plan, and the regional housing needs.
- H. Based on the evidence submitted to the Council, the contributions made in the context of the Measure C competition are voluntary in nature and are not duplicative of the impact fees.
- I. The City Council has adopted findings which support the authority to reduce traffic and sewer impact fees based on the Redevelopment Agency funding of traffic and sewer improvements. All other existing development impact fees will remain the same.

SECTION 2. Adoption of Fees. Therefore, development impact fees for the City of Morgan Hill are modified as stated in Exhibit A, which is attached hereto and incorporated by reference. Except as modified herein and except as modified by previous Resolutions 5686 and 5837, Resolution No. 5592 and its attached fee schedule shall remain in full force and effect. The adjustment to sewer impact fees shall only apply to commercial & industrial development within the Project Area and residential development within the downtown competition area as defined under the Residential Development Control System (RDCS). This adjustment shall be in effect until December 31, 2020. The Agency's contribution toward the expansion of the waste water treatment facility shall be reflected in the sewer impact fee calculations for eligible projects in the Project Area.

SECTION 3. Implementation Dates. The City Council hereby orders that all adjustments in development impact fees be effective February 5, 2007, subject to the guidelines established below.

SECTION 4. Automatic Annual Adjustment. Each fee fixed herein shall be adjusted automatically on January 15th of each fiscal year, beginning on January 15, 2008, consistent with Section 3.56.050 of the Municipal Code.

SECTION 5. Refunds, Exemptions, Credits, and Adjustments. Refunds, exemptions, credit and adjustments to payment of impact fees shall be made and/or calculated in accordance with the applicable provisions of Chapter 3.56 of the Municipal Code.

SECTION 6. Chapter 3.56. The provisions of this resolution are subject and subordinate to the provisions of Chapter 3.56 of the Municipal Code, and shall at all times be construed and applied consistent therewith, as the same presently exists or from time to time be hereafter amended.

SECTION 7. Challenges to Resolution. Any judicial action or proceeding to attack, review, set aside or annul this resolution or any provision thereof shall be brought within one hundred and twenty (120) days of its adoption by the City Council.

City of Morgan Hill
 Resolution No. 6080
 Page 5 of 6

SECTION 8. Exemption from CEQA. Pursuant to Title 14, California Code of Regulations, Sections 15061 and 15273(4), the City Council finds that this resolution is exempt from the California Environmental Quality Act.

SECTION 9. Severability. If any portion of this Resolution is declared invalid by a court of competent jurisdiction then it is the intent of the City Council that all other portions of the Resolution shall be severed and remain in full force and effect.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 17th day of January 2007 by the following vote:

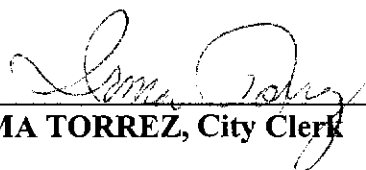
AYES:	COUNCIL MEMBERS:	Larry Carr, Mark Grzan, Marby Lee, Greg Sellers, Steve Tate
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

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. 6080, adopted by the City Council at a Regular Meeting held on January 17, 2007.

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

DATE: 1/26/07


 IRMA TORREZ, City Clerk

Attachment: Resolution No. 6080 (3153 : Traffic and Sewer Impact Fees)

City of Morgan Hill
Resolution No. 6080
Page 6 of 6

EXHIBIT A**TRAFFIC & SEWER DEVELOPMENT IMPACT FEE ADJUSTMENTS**

DESCRIPTION	UNIT	CURRENT FEE	PROPOSED FEE
<u>TRAFFIC IMPACT FEE</u>			
SINGLE FAMILY RESIDENTIAL	dwelling unit	\$ 3,181	\$ 1,383
MULTI-FAMILY RESIDENTIAL	dwelling unit	\$ 2,226	\$ 968
COMMERCIAL	peak hourly trip	\$ 3,160	\$ 1,383
INDUSTRIAL	peak hourly trip	\$ 3,160	\$ 1,383
<u>SEWER IMPACT FEE</u>			
RESIDENTIAL (In the RDCS downtown area within the Redevelopment Project Area)	dwelling unit (single family)	\$ 9,060	\$0
	dwelling unit (multi-family)	\$ 7,667	\$0
COMMERCIAL & INDUSTRIAL (In the Redevelopment Project Area)	gpd (gallons per day)	\$ 31.01	\$0

Attachment: Resolution No. 6080 (3153 : Traffic and Sewer Impact Fees)

DRAFT



Meeting Minutes City Council

Rich Constantine - Mayor
John McKay - Mayor Pro Tem
Gino Borgioli - Council Member
Yvonne Martinez Beltran - Council Member
Rene Spring - Council Member

Wednesday, June 23, 2021 5:30 pm

Virtual Meeting

PUBLIC NOTICE

The Public Hearing to consider Vehicle-Miles-Traveled (VMT) screening criteria and thresholds of significance regarding the City's implementation of State Senate Bill 743 (SB 743) transition from Level-of-Service (LOS) to VMT as the metric for transportation analysis under the California Environmental Quality Act (CEQA) for development projects that was noticed for consideration by the City Council at this meeting was continued to a date uncertain. This will be duly noticed.

SPECIAL/REGULAR MEETING

A special meeting of the City Council was called at 5:30 p.m. for the purpose of conducting a Housing Sustainability Workshop and a closed session.

5:30 p.m. Housing Sustainability Workshop

6:30 p.m. Closed Session

7:00 p.m. Regular Meeting

SPECIAL MEETING

5:30 p.m. Housing Sustainability Workshop

6:30 p.m. Closed Session

Minutes Acceptance: Minutes of Jun 23, 2021 5:30 PM (CONSENT CALENDAR)

CALL TO ORDER

Mayor Pro Tem McKay called the meeting to order at 5:30 p.m.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

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

DECLARATION OF POSTING AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

WORKSHOP

This workshop is the fourth in a series of Housing Workshops that will look at the current and future state of housing in Morgan Hill. This workshop is called "Housing Sustainability." Staff will present and discuss the following:

- o How the City plans for infrastructure needs, including planning for water, sewer, roads, police, and fire.
- o How the City can maintain long-term sustainability in the context of all of the new State-mandated housing production.

City Manager Christina Turner introduced the workshop and turned the presentation over to Assistant City Manager Edith Ramirez, Development Services Director Jennifer Carman, and Housing Manager Rebecca Garcia.

Public Comment opened at 6:16 p.m. The following people were called to speak:

Armando Benavides

Rocke Garcia

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

WORKSHOP PRESENTATION

CLOSED SESSION

City Attorney Donald Larkin announced the closed session items.

OPPORTUNITY FOR PUBLIC COMMENT

Public comment opened at 6:30 p.m. There being no requests to speak, public comment closed.

ADJOURN TO CLOSED SESSION

The special meeting adjourned to closed session at 6:30 p.m.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Gov. Code section 54956.8.)

Property: APN's - 817-06-001
 Agency negotiator: Christina Turner and Chris Ghione
 Negotiating parties: Chu, John C. and May-Jih C.
 Under negotiation: Price and Terms of Payment

CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Gov. Code section 54956.8.)

Property: APN's - 762-61-3052 (Community and Cultural Center)
 Agency negotiator: Christina Turner and Chris Ghione
 Under negotiation: Price and Terms of Lease

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION (Gov. Code section 54956.9(d)(2).): (one case).**REGULAR MEETING**

The regular meeting convened at 7:00 p.m.

PROCLAMATIONS

Proclaiming the month of July as Parks & Recreation Month

RECOGNITIONS

Recognizing Fred Gomez for his years of service to Morgan Hill

CITY COUNCIL REPORTS

Council Member Spring had no reports.

CITY MANAGER'S REPORT

City Manager Christina Turner spoke to the evening's supplements and presentations. She announced the City's updated watering and irrigation schedule which is limited to two days per week. You can learn more about the updated regulations on the City's webpage. She reminded the community that fireworks are illegal in Morgan Hill. Fireworks result in brush fires, damages to homes, missing pets, and unnecessary injuries. She invited the community to join the free FreedomFest Fireworks show at the Outdoor Sports Center. Illegally obtained fireworks, as well as safe and sane fireworks purchased legally elsewhere, are still illegal in Morgan Hill. Morgan Hill Police and Fire have adopted a zero-tolerance policy and will be actively patrolling for violations. She reported that Stephen Sheldon has joined our Police Department part time to develop and implement our South County Youth Diversion Program. Our Police Department partners with the County District Attorney's Office, Sheriff's Office, Gilroy Police Department, Morgan Hill and Gilroy Unified School Districts, Community Solutions, South County Youth Task Force, County Behavioral Health, and Rebecca's Children Services to develop and implement a South County specific based youth diversion program. This is a collaborative effort that will serve all youth and will greatly benefit our underserved youth by reducing racial and economic inequities by providing a tailored approach to our youth and their families based on individual needs. The program will be phased in with a goal of being up and running by next fall. She shared that Cal Cities will have a division legislative event and policy update on Friday, June 25th at noon. She concluded by inviting everyone to join our Town Hall on Thursday, June 24th at 5:30 p.m. to learn more about Morgan Hill's water, where it comes from, what a

level 2 shortage means, how growth in Morgan Hill relates to water usage, and similar topics.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin shared that he serves as the City's representative on the Board of Directors for Plan JPA which is our risk management pool liability insurance program. He announced that we will be seeing an increase in the insurance portion that will be significantly higher than 36%. These increases are capped at 40% on an annual basis. We can anticipate a 40% increase for the next several years due to some very large claims. Due to COVID, fires, climate change, extreme weather events, and other factors, our property damage insurance is going up even more significantly. The Plan JPA is still putting together final numbers, we can look to see those costs increasing as much as 50%. We are looking at ways to join other risk pools at higher levels to stabilize those increases so that we won't be seeing 40-50% increases year over year.

OTHER REPORTS

Mayor Pro Tem McKay reiterated that there are no legal fireworks in Morgan Hill. He asked that community members be considerate of families with pets and those who live in high fire danger areas especially in extreme fire conditions.

PUBLIC COMMENT

Public comment opened at 7:12 p.m.

Krista Rupp was called to speak.

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

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

CONSENT CALENDAR

MOTION:

Approving consent calendar items 1 through 4, 6 and 7.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	John McKay, Mayor Pro Tem
SECONDER:	Rene Spring, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

- 1. APPROVE AN IMPROVEMENT AGREEMENT AND A DEFERRED IMPROVEMENT AGREEMENT WITH TSC MOTORS INC. (MORGAN HILL CDR+J DEALERSHIP), AND AUTHORIZE THE CITY MANAGER TO EXECUTE AN ASSOCIATED RIGHT-OF-WAY ACQUISITION AGREEMENT WITH THE OWNER OF THE PROPERTY WITH ASSESSOR'S PARCEL NUMBER (APN) 728-17-032**

Recommendation:

1. Approve an Improvement Agreement with TSC Motors Inc.;
2. Approve a Deferred Improvement Agreement with TSC Motors Inc.;
3. Authorize the City Attorney to review and approve an alternative form of security to be provided by TSC Motors Inc. as part of the Improvement Agreement for the Morgan Hill CDR+J Dealership Project;
4. Authorize the City Manager to execute the Improvement Agreement and Deferred Improvement Agreement;
5. Authorize the recordation of the Improvement Agreement and Deferred Improvement Agreement; and
6. Authorize the City Manager to negotiate and execute a Right-of-Way Acquisition Agreement with the Owner of the property with Assessor's Parcel Number (APN) 728-17-032.

2. APPROVE SECOND AMENDMENT TO MAINTENANCE SERVICE AGREEMENT WITH ANIMAL DAMAGE MANAGEMENT, INC.

Recommendation:

1. Determine that competitive bids upon notice would not likely result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances per Section 3.04.150 (1) of the Morgan Hill Municipal Code; and
2. Authorize the City Manager to execute and administer the Second Amendment to the Maintenance Service Agreement with Animal Damage Management, Inc., extending the agreement for one additional year of service at annual amount of \$35,160 for a new total contract amount of \$140,640 over 4 years.

3. APPROVE THIRD AMENDMENT TO AGREEMENT WITH INNOVATIVE CLAIMS SOLUTIONS, INC.

Recommendation:

Authorize the City Manager to execute and administer a Third Amendment to Agreement with Innovative Claims Solutions, Inc. to provide third party claims administration for workers' compensation extending the agreement for one additional year of service at annual amount of \$34,380, for a new total contract amount of \$206,600 over 6 years.

4. APPROVE THE JUNE 16, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

5. ITEM PULLED FOR DISCUSSION

6. AWARD COMMUNITY AND CULTURAL CENTER BOILER REPLACEMENT PROJECT TO STEPHEN CIARI PLUMBING AND HEATING, INC.

Recommendation:

1. Adopt resolution amending the Fiscal Year 2020-21 Adopted Budget to appropriate an additional \$28,101 from the Building Replacement Fund (741) for the Community and Cultural Center Boiler Replacement Project;
2. Award contract to Stephen Ciari Plumbing and Heating, Inc. in the amount of \$98,274 and authorize the expenditure of (10%) contingency funds not to exceed \$9,827 for a total authorization of \$108,101; and
3. Authorize the City Manager to execute and administer that certain contract with Stephen Ciari Plumbing and Heating, Inc.

7. AWARD OF EAST FIFTH STREET SEWER MAIN PROJECT TO PACIFIC UNDERGROUND CONSTRUCTION, INC.

Recommendation:

1. Approve East 5th Street Sewer Main Project plans and specifications;
2. Award contract to Pacific Underground Construction, Inc. for the East 5th Street Sewer Main Project in the amount of \$1,226,730;
3. Authorize expenditure of construction contingency not to exceed \$122,673; and
4. Authorize the City Manager to execute and administer the construction contract with Pacific Underground Construction, Inc.

ITEM PULLED FOR DISCUSSION

5. AWARD POLICE AND PUBLIC SERVICES DEPARTMENTS FLEET SERVICE AGREEMENT TO FRANK'S AUTO SERVICE

Recommendation:

1. Award Vehicle Service Agreement to Frank's Auto Service for a total not-to-exceed amount of \$368,308 over three years; and
2. Authorize City Manager to Execute the Agreement.

Public comment opened at 7:19 p.m.

Joe Baranowski was called to speak.

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

MOTION:

Approving the recommended actions.

RESULT:	AWARDED [UNANIMOUS]
MOVER:	Rene Spring, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

PUBLIC HEARING

8. ADOPT RESOLUTION ESTABLISHING CREDIT CARD PAYMENT SERVICE FEE

Recommendation:

1. Open/Close public hearing; and
2. Adopt resolution establishing new credit card service fee for development fees and transient occupancy tax payments by credit card.

Finance Director Dat Nguyen provided the report.

The public hearing opened at 7:32 p.m.

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

MOTION:

Approving the recommended action.

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

9. CONSIDER APPEAL OF PLANNING COMMISSION'S APPROVAL OF SD2020-0011/SR2020-0029 THROUGH SR2020-0033 DE PAUL - TRAMMELL CROW MORGAN HILL VENTURE: REQUEST FOR A TENTATIVE PARCEL MAP AND DESIGN PERMITS FOR THE REDWOOD TECH AT 101, A FIVE BUILDING INDUSTRIAL PARK, ON A 29± ACRE SITE (APNS 728-30-006 AND 728-30-009). (AAE2021-0004 AND AAE2021-0005)

Recommendation:

1. Grant a hearing de novo;
2. Open/close public hearing; and
3. Adopt Resolution denying the appeals and reaffirming the decision of the Planning Commission to approve the project subject to Conditions of Approval.

Council Member Borgioli recused himself.

Mayor Constantine announced that he spoke with representatives from the Sprinkler Fitters Union and representatives from Trammell Crow.

Council Member Spring stated that he received several emails on this item and he disclosed that he had lunch with Joe Baranowski but they did not speak on this topic.

Mayor Pro Tem McKay announced that he received various emails and shared that he did speak with a Trammell Crow representative a few months ago.

Council Member Martinez Beltran shared that she received various emails and spoke with the Morgan Hill Responsible Growth Coalition (MHRGC).

Principal Planner Adam Paszkowski provided a presentation and report.

Don Little and David Blackwell spoke on behalf of the applicant, Trammell Crow.

Joe Baranowski spoke on behalf of the appellant, The Morgan Hill Responsible Growth Coalition.

The public hearing opened at 8:56 p.m. The following people were called to speak:

Russell Blalack
Carolyn and Eric Wallace
Murali Chirala
Ernie Tibaldi
John Williams
Brittney Sherman
Jordan Navy
Toni Navy
Dylan Boldt
David Dindak
Linda Nowlen
Miguel Jimenez
Stephen Cronin
Terry Williams
Mercedes Little
Dave Matthews

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

MOTION:

Approving staff recommendation to deny the appeal.

RESULT: ADOPTED [3 TO 1]
MOVER: John McKay, Mayor Pro Tem
SECONDER: Rich Constantine, Mayor
AYES: Constantine, McKay, Martinez Beltran
NAYS: Spring
RECUSED: Borgioli

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Spring asked that staff review policies to ensure that they are written as intended.

Mayor Pro Tem McKay reiterated Council Member Spring's request, however he asked that this work be deferred until staff can complete some of the current projects they are working on.

Council Members Borgioli and Martinez Beltran reiterated Council Member Spring's request.

Council Member Borgioli asked for a presentation on the timing of lights on Butterfield Blvd and through Downtown. He also requested that a subcommittee be formed regarding the widening of HWY 101.

Council Member Martinez Beltran asked that staff review the policy for City contracts, both for service and professional contracts.

CLOSED SESSION ITEMS CONTINUED FROM BEGINNING OF AGENDA

Public comment opened at 10:15 p.m. There being no requests to speak, public comment closed.

The meeting recessed at 10:15 p.m. and reconvened at 10:25 p.m.

The City Council meeting adjourned to closed session to continue to the closed session items from earlier in the agenda.

ADJOURNMENT

There being no further business, the meeting adjourned at 10:55 p.m.

MINUTES PREPARED BY:

Michelle Bigelow, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: August 4, 2021

PREPARED BY: Joey Dinh, Associate Planner
APPROVED BY: City Manager

INTRODUCE ORDINANCE TO APPROVE A DEVELOPMENT AGREEMENT AMENDMENT FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 764-24-061 LOCATED AT 18755 OLD MONTEREY ROAD AT THE SOUTHWEST CORNER OF OLD MONTEREY ROAD AND MUSTARD AVENUE (AAE2021-0002: OLD MONTEREY - APPLETREE (KELLY VO))

RECOMMENDATION(S)

1. Open and close public hearing;
2. Waive first and second reading of Development Agreement Ordinance; and
3. Introduce Development Agreement Ordinance.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving Our Community History

2020-2021 Strategic Priorities

Community Outreach

Engagement and Messaging

GUIDING DOCUMENTS

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

The 18755 Old Monterey, LLC (“applicant”) acquired the Appletree residential subdivision project from the previous developer and is requesting to modify the approved project. The approved project included a Tentative Subdivision Map to subdivide a 1.13-acre parcel into six (6) lots to develop five (5) detached single-family dwelling units, two (attached) accessory dwelling units (ADUs) and associated improvements. An existing historical house located on Lot No. 4 was to be retained.

The applicant requested a Historic Relocation permit and amendment to the Development Agreement (DA) to relocate the existing historic house to provide developable area on Lot No. 4 for a new single-family unit. The relocated historical housing would be converted into an ADU.

The adopted DA for the project specifies the duration and permitted uses of the subject property, and the general location and density or intensity of uses. It also contains provisions concerning its transferability to any successor owners of the property. The DA outlines the benefits provided to the City by entering into the Agreement. The

adopted DA included five single-family detached houses and retained the existing historic house. As a result, the DA must be amended to add one additional unit. An amended DA has been provided as Attachment 1. The findings required to approve the DA amendments are fully analyzed in the Planning Commission report (Attachment 3).

Planning Commission Action

The Planning Commission reviewed the project on June 8, 2021. During review of the project, the discussion centered around the potential relocation of the historic house. Some of the Commission had questions about the potential disturbance of lead paint typically found in older historic structures. A detailed assessment of lead paint and other potentially harmful materials (i.e., asbestos) is required to be submitted during the Building Permit process. An in-depth condition of approval was also added to ensure all appropriate precautions are taken.

Two public comments were received during the hearing, objecting to the potential historic relocation. The reasons cited included:

- a. Potential release of contaminants (dust and lead) during the moving process;
- b. History of weed overgrowth and abatement issues;
- c. Concerns with previous tenant history and neighborhood safety; and,
- d. Questions regarding historic nature of the property and fit with the neighborhood aesthetic.

The Planning Commission also expressed desire for the applicant to install a picket fence or additional landscaping along the frontage of the property to accentuate the historic nature of the property, if found acceptable by the historical architect. The Commission requested that the Development Services Director approve text (in addition to the design and location) on the plaque commemorating the historic nature of the property, prior to installation. The Planning Commission voted 6-0 (one commissioner recused) to approve Resolution No. 21-06 to allow the Historic Relocation Permit (Attachment 4). The Conditions of Approval were amended to reflect the Planning Commission recommendations.

The Planning Commission voted 6-0 (one commissioner recused) to approve Resolution No. 21-07 (Attachment 5) recommending the City Council approve an amendment to DA (DA2018-0001).

COMMUNITY ENGAGEMENT: Inform

The proposed project was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period and a sign was posted on the project site pursuant to the Planning Division requirements.

ALTERNATIVE ACTIONS:

City Council could deny the request to amend the DA to allow the developer to construct a sixth single-family house. The existing DA would remain in-force for the development of five new single-family residences on a 6-lot subdivision.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On July 23, 2008, the City Council adopted Ordinance No.1892 to update the City's Historical Resources Code by repealing Chapter 18.75 Cultural Resources Preservation and adopting Chapter 18.75 Historical Resources (renumbered to Chapter 18.60 by Ordinance No. 2277). The City Inventory List identified the property as potentially historically significant.

An application was submitted for the 2016 Residential Development Control System (RDSCS) competition requesting five (5) building allotments for the project site. At the January 10, 2017, Planning Commission meeting, the Commission adopted Resolution No. 17-01 awarding the project five Fiscal Year 2018/2019 building allotments.

On June 6, 2018, the City Council adopted Ordinance No. 2277, approving a comprehensive update to Title 18 (Zoning), including an amendment to the City's Official Zoning Map. The update renamed the R-1 Single Family Medium Density (R1-7,000) zone district to Residential Detached Medium (RDM-7,000) and did not change the development standards.

On June 11, 2019, the Planning Commission adopted Resolution No. 19-06, approving a Tentative Subdivision Map for a six (6) lot residential subdivision. The Planning Commission also recommended approval of DA2018-0001 to the City Council.

On September 18, 2019, the City Council adopted Ord. No. 2303, approving a DA for the project. The DA specified terms for the development of five new single-family detached dwellings.

On June 8, 2021, the Planning Commission adopted Resolution No. 21-06 and No. 21-07. Resolution No. 21-06 approved a Historical Relocation Permit to move the historic house to the southwest corner of Lot No. 4. Resolution No. 21-07 recommended approval of a DA amendment.

FISCAL AND RESOURCE IMPACT:

The City's development review functions are cost-recovery, with fees collected from applicants to cover cost of services. These fees have been collected.

CEQA (California Environmental Quality Act):

An environmental assessment was prepared for the project by David J. Powers & Associates, Inc. dated February 27, 2019, in conformance with the California Environmental Quality Act (CEQA). The assessment determined the project qualifies for a Class 32 In-Fill Development exemption because it meets the criteria set forth in

CEQA Guidelines Section 15332(a) through 15332(e). The Categorical Exemption Memorandum included a historical and architectural evaluation performed by Urban Programmers dated September 25, 2018. This report contemplated the historic house and determined that any proposed alteration or relocation would require a Historic Alteration or Relocation Permit from the City.

The Development Services Director concluded that the project proposed for Old Monterey - Kelly Vo is Categorically Exempt pursuant to Section 15332 of the CEQA Guidelines.

An addendum to the Historic Evaluation dated March 25, 2021, was performed by Urban Programmers to analyze the proposed relocation. The report found relocating the historic house would be consistent with the CEQA guidelines and provided recommendations for rehabilitation consistent with the Secretary of the Interior's Standards for Rehabilitating Historic Buildings. These recommendations are included as part of the Conditions of Approval. No further CEQA clearance is required.

LINKS/ATTACHMENTS:

1. Amended DA CC Ordinance
2. Ord No. 2303 Recorded DA for Appletree Investments, LLC
3. Planning Commission Staff Report, Project Plans, and CEQA Docs (weblink)
4. PC Resolution No 21-06 (Historical Relocation Permit)
5. PC Resolution No. 21-07 (Amended DA)

ORDINANCE NO. , NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING AMENDMENTS TO DEVELOPMENT
AGREEMENT DA2018-0001: OLD MONTEREY-KELLY VO
FOR A 6-UNIT RESIDENTIAL DEVELOPMENT ON A 1.13-
ACRE SITE LOCATED ON THE SOUTHWEST CORNER
OF OLD MONTEREY ROAD AND MUSTARD AVENUE
(APN 764-24-061)**

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

- SECTION 1.** The Planning Commission, pursuant to Chapter 18.78 (now Chapter 18.156) of the Morgan Hill Municipal Code, awarded five (5) building allotments for application RDCS 2016-0008: Old Monterey-Kelly Vo for Fiscal Year (FY) 2018-19.
- SECTION 2.** The City Council of the City of Morgan Hill enacted Ordinance number 1594, as revised by Ordinance Number 2277, establishing a procedure for processing Development Agreements in Chapter 18.116 for projects receiving allotments through the Residential Development Control System, Chapter 18.156, of Title 18 of the Morgan Hill Municipal Code.
- SECTION 3.** Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.
- SECTION 4.** The City Council adopted Ordinance No. 2303 on September 18, 2019, approving a Development Agreement for the Old Monterey-Kelly Vo project.
- SECTION 5.** The Development Agreement Amendment request was considered by the Planning Commission at its regular meeting of June 8, 2021 at which time the Planning Commission recommended approval amendments to Development Agreement DA2018-0001: Old Monterey-Kelly Vo based on the findings described below;
- SECTION 6.** References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner(s) set forth in detail the development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made

only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 7. The Development Agreement is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan.

The project would provide 6 single-family residential units. No General Plan policy conflicts have been identified with the proposed project.

SECTION 8. The Development Agreement is compatible with the uses authorized in the zoning district in which the real property is located.

The proposed residential use is permitted within the RDM-7,000 zoning district and would be compatible with the surrounding residential and commercial uses.

SECTION 9. The Development Agreement duly considers city mitigation programs in effect at the time of execution of the agreement.

The project would be subject to the payment of applicable impact fees and community benefit commitments as part of the RDSCS process.

SECTION 10. The Development Agreement will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood.

The project's construction would adhere to state, local and federal laws. The project is residential housing and would be compatible with the surrounding neighborhood.

SECTION 11. The Development Agreement complies with the provisions of the California Environmental Quality Act and city's procedures adopted pursuant thereto.

The project is Categorical Exempt from CEQA and meets the criteria for a Class 15332 - In-Fill Development exemption. A CEQA Categorical Exemption Memorandum has been prepared and adopted for the project.

SECTION 12. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values.

The project will provide high quality architecture consistent with the City's Architectural Design Guidelines. The project will also be consistent with state and local laws.

- SECTION 13.** Testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.
- SECTION 14.** Severability: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- SECTION 15.** Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance or a summary thereof pursuant to 96933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 4th DAY OF AUGUST 2021, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 18TH DAY OF AUGUST 2021, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. XXXX, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th day of August 2021.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

**AMENDMENT TO
DEVELOPMENT AGREEMENT**

THIS AMENDMENT TO DEVELOPMENT AGREEMENT ("**Amendment**") is entered into as of the ____ day of _____, 2021, by and among 18755 OLD MONTEREY, LLC ("**Developer**") and CITY OF MORGAN HILL, a municipal corporation of the State of California ("**City**").

RECITALS

A. Appletree Investment, LLC, Developer's predecessor in interest, entered into a Development Agreement (DA) with City on September 18, 2019 adopted by the City Council as Ordinance No. 2303, to facilitate the development of that certain real property owned by Developer within the City of Morgan Hill, State of California, which is legally described in Exhibit A to the Development Agreement ("**Property**"). The DA was recorded on September 26, 2019 as document number 24290883. The DA was assigned to Developer on July 7, 2021. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement.

B. Developer has applied for a Historical Relocation Permit to allow for the existing building to be moved and a new residential be additionally located on Parcel 4.

C. Developer and City desire to enter into this Amendment to revise the project description to include an additional residential unit.

AGREEMENT

NOW, THEREFORE, Developer and City hereby agree as follows:

1. Amendment to Development Agreement.

A. Section 1.02(a)(10) is revised to read as follows:

"**Project**" means the development containing 6 units in a residential subdivision project, as more particularly described in the RDSC Application RDSC2016-0008, Historical Relocation Permit CUL2021-0001, Design Permit

SR2019-0001, and Subdivision Application SD2018-0002 as described in Exhibit B. Any reference in this Agreement to the "Project" shall mean and include the "Property".

B. Exhibit B "Description of Project" is amended to read as follows:

RDCS APPLICATION NO. RDCS2016-0008: OLD MONTEREY-KELLY VO FOR A RESIDENTIAL DEVELOPMENT PROJECT THAT INCLUDES SIX (6) SINGLE FAMILY RESIDENCES.

2. Building Design. The new single-family detached home on Lot 4 must have a similar and complementary architectural design to the other five single-family homes within the Appletree Subdivision.

3. RDCS Commitments. The design of the new single-family detached home on Lot 4 must meet the Residential Development Control System (RDCS) commitments established in the Appletree Subdivision Development Agreement.

4. Building Code Requirements. The construction of a new dwelling unit on this lot will require that building to have its own construction plans and documentations. The construction plans and documentation for this building are required to comply with the 2019 California Building Standard Codes and the current Morgan Hill Municipal Code. The Master Plan for the other five building fall under the 2016 California Building Code since their Permit Application was submitted prior to the adoption of the 2019 California Building Standards codes and the current Morgan Hill Municipal Code prohibiting natural gas in newly constructed building ordinance.

5. Development Agreement in Full Force and Effect. Except as specifically provided herein with respect to the assignment, all the terms, covenants, conditions and provisions of the Development Agreement shall remain in full force and effect.

6. Recording. City shall cause this Amendment to be recorded in the Official Records of Santa Clara County.

7. Severability. Except as otherwise provided herein, if any provision(s) of this Amendment is (are) held invalid, the remainder of this Amendment shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the Parties.

8. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the Parties to this Amendment had executed the same counterpart.

9. Effective Date/Amendments. The Effective Date of this Amendment shall be the date upon which this Amendment is approved by the City of Morgan City Council. This Amendment shall not be amended except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

[Signature Page Follows]

IN WITNESS WHEREOF, Developer and City have entered into this Agreement as of the date first above written.

“CITY”

CITY OF MORGAN HILL

Christina J. Turner
City Manager

Approved as to form:

Donald A. Larkin
City Attorney

Date: _____

“DEVELOPER”

18775 Old Monterey, LLC

By _____

Name _____

Its _____

Date: _____

(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY, MUST BE
ACKNOWLEDGED BEFORE A NOTARY)

Attachment: Amended DA CC Ordinance [Revision 5] (3144 : AAE2021-0002: Old Monterey - Appletree (Kelly Vo))

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)
) ss.
COUNTY OF _____)

On _____, before me, _____
 _____ (insert name and title of the officer)

personally appeared _____,
who 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.

Signature _____ (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.

[illegible]

On _____, before me, _____
 _____ (insert name and title of the officer)

personally appeared _____,
who 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.

Signature _____ (Seal)

ORDINANCE NO. 2303, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT DA2018-0001: OLD MONTEREY- KELLY VO FOR A 6-LOT SINGLE-FAMILY RESIDENTIAL SUBDIVISION PROJECT PROPOSED ON A 1.13-ACRE PARCEL LOCATED ON THE SOUTHWEST CORNER OF OLD MONTEREY ROAD AND MUSTARD AVE LOCATED AT 18755 OLD MONTEREY ROAD (APN 764-24-061)

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

SECTION 1. The Planning Commission, pursuant to Chapter 18.78 (now Chapter 18.156) of the Morgan Hill Municipal Code, awarded 5 building allotments for application RDCS 2016-0008: OLD MONTEREY-KELLY VO for FY 2018-2019.

SECTION 2. The City Council of the City of Morgan Hill enacted Ordinance number 1594, establishing a procedure for processing Development Agreements in Chapter 18.116 for projects receiving allotments through the Residential Development Control System, Chapter 18.156, of Title 18 of the Morgan Hill Municipal Code.

SECTION 3. Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner(s) set forth in detail the development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and Development Agreement approved by this Ordinance is consistent with the goals, objectives, policies, general land uses, and programs specified in the General Plan and any applicable specific plan. The project would provide 5, single-family residential units. There have been no General Plan policy conflicts identified with the proposed project.

SECTION 6. The City Council hereby finds that the Development Agreement is compatible with the uses authorized in the zoning district in which the real property is located because the housing development project is a permitted use within the Residential Detached Medium zoning district and is compatible with the surrounding residential and commercial uses.

SECTION 7. The City Council has duly considered city mitigation programs in effect at the time

of execution of the agreement and hereby finds that the project is subject to the payment of applicable impact fees and community benefit commitments as part of the RDCS process.

SECTION 8. The City Council hereby finds that the project will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood because project construction would adhere to state, local and federal laws. The project is residential housing that would include the normal daily operations of other residential sites.

SECTION 9. The City Council of the City of Morgan Hill finds that the Development Agreement complies with the provisions of the California Environmental Quality Act and city's procedures adopted pursuant thereto. The City Council further finds that, on the basis of the whole record before it, there is no substantial evidence that the project as currently proposed will have a significant effect on the environment and therefore finds the project Categorically Exempt pursuant to Class 32, Section 15332 relating to In-Fill Development Projects of the CEQA and this finding reflects the City Council's independent judgment and analysis. The custodian of the documents or other material which constitute the record shall be the Development Services Department.

SECTION 10. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values because the project will provide high quality architecture consistent with the City's Architectural Design Guidelines. The project will also be consistent with state and local laws.

SECTION 11. Testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

SECTION 12. Severability: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 13. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance or a summary thereof pursuant to 96933 of the Government Code.

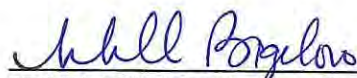
THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 4th DAY OF SEPTEMBER 2019 AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 18TH DAY OF SEPTEMBER 2019 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH THE LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Larry Carr, Rene Spring, Yvonne Martinez Beltran, John McKay
NOES: COUNCIL MEMBERS: None
ABSTAIN: COUNCIL MEMBERS: None
ABSENT: COUNCIL MEMBERS: Rich Constantine

APPROVED:


RENE SPRING, Mayor Pro Tem

ATTEST:


IRMA TORREZ, City Clerk

DATE: 10/16/19

Effective: October 18, 2019

∞ 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. 2303, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th day of September 2019.

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

DATE: 10/16/19


IRMA TORREZ, City Clerk

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT

[DA2018-0001: Old Monterey-Kelly Vo]

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

APPLETREE INVESTMENT LLC

REGARDING

THE OLD MONTEREY-KELLY VO RESIDENTIAL DEVELOPMENT PROJECT

RESIDENTIAL DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
APPLETREE INVESTMENT LLC
REGARDING THE
OLD MONTEREY-KELLY VO PROJECT

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the City of Morgan Hill, a California municipal corporation, (hereinafter "**City**"), and Appletree Investment LLC, a California limited liability company, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to Section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its Morgan Hill Municipal Code (Chapter 18.116 *et seq.*) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

Developer currently has a legal and/or equitable interest in the Property.

Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

RDCS Application RDCS2016-0008: Five (5) FY 2018-19 building allotments;

Environmental Assessment Application EA2018-0004;

Subdivision Application SD2018-0002; and,

Administrative Extension Application AAE2019-0002 which extended the exercise of allotment deadline to December 30, 2019;

The Existing Approvals are more particularly described in the CEQA Categorical Exemption Memorandum for the Old Monterey-Kelly Vo project and the resolutions adopting the Existing Approvals.

For the reasons recited herein, 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 planning, 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 Agreement Statute was enacted.

On January 10, 2017, the Morgan Hill Planning Commission awarded allotments for the Project as set forth in the Developer's application for residential allotments pursuant to Chapter 18.156 ("**Residential Development Control System**", or "**RDCS**") of the Morgan Hill Municipal Code ("**Code**"). This Agreement serves to secure in a permanent and enforceable manner the public benefits and commitments included in the Developer's application as required under Section 18.156.120.J of the Code.

On June 11, 2019, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**") considered the Development Agreement for recommendation to the City Council, and determined that the Development Agreement is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan; is compatible with the uses authorized in the zoning district in which the real property is located; duly considers City mitigation programs in effect at the time of execution of the agreement; will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood; complies with the provisions of the California Environmental Quality Act and City's procedures adopted pursuant thereto; and will not adversely affect the orderly development of property or the preservation of property values.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. Following a duly noticed and conducted public hearing, the Morgan Hill City Council ("City Council") introduced an ordinance ("**Ordinance**"), accepting the recommendation of the Planning Commission, finding that this Agreement's provisions are consistent with the General Plan and any applicable specific plan, approving this Agreement, and directing this Agreement's execution by City. The City adopted the Ordinance, and the Ordinance became effective thirty (30) days later. The "Effective Date" in this Agreement shall be the date that the Ordinance became effective.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

- (1) "**Allotments**" shall mean those residential allotments awarded Developer through the Residential Development Control System
- (2) "**Applicable Law**" shall have that meaning set forth in Section 2.01(a) of this Agreement.
- (3) "**Commitments**" shall have that meaning set forth in Section 2.04(a) of this Agreement.

- (4) **"Director"** shall mean the Director of Community Development, and his or her designee.
- (5) **"Existing Approvals"** shall have that meaning set forth in paragraph D of the Recitals of this Agreement.
- (6) **"Existing City Laws"** shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, RDCS, 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.
- (7) **"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.*
- (8) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval that 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.
- (9) **"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.
- (10) **"Project"** means the development containing 5 units in a residential subdivision project, as more particularly described in the RDCS Application RDCS2016-0008 and Subdivision Application SD2018-0002 as described in Exhibit B. Any reference in this Agreement to the "Project" shall mean and include the "Property".
- (11) **"Project Approvals"** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.
- (12) **"Property"** shall mean that certain real property consisting of approximately 1.13 acres located within the City, as more particularly described and shown on Exhibit A to this Agreement.
- (13) **"RDCS"** means the Residential Development Control System set forth in Chapter 18.156 of the Morgan Hill Municipal Code.
- (14) **"Second Notice"** shall have that meaning set forth in Section 4.07(c) of this Agreement.
- (15) **"Subdivision Document"** means, pursuant to Government Code Section 66452.6(a) and this Agreement, any tentative map, vesting tentative map, parcel map, or final map, or any such new map or any amendment to any such map, or any resubdivision.

- (16) **"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 after the City Council adopts the Ordinance, including without limitation, subdivision maps and building permits.

(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, including the Morgan Hill Municipal Code.

1.03 **Term.**

The term ("**Term**") of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated or modified as provided in this Agreement) until the earliest of (1) the loss of all residential allotments for the Project pursuant to the RDCS, if applicable, (2) the issuance of a certificate of occupancy for all units in the Project or (3) ten (10) years plus one day after the Effective Date; provided however that Developer's obligations pursuant to Sections 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement.

If any "**Third-Party Challenge**" (as that term is defined in Section 4.06(a) of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment ("**Litigation Tolling**"). Notwithstanding the foregoing, regardless of the number of Third-Party Challenges that may be filed during the Term of this Agreement, the sum total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third-Party Challenge shall not delay or stop the development, processing or construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

APPLICABLE LAW

2.01 **Applicable Law—Generally.**

As used in this Agreement, "**Applicable Law**" shall mean the rules, regulations, official policies, standards, and specifications applicable to the development of the Property 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):

All the provisions, terms and conditions of this Agreement.

Existing Approvals.

The Subsequent Approvals, provided such Subsequent Approvals are:

- (i) In compliance with all controlling California law;
- (ii) Mutually agreed to by the Parties;
- (iii) In compliance with this Agreement; and
- (iv) Duly enacted by City.

The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.

Any "New City Laws" Developer is subject to as provided in Section 2.09 of this Agreement.

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.

1.02 Vested Right to Applicable Law.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement, City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law.

(b) Nothing contained herein will give Developer a vested right to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

Pursuant to this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, and/or when Developer becomes subject to a New City Law pursuant to this Agreement.

The vested rights to develop the Project in accordance with Applicable Law and this Agreement shall be vested only to those residential units having an RDCS residential allotment. Nothing contained herein shall give Developer a vested right to develop the described Project absent valid RDCS residential allotments.

Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to develop in lieu of any other instrument of vesting, including any vesting tentative map or any other agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable City, state or federal law.

2.03 Project Impacts and Costs.

(c) 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 Developer. 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, Homeowners Associations, 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, in its sole and exclusive discretion, 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.

Impact Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04 and as part of the Developer's sole and exclusive obligation to cover Project Mitigation, Developer shall pay all Impact Fees and in the amounts in legal effect at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code.

Processing Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04, 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, and environmental studies required pursuant to 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 Developer. 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.

2.04 RDCS and Other Specific Project-Specific Requirements.

(d) The Specific Restrictions and Requirements set forth in Exhibit C are public benefit commitments ("**Commitments**") voluntarily assumed by Developer in return for benefits derived from the City's RDCS allotment approval program. These requirements are not Project Mitigation within the meaning of Section 2.03 of this Agreement. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or prohibition pursuant to otherwise applicable City, state or federal law and hereby waives any such right to credit, refund, reimbursement or prohibition. These Commitments are voluntarily assumed by

Developer in return for benefits derived from the RDCS. Pursuant to the RDCS, awarding of residential allotments to new development is a competitive process based on a point system. Additional points can be awarded to a development proposal that voluntarily commits towards providing a public benefit contribution in addition to those already required to mitigate its impacts. The Commitments result in additional points, thereby allowing the development proposal to secure a higher score pursuant to the RDCS, which in turn may provide a high enough score for the development proposal to secure residential allotments. The Commitments set forth in Exhibit C, derived from that RDCS process, are enforced through this Agreement.

Substitution of Commitments within the same Objective may be allowed in limited circumstances, as provided in Section IV. F of the RDCS Competition Manual, with approval of the Community Development Director documented through an Administrative Amendment as provided in Section 3.05 of this Agreement. Substitution may be allowed only if the proposed changes result in the project receiving the same or higher score within each Objective, maintain or improve the quality of the project, and would result in the same or greater value to the City or its future residents. No changes which would subject the Project to further environmental review under CEQA shall be approved. In circumstances in which Substitution within the same Objective is not possible, Substitution may be allowed only by resolution of the Planning Commission.

The Developer's RDCS application – RDCS2016-0008: Old Monterey-Kelly Vo and approval actions (as reflected in the official records, including agendas and minutes of the City Planning Commission on January 10, 2017 and City Council on February 15, 2017) shall be incorporated into this Agreement by this reference.

2.05 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.

2.06 Timing of Development.

(e) **Securing Building Permits and Beginning Construction.** Developer is required to obtain any approvals or permits for the development of the Project in accordance with this Agreement, the Applicable Law, and the Project Approvals. However, any Subsequent Approval initiated by Property Owner which substantially changes the permitted uses or substantially increases the height, and density or floor area allowed under the Project Approvals, shall be subject to the rules, regulations, ordinances and official policies of the City then in effect. 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 and the RDCS, if applicable. In the event Developer fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Construction Codes, Project Approvals, and RDCS, Developer shall be in default of this Agreement, and must cure said default as provided in section 4.01 of this Agreement.

Progress Reports Until Construction of Project is Complete. Developer shall make reports regarding the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of construction, off-site and landscaping contracts or documents, Developer agrees to furnish such documents to the City.

Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units in the Project, the City shall provide Developers with an instrument in recordable form certifying completion of the entire project.

2.07 Improvements.

In any instance where Developer is required to install improvements (including those set forth in Exhibit C), Developer shall obtain City approval of the plans and specifications and the timing and manner of the installation of improvements, and provided Developer has supplied all information required by City, City shall review and act on the application for such approval with good faith and in a reasonable manner. Where the actual cost of any improvement exceeds Developer's estimated cost or commitment, Developer shall be solely responsible for all improvement costs in excess of those approved by City unless otherwise provided for in a reimbursement agreement.

2.08 Overcapacity, Oversizing.

(f) City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and services outside of the Project ("**Oversizing**"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

Unless no credit or reimbursement is owed to Developer pursuant to Section 2.04 of this Agreement, Developer's right to receive credits and reimbursements for Oversizing or excessive payment or performance shall be determined and processed pursuant to the City's Municipal Code and controlling practices (relative to credits and reimbursements) on the Effective Date.

2.09 New City Laws.

(g) 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.

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:

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 total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

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;

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.

If City determines that it has the right pursuant to this Agreement to impose and apply a New City Law on the Property and 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).

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 pursuant to this Agreement, including without limitation Developer's obligations of full "Project Mitigation" pursuant to Section 2.03 or the "RDCS and Other Project Specific Requirement" pursuant to Section 2.04. Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

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, 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.

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.

PROCESSING

3.01 Processing.

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. This Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, and later added to this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including Planning and Zoning Law and CEQA), and are adopted/approved by City, which shall retain all lawful discretion in this regard. The 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. The Parties agree that this Agreement does not modify, alter or change the City's obligations pursuant to CEQA and acknowledge that Subsequent Approvals may require additional environmental review pursuant to CEQA.

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 Existing 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**").

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.

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 Establishment and Extension of Residential Development Control System Building Allotments.

Allotments shall be exercised pursuant to Section 18.156.160 of the Morgan Hill Municipal Code and Section IV.J of the RDCS Competition Manual. The City may approve an extension to the date by which an allotment must be exercised only as allowed by Section 18.156.170 of the City of Morgan Hill Municipal Code and Section IV.L of the RDCS Competition Manual. Extensions and allotment adjustments for ongoing projects shall be processed by Planning Commission resolution as provided in Section IV.H of the RDCS Competition Manual.

3.04 Amendments.

This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any request by Developer for an amendment or modification to this Agreement or a Project Approval 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.

3.05 Administrative Amendment

Upon the written request of, and payment of the established fee by, Developer, Substitution of Commitments within the same criteria category may be processed administratively by the Community Development Director. Any Administrative Amendment must be made in writing approved by the Director and approved by the City Attorney, and signed by the Developer.

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

Any failure by City or Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days (or 150 days for a Mortgagee (as that term is defined in Section 4.10(a)) following written notice of such failure from the other Party (unless such period is extended by written mutual consent) ("**Notice of Default**"), shall constitute a default pursuant to this Agreement ("**Default**"). Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period (or 150 days for a Mortgagee), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period (or 150 days for a Mortgagee). If the alleged failure is cured, then no Default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a Default shall exist pursuant to this Agreement and the non-defaulting Party may exercise any of the remedies available pursuant to this Article.

No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default pursuant to this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

(a) During any cure period and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder to the maximum extent practicable in light of the disputed matter and pending its resolution, or formal termination of the Agreement, as provided herein.

City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to an alleged default of Developer hereunder.

4.03 Resolution of Disputes.

(b) In the event either Party is in default pursuant to 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.

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 pursuant to this Agreement, any City Council determination pursuant to this Agreement shall be deemed a final agency action.

If any dispute arises between or among the Parties as to interpretation or application of any of the terms of this Agreement, the Parties shall attempt to resolve the dispute in accordance with this Agreement prior to third party mediation, arbitration, or formal court action. As to any such dispute, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute. Should the Parties not resolve the dispute informally, the Parties agree to meet and confer 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.

4.04 Periodic Review.

(c) The City shall review this Agreement at least once annually to assure compliance with the RDCS, at which time the Developer is required to demonstrate good faith compliance with the terms of this Agreement.

If, as a result of such annual review, the City finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded pursuant to the RDCS, in addition to all other legally available remedies.

4.05 Force Majeure Delay, Extension of Times of Performance.

(d) 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").

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.

4.06 Third Party Legal Actions.

(e) 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 pursuant to CEQA ("**Third-Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

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).

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).

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.

4.07 Estoppel Certificate.

(f) 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:

This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations pursuant to this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

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.

If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.07(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.

4.08 Assignment/Covenants Run with the Land.

(g) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed assignment shall be subject to the express written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. City's approval of a proposed assignment or transfer shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property to completion. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall specify the portion of the Project or Property and the rights assigned and obligations assumed, and shall be approved by the City Attorney. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations pursuant to this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney.

Release Upon Assignment. Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests pursuant to this Agreement, Developer shall be released from its obligations with respect to the Property/Project (or any portion thereof), and any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the effective date of such assignment. A default by any Assignee shall only affect that portion of the Property/Project owned by such Assignee and shall not cancel or diminish in any way Developer's rights or obligations hereunder with respect to the assigned portion of the Property/Project not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property/Project owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property/Project owned by such Assignee.

Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code Section 1468.

This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project ("**Consumer**") unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.09 Encumbrances on the Property.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property, or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project. Mortgagee may require certain modifications to this Agreement, and City shall negotiate in good faith any such request for modification or subordination.

4.10 Obligations and Rights of Mortgage Lenders.

(h) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof ("**Mortgagee**"), shall not be obligated pursuant to this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.

Each Mortgagee shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer pursuant to this Agreement, provided such Mortgagee has informed City of its address for notices. Each Mortgagee shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief pursuant to any chapter of Title 11 of the United States Code (the "**Bankruptcy Code**"), the cure periods provided for a Mortgagee in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of Section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if City obtains relief from the automatic stay pursuant to Bankruptcy Code Section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Mortgagee's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Mortgagee relief from the automatic stay. Each Mortgagee shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of Section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

Any Mortgagee who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, that have accrued prior to the time such holder comes into possession. In addition, any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to a foreclosure of mortgage or deed of trust, or deed in lieu of such foreclosure, shall, subject to Section 4.10(a) above, be a permitted Assignee and, as such, shall succeed to all the rights, benefits and obligations of Developer pursuant to this Agreement.

Nothing in this Agreement shall be deemed to be construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereof, other than

those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

4.11 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

GENERAL PROVISIONS

5.01 Miscellaneous.

Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

Requirements of Development Agreement Statute. The permitted uses of the Property; density and/or intensity of use of the Property; the maximum height and size of proposed buildings and other structures; provisions for reservation or dedication of land for public purposes; location of public improvements; and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law.

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 pursuant to 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.

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.

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 subdivision. 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.

Insurance. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The minimum limits of liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed pursuant to this Agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:

Per Occurrence \$1,000,000

Limit of Liability for Property Damage:

Aggregate Liability for Loss \$1,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed pursuant to this agreement and before permitting any Contractor or Subcontractors to perform work pursuant to this agreement, the Developer shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by the Developer as it may be applied to the Contractor's or Subcontractor's work.

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.

Notices.

All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed, via first class mail, to the respective Party at the below listed address. Notice shall be deemed effective and received five days after the date of mailing or upon personal delivery.

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: Kelly Vo
Appletree Investment LLC
PO Box 32115
San Jose, CA 95132
Tel: (408) 889-4507

With a Copy To: Vince Burgos
Development Process Consultants
220 Live Oak Drive
Danville, CA 94506
Tel: (408) 421-2695

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.

Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

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.

Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed pursuant to the laws of the State of California.

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.

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.

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.

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 Description of Project.

Exhibit C RDCS Specific Restrictions and Requirements.

Signatures of all parties are on the following page.

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City of Morgan Hill
Ordinance No. 2303, New Series
Page 25 of 37

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Attachment: Ord No. 2303 Recorded DA for Appletree Investments, LLC (3144 : AAE2021-0002: Old Monterey - Appletree (Kelly Vo))

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

DEVELOPER:

s/ _____

s/ _____

Christina J. Turner
City Manager


Kelly Vo
Appletree Investment LLC

Date: _____

Date: 7/3/19

*Corporate entities must provide a
second signature:*

Attest:

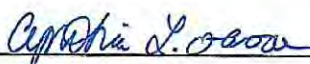
s/ _____

Deputy City Clerk

Name/Title [print]

Date: _____

Approved as to Form:

s/ 

Adopted by Ordinance No. _____
by action of City Council on _____

 Donald A. Larkin
City Attorney

Date: 7-10-19

(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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 July 3rd, 2019 before me, Andrew Minh Nguyen, Notary Public

Date

Here Insert Name and Title of the Officer

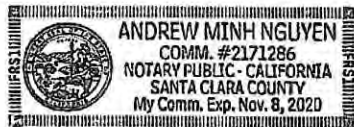
personally appeared Kelly Vo

Name(s) of Signer(s)

who 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.



Signature

Andrew
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached DocumentTitle or Type of Document: Residential Development Agreement Document Date: N/ANumber of Pages: 21 Signer(s) Other Than Named Above: As above**Capacity(ies) Claimed by Signer(s)**

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☒ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

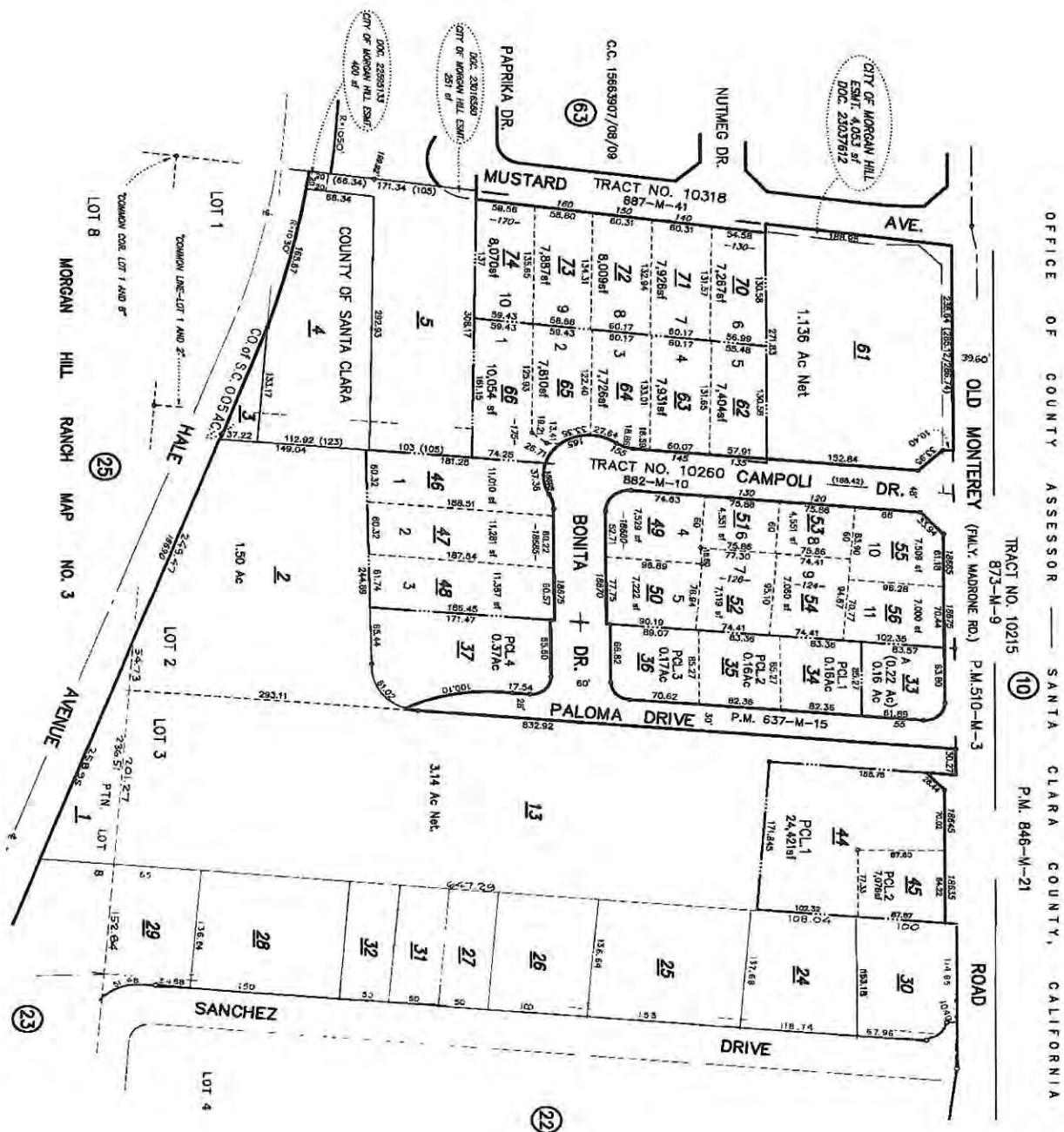
EXHIBIT A

**LEGAL DESCRIPTION OF THE PROPERTY ON WHICH
PROJECT IS BE LOCATED**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

A PORTION OF LOTS 1 AND 2, AS SHOWN ON THAT CERTAIN MAP ENTITLED "MORGAN HILL RANCH MAP NO. 3", WHICH WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON SEPTEMBER 21, 1892 IN BOOK G OF MAPS, PAGES 20 AND 21 AND BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHWESTERLY LINE OF MADRONE ROAD, AT THE NORTHERNMOST CORNER OF LOTS 1, AS SAID ROAD AND LOT ARE SHOWN ON THE MAP ABOVE REFERRED TO; THENCE FROM SAID POINT OF BEGINNING, SOUTH 57° 58' WEST ALONG THE NORTHWESTERLY LINE OF SAID LOT 1 FOR A DISTANCE OF 188.95 FEET TO THE NORTHERNMOST CORNER OF THAT CERTAIN 0.646 ACRE TRACT OF LAND DESCRIBED AS PARCEL ONE IN THE DEED TO JAMES J. CAMPOLI, ET UX, RECORDED FEBRUARY 15, 1961 IN BOOK 5072, PAGE 709 OF OFFICIAL RECORDS; THENCE SOUTH 38° 36' EAST ALONG THE NORTHWESTERLY LINE OF SAID 0.646 ACRE TRACT FOR A DISTANCE OF 295.27 FEET TO THE EASTERNMOST CORNER THEREOF IN THE NORTHWESTERLY LINE OF THAT CERTAIN 5.551 ACRE TRACT OF LAND DESCRIBED AS PARCEL ONE IN THE DEED TO NICK RIZZI, ET UX, RECORDED JUNE 13, 1944 IN BOOK 1206, PAGE 111 OF OFFICIAL RECORDS; THENCE NORTH 55° 22' EAST ALONG THE NORTHWESTERLY LINE OF SAID 5.551 ACRE TRACT, FOR A DISTANCE OF 188.42 FEET TO THE NORTHERNMOST CORNER THEREOF IN SAID SOUTHWESTERLY LINE OF MADRONE ROAD; THENCE NORTH 38° 45' WEST ALONG SAID LAST MENTIONED LINE 285.12 FEET TO THE POINT OF BEGINNING.



LAWRENCE E. STONE - ASSESSOR
 Coded for use for assessment purposes only.
 Compiled under R. & T. Code, Sec. 327.
 Effective Roll Year 2017-2018

BOOK
764

PAGE
24

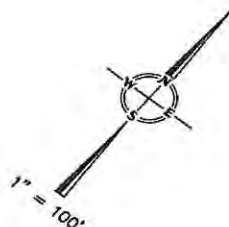


EXHIBIT A

EXHIBIT B

DESCRIPTION OF PROJECT

**RDCS APPLICATION NO. RDCS2016-0008: OLD MONTEREY-KELLY VO
FOR A RESIDENTIAL DEVELOPMENT PROJECT THAT INCLUDES SIX LOTS,
WITH FIVE NEW SINGLE FAMILY DWELLING UNITS AND ONE EXISTING
DWELLING UNIT.**

EXHIBIT B

-1-

Attachment: Ord No. 2303 Recorded DA for Appletree Investments, LLC (3144 : AAE2021-0002: Old Monterey - Appletree (Kelly Vo))

EXHIBIT C
SPECIFIC RESTRICTIONS AND REQUIREMENTS
(INCLUDING RDCS REQUIREMENTS)

The following restriction and requirements apply to the Development proposed in the RDCS application date September 1st, 2016 or RDCS application #2016-0008 and shall apply to that portion of the Property included in the said phases of the development on the Property. The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are IN ADDITION to any mitigation requirements pursuant to CEQA, impact fees, in-lieu fees or other requirements pursuant to federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

*Contribution estimates may require augmentation for the completion of improvements. Impact fees are subject to the provisions of Section 2.03 (b) of this Agreement.

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
	Public Schools			
B.1	Developer Fees	Commit to payment of district adopted developer fees as provided by the Leroy F. Green School Facilities Act of 1988.	Prior to the issuance of building permit	\$4,950 per unit
B.4	Off-site pedestrian safety improvements	Provide off-site pedestrian safety improvements or traffic safety improvements to an elementary school located within 3/4 miles of the project site or to a middle school or high school up to \$4,950 per unit. Project commits to provide safe walking improvements as designated by MHUSD and the City of Morgan Hill Public Works Department.	Prior to the issuance of building permit	\$4,950 per unit

EXHIBIT C
-1-

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
	Open Space			
B.4.b	TDC for projects (<25 units)	The project commits to double TDC's	Prior to building permit final	Double TDC fee per unit, applicable rate applies at time of payment.
	Orderly and Contiguous Development			
B.2	Fills in existing utility lines	Property owner or designee agrees to fill in 1 water line, 1 sewer line, 1 stormdrain, and 1 fire. The required utility easements shall be obtained prior to approval of the Final/Parcel Map and public improvement plans.	Prior to Site Review Approval	N/A
	Public Facilities			
B.2.b	Drainage concept consistent with City's storm drain system	Project drainage concept will be consistent with City's Storm drain system (e.g., the City Storm Drainage Master Plan, local area storm drain system)	Prior to Improvement Plan approval	N/A
B.2.f	Excess public improvements	Applicant will provide public improvements at \$4,400/unit.	Prior to Improvement Plan approval	\$4,400 per unit
B.2.g	Contribution to RDCS Capital Improvements fund	Applicant will contribute \$1,100 per unit to the RDCS Capital Improvement Program Fund	Prior to Improvement Plan approval	\$1,100 per unit
	Parks and Paths			

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1	Park in-lieu fee (<50 units)	The project shall pay an in-lieu fee consistent with the requirements contained in Chapter 17.28 of the Municipal Code.	Prior to Parcel Map Approval	See Chapter 17.28 for fee calculation
B.2	On-site recreational amenities			
B.3	Bicycle/equestrian/pedestrian paths	Project shall provide at least 0.15 miles of Class II bike lanes. Prior to installation, the Project shall coordinate with City of Morgan Hill to determine the location for the Class II bike lane improvements to be installed	Prior to issuance of Offsite Improvements	N/A
B.7	Additional park fees (in-lieu fee) for projects (<50 units)	In addition to standard park fees, project shall pay the lesser of either twelve times the in-lieu park fees or \$4,400 per unit.	Prior to Parcel Map Approval	Twelve times the in-lieu park fees or \$4,400 per unit. Whichever is less.
	Housing Needs			
B.1	15% Granny units or R-2 projects 10%-25% single family units	Applicant commits to 2 secondary dwelling units for 2 points.	Prior to Site Review Approval	N/A
B.2.a	Standard Housing Fee	Applicant agrees to pay the standard housing fee	Prior to Building Permit final	\$12,000
B.2.b	Double Housing Fee	Applicant agrees to pay double the standard housing fee.	Prior to Building Permit final	\$24,000
	Quality of Construction Standards			

EXHIBIT C

-3-

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.a	OSB/Plywood wrap	The project will include the installation of OSB/Plywood wrap.	Prior to Building Permit issuance	N/A
B.1.b	Foundations	The project will utilize alternate materials in the concrete mix such as fly ash, slag, silica fume or rice hull to achieve a 20% reeducation of cement.	Prior to Building Permit issuance	N/A
B.1.c	Wallboard	The project will include the installation of light weight wallboard for all walls excluding code requirement for fire walls.	Prior to Building Permit issuance	N/A
B.1.d	Electrical raceway	The project will include installation of one dedicated ¾ inch electrical raceway for a future circuit to accommodate two 220 Volt electric car charging stations inside the garage.	Prior to Building Permit issuance	N/A
B.1.f	90% high efficiency fan forced heating	The project will include the installation of 90% high efficiency fan forced heating	Prior to Building Permit issuance	N/A
B.1.g	Zoned heating and air conditioning	The project will include the installation of zoned heating and air conditioning for all one and two-story homes. For multi-family projects with multi-story units, air returns are installed on two floors to improve temperature distribution.	Prior to Building Permit issuance	N/A
B.1.h	Multiple efficiency improvements	The project will include: 1) the installation of listed sound attenuated materials in walls that adjoin a	Prior to Building Permit issuance	N/A

EXHIBIT C

6.b

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		bathroom and/or bedroom walls, 2) installation of high efficiency energy star water heater with energy factor of 0.70, 3) the installation of ultra-high efficiency or dual flush toilet, and 4) installation of rain sensor monitor on irrigation system.		
	Safety and Security			
B.1.a	Fire proof safe	Project will install a fireproof safe in each unit.	Prior to Building Permit issuance	N/A
B.1.b	First aid kit	Project will provide a first aid kit with poison control document in the kitchen of each unit.	Prior to Building Permit issuance	N/A
B.1.d	Outdoor lighting	Applicant commits to providing lighting on all buildings that meet Police Department specifications, California Electrical Code and MHMC. Applicant will install motion detector light on each unit.	Prior to Building Permit issuance	N/A
B.1.f	Illuminated address numbers	Applicant commits to installing lighted address numbers on each building and illuminated unit numbers on each dwelling unit. Applicant commits to installing painted reflective curb numbers where possible.	Prior to Building Permit issuance	N/A
B.2	Crime Prevention through Environmental Design (CPTED)	Applicant commits to utilizing the design principles of CPTED of natural surveillance, territorial	Prior to Building Permit issuance	N/A

EXHIBIT C

-5-

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		reinforcement for each dwelling unit.		
B.3	Lockable hardware	Applicant commits to installing lockable hardware on all side yard and patio gates.	Prior to Building Permit issuance	N/A
B.4	Central Monitoring	Project will install an intrusion, fire alarm, and heat detector system, monitored by a central station. Project will provide a one year monitoring contract with the purchase of each unit.	Prior to Building Permit issuance	N/A
	Livable Communities			
B.6	Architectural variation	Applicant will provide porches, two different roof lines, architectural profiles and massing and consistent architectural relief and detailing per stated requirements: a. Uses porches, balconies, for any area viewed from the public right-of-way or multi-unit courtyards interior to the project on at least 25% of units to promote a neighborhood feel. b. Uses at least two different roof lines and two different pitches throughout the project, i.e. gable, hippled, dormers, Mansard, etc. c. Uses architecture and profiles and massing that are compatible and works with the existing surrounding	Prior to Site Review Approval	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		neighborhoods. Applicable only where a project adjoins an existing neighborhood on at least one side or twenty-five percent of the project's frontage. d. Provides a consistent level of architectural relief and detailing on all four building elevations. Where two-story rear and/or side-yard building elevations occur, architectural relief shall include some third dimensional design element such as bay windows, balconies, covered porches, decorative trellis, etc. In addition, each standard trim and base color must represent no more than 15% (project size permitting) of the project.		
B.7	Maximizes privacy	Windows on sides will alternate. Noise producing elements [i.e. air conditioners] are located away from the property lines.	Prior to Site Review Approval	N/A

RESOLUTION NO. 21-06

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING A HISTORIC RELOCATION PERMIT TO ALLOW THE EXISTING HISTORICAL HOUSE LOCATED ON LOT NO. 4 OF THE APPLETREE SUBDIVISION TO BE RELOCATED TO THE NORTHWEST CORNER OF LOT NO. 4 AND CONVERTED TO A DETACHED ACCESSORY DWELLING UNIT. THE PROPERTY IS LOCATED ON THE SOUTHWEST CORNER OF OLD MONTEREY ROAD AND MUSTARD AVENUE AT 18755 OLD MONTEREY ROAD (APN 764-24-061)

WHEREAS, on January 26, 2021, 18755 Old Monterey, LLC submitted an application for a Historic Relocation Permit to allow the existing historical house located on Lot No. 4 of the Appletree subdivision to be relocated to the northwest corner of Lot No. 4 and converted to a detached accessory dwelling unit; and

WHEREAS, such request was considered by the Planning Commission at their regular meeting of June 8, 2021; and

WHEREAS, the Development Services Director has determined that the Appletree (Kelly Vo) project proposed is categorically exempt from CEQA pursuant to Section 15332 (In-fill Development); and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

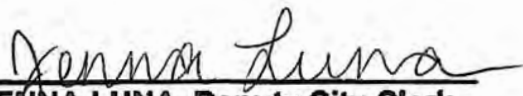
SECTION 1. The approved project shall be conducted in a manner consistent with the Conditions of Approval attached hereto as Exhibit A and consistent with the Secretary of Interior's Standards for Rehabilitating Historic Buildings.

PASSED AND ADOPTED THIS 8th DAY OF JUNE, 2021, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

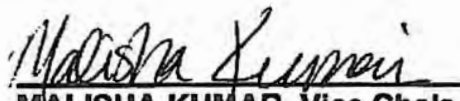
AYES:	COMMISSIONERS:	KUMAR, MUELLER, TANDA, GONZALEZ-ESCOTO, DOWNEY, MUNOZ-MORRIS
NOES:	COMMISSIONERS:	NONE
ABSTAIN:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	HABIB

City of Morgan Hill
Resolution No. 21-06
Page 2 of 8

ATTEST:


JENNA LUNA, Deputy City Clerk

APPROVED:


MALISHA KUMAR, Vice Chair

AFFIDAVIT

We, 18755 Old Monterey, LLC, applicants, hereby agree to accept and abide by the terms and conditions specified in this resolution.

By: 

Date: July 12, 2021

EXHIBIT "A"

CONDITONS OF APPROVAL

APPLICATION NO: CUL2021-0001: OLD MONTEREY – APPLETREE (KELLY VO)

THE FOLLOWING APPROVAL REQUIREMENTS AND ANY SPECIAL CONDITIONS SHALL BE APPLIED THROUGH THE DEVELOPMENT APPROVAL PROCESS.

Legend

MHMC= Morgan Hill Municipal Code
 MHARH= Morgan Hill Architectural Review Handbook
 CMH= City of Morgan Hill
 CFC= California Fire Code

I. PROJECT DESCRIPTION

The project includes a Historic Relocation Permit to allow the existing historical house located on Lot No. 4 of the Appletree subdivision to be relocated to the northwest corner of Lot No. 4 and converted to a detached accessory dwelling unit.

The project shall comply with all requirements of related project approvals granted by the City, including all of the following:

- A. AAE2021-0002
- B. EA2021-0002
- C. SR2019-0001
- D. DA2018-0001
- E. SD2018-0002
- F. RDCS2016-0008

II. PROJECT CONDITIONS OF APPROVAL

This Historic Relocation Permit approval is limited to the plan set date stamped June 8, 2021, on file (File Number CUL2021-0001) with the Development Services Department. The approved building plans and landscape plans must be in substantial conformance with the Historic Relocation Permit plans as determined by the Development Services Director. These documents show the location and dimensions of all vehicle and pedestrian circulation ways (ingress/egress), common areas, and other easement areas.

It shall be the responsibility of the Owner to ensure that any changes or modifications to the Project or any Unit are in compliance with the original City Conditions of Approval of the Project, which are hereby incorporated herein as set forth in full.

PLANNING DIVISION

DEFENSE AND INDEMNITY

- A. As part of, and in connection, with this application to the City of Morgan Hill, Applicant agrees to defend, indemnify, and hold harmless the City of Morgan Hill, its officers, agents, employees, officials and representatives (Indemnitees) from and against any and all claims, actions, or proceedings arising from any suit for damages or for equitable or injunctive relief which is filed against City to attack, set aside, void or annul its approval of this application or any related decision, or the adoption of any environmental documents which relates to said approval. The City shall promptly notify the Applicant of any such claim, action or proceeding and the City shall cooperate fully in the defense thereof. In the event that Applicant is required to defend Indemnitees in connection with the proceeding, Indemnitees shall retain the right to approve (a) the counsel to so defend Indemnitees; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld. This indemnification shall include, but is not limited to, (a) all pre-tender litigation costs incurred on behalf of the City, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals; (b) reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted; and (c) all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision. City may, in its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of its obligations under this condition. The undersigned hereby represents that they are the Applicant or are fully empowered by the Applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by Applicant to be bound by such conditions.

TIME LIMITS

- A. **Term:** The Historical Relocation Permit approval granted pursuant to this Resolution shall remain in effect for two years to June 8, 2023. Failure to obtain building permits within this term shall result in termination of approval unless an extension of time is granted with a showing of just cause prior to expiration date. (MHMC 18.108.040)

SITE DEVELOPMENT

- A. **Site Design:** The site shall be developed in accordance with Approval Certificate Number 19-017 for the existing Design Permit, except as modified herein.
- B. **Final Site Development Plans:** Final site development plans shall be reviewed for conformance with CUL2021-0001 and approved by the Development Services Department prior to issuance of a building permit. All such plans shall include:

- i. Detail depicting all concrete curbs as full formed.
- ii. All mechanical equipment, including electrical and gas meters, post indicator valve, backflow prevention devices, etc., shall be architecturally screened from view or located interior to the building. All ground mounted utility appurtenances such as transformers shall not be visible from any public right-of-way and shall be adequately screened through the use or combination of concrete or masonry walls, berming, and landscaping. **(MHARH p.20, 45, 79)** For additional screening, backflow preventers shall be painted dark green, except the fire connection which shall be painted yellow.
- iii. All existing on-site overhead utilities shall be placed underground in an approved conduit from the service connection at the street or at the property line to the service connection at the building.

SECRETARY OF INTERIOR'S STANDARDS FOR REHABILITATING HISTORIC BUILDINGS AND PRESERVATION BRIEFS

- A. **Architectural Plans:** The architectural plan for the rehabilitation and any addition or alteration shall be prepared by a historic architect, recognized by the State of California (CRIS) and with experience rehabilitating wood buildings of this age. The Development Services Director shall verify the preparation of the plans by a qualified historic architect at building permit submittal. The applicant shall install a picket fence or additional landscaping along the frontage of the property to compliment the historic nature of the property, if found acceptable by the historical architect.
- B. **Rehabilitation:** Prior to the start of the rehabilitation, the General Contractor shall receive training from the historic architect on the sensitive nature of the materials and their preservation and care during rehabilitation. Prior to starting work, all workers assigned to this building shall receive training regarding the care of historic materials during any work and the preservation of historic materials going forward, including the following:
 1. Cleaning Historic Wood: When protecting the historic wood and to prepare for new paint, the contractor shall use low pressure water and bristle brushes to clean the building. The contractor shall follow Preservation Briefs #9 and #10 of the U.S. Department of Interior National Park Service Cultural Resources – Heritage Preservation Services Preservation Briefs.
 - a. Preservation Brief 9: The Repair of Historic Wooden Windows
 - b. Preservation Brief 10: Exterior Paint Problems on Historic Woodwork

2. **Repairing Historic Wood Elements:** The historic features and design of the building shall be preserved. Wood that is too deteriorated to be retained shall be replaced with wood milled to match the historic wood elements and approved by the historic architect prior to installation.
 3. **Repairing Historic Wood Window Sash:** The historic windows shall be preserved. The wood sash shall be cleaned and repaired. If required, new cords and missing hardware shall be installed for windows to be operable.
 4. **Roof Repair:** Roof repairs shall follow the historic shape and form of the roof structure. Roof covering shall be wood or composition shingles, with replacement material approved by the historic architect prior to installation.
- C. **Site and Setting:** The historic building shall be relocated to provide greater visibility along Mustard Avenue, with the structure relocated to at a minimum the setback line along Mustard Avenue. The Development Services Director shall verify the setback of the structure prior to issuance of a building permit.
- D. **Relocation:** An experienced house mover shall be retained to brace and prepare the building prior to lifting it and relocating to a new foundation.
1. Prior to issuance of a building permit for relocation of the historical building, the project applicant shall provide the Development Services Department a detailed assessment pertaining to the potential presence of lead-based paint-containing materials (LCM) and asbestos-containing materials (ACM) in the existing structure planned for relocation. If structure does not contain LCM or ACM, further action is not required; however, if LCM or ACM is found, condition 2 (below) shall be implemented.
 2. Prior to issuance of a building permit by the City for the relocation of the existing structure, all loose and peeling paint shall be removed and disposed of by a licensed and certified lead paint removal contractor, in accordance with federal, State, and local regulations. The contractor shall be informed that all paint on the buildings shall be considered as containing lead. The contractor shall take appropriate precautions to protect his/her workers, the surrounding community, and to dispose of construction waste containing lead paint in accordance with federal, State, and local regulations subject to approval by the City Building Official. Proof of removal shall be submitted to the City of Morgan Hill Development Services Department prior to issuance of a permit. If the building contains ACMs, a permit from the Bay Area Air Quality Management District (BAAQMD) may be required prior to potential disturbance. Any activities likely to disturb lead-based paint/coatings or lead containing materials (LCMs) or asbestos-containing materials (ACMs) shall be carried out by a contractor trained and qualified to conduct LCM and ACM construction work. Contractors must follow local, state, and federal regulations, including the Bay Area Air

Quality Management District (BAAQMD) and CALOSHA Guidelines, for handling of asbestos or lead paint.

- E. **Loss of Setting:** An educational plaque shall be installed in the sidewalk or at the front of the building to provide context for the historic building and build public awareness of the local history. The plaque shall describe the history of the building and Madrone Station. The Development Services Director shall approve the design, text, and location of the plaque prior to installation.
- F. **Historic Alteration Permit:** A major Historic Alteration Permit may be required if the restoration exceeds the scope of recommendations provided by the addendum report or if the alterations is estimated to be valued at \$10,000 or greater (MHMC 18.60.070.B.2.b).

GENERAL

- A. **Mitigation Fee Act:** Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of this development project for the purpose of defraying all or a portion of the cost of public facilities related to this development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, fees collected as part of development agreements, or as a part of the application for the City's Residential Development Control System. The Mitigation Fee Act Fees applying to this project are listed in the schedule of fees to be provided at building permit stage. Notice is also hereby given that the Developer has an opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval or conditional approval of this development project and that the 90-day protest period has begun.
- B. **SUBMIT SIGNED COPIES OF RESOLUTION:** Submit two (2) signed copies of the PLANNING COMMISSION RESOLUTION to the Planning Division prior to issuance of a building permit.

ENGINEERING DIVISION

- A. Submit the latest set of Improvement plans and map to the Engineering and Utilities Department (attention Mario Jimenez)
- B. Provide updated Storm Water calculations addressing additional runoff and sizing of onsite storm.

BUILDING DIVISION

- A. A separate Building Permit is required for the relocation.

City of Morgan Hill
Resolution No. 21-06
Page 8 of 8

- B. The findings within the Addendum to the Historical and Architectural Evaluation shall be included in those plans and construction documentations.

RESOLUTION NO. 21-07

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF AMENDMENTS TO DEVELOPMENT AGREEMENT DA2018-0001: OLD MONTEREY-KELLY VO FOR A 6-UNIT RESIDENTIAL DEVELOPMENT ON A 1.13-ACRE SITE LOCATED ON THE SOUTHWEST CORNER OF OLD MONTEREY ROAD AND MUSTARD AVENUE (APN 764-24-061)

WHEREAS, the current owner of the property, 18755 Old Monterey, LLC, applied for an amendment to the Development Agreement (application AAE2021-0002: Old Monterey-Appletree (Kelly Vo));

WHEREAS, the City Council of the City of Morgan Hill enacted Ordinance No. 1594 as amended, establishing a procedure for processing Development Agreements in Chapter 18.116 for projects receiving allotments through the Residential Development Control System, Chapter 18.156, of Title 18 of the Morgan Hill Municipal Code; and

WHEREAS, Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property; and

WHEREAS, the City Council adopted Ordinance No. 2303 on September 18, 2019, approving a Development Agreement for the Old Monterey-Kelly Vo project; and

WHEREAS, an amendment to Development Agreement DA2018-0001 was considered by the Planning Commission at its regular meeting of June 8, 2021; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

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

- SECTION 1.** The Planning Commission recommends that the City Council approve the amendment to the Development Agreement (DA2018-0001) application AAE2021-0002: Old Monterey-Appletree (Kelly Vo) based on the determination and supporting reasoning described below as required by Morgan Hill Municipal Code Section 18.116.040.C.
- SECTION 2.** The Development Agreement is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan.

The project would provide 6 single-family residential units. No General Plan policy conflicts have been identified with the proposed project.

SECTION 3. The Development Agreement is compatible with the uses authorized in the zoning district in which the real property is located.

The proposed residential use is permitted within the RDM-7,000 zoning district and would be compatible with the surrounding residential and commercial uses.

SECTION 4. The Development Agreement duly considers city mitigation programs in effect at the time of execution of the agreement.

The project would be subject to the payment of applicable impact fees and community benefit commitments as part of the RDCS process.

SECTION 5. The Development Agreement will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood.

The project's construction would adhere to state, local and federal laws. The project is residential housing and would be compatible with the surrounding neighborhood.

SECTION 6. The Development Agreement complies with the provisions of the California Environmental Quality Act and city's procedures adopted pursuant thereto.

The project is Categorical Exempt from CEQA and meets the criteria for a Class 15332 - In-Fill Development exemption. A CEQA Categorical Exemption Memorandum has been prepared and adopted for the project.

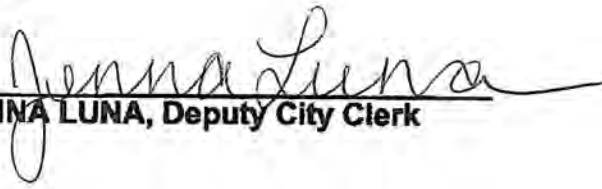
SECTION 7. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values.

The project will provide high quality architecture consistent with the City's Architectural Design Guidelines. The project will also be consistent with state and local laws.

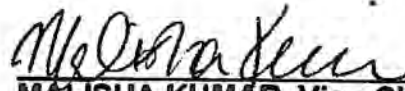
PASSED AND ADOPTED THIS 8TH DAY OF JUNE 2021, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:	KUMAR, MUELLER, TANDA, GONZALEZ-ESCOTO, DOWNEY, MUNOZ-MORRIS
NOES:	COMMISSIONERS:	NONE
ABSTAIN:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	HABIB

ATTEST:


JENNA LUNA, Deputy City Clerk

APPROVED:


MALISHA KUMAR, Vice Chair

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

(INSERT DEVELOPMENT AGREEMENT)

Attachment: PC Resolution No. 21-07 (Amended DA) (3144 : AAE2021-0002: Old Monterey - Appletree (Kelly Vo))



CITY COUNCIL STAFF REPORT

MEETING DATE: August 4, 2021

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

APPROVE CONDITIONAL FUNDING FOR ROYAL OAKS VILLAGE AFFORDABLE HOUSING PROJECT BY URBAN HOUSING COMMUNITIES/IKAICA OHANA (UHC) FROM DESIGNATED HOUSING FUNDS

RECOMMENDATION(S)

Approve conditional funding for the UHC Housing Project, "Royal Oaks Village," in the amount of \$400,000, contingent on UHC's ability to obtain the remaining gap funds, subject to an agreement negotiated by the City Attorney.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Enhancing Equity
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 invest affordable housing funds to support the creation of farm worker housing?
2. Should the City Council partner with UHC/Ikaika Ohana on the Royal Oaks Village project to help the City meet its Regional Housing Needs Allocation (RHNA) requirements?

REPORT NARRATIVE:

Urban Housing Communities (UHC) in partnership with Ikaika Ohana, a nonprofit General Partner, is proposing to build a 100 percent affordable housing development project comprised of 73 multi-family units, of which 30 units are dedicated to farmworker housing, 18 units are dedicated to Permanent Supportive Housing units for people experiencing homelessness, 24 units are dedicated to lower income workforce housing units, and 1 unit is dedicated as a managers unit. The proposed project, known as the Royal Oaks Village, is located at the Royal Oaks Mushroom Farm along Watsonville Road, south of Monterey Road.

This project requires a City contribution in the amount of \$400,000 in order to deliver the low income workforce housing project. For years, the housing team has been working to deliver a farmworker housing project in the City. Staff recommends City Council approve a \$400,000 contribution to the project contingent on the developer's ability to obtain a commitment for the remaining gap funding, approximately \$6,725,000, which would need to occur within approximately 120 days of an executed agreement.

County of Santa Clara Board of Supervisors (BOS) will consider a funding recommendation for this project on August 31, 2021. It is important that the project demonstrate local support prior to going before the County BOS. The City's Planning Commission will review this project on August 24, 2021. Assuming the project receives necessary approvals by August 25, 2021, the project will be able to qualify for State tax credits. An application for Federal and State tax credits is expected to be submitted on September 13, 2021. The allocation of bonds and tax credits will occur in December 2021, with anticipated financial closing and initiation of construction in April 2022. Completion of construction will occur in August 2023.

Urban Housing Communities (UHC) has been developing affordable housing in Morgan Hill since 2006, and continues to be a strong and responsive partner, sensitive to the limited resources of a smaller city like Morgan Hill. Ikaika Ohana is the nonprofit General Partner. In 2006, UHC developed the Horizons at Morgan Hill, a 49-unit Senior Affordable Housing apartment complex that continues to provide a safe and supportive environment for seniors. In 2011, UHC purchased and rehabbed "The Crossings at Morgan Hill", a property in decline. The property is now an updated, 24-unit affordable apartment complex for families with many recreational amenities. UHC's most recent project, "Crossings on Monterey", is a 39 affordable unit, energy efficient, Permanent Supportive Housing Development completed in 2019 serving families that experienced homelessness.

UHC has been a consistent, reliable and collaborative partner. UHC is committed to building cost effective, service enriched development within the City, partnering with the City to implement its Housing Element policies. The Royal Oaks Village will serve farmworker families and people experiencing homelessness, furthering the City's ability to implement the following policies:

- Policy HE-1h: Encourage the creation of rental housing, including housing for extremely low-income households, through available funds, banked land and community partnerships.
- Policy HE-1r: When available, continue to make housing funds available to finance 100 percent affordable projects, including housing for extremely low-income households.

Farmworker Housing

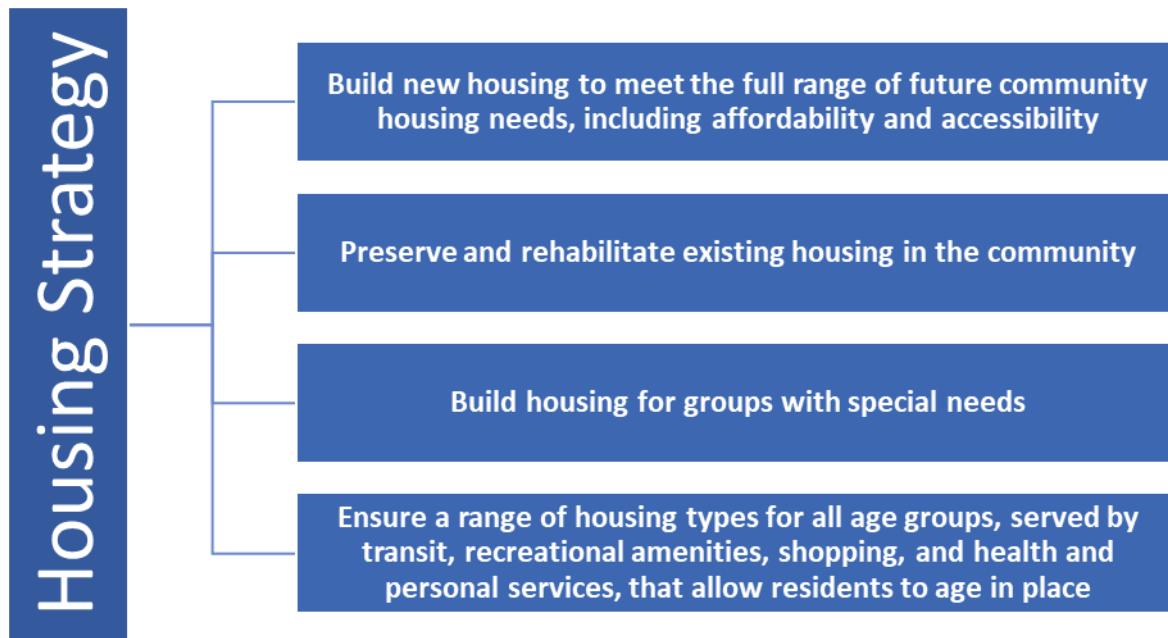
In 2014, the County of Santa Clara Planning Department conducted a small sampling of focus groups and interviews with South County farmworkers, service providers, the farm bureau, and school liaisons to begin to understand the housing needs that were

occurring among the farmworker population. The interviews conducted, showed that the farmworkers were living in substandard and overcrowded conditions, demonstrating the need for affordable and livable housing.

The County adopted a farmworker housing goal in the County's Housing Element in 2014. In April 2017, the County Planning Department issued an Informal Competitive Procurement for "Preparing a Farmworker Housing Needs Assessment." Due to the cost of the assessment, the County decided to partner with the City of Morgan Hill to begin to complete their research. In January 2018, there was a joint "roundtable" discussion with South County stakeholders at the City of Morgan Hill, which led the County to conduct a broader "Farmworker Housing Survey" specific to South County. The results indicated an unmet demand for approximately 700 permanent family residences and seasonal housing for approximately 1,400 farmworkers. Last fall the BOS passed the permit streamlining ordinance for agricultural employee housing which focuses on smaller-scale permanent housing for farm families, including up to six family units per parcel, which can consist of pre-fabricated homes and/or co-housing. Efforts are needed at both the City and County level to improve housing conditions for farmworkers in both the incorporated and unincorporated areas.

Housing Element

The Housing Element of the City's General Plan is Morgan Hill's comprehensive statement of its housing needs and goals. It identifies actions to meet the housing needs of the full spectrum of city residents at all income levels. The purpose of the Housing Element is to establish specific goals, policies, and objectives relative to the provision of housing for all income levels and an action plan. Additionally, the Housing Element is the guiding policy document used to evaluate housing recommendations, to ensure that policies and funding recommendations are in alignment. Furthermore, in order to have a Housing Element certified by the State Housing and Community Development Department (HCD), the City must demonstrate how the community will meet the existing and projected housing needs. The main performance measure by which a City is evaluated by HCD is its annual progress on the Regional Housing Needs Allocation goals (RHNA is the number of new homes that a city is "assigned" in each income category to produce). The City is in its fifth RHNA Housing Element cycle. The current housing element cycle is for the Planning Period: January 31, 2015 – January 31, 2023. The Housing Element strategies are listed below.



The proposed project, the “Royal Oaks Village,” is in alignment with the strategies set forth in the Housing Element and is unique in that it will serve two underserved populations, people experiencing homelessness and our agriculture workforce. It will also aid the City in achieving Very Low Income (VLI) RHNA units as 48 units will be dedicated to very low and extremely low-income families. These units will likely come to fruition in the next Housing Element Cycle after January 31, 2023.

Project Details

The Royal Oaks Village is a 100 percent affordable housing development project. The project site is approximately 7.64 acres, and the project will be developed on approximately 3.7 net acres of the site. This project would be comprised of 73 multi-family units, of which 30 units are dedicated to farmworker housing, 18 units are dedicated to Permanent Supportive Housing units for people experiencing homelessness, 24 units are dedicated to lower income workforce housing units, and 1 unit is dedicated as a manager unit. This community will serve families and individuals with incomes ranging from a maximum of \$34,800 for a household of one to a maximum of \$117,750 for a household of four, up to 80% of the Area Median Income.

The new development will include an approximately 3,611 square foot community room, lounge, management office, computer room, central laundry room, and a patio overlooking the play area with a tot lot. The site is located along Watsonville Road, south of Monterey Road, previously known as the Royal Oaks Mushroom Farm. The land use of the site is Mixed Use Flex (7-24 du/ac) and the zoning is Mixed Use Flex (MU-F) with Planned Development (PD) combining district.

This project is expected to be heard at the August 24th Planning Commission meeting.

Project Funding

If the Council chooses to pledge \$400,000 towards the project, the project could then attempt to secure a commitment for additional development funds immediately. As the City of Morgan Hill continues to be a part of the regional affordable housing solution, and with the passage of County's Measure A in November of 2016, this project potentially could leverage a significant amount from other county or regional affordable housing resources. Measure A was created in 2016 as \$950 million general obligation bonds set to deliver 4,800 units of affordable housing within Santa Clara County over approximately 10 years. As of March 31, 2021, a total of 2,744 affordable housing units were committed for development. If UHC is successful at obtaining Measure A funds, this will be the second Measure A project in the City of Morgan Hill with the first being "The Crossings" on Monterey by UHC, a 39-unit project that received \$5.8 million in Measure A funds and was occupied in January 2020.

Pending City Council direction, the next steps are to seek the following additional funding commitments within 120 days:

Tax-Exempt Bonds:	\$15,249,000
Federal Tax Credits:	\$19,678,164
State Tax Credits:	\$5,545,902
County of Santa Clara:	\$6,725,000
Def. Dev. Fee:	\$1,886,267

If successful, the housing team will return to Council to provide an update and a request for consideration of a housing development loan agreement.

COMMUNITY ENGAGEMENT: Inform

This staff report serves to inform the community of the proposed pledge to fund a portion of the UHC/Ikaika Ohana affordable housing project.

ALTERNATIVE ACTIONS:

The alternative is not to pledge \$400,000 and review project funding request once the remaining gap funds have been secured.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Government Code Section 65915(d)(2)(D) requires the City to grant four incentives, or concessions, for projects that are 100 percent affordable for lower income households (excluding managers unit), except that up to 20 percent of the total units in the development may be for moderate-income households. The City Council approved four concessions for the project on January 20, 2021.

FISCAL AND RESOURCE IMPACT:

Funding for this conditional program expense of \$400,000 must be reappropriated from FY 20/21 to FY 21/22 – Housing Mitigation Fund (236)

It should be noted that once this commitment is pledged, the housing fund is exhausted until new housing in-lieu fees are received by the City. Local development support is based on in-lieu fees paid by developers. In the era of Redevelopment, funds were

amassed at a much quicker pace than the City sees in the post redevelopment era. If this local support commitment is made, it may be two to three years before the housing fund contains a significant amount available for additional contributions. The housing program has limited funds of approximately \$500,000 annually to pledge towards affordable housing programs and/or projects.

CEQA (California Environmental Quality Act):

The project is for funding purposes only and therefore, the project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3), as there is no possibility that funding the project will cause a significant effect on the environment. Further CEQA review will be performed on the site as part of the entitlement application process.

LINKS/ATTACHMENTS:

1. Development Project Page (weblink)



Morgan Hill City Council Meeting – August 4, 2021

PARK AND RECREATION PROPERTY ACQUISITION

Agenda Item: 3



Two Properties



Existing Ball Field Site



- 2015 City Purchases Ball Field Property
- 2016 the Ball Field Property was part of the failed annexation request
- 2019 City Council Directs Staff to look for alternative sites for ball field center

New Parks and Recreation Site



- 19.6 acres adjacent to 8 acres of existing City owned land
- Good access along arterial roadways
- Site has been discussed with regional entities
- Site would allow existing Ball Field Property to remain in use for ag preservation

Acquisition



- Transfer Existing Ball Field Site to the Agricultural Preservation and Open Space Fund from the Park Impact Fund
\$5.38M
- New Property purchase cost
\$3M
- Property has been appraised to ensure fair market value

Property Features



Questions?



Morgan Hill City Council Meeting – August 4, 2021

PARK AND RECREATION PROPERTY ACQUISITION

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- Property has been appraised to ensure fair market value

Property Features



Questions?

From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Donald Larkin](#); [Chris Ghione](#)
Subject: FW: [EXTERNAL] Athletic field relocation
Date: Wednesday, August 4, 2021 7:26:05 AM
Attachments: [Pages from Draft EIRS JM V3-03 PEPD Alternative 1 Book 1 A Composite Plan Profile and Cross Sections.pdf](#)

From: Chris Ghione <Chris.Ghione@morganhill.ca.gov>
Sent: Tuesday, August 3, 2021 6:19 PM
To: [REDACTED]
Cc: Donald Larkin <Donald.Larkin@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: FW: [EXTERNAL] Athletic field relocation

Hello Mr. Tangney,
Don Larkin asked that I reply to your email. There is no intent to use this transaction in any sort of way to impact any current or future High Speed Rail alignment. The HSR Authority has released 4 proposed alignments that are being reviewed environmentally. None of these alignments go through this site. The reasons for the purchase of the site are clearly outlined in the staff report.

To help ensure you of this I am including a copy of the HSR alignment on the west side of town. HSR alternative routes 1 and 3 for the San Jose to Merced Section are the easternmost alignments, however for both alignments the route is still on the West side of Highway 101 when near this property as demonstrated in the attached plans provided to the City and to the public in general by the HSR.

Let me know if you would like to discuss and thank you for reaching out.

Thank you,

Chris

Chris Ghione
Public Services Director
[Engage With Us!](#)

City of Morgan Hill
Community Services, Engineering and Utilities
17575 Peak Avenue, Morgan Hill, California, USA 95037

P: 408.782.9154 | **C:** 408.427.6196
chris.ghione@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

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Please supplement.

From: [REDACTED]
Sent: Tuesday, August 3, 2021 11:53 AM
To: Donald Larkin <Donald.Larkin@morganhill.ca.gov>
Subject: [EXTERNAL] Athletic field relocation

Dear Mr. Larkin,

I'm writing today to voice my opposition to the proposed athletic field relocation. This could turn into a significant law suit against the city if this is being done as a way to redirect the HSR route to the east side of 101

Thanks,
Mike Tangney

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From: [Chris Ghione](#)
To: [Joe Baranowski](#)
Cc: [Christina Turner](#); [Donald Larkin](#); [Michelle Bigelow](#)
Subject: RE: [EXTERNAL] Fwd: Aug 4 2021 Consent Calendar Item #3 : Approve Park and Recreation Land Purchase and Transfer of Existing Parks and Recreation Property to the Agriculture and Open Space Fund
Date: Wednesday, August 4, 2021 1:33:52 PM

Hi Joe,

Thanks for all the questions. I am responding to each below.

First email Question 1 - The intent of the property was to build a ball field site with 5-6 baseball/softball fields for the community. Through past analysis it was believed that the ball field center would be much more of local site than the Outdoor Sports Center, which is split between local and regional use. The "natural fit" was the original thought when the purchase occurred, however, at that time it was believed the property could be annexed. When the effort to annex the property occurred, significant opposition arose against the annexation. This includes opposition from the County, LAFCO, Open Space Authority and others. These factors assisted the Council in making the decision to direct staff to look for an alternative site and for the ball field site to be preserved as agriculture.

First Email Question 2 - The long term impacts cannot be determined now because we don't have a project for the site developed yet. Monterey Road connected with Butterfield Blvd does provide for significant arterial streets to serve the site. From a traffic perspective this will be analyzed through the CEQA environmental review process, based on the plan for the site when developed. The City could determine the intensity of this site in conjunction with this analysis. Pedestrian connectivity to the area can also be further analyzed, but there is connectivity already there between Butterfield Blvd, Watsonville Road and Monterey Road. Obviously frontage improvements will be necessary. This has been reviewed in conjunction with the park planning done on the adjacent site that was part of the State Park grant applied for by the City. Development at either site will need to include off site improvements and costs associated with the site.

First Email Question 3 - Development of the site in the County has been explored, however, based partly on a desire to work with our regional partners an alternate direction was taken. The Council could choose to not purchase the new property and direct staff to move forward on the original site, however, there is significant opposition from regional entities and within the community for development on the site. The agricultural preservation of the site is a multi-step process. You are correct in noting that a permanent easement is not yet on the site, but the only way to move that direction is to transfer the site out of the Park Impact Fund.

Second Email Question 1 - The City has an existing property of 8 acres next to the Butterfield bridge and access was designed for this property on Butterfield for the park located on the 8 acres. Use of this access with the additional property would need to be evaluated for the full site, but as you have suggested the primary access would be off Monterey.

Second Email Question 2 - Ball field use is typically after school hours and on weekends. We would anticipate the largest use on weekends consistent with what we see at the Outdoor Sports Center. The site would need to be fully planned and other park elements could be of interest to the

community as well. A design process will need to occur.

Second Email Question 3 - Since the City has used the funds to buy the land there is no timetable on the use of the funds. Under AB1600 the City must declare annually any funds collected but not spent within 5 years. The City can hold the funds longer than 5 years for a specific project or purpose, but must note that purpose annually. Moving forward with the purchase would continue to serve the original purpose consistent with the Parks Master Plan. It may be possible to hold these funds for a future park site, however, our recommendation is to move forward on the alternate site. If the City were to declare the Ball Field site to be used for Ag Preservation without repaying the Park Impact Fund that would not be legal.

Ultimately, finding a site like this for park and recreation space adjacent to or within the City available at a fair market price is extremely difficult and opportunistic in nature.

Thank you again for your comments and thoughts. Hope this provides additional clarity.

Chris

Chris Ghione
Public Services Director
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City of Morgan Hill
Community Services, Engineering and Utilities
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From: Joe Baranowski <joe.b@mh-rgc.org>
Sent: Wednesday, August 4, 2021 12:12 PM
To: Chris Ghione <Chris.Ghione@morganhill.ca.gov>
Cc: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: [EXTERNAL] Fwd: Aug 4 2021 Consent Calendar Item #3 : Approve Park and Recreation Land Purchase and Transfer of Existing Parks and Recreation Property to the Agriculture and Open Space Fund

Hi Chris,

You may have already seen the email I sent yesterday below. I just looked and saw that

you prepared the staff report. I should have notice that yesterday and cc'd you yesterday given that you will most likely be fielding questions tonight. Given the 3-minutes rule and not knowing whether there will be time for answering questions, I thought I'd reach out to you with a few specific questions that I didn't ask in my email yesterday after spending some considerable time doing a site visit this morning and also after an e-mail exchange with Erik Wagle whose main point was that based on his information "the City continues to have a very strong desire to invest in a ballfield complex".

1) Does the City envision ingress / egress possibilities OTHER than Monterey Road? Given the railroad tracks, the Butterfield 'bridge' and limited runway before the bridge it seems like Monterey Rd might be the only available way in and out.

2) Assuming 'Ballfields' is still a goal is there an idea of what a typical day and time of day schedule would be for the fields and a typical number of vehicles during times when the fields are in use?

3) The staff report notes that "finding an alternate site is critical as the funding used to purchase the Ball Field Property was purchased with Park Impact Funds". I am aware that Impact Fees collected under AB1600 have rules that govern time by which funds must be expended but it isn't at all clear what those timelines are in general or more specifically for this case. What is the timing with respect to use of the Park Impact Funds associated with this item?

Thanks,

Joe Baranowski

===== Forwarded message =====

From: Joe Baranowski <joe.b@mh-rgc.org>

To: "Christina.Turner" <christina.turner@morganhill.ca.gov>

Cc: "Rene.Spring" <rene.spring@morganhill.ca.gov>, "Rich.Constantine"

<rich.constantine@morganhill.ca.gov>, "yvonne.martinezbeltran"

<yvonne.martinezbeltran@morganhill.ca.gov>, "Gino Borgioli"

<gino.borgioli@morganhill.ca.gov>, "john.mckay" <john.mckay@morganhill.ca.gov>,

"mhr gc" <mhr gc@mh-rgc.org>

Date: Tue, 03 Aug 2021 09:29:27 -0700

Subject: Aug 4 2021 Consent Calendar Item #3 : Approve Park and Recreation Land Purchase and Transfer of Existing Parks and Recreation Property to the Agriculture and Open Space Fund

===== Forwarded message =====

Hi Christina and City Council,

I am writing to notify you that I will be requesting Consent Calendar Item #3 be moved to allow questions and I respectfully ask the Council to consider not supporting the requested action without further discussion.

1) What was/is the intended use of the former 'Ball Fields' property ?

Looking at the Site Map gives one a sense that the proposed location change, while relatively insignificant in distance is stark (at least 'visually') in terms of "strategy". The 'Ball Fields' location naturally fit along the Outdoor Sports Complex and Aquatics Center outdoor recreation 'corridor'. Those facilities are not only being used 'directly' by residents but also by the City to attract out-of-town groups and activities which ***support revenue generating activities including supporting the Hotels along Condit Avenue.***

While the proposed location of the new 'Ball Fields' is only about 1 mile, the look and feel might as well be ten times that in my opinion.

2) What is the likely Traffic Impact and need for pedestrian and visitor infrastructure and how would that impact increase cost or delay development of the property to where it could be used for whatever it's intended purpose(s) are?

The current location has direct access to 101 from Tennant Ave. Again, the short distance separating the new proposed location seems likely to be deceiving in terms of long-term Traffic Impact and required funds for street improvements - perhaps depending significantly on the intended uses. What about the required pedestrian and visitor infrastructure (parking, sidewalks, seating,) what would be required depending on intended uses?

3) Would this action actually support the Council's request ?

Unfortunately I have not and do not anticipate having time to review the February 2019 City Council direction which the staff report references and I apologize in advance if the proper context would be found there. However, I interpret the staff report as saying that whether the City could develop the current 'Ball Fields' despite some County and Open Space Authority concern was not fully explored in lieu of finding "an alternate more suitable recreation site that could allow the existing site to continue to be used for agriculture".

However, with the report noting that "Future action by the City Council and other entities will be needed to permanently preserve the former Ball Field Property for agriculture through an" it seems to me that this proposal fails to be either "more suitable" or ensure that the current site will be kept for agricultural uses.

Regards,

Joe Baranowski

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City Council Meeting August 4, 2021 Agenda Item No. 6

AAE2021-0002: Old Monterey – Appletree (Kelly Vo)



August 4, 2021

Old Monterey – Appletree (Kelly Vo)

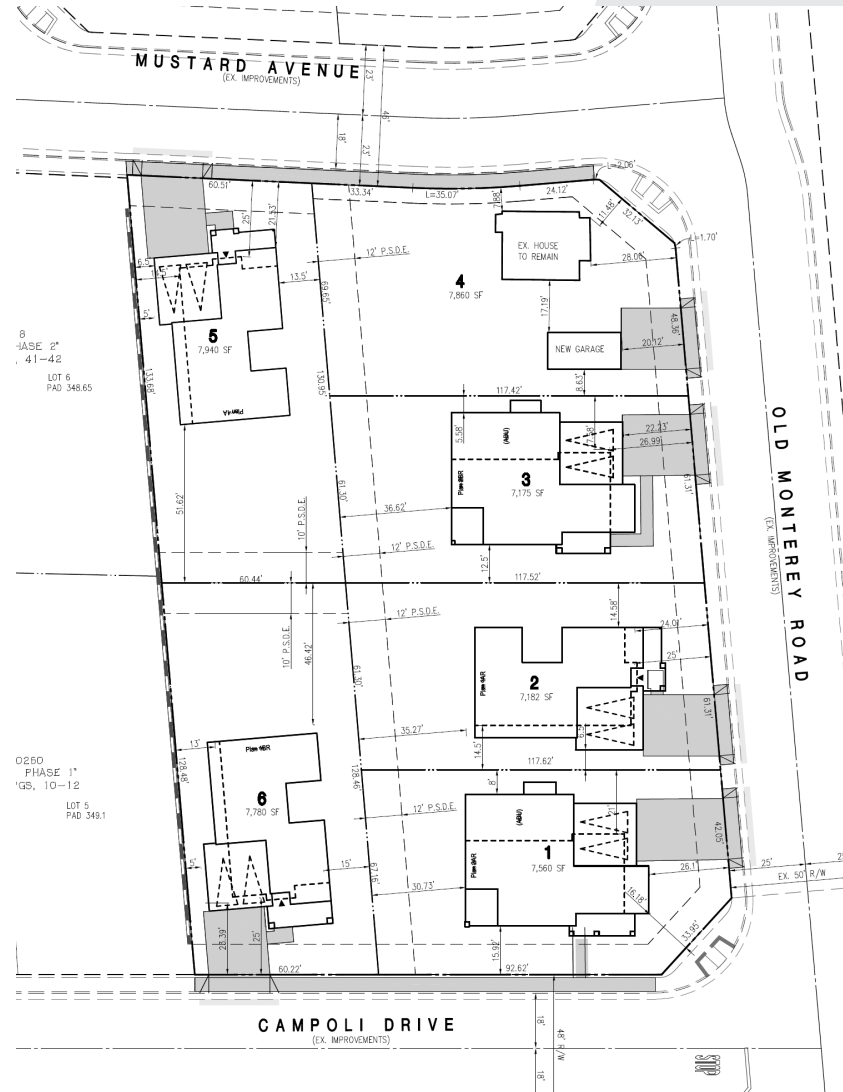
Project Location



Old Monterey – Appletree (Kelly Vo)

Project (As Currently Approved)

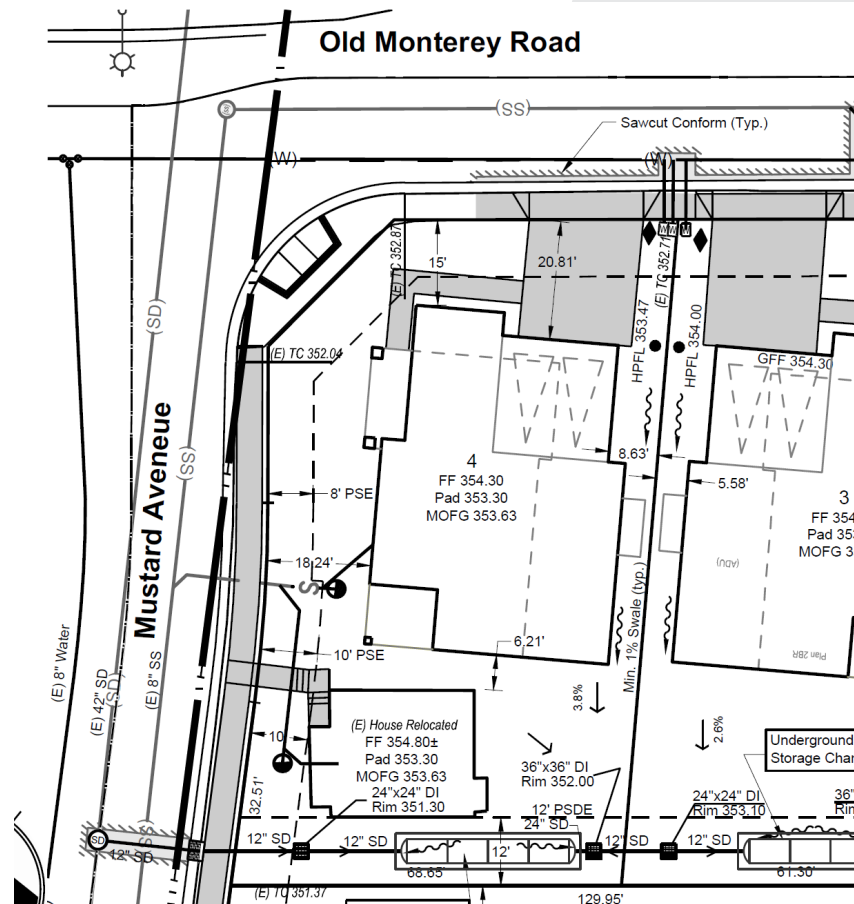
- 6-lot subdivision on 1.13ac lot
- 5 new SFDs
- 2 attached ADUs
- Existing historic SFD to remain



Old Monterey – Appletree (Kelly Vo)

Applicant's Request

- Amendment to “Appletree” Development Agreement to add one additional unit
- Existing historical house will be retained as an ADU on Lot No. 4



Old Monterey – Appletree (Kelly Vo)



Planning Commission Action

- Reviewed on June 8, 2021
- Approved Historical Relocation Permit (Res. No. 21-06)
- Recommended approval of DA Amendment to add one new single-family unit to project

Findings – Development Agreement

- A. Is consistent with the goals, objectives, policies, general land uses, and programs specified in the general plan and any applicable specific plan.
- B. Is compatible with the uses authorized in the zoning district in which the real property is located.
- C. Duly considers city mitigation programs in effect at the time of execution of the agreement.

Findings – Development Agreement

- D. Will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood.
- E. Complies with the provisions of the California Environmental Quality Act and city's procedures adopted pursuant thereto.
- F. Will not adversely affect the orderly development of property or the preservation of property values.

Old Monterey – Appletree (Kelly Vo)



Recommendations

- Open/close public hearing;
- Waive first and second reading of Development Agreement Ordinance; and
- Introduce Development Agreement Ordinance

Questions?





City Council Meeting August 4, 2021 Agenda Item No. 6

AAE2021-0002: Old Monterey – Appletree (Kelly Vo)



August 4, 2021

Old Monterey – Appletree (Kelly Vo)

Project Location



CITY OF MORGAN HILL

[illegible]

CITY OF MORGAN HILL

3

Old Monterey – Appletree (Kelly Vo)



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Old Monterey – Appletree (Kelly Vo)



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- Introduce Development Agreement Ordinance

Questions?



RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

**AMENDMENT TO
DEVELOPMENT AGREEMENT**

THIS AMENDMENT TO DEVELOPMENT AGREEMENT ("**Amendment**") is entered into as of the 18th day of August 2021, by and among 18755 OLD MONTEREY, LLC ("**Developer**") and CITY OF MORGAN HILL, a municipal corporation of the State of California ("**City**").

RECITALS

A. Appletree Investment, LLC, Developer's predecessor in interest, entered into a Development Agreement (DA) with City on September 18, 2019, adopted by the City Council as Ordinance No. 2303, to facilitate the development of that certain real property owned by Developer within the City of Morgan Hill, State of California, which is legally described in Exhibit A to the Development Agreement ("**Property**"). The DA was recorded on September 26, 2019, as document number 24290883. The DA was assigned to Developer on July 7, 2021. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement.

B. Developer has applied for a Historical Relocation Permit to allow for the existing building to be moved and a new residential be additionally located on Parcel 4.

C. Developer and City desire to enter into this Amendment to revise the project description to include an additional residential unit.

AGREEMENT

NOW, THEREFORE, Developer and City hereby agree as follows:

1. Amendment to Development Agreement.

A. Section 1.02(a)(10) is revised to read as follows:

"**Project**" means the development containing 6 units in a residential subdivision project, as more particularly described in the RDCS Application RDCS2016-0008, Historical Relocation Permit CUL2021-0001, Design Permit SR2019-0001, and Subdivision Application SD2018-0002 as described in Exhibit B. Any reference in this Agreement to the "Project" shall mean and

include the "Property".

B. Exhibit B "Description of Project" is amended to read as follows:

RDCS APPLICATION NO. RDCS2016-0008: OLD MONTEREY-KELLY VO
FOR A RESIDENTIAL DEVELOPMENT PROJECT THAT INCLUDES SIX (6)
SINGLE FAMILY RESIDENCES.

2. Building Design. The new single-family detached home on Lot 4 must have a similar and complementary architectural design to the other five single-family homes within the Appletree Subdivision.

3. RDCS Commitments. The design of the new single-family detached home on Lot 4 must meet the Residential Development Control System (RDCS) commitments established in the Appletree Subdivision Development Agreement.

4. Building Code Requirements. The construction of a new dwelling unit on this lot will require that building to have its own construction plans and documentations. The construction plans and documentation for this building are required to comply with the 2019 California Building Standard Codes and the current Morgan Hill Municipal Code. The Master Plan for the other five building fall under the 2016 California Building Code since their Permit Application was submitted prior to the adoption of the 2019 California Building Standards codes and the current Morgan Hill Municipal Code prohibiting natural gas in newly constructed building ordinance.

5. Development Agreement in Full Force and Effect. Except as specifically provided herein with respect to the assignment, all the terms, covenants, conditions and provisions of the Development Agreement shall remain in full force and effect.

6. Recording. City shall cause this Amendment to be recorded in the Official Records of Santa Clara County.

7. Severability. Except as otherwise provided herein, if any provision(s) of this Amendment is (are) held invalid, the remainder of this Amendment shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the Parties.

8. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the Parties to this Amendment had executed the same counterpart.

9. Effective Date/Amendments. The Effective Date of this Amendment shall be the date upon which this Amendment is approved by the City of Morgan City Council. This Amendment shall not be amended except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

[Signature Page Follows]

IN WITNESS WHEREOF, Developer and City have entered into this Agreement as of the date first above written.

"CITY"

CITY OF MORGAN HILL

Christina J. Turner
City Manager

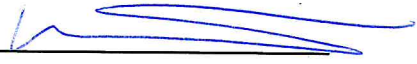
Approved as to form:

Donald A. Larkin
City Attorney

Date: _____

"DEVELOPER"

18775 Old Monterey, LLC

By 

Name REYAD KATWAN

Its MANAGER

Date: 8-2-2021

(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY, MUST BE
ACKNOWLEDGED BEFORE A NOTARY)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

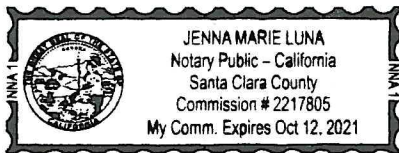
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Santa Clara)
On August 2, 2021 before me, Jenna Marie Luna, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Reyad Katwan
Name(s) of Signer(s)

who 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.



Signature Jenna Marie Luna
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Amendment to Development Agreement
Document Date: September 18, 2019 Number of Pages: 3
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____



ROYAL OAK VILLAGE AFFORDABLE HOUSING PROJECT URBAN HOUSING COMMUNITIES/IKAIKA OHANA (UHC)



August 4, 2021

POLICY CONSIDERATIONS



1. Should the City Council invest affordable housing funds to support the creation of farm worker housing?
2. Should the City Council partner with UHC/Ikaika Ohana on the Royal Oak Village project to help the City meet its Regional Housing Needs Allocation (RHNA) requirements?

Royal Oak Village



- A 100% Affordable housing development comprised of 73 multi-family units:
 - 30 Farmworker units
 - 24 Permanent Supportive Housing
 - 18 Low-income Workforce units
 - 1 Manager unit
- The Project is located at the Royal Oaks Mushroom Farm along Watsonville Road, south of Monterey Road

Residential Unit
over Clubhouse/
Leasing

Carport Typical:
Full Cantilevered Offset
Tapered Carports
Solar Panel Roof, Sloped as
determined by Orientation

Project
Main Entry

Dog Park/
Open Space

3 Story Apartment
Building Typical

Trash Enclosure
Typical

E.V.A. Only



Architecture • Planning
888.456.5849
ktgy.com

A6702 Morgan Hill, L.P.
2000 E. Fourth Street, Suite 205
Santa Ana, CA 92705

ROYAL OAK VILLAGE
MORGAN HILL, CA # 2020-0148

SECOND SUBMITTAL
January 4, 2021

PERSPECTIVE
AERIAL VIEW ALONG WATSONVILLE RD

A6.3

Royal Oak Village



- The project will be developed on 3.7 of 7.64 acres
- This community will serve families and individuals with incomes ranging from a maximum of \$34,800 for a household of one to a maximum of \$117,750 for a household of four, up to 80% of the Area Median Income

Royal Oak Village



- Includes: 3,611 square foot community room, lounge, management office, computer room, central laundry room, and a patio overlooking the play area with a tot lot
- The land use of the site is Mixed Use Flex (7-24 du/ac) and the zoning is Mixed Use Flex (MU-F) with a Planned Development (PD) combining district
- This project is expected to be heard at the August 24th Planning Commission meeting

Urban Housing Communities (UHC)/Ikaika Ohana



- In 2006 UHC developed the Horizons at Morgan Hill, a 49-unit Senior Affordable Housing apartment community
- In 2011 UHC purchased and rehabbed the Crossings at Morgan Hill, a 24-unit affordable apartment complex for families
- In 2019 UHC developed the Crossings on Monterey, a 39-unit affordable Permanent Supportive Housing Development

Housing Element



- The Housing Element of the City's General Plan is Morgan Hill's comprehensive statement of its housing needs and goals and is used to evaluate housing recommendations
- The main performance measure by which a City is evaluated is its annual progress on the Regional Housing Needs Allocation goals

Unit Mix and Regional Housing Needs Allocation goals (RHNA)



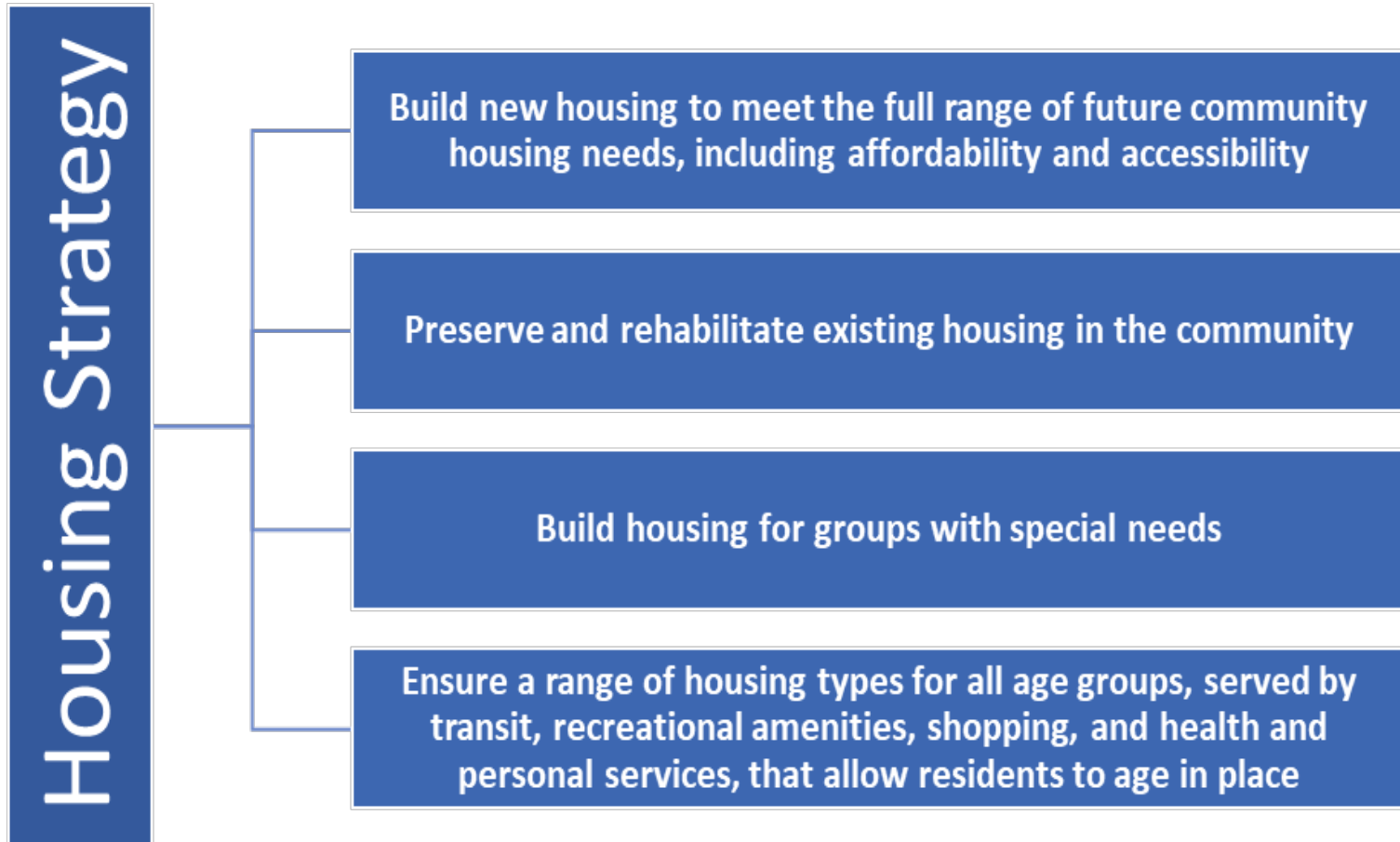
- This project will aid the City in achieving 54 Very Low Income (VLI) RHNA units, and 19 Low Income units
- These units will likely come to fruition in the next Housing Element Cycle after January 31, 2023

Implementation of the Housing Element Policies



- Policy HE-1h: Encourage the creation of rental housing, including housing for extremely low-income households, through available funds, banked land and community partnerships
- Policy HE-1r: When available, continue to make housing funds available to finance 100 percent affordable projects, including housing for extremely low-income households

Housing Strategy



The Need for Farmworker Housing



- In January 2018, the County conducted a Farmworker Housing Survey, the results indicated an unmet demand for 700 permanent family residences, and seasonal housing needs for 1,400 farmworkers
- Efforts are needed at both the City and County level to improve housing conditions for farmworkers in both the incorporated and unincorporated areas
- Farmworkers often live in substandard and overcrowded conditions, demonstrating the need for affordable and livable housing

RECOMMENDATION



- The recommendation is to approve conditional funding for The Royal Oak Village in the amount of \$400,000, reappropriated from FY 20/21 to FY 21/22 Housing Mitigation Fund (236)
- Pending City Council direction, UHC will seek the following additional funding commitments within 120 days:

Tax-Exempt Bonds: \$15,683,000

Federal Tax Credits: \$19,371,387

State Tax Credits: \$5,459,443

County of Santa Clara: \$6,725,000

Def. Dev. Fee: \$1,845,443

California Housing and Community Development (HCD) income limits



**HCD Income Table
(Effective April 26, 2021)**

Household size	1	2	3	4	5	6	7	8
Extremely Low 0-30%	\$34,800	\$39,800	\$44,750	\$49,700	\$53,700	\$57,700	\$61,650	\$65,650
Very Low 30-50%	\$58,000	\$66,300	\$74,600	\$82,850	\$89,500	\$96,150	\$102,750	\$109,400
Lower 50-80%	\$82,450	\$94,200	\$106,000	\$117,750	\$127,200	\$136,600	\$146,050	\$155,450
Median	\$105,900	\$121,050	\$136,150	\$151,300	\$163,400	\$175,500	\$187,600	\$199,700
Moderate 80-120%	\$127,100	\$145,250	\$163,400	\$181,550	\$196,050	\$210,600	\$225,100	\$239,650



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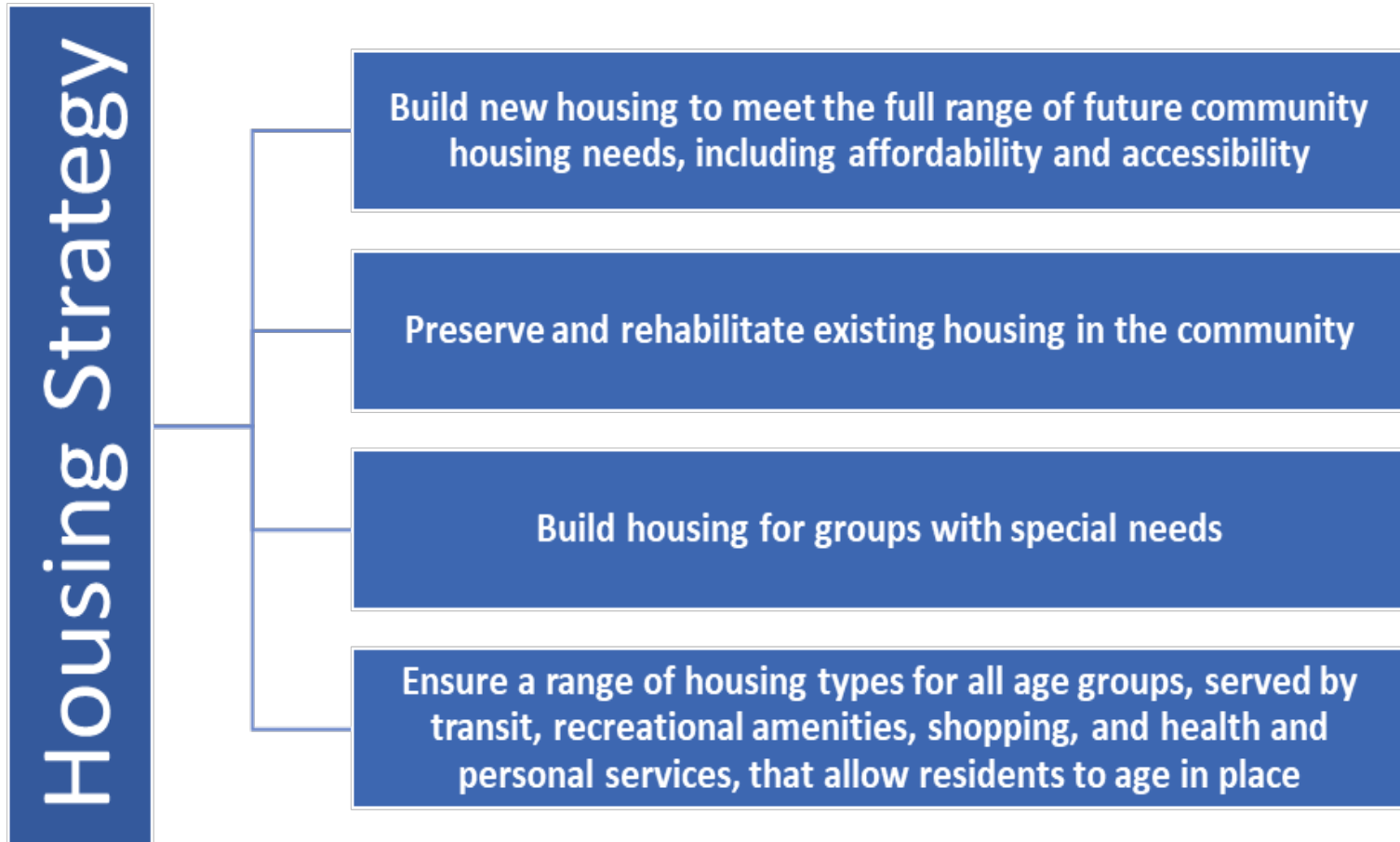
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Moderate 80-120%	\$127,100	\$145,250	\$163,400	\$181,550	\$196,050	\$210,600	\$225,100	\$239,650

Supplement Item #7 Q & A

1. It is stated that the project requires a City contribution in the amount of \$400,000 in order to deliver the low income workforce housing project. Why is it required?

The project desires a contribution to deliver the *farmworker* and low to mod workforce units, otherwise it can be expected that most of the units would likely be delivered as permanent supportive housing (PSH) units for our unhoused neighbors and overseen by the County. Staff has worked to develop a balanced mixed income community.

2. Are these state tax credits a financial credit to the city, if so, how much?

Tax Credits are not directly provided to a city. The federal government issues tax credits to states, state housing agencies then awards the credits to developers to subsidize the acquisition and construction through a competitive process. Developers sell the credits to private investors to obtain funding to construct. Investors can claim the LIHTC over a 10-year period.

3. If the City Council does not approve the \$400K of additional funds will it most likely fail?

If City Council doesn't approve the \$400K, it is likely the developer will seek to obtain additional Measure A funds from the County to bring the development to fruition; however, the target population would change to an increased number of unhoused PSH units and less workforce units. Measure A is competitive and typically the County BOS prefers that a project has local support before expending County resources. The greatest impact would be a decrease or elimination of the farmworker and low to mod workforce units.

4. The report states that this project potentially could leverage a significant amount from other county or regional affordable housing resources. What other sources and how much potentially?

The probability of securing Measure A funding is increased if the developer can demonstrate local support, and the ability to leverage funding. Local funding is a requirement for the Tax Credit application. The current plan includes attempting to secure the following sources:

Tax-Exempt Bonds: \$15,683,000

Federal Tax Credits: \$19,371,387

State Tax Credits: \$5,459,443

County of Santa Clara: \$6,725,000

Def. Dev. Fee: \$1,845,443

City of Morgan Hill: \$400,000

5. Other than this notification, was there any other notification from the city to the community?

A project development web page has been created on the City website to inform the public of the project application. A site plan and project elevations have been provided for public review. The City will continue to inform the public through the public engagement process as the Design Review permit is processed. Also, 600 foot noticing occurred, e-notification, 411, and a notice of intent was published on July 16 in the Morgan Hill Times. Noticing: <http://www.morgan-hill.ca.gov/2178/Watsonville-Hordness-Royal-Oaks-Village>

6. What is the negative affect of not approving the funds? Alternately, can the city commit less funds? How did the city derive at the \$400K figure?

The negative affect of not approving the funds would be a change to the target population, less farmworker and workforce units and an increase in PSH units. The project *may* move forward without city funding, assuming that the developer is able to obtain a greater amount of Measure A funding from the County. Note, UHC has already requested \$7.5 million from the County's Measure A funds. City funding helps to leverage Measure A and further demonstrates local support. The \$400K supports the City's ability to shape the target population and service levels. As is, staff has worked diligently with the developer and the County to come to a consensus that yields a significant amount of farmworker units and low to moderate workforce units without the ability to pay for the construction of even one unit. Overall hard cost and soft costs including, land, financing, A&E, developer fee, impact and permit fees, the total to build one unit is \$677,868. The funding recommendation of \$400K is the least amount that staff has recommended for an affordable housing project. The previous recommendation was \$750,000 for the UHC Crossings project, and the one before that was \$4.5 million for EAH's scattered site project.

7. What does it mean to reappropriate from the calendar yrs expressed?

Staff budgeted these funds for this project in the Fiscal Year 20/21 budget, but did not spend it in Fiscal Year 20/21, so we are recommending we push it out to Fiscal Year 21/22.

8. Where do the City funds come from, ie: General Fund? It sounds like it will take many years to ramp up the available funds if \$400K is used? That being said, would it make more sense to reduce the \$400K to \$200K for example, thereby leaving opportunity for future projects?

The \$400K will come from the Housing Mitigation Fund 236 (also known as the Housing In-Lieu Fee Fund). Housing Program expenses do not come from the General Fund. Staff is not confident that we can influence and negotiate our priorities with less than what has been presented.



Regular Meeting Agenda

City Council

Rich Constantine - Mayor
John McKay - Mayor Pro Tem
Gino Borgioli - Council Member
Yvonne Martinez Beltran - Council Member
Rene Spring - Council Member

Wednesday, August 4, 2021 7:00 p.m.

Virtual Meeting

VIRTUAL MEETING GUIDELINES AND PUBLIC COMMENT

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. Physical meetings will not be in the City Council Chamber until further notice.

City Council meetings will be live streamed on Channel 17, on the City's website and on the City's Facebook page. Those members of the community that would like to participate in the meetings remotely may do so by joining the virtual meeting at: <https://bit.ly/MHCityCouncilMeeting> or by calling in to: (669) 900-9128, then enter the webinar id: 873 3200 8380#.

Public comment may be provided in the following ways:

- Join the virtual City Council meeting via the link above, when public comment is opened, raise your virtual hand and be called upon to speak for up to 3 minutes
 - In order to speak, please be sure that your version of Zoom is up to date.
- Join the virtual meeting by calling in to the number above, dial *9 to raise your hand and be called upon to speak for up to 3 minutes
- Send public comments in writing to the City Clerk at ccpubliccomment@morganhill.ca.gov [<mailto:ccpubliccomment@morganhill.ca.gov>](mailto:ccpubliccomment@morganhill.ca.gov)

* Please note that comments made on Facebook are not considered public comment.

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

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2

City Clerk Michelle Bigelow

CITY COUNCIL REPORTS

Mayor Constantine

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PUBLIC COMMENT

Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the City Council is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. ACCEPT MADRONE CHANNEL TRAIL IMPROVEMENTS PHASE I PROJECT

Recommendation:

1. Accept as complete the Madrone Channel Trail Improvements Phase I Project;
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.

2. APPROVE FISCAL YEAR 2021-22 WORK PLANS FOR PARKS AND RECREATION AND LIBRARY, CULTURE AND ARTS COMMISSIONS

Recommendation:

1. Approve the proposed Parks and Recreation Commission FY 2021-22 Work Plan; and
2. Approve the proposed Library, Culture and Arts Commission FY 2021-22 Work Plan.

3. APPROVE PARK AND RECREATION LAND PURCHASE AND TRANSFER OF EXISTING PARKS AND RECREATION PROPERTY TO THE AGRICULTURE AND OPEN SPACE FUND

Recommendation:

1. Authorize the City Manager to enter into a purchase and sale agreement for the purchase of a 19.58-acre site (APN 817-06-001) located on Monterey Road south of Butterfield Boulevard for use for future park and recreation purposes for a total price of \$3 million;
2. Approve the transfer of \$5,383,018 from the Agriculture and Open Space Preservation Fund to the Park Impact Fund to transfer existing City owned property on Tennant Avenue (APNs 817-14-004, 817-14-009 and 817-14-005) from future use for parks and recreation purposes to future use for agriculture and open space preservation purposes; and
3. Adopt resolution appropriating funds for the purchase and transfer of the properties.

4. APPROVE AN EXTENSION OF THE TRAFFIC AND SEWER IMPACT FEES CREDIT PROGRAM

Recommendation:

Adopt resolution amending the Reduction of Traffic and Sewer Impact Fees program resolution (Resolution No. 6080) to extend the Sewer Impact Fees Credit Program until December 31, 2025.

5. APPROVE THE JUNE 23, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

PUBLIC HEARING

6. INTRODUCE ORDINANCE TO APPROVE A DEVELOPMENT AGREEMENT AMENDMENT FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 764-24-061 LOCATED AT 18755 OLD MONTEREY ROAD AT THE SOUTHWEST CORNER OF OLD MONTEREY ROAD AND MUSTARD AVENUE (AAE2021-0002: OLD MONTEREY - APPLETREE (KELLY VO))

Recommendation:

1. Open and close public hearing;
2. Waive first and second reading of Development Agreement Ordinance; and
3. Introduce Development Agreement Ordinance.

Estimated Time: 15 Minutes

OTHER BUSINESS

7. APPROVE CONDITIONAL FUNDING FOR ROYAL OAKS VILLAGE AFFORDABLE HOUSING PROJECT BY URBAN HOUSING COMMUNITIES/IKAIKA OHANA (UHC) FROM DESIGNATED HOUSING FUNDS

Recommendation:

Approve conditional funding for the UHC Housing Project, "Royal Oaks Village," in the amount of \$400,000, contingent on UHC's ability to obtain the remaining gap funds, subject to an agreement negotiated by the City Attorney.

Estimated Time: 20 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

SUSTAINABLE MORGAN HILL



VISION

To sustain a safe, equitable, 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 Equity, Diversity, and Inclusiveness
- Advancing Regional Initiatives
- Advocating for Local Control

2020-2021 Strategic Priorities

- **Fiscal Sustainability**
- Affordable Housing and Homelessness
- Community Outreach, 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.

