



Special - 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, September 1, 2021 5:30 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.

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:30 p.m. for the purpose of conducting a Water Workshop.

5:30 p.m. Water Workshop

7:00 p.m. Regular Meeting

SPECIAL MEETING

5:30 p.m. Water Workshop

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

WORKSHOP

This workshop is intended to provide the City Council and community with background information on the City's water supply system ahead of review of the City's Urban Water Management Plan and Water Supply Contingency Plan.

REGULAR MEETING

7:00 p.m.

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

PRESENTATIONS

Edward Boss Prado Foundation Donation Presentation for Aquatics Center Passes

PROCLAMATIONS

Proclaiming the month of September 2021 as National Emergency Preparedness Month

Proclaiming the month of September 2021 as Childhood Cancer Awareness Month and

Honoring Jacob's Heart Children's Cancer Support Services

CITY COUNCIL REPORTS

Council Member Borgioli

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

September 1, 2021

OTHER REPORTS

PUBLIC COMMENT

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

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. APPROVE ON-CALL WATER AND SEWER REPAIR AGREEMENTS

Recommendation:

1. Approve and authorize the City Manager to execute an agreement with West Valley Construction Company, Inc. in the not to exceed amount of \$150,000 for on-call as needed water and sewer repairs; and
2. Approve and authorize the City Manager to execute an agreement with Pacific Underground Construction, Inc. in the not to exceed amount of \$50,000 for on-call as needed water and sewer repairs.

2. APPROVE ANTENNA GROUND LICENSE AGREEMENT FOR NEW CELL TOWER AT THE OUTDOOR SPORTS CENTER AND RELATED SIDE LETTER AGREEMENT WITH FACILITY OPERATOR

Recommendation:

1. Authorize the City Manager to execute the Cell Tower Hosting Side Letter Agreement with MHOSC; and
2. Authorize the City Manager to execute the Antenna Ground License with New Cingular Wireless PCS for the siting of a new cell tower at the Outdoor Sports Center.

3. ADOPT RESOLUTION DECLARING THE SUMMARY VACATION OF A PORTION OF THE SUTTER BOULEVARD STREET EASEMENT, AND THE ADJACENT LANDSCAPE AND PUBLIC SERVICE EASEMENTS BETWEEN BUTTERFIELD BOULEVARD AND DIGITAL DRIVE

Recommendation:

1. Adopt resolution declaring the Summary Vacation of:
 - a. A portion of Sutter Boulevard street easement between Butterfield Boulevard and Digital Drive; and
 - b. Adjacent 15-foot wide Landscape and Public Service Easements on both sides of Sutter Boulevard between Butterfield Boulevard and Digital Drive;
2. Direct the City Clerk to file a certified copy of the Resolution of Vacation in the Office of the Recorder of Santa Clara County; and
3. Authorize the City Manager to sign Quitclaim Deeds of the vacated portion of Sutter Boulevard on behalf of the City and direct the City Clerk to file in the Office of the Recorder of Santa Clara County.

4. ADOPT RESOLUTION DECLARING THE SUMMARY VACATION OF A PORTION OF MONTEREY ROAD STREET RIGHT-OF-WAY, NORTH OF COCHRANE ROAD, AND RESERVATION OF A PUBLIC SERVICE EASEMENT

Recommendation:

1. Adopt resolution declaring the Summary Vacation of a portion of Monterey Road street right-of-way, north of Cochrane Road, and reservation of a public service easement;
2. Direct the City Clerk to file a certified copy of the Resolution of Vacation in the Office of the Recorder of Santa Clara County; and
3. Authorize the City Manager to sign Quitclaim Deeds of the vacated portion of Monterey Road on behalf of the City and direct the City Clerk to file in the Office of the Recorder of Santa Clara County.

PUBLIC HEARING

5. RECEIVE 2020 URBAN WATER MANAGEMENT PLAN AND 2020 WATER SHORTAGE CONTINGENCY PLAN

Recommendation:

1. Receive 2020 Urban Water Management Plan and 2020 Water Shortage Contingency Plan; and
2. Open and close the public hearing for the 2020 Urban Water Management Plan and 2020 Water Shortage Contingency Plan.

Estimated Time: 20 Minutes

OTHER BUSINESS

6. APPROVE A DISPOSITION AND DEVELOPMENT AGREEMENT AMENDMENT AND AMENDMENT TO THE FISCAL YEAR 2021-22 BUDGET FOR THE DEPOT - LATALA PROJECT

Recommendation:

1. Adopt resolution authorizing the City Manager to execute an amendment to the Disposition and Development Agreement for the Hale Lumber site; and
2. Adopt resolution amending the Fiscal Year 2021-22 Budget appropriating \$755,591 from the Public Facilities Fund (346) and \$138,263 from the Undergrounding Fund (350).

Estimated Time: 45 Minutes

7. APPROVE POLICY CRITERIA FOR ONE-TIME AMERICAN RESCUE PLAN ACT (ARPA) FUNDING FOR COMMUNITY ORGANIZATIONS

Recommendation:

Approve policy criteria for one-time ARPA funding to nonprofit organizations serving the residents and businesses of Morgan Hill.

Estimated Time: 30 Minutes

8. RECEIVE MONTHLY BUDGET UPDATE AND JULY 2021 FINANCIAL AND INVESTMENT REPORTS

Recommendation:

Accept and file report.

Estimated Time: 10 Minutes

9. ADOPT POLICY REGARDING THE APPOINTMENT OF EMERGENCY STANDBY COUNCIL MEMBERS

Recommendation:

Adopt resolution approving the City Council Policies and Procedures CP-21-01 "Appointment of Emergency Standby City Council Members."

Estimated Time: 15 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Authority:	Gov. Code section 54956.8
Property:	APN's - 762-61-3052 (Community and Cultural Center)
Agency negotiator:	Christina Turner, City Manager and Chris Ghione, Public Services Director
Under negotiation:	Price and Terms of Lease

CONFERENCE WITH LABOR NEGOTIATORS

Authority:	Pursuant to Government Code Section 54957.6
City Negotiators:	Christina Turner City Manager; Donald Larkin, City Attorney; Michael Horta, Human Resources Director; Dat Nguyen, Finance Director
Employee Organization:	Morgan Hill Police Officers Association Employees Covered under Management Resolution #21-025 AFSCME Local 101 Morgan Hill Community Service Officers Association

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: September 1, 2021

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

APPROVE ON-CALL WATER AND SEWER REPAIR AGREEMENTS

RECOMMENDATION(S)

1. Approve and authorize the City Manager to execute an agreement with West Valley Construction Company, Inc. in the not to exceed amount of \$150,000 for on-call as needed water and sewer repairs; and
2. Approve and authorize the City Manager to execute an agreement with Pacific Underground Construction, Inc. in the not to exceed amount of \$50,000 for on-call as needed water and sewer repairs.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure

2020-2021 Strategic Priorities

Fiscal Sustainability

GUIDING DOCUMENTS

Water System Master Plan
Wastewater System Master Plan

REPORT NARRATIVE:

It is the intent of the Utilities Division to contract with multiple on-call contractors to provide an additional resource to support City staff when water and sewer repairs may be too large or complex for City staff to perform. Typical work to be performed under this contract includes repair of water service leaks, water main leaks, hydrant repair, valve replacement, water service replacement, meter installation, sewer main repairs, sewer lateral repair, manhole repair or installation, backfill of excavations, compaction, and final paving of streets. The agreements would be for a base term of two (2) years with the possibility of three (3) additional one-year extensions.

A Request for Proposal (RFP) was issued on May 12, 2021, to select one to three contractors for these services. The RFP was advertised in both the Morgan Hill Times and the San Jose Mercury News. Additionally, it was posted to the City's website and Public Purchase website. The City received two proposals for this RFP from West Valley Construction Company and Pacific Underground Construction. Current State of California Department of Industrial Relations (DIR) registrations and contractor's licenses for these two entities were verified before submittals were reviewed. An evaluation team of four City staff members reviewed the submittals based on criteria including experience, qualifications, capability, references, quality of the proposal, safety practices, and fee schedule. Evaluators determined that both contractors were

highly qualified to meet the needs of the City and the scope of work. The fee schedule for Pacific Underground was slightly higher than that of West Valley so staff recommends contracting with both but using West Valley contractors as the first point of contact for on-call services and Pacific Underground as the secondary, if and when the need arises.

COMMUNITY ENGAGEMENT: Not Applicable

Ongoing maintenance of the City's water and wastewater infrastructure is an expected service provided by the City.

ALTERNATIVE ACTIONS:

Staff recommends that Council awards the maintenance contracts to West Valley Construction Company and Pacific Underground Construction; however, Council may consider different alternatives:

1. Award just one contract to the lowest overall proposer, West Valley Construction. This action would limit the flexibility of having multiple contractors available in emergency repair situations and to expedite, when needed, multiple non-emergency repairs.
2. Reject all proposals, this action may delay services for water and wastewater infrastructure repairs and as such may risk the ability to meet water and/or wastewater demands due to system failure.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has previously approved on-call contract services for various maintenance services, including electrical, plumbing, roofing and for general contractors. Most recently on April 15, the Council approved contracts for On-Call General Contractors.

FISCAL AND RESOURCE IMPACT:

Funding for these two-year agreements is available in the Water (650) and Wastewater (640) Divisions' operations budgets. Additionally, funds in various capital improvement project budgets may fund some of this work.

CEQA (California Environmental Quality Act): Categorical Exemption

This project is Categorically Exempt pursuant to Section 15301 of CEQA Guidelines because the work to be performed is repair of existing water and wastewater infrastructure involving no expansion of existing use.

LINKS/ATTACHMENTS:

1. WV Executed-Maintenance Service Agreement
2. PU Executed - City Maintenance Service Agreement

**MAINTENANCE SERVICE AGREEMENT
WEST VALLEY CONSTRUCTION COMPANY, INC.**

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until August 30, 2023 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum of three one-year extensions. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be Water and Sewer Repairs as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$150,000.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed One Hundred Fifty Thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for each subsequent extended one-year term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the immediately preceding prior year of service.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination,

SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this Agreement, in whole or in part, on behalf of CITY.

5.1. **Non-Appropriations.** Notwithstanding anything contained in this Agreement to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for CITY for any reason whatsoever in any fiscal year, for payments due under this Agreement, CITY will immediately notify SERVICE PROVIDER of such occurrence, and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for CITY or are otherwise available for payments.

5.2. **Temporary Suspension of Services.** CITY'S need for services may be suspended due to unforeseeable or unavoidable circumstances beyond its control. Such circumstances include, but are not limited to, earthquake, fire, explosion, flood or other natural catastrophe; governmental legislation, condemnation, acts, orders, or regulation; war or acts of terrorism; strikes or labor difficulties; and quarantine, epidemic, or pandemic. CITY shall provide a 5-days' written notice or less under urgent circumstances to temporarily suspend services at specific CITY facilities. CITY reserves the right to request which CITY facilities are to be serviced or not serviced due to unforeseeable or unavoidable circumstances; and the level of service at each CITY facility. Upon suspension, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid up to the date of the suspension. No further payments will be made for services provided after the date of the suspension. CITY shall provide 5 days' written notice when the circumstances for the suspension of specific facilities' services are removed for SERVICE PROVIDER to commence providing services.

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

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

provide the services of SERVICE PROVIDER under this Agreement, together with the reasonably anticipated quantities thereof, if requested by CITY.

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

8.1. **Insurance Types and Amounts.**

- 8.1.1. **Commercial General Liability (CGL).** SERVICE PROVIDER shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.2. **Automobile Liability.** SERVICE PROVIDER shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if SERVICE PROVIDER does not own automobiles, then SERVICE PROVIDER shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.3. **Workers' Compensation Insurance and Employer's Liability.** SERVICE PROVIDER shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If SERVICE PROVIDER is self-insured, SERVICE PROVIDER shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- 8.1.4. **Pollution (Environmental) Liability.** If the performance of SERVICE PROVIDER's work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, SERVICE PROVIDER shall procure and maintain Pollution Liability covering the SERVICE PROVIDER'S liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous

materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

8.1.5. Professional Liability.

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

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

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

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

8.2.1. General Liability and pollution liability (when pollution liability applies).

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

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

8.2.1.3. Insurance shall be primary non-contributing.

8.2.2. Workers Compensation.

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

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

- 8.4. **Certificates.** SERVICE PROVIDER shall furnish CITY with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, SERVICE PROVIDER shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to SERVICE PROVIDER's agreement with CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. A "material change" is a change that results in non-compliance with any insurance requirements in this section 8. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

10. **Compliance with Law.**

- 10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage

rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

- 10.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
- 10.4. Compliance with Wage and Hour Laws: SERVICE PROVIDER, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

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

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

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

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

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

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

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

Address of SERVICE PROVIDER is as follows:

West Valley Construction Company, Inc.
580 McGlinchy Lane
Campbell, CA 95008

Address of CITY is as follows:

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

15. **Licenses, Permits and Fees.** SERVICE PROVIDER shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.
16. **Service Provider's Proposal.** If applicable, this Agreement shall include SERVICE PROVIDER'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

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17. **Maintenance of Records.**

- 17.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then SERVICE PROVIDER shall retain said records until such action is resolved.
- 17.2. **Access to and Audit of Records.** CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of SERVICE PROVIDER and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of CITY or as part of any audit of CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 17.3. **Ownership of Work Product.** All documents or other information developed or received by SERVICE PROVIDER for work performed under this Agreement shall be the property of CITY. SERVICE PROVIDER shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

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

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

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

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

22. **Defense and Indemnification.**

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

contained in this Agreement by SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

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

22.3. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by SERVICE PROVIDER.

22.4. **Right to Offset.** CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (22) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

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

27. **Binding Agreement.** Notwithstanding the provisions of Section 20 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Bigelow
 Print Name

 Christina J. Turner
 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

West Valley Construction Company, Inc.

 City Attorney

By:

 Donald A. Larkin
 Print Name

Patrick Miller

PATRICK MILLER
ASSISTANT VICE PRESIDENT

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: 2/28/22

By:

BRAD BOSCHWORTH, SECRETARY

Print Name and Title of Signer.

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

Date: 7/28/2021

174963

1000002493

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

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

Expiration Date(s) 8/31/22

Expiration Date(s) 6/30/22

Seal:

U:\Legal Forms\Consultant Agreements\City Maintenance Service Agreement.Docx

EXHIBIT A SCOPE OF SERVICES

This project is to provide water and sewer repairs on an on-call, as-needed, time-and-materials basis for a period of two (2) years with the option for three (3) additional single year extensions. Any tasking shall be initiated solely by the City. Execution of this agreement by the City does not in any way guarantee that any tasking or request for on-call services will be issued to any party. Moreover, execution of this agreement by the City shall not entitle contracted parties to any form of payment or compensation from the City without first having issued tasking or request for services from a contractor.

Typical work to be performed under this contract includes repair of water service leaks, water main leaks, hydrant repair, valve replacement, water service replacement, meter installation, sewer main repairs, sewer lateral repair, manhole repair or installation, backfill of excavations, compaction, and final paving of streets. From time to time the City may request service for a backhoe with operator and/or laborers to assist the City repair crew. The Contractor also may be requested to do patch paving work. City staff and equipment will be made available for assistance with shutdowns and some activities.

The work to be performed under this contract consists of furnishing all tools, equipment, materials, supplies, and manufactured articles to complete the services as needed. It shall also include the furnishing of all transportation and services, including fuel, power, water, and essential communications, and for the performance of all labor, work, or other operations required for the fulfillment of the contract in strict accordance with the Contract Documents and City's Standard Details for Construction Standard Details for Construction -Link currently in effect.

The Contractor may utilize the services of specialty subcontractors on those parts of the work that, under normal contracting practices, are performed by specialty subcontractor. It is understood that at least 50 percent of the work to be performed shall be performed by the successful Contractor. Any subcontractor used must adhere to the same terms and conditions as the successful contractor. The Contractor is representing to City that he/she and any subcontractor has all appropriate licenses, certifications, and registrations to perform the work hereunder. The Contractor shall be fully responsible to the City for the performance of his/her subcontractors, and of persons either directly or indirectly employed by them.

City Responsibilities

City's personnel will identify and assess specific projects or repairs. The City will notify Contractor of general locations requiring construction or repair, and a general description of the field conditions at repair locations, and materials to be provided by the City. The City's Project Manager or designated representative will direct the general process to be followed but shall not generally direct the means or methods to be used by the Contractor. The City will provide base maps or record drawings of facilities when they are requested and available. All work to be completed will be agreed upon prior to the commencement of work with a general scope of services. Drawings will be provided if applicable. The City will issue a written task order and attach the contractor's scope of work for projects that are not an emergency. Notification of residents whose service may be interrupted will be the responsibility of the City.

Contractor's Responsibilities

The Contractor will provide a scope of work for each project that is not an emergency. The scope of work will be the basis for the project and will serve as supplement to the contract documents for that particular project. The scope of work shall include a not to exceed amount for the project. The Contractor shall be responsible for providing the following to complete the services in a timely manner as outlined below:

- Qualified Labor
- Tools
- Equipment, including all necessary Safety Equipment
- Materials and Supplies
- Transportation
- Services (including fuel, power, water, and communications)
- Sheeting and shoring as required
- Traffic control devices and measures

For an emergency repair the Contractor shall make every effort to begin the repair within four (4) hours of notification that a repair is needed. Notification of the repair will be made in the form of a phone call. The City is aware that the Contractor may have other commitments. The Contractor shall notify the City if they do not have the manpower to mobilize a crew to begin the repair within the allotted time. If the Contractor cannot mobilize the City will contact the other Contractor on the list. If none of the Contractors on the short list derived this solicitation can do the work within the time frame, the City reserves the right to seek assistance from another contracting firm.

Contractor is responsible for damage resulting from performing work and clean-up of effected area. The Contractor shall incur these damage costs and not pass these charges to the City.

The Contractor shall be cautioned that the City has Asbestos Cement Pipe (ACP) in some areas of the water distribution system as well as the wastewater collection system. Some of the repairs may be on ACP lines. The Contractor and its employees shall be properly trained for working on these ACP lines. All current OSHA standards shall be followed.

As some of the infrastructure falls outside of City limits, the Contractor will have to obtain encroachment permits, if needed, in the jurisdiction where the work is taking place.

Repair Standards

The Contractor is responsible for meeting all contract conditions and City's Standard Details for Construction (link on page 9), specifications, and drawings. If the City's Inspectors determine that any repair work is substandard, the Contractor shall be advised thereof orally and in writing, and shall redo all such work at the expense of the Contractor. The City's Project Manager and Inspectors will determine a time when the re-work is to be completed and re-inspect the repair to determine if the repair has been performed satisfactorily. The Contractor shall comply with all Federal, State, and Local safety rules and regulations.

Materials and Supplies

At the time of notification, the City will provide the Contractor with a list of City supplied materials. The Contractor is responsible for having a reliable supply chain in place to obtain, in a timely manner, all additional materials and supplies needed for the required repair. All materials and supplies obtained by the Contractor for the work must be new and free from defects. There will be no mark-up or other cost charged to the City for materials and supplies used from the City's

inventory. The City will deliver small materials and fittings such as repair clamps, corp stops, etc. to the project site. Any bulk materials such as aggregate base, temporary asphalt paving, etc. provided by the City shall be picked up by the Contractor at the City's Corporation Yard.

Disposal of Materials

All materials shall be disposed of in a manner that does not adversely affect the environment and is consistent with local, state, and federal laws and regulations.

Response Schedule

Emergency Repair - The Contractor will make every effort to begin emergency repairs within the notification specified herein, or in accordance with a schedule approved by the City. Notification to the Contractor may be in the form of a telephone call, facsimile, or e-mail, depending on the urgency of the repair. The City reserves the rights, in its sole discretion, to require a more rapid response should it deem it to be necessary. A typical emergency repair will have a response time of four (4) hours. If repair cannot be started within this period, the City reserves the right to obtain the services of other Contractors.

Scheduled Repair - If a scheduled repair cannot be started within twenty-four (24) hours of the City's scheduled time of repair, the Contractor shall provide the City accurate estimate of when work can start. The City will work with the Contractor in regards to other commitments the Contractor may have. However, the City reserves the right to seek outside assistance from other Contractors if scheduling cannot be agreed upon and repairs are determined by the City, in its sole discretion, to be as required.

Physical Location of Underground Utilities

The City is responsible for providing all utility maps or record drawings to perform repairs.

Facilities Shown or Indicated – Unless it is otherwise expressly provided in the section below, **Protection of Existing Facilities**, the City shall not be responsible for the accuracy or completeness of information or data shown on the City's water and sewer system base maps or any other utility information, and the Contractor shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Utilities for coordination of the work with the owners of such Underground Utilities during construction, for the safety and protection thereof and repairing any damage thereto resulting from the work, the cost of which will be considered as having been included in the contract price. Existing utility lines that are shown, or the locations of which are made known to the Contractor prior to excavation and that are to be retained, and all utility lines that are constructed during excavation operations shall be protected from damage during excavation and back-filling and if damaged, shall be immediately repaired by the Contractor except as the owner of the utility or other facility may otherwise direct. All repairs due to damage are subject to inspection and approval by an authorized representative of the property owner before being concealed by backfill or other work. The obligations set forth in this paragraph and other paragraphs concerning underground work shall apply to such damage as may occur after back-filling or is not discovered until after completion of the back-filling.

Facilities Not Shown or Indicated - If an Underground Utility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the City's water and sewer system base maps and not otherwise made known to the Contractor prior to excavation, which the Contractor could not reasonably have been expected to be aware of based on the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the repair, the

Contractor shall identify the owner of such Underground Utility and give written notice thereof to the City in accordance with the requirements of the next section, Protection of Existing Facilities. In the event that the Contractor damages any existing utility lines that are not shown or the locations of which are not made known to the Contractor prior to excavation, a written report thereof shall be made immediately to the City. If directed by the City, repairs shall be made by the Contractor.

To the extent required by Government Code section 4215, all costs of locating, repairing damage to, and removing or relocating such utility facilities not shown or indicated, and for the necessary idling of equipment on the project which was actually working on that portion of the work which was interrupted or idled by removal or relocation of such utility facilities not shown or indicated, which costs were not incurred due to the failure of the Contractor to exercise reasonable care, will be paid for as time and materials.

Protection of Existing Facilities

General - The Contractor shall protect all existing utilities and improvements not designated for removal and shall restore damaged or temporarily relocated utilities and improvements to a condition equal to or better than they were prior to such damage or temporary relocation. Restoration shall be to the reasonable satisfaction of the City or to the affected utility or franchisee.

The Contractor shall verify the exact locations and depths of all utilities or improvements shown and the Contractor shall make exploratory excavations of all utilities or improvements that may interfere with the Work. The number of exploratory excavations required shall be that number which is sufficient to determine the alignment and grade of the utility or improvement. The Contractor shall notify and obtain concurrence with City staff of that number of exploratory excavations.

It shall be the Contractor's responsibility to see that all utilities or other improvements are adequately protected from damage due to such operations. The Contractor shall exercise care in all excavations to avoid damage to existing underground facilities. This shall include hand digging in those areas where underground facilities are known to exist until they have been sufficiently located to avoid damage to the facilities. No additional compensation shall be provided the Contractor for compliance with the provisions of this section or for the damage and repair of facilities due to the lack of such care.

Right-of-Way - The Contractor shall not do any work that would affect any oil, gas, sewer, or water pipeline; any telephone, telegraph, communication wire or cable, or electric transmission line; any fence; or any other structure, nor shall the Contractor enter upon the right-of-way involved until notified by the City's representative that the City has secured authority therefore from the appropriate authority. All oil and gasoline pipelines, power, and telephone or other communication cable ducts, gas and water mains, irrigation lines, sewer lines, storm drain lines, poles, and overhead power and communication wires and cables encountered along the line of the Work shall remain continuously in service during all the operations under the Contract, unless other arrangements satisfactory to the City are made with the owner of said pipelines, duct, main, irrigation line, sewer, storm drain, pole, or wire or cable.

In case it shall be necessary to move the property of any public utility or franchise holder, the Contractor shall provide written and just cause for utilities to be moved, and such utility company or franchise holder will, upon request of the Contractor, be notified in writing by the City to move such property within a specified reasonable time. When utility lines that are to be removed are encountered within the area of operations, the Contractor shall notify the City's Engineer a sufficient time in advance for the necessary measures to be taken to prevent interruption of service.

This procedure is intended to prevent the Contractor from arbitrarily deciding to cut through any other utility's or any franchisee's facilities. It allows the City to coordinate such work with those agencies and set the timeline and sequence of such work. After authorization has been obtained, the Contractor shall give said party due notice of its intention to begin work, and shall give said party convenient access and every facility for removing, shoring, supporting, or otherwise protecting such pipeline, transmission line, ditch, fence, or structure, and for replacing same. The Contractor shall provide such special protection as may be necessary to protect all known utilities and other improvements that may be impaired during construction operations and shall take all possible precautions for the protection of unforeseen utility lines or other improvements to provide for uninterrupted service.

Utilities to be Removed/Relocated - Where the proper completion of the repair work requires the temporary or permanent removal and/or relocation of an existing utility or other improvement that is shown, the Contractor shall remove and, without unnecessary delay, temporarily replace or relocate such utility or facility. In all cases of such temporary removal or relocation, restoration to the former location shall be accomplished by the Contractor in a manner that will restore or replace the utility or improvement as nearly as possible to its former location and to as good or better condition than found prior to removal.

Restoration of Pavement:

A. General. All paved areas, including asphalt concrete berms, cut or damaged during construction, shall be replaced with in accordance with the specifications of the public authority that has jurisdiction over the site of the work. The City of Morgan Hill and the County of Santa Clara own public right of ways within the City's service area. All temporary and permanent pavements shall conform to the requirements of the affected pavement owner. All pavements that are subject to partial removal shall be neatly saw cut in straight lines per specifications.

B. Temporary Resurfacing. Wherever required by the public authority with jurisdiction over the site of the work, the Contractor shall place temporary surfacing promptly after back-filling and shall maintain such surfacing for the period of time fixed by said authority before proceeding with the final restoration of improvements.

C. Permanent Resurfacing. In order to obtain a satisfactory junction with adjacent surfaces, the Contractor shall comply with the applicable City or County Specifications, at its expense. The City will pay for initial testing. Any required re-testing and correction costs will be the responsibility of the Contractor.

D. Restoration of Sidewalks or Private Driveways. Wherever sidewalks or private roads have been removed for purposes of construction, the Contractor shall place suitable temporary sidewalks or roadways promptly after back-filling and shall maintain them in satisfactory condition for the period of time fixed by the authorities having jurisdiction over the affected portions before proceeding with the final restoration or, if no such period of times is so fixed, the Contractor shall maintain said temporary sidewalks or roadways until the final restoration thereof has been made. Final restorations shall be in accordance with any applicable City and/or general construction codes.

Notification by the City - For routine repairs, the City shall notify Underground Service Alert (1-800-642-2444) forty-eight (48) hours prior to any excavation in the vicinity of any existing underground facilities, including all water, sewer, storm drain, gas, petroleum products, or other pipelines; all

buried electric power, communications, or television cables; all traffic signal and street lighting facilities; and all roadway and state highway rights-of-way.

Facility Access

Continuous access to the City's facilities shall be provided at all times during the Project. Such access shall be suitable for large vehicles, e.g. chemical delivery and sludge hauling trucks. Access routes shall be provided for each planned project.

Water Quality Protection and Stormwater Quality

The Contractor shall take all necessary steps to protect the storm drain system from discharges of construction-related wastewater, including saw cutting slurry, concrete washout, sediment-contaminated and runoff, sewage overflows, and highly-chlorinated discharges from water line testing. This will require the use of Best Management Practices (BMPs) such as providing sediment controls on downstream storm drain inlets, collecting and removing saw cutting slurry, providing an area for concrete washout, and directing highly-chlorinated discharges to the sanitary sewer or by dechlorinating this water. The Contractor is responsible for damage resulting from performing repair and clean-up of effected area.

Trench Excavation

The maximum length of trench excavation in advance of the pipe laying operation shall be 50 feet, and the maximum amount of trench remaining open without backfill shall be 50 feet. No trench in public areas shall be left open during periods when the Contractor is not at the site of work; trenches in these areas shall either be backfilled and temporarily paved, where applicable, or covered with steel trench plates as specified in the technical specifications.

Underground Facilities

The Contractor shall exercise care in all excavations to avoid damage to existing underground facilities. This shall include potholing and hand digging in those areas where underground facilities are known to exist until they have been sufficiently located to avoid damage to the facilities.

Prior to fabrication of any materials, the Contractor shall verify the locations and elevations of existing underground facilities to ensure proper connection and/or clearance.

The Contractor shall exercise care in maintaining those pipes and facilities to be abandoned and/or removed which are required for the continuing operation of the existing facilities until such time as they can be abandoned. The Contractor shall exercise extreme caution in working in any area adjacent to existing facilities. It is essential that the existing facilities be maintained in service until the new work is ready for full time operation and is placed in service.

No additional compensation shall be provided the Contractor for compliance with the provisions of this section for the damage and repair of such facilities due to the lack of care, and the Contractor shall be responsible for the direct and indirect costs resulting from the damage and repair of such facilities.

Working Hours

For Emergency Repairs working hours may be any day of the week at any time. The crews that respond to the emergency shall comply with applicable labor codes for hours worked.

For Scheduled Repairs normal City staff working hours are from 7:00 a.m. to 3:30 p.m., excluding weekends and City holidays. Unless otherwise approved in writing by the City, repair work shall be allowed only between the hours of 7:00 a.m. and 8:00 p.m. on weekdays and, when approved in writing in advance by the City, 9:00 a.m. to 6:00 p.m. on weekends and holidays. These working hours may be adjusted on a job by job basis depending on nature of the project and specific encroachment permit conditions for the project.

The Contractor shall notify the City at least 48 hours prior to any work outside the normal working hours defined above, on weekends or holidays.

Noise Abatement

All operations at the site of the repairs shall be performed so as to minimize unnecessary noise. Special measures shall be taken to suppress noise during night hours. Noise levels due to Contractor's activities shall not exceed the levels specified by local ordinance.

Internal combustion engines used on the work shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated without said muffler.

Warranty and Scheduled Maintenance

The Contractor hereby agrees to make, at its own expense, all repairs or replacements necessitated by defects in materials or workmanship, in those components provided, installed, replaced and/or modified by the Contractor, and pay for any damage to other works resulting from such defects, which becomes evident within one (1) year after the date of acceptance of installation work, or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Agreement. This warranty shall include all parts and labor and the performance of all manufacturers' recommended maintenance. This in no way shall limit, amend, or reduce any manufacturer's warranty. The Contractor further assumes responsibility for a similar guarantee for all work and materials provided by subcontractors. This warranty shall not apply to existing equipment that was not modified or significantly adjusted so as to change its operation. The Contractor also agrees to indemnify, defend and hold the City harmless from liability of any kind arising from damage due to covered defects. Prior to the final acceptance of installation work, the Contractor shall provide phone numbers for around-the-clock notification of the need for emergency service repairs, a schedule showing specific dates for routine maintenance service calls.

The Contractor shall respond within four (4) hours of City's emergency service call after receipt of notice from the City, and promptly make all repairs arising out of defective materials, workmanship, or equipment. If a service response does not occur within four (4) hours, or diligent efforts are not made to effect repairs, the City will notify the Contractor (by fax or voice mail if no representative is available) of its intent to secure another service provider. Thereafter, the City is authorized to make such repairs, and the Contractor shall be liable for the cost thereof. In case of emergency, where, in the opinion of the City, delay could cause serious loss or damage, repairs may be made without notice being sent to the Contractor, and the expense in connection t The Contractor shall direct all of its equipment suppliers and/or manufacturers to promptly provide to it and to the City any and all information concerning product defects or other problems and shall promptly forward to the City any such information received, whether before, during, or after the warranty period.

Prior to the expiration of the warranty period, the City reserves the right to hold a meeting and require the attendance of the Contractor. The purpose of the meeting is to review warranties, bonds, and maintenance requirements, and determine required repair or replacement of defective items.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES****On-Call Services for Water and Sewer Repairs**

This work is subject to prevailing wage. The hourly wages to be paid laborers, workers, or mechanics shall not be less than the DIR prevailing wage rates for an hour's work in the same trade or occupation in Santa Clara County. Prevailing wage rates are available on line at <http://www.dir.ca.gov/dlsr>.

Description	Unit	Hourly Rate
1. LABOR		
a. Project Manager	Hour	\$ <u>150.00</u>
b. Foreman/Superintendent	Hour	\$ <u>166.64</u>
c. Equipment Operator	Hour	\$ <u>182.65</u>
d. Journeyman	Hour	\$ <u>133.74</u>
e. Laborer or Equivalent	Hour	\$ <u>133.74</u>
2. EQUIPMENT		
a. Boom Truck	Hour	\$ <u>52.49</u>
b. Service Vehicle (utility body pickup) or Equivalent	Hour	\$ <u>31.87</u>
c. Backhoe (Case 580E or comparable)	Hour	\$ <u>62.23</u>
d. Welder	Hour	\$ <u>11.29</u>
e. Compressor (150 cfm)	Hour	\$ <u>34.98</u>
f. 5 yd Dump Truck	Hour	\$ <u>60.82</u>
g. 24-inch Vibratory Smooth Drum Roller	Hour	\$ <u>23.71</u>
3. MOBILIZATION AND DEMOBILIZATION		

Mobilization and Demobilization 15 % (Fill In)

4. OVERHEAD AND PROFIT

Overhead and Profit 15 % (Fill In)

5. MATERIALS MARKUP

Materials Markup - Cannot exceed 25% 15 % (Fill In)

6. SUBCONTRACTOR MARKUP

Subcontractor Markup 15 % (Fill In)



City of Morgan Hill

Request for On-call Contractor Services

In-ground sewer and water piping repair services contract

Contractor: West Valley Construction Company

Date: 6/24/2021

Equipment Schedule (Time on Jobsite)		
Category	Description	Hourly Rate
AC1	Air compressor <124 CFM	\$ 29.13
AC2	Air Compressor 125-249 CFM	\$ 34.98
AP1	Asph. Milling Mach.<25.9" wide	\$ 164.56
AT1	Arrow board trailer	\$ 4.40
BB6	Beverage Body Truck, Class 6	\$ 45.84
BH3	BH/Ldr 14' to 14.9' dig depth	\$ 62.23
BH4	BH/Ldr 15' to 15.9' dig depth	\$ 72.20
BH6	BH/Ldr 17' and over dig depth	\$ 116.15
BHA	Breaker attachment	\$ 34.60
BHB	Pole Auger attachment	\$ 7.42
BHC	Compaction wheel	\$ 7.34
BN1	2" Conduit bender	\$ 11.47
CM1	Concrete mixer	\$ 8.54
CP1	Hydraulic cable puller	\$ 20.40
CP3	Electric cable puller	\$ 7.28
CR1	Crane < 8000 lbs Cap	\$ 9.43
CR6	Crane Truck, Class 6	\$ 52.49
CR7	Crane Truck, Class 6	\$ 54.84
CRA	Crane Truck Insulator	\$ 6.18
CT1	Concrete trailer <1.5 yard	\$ 24.40
DB4	Dump truck 1-2.9 yd. Class 4	\$ 66.91
DB5	Dump truck 3-4.9 yd. Class 5	\$ 60.82
DB6	Dump truck 5-6.9 yd. Class 6	\$ 70.05
DB7	Dump truck 7-9.9 yd. Class 7	\$ 94.11
DB8	Dump truck >10 yd Class 8	\$ 117.71
DBA	Side conveyor attachment	\$ 15.81

DC6	Dump trk 5-6.9 yd. cls 6 w/ KB	\$ 74.24
DR1	Service Drill	\$ 3.09
DT1	Dump Trailer, Class 1	\$ 18.45
DT2	Dump Trailer, Class 2	\$ 18.45
DZ2	Bulldozer 60-74 hp	\$ 68.41
ET1	Equipment Trailer, Class 1	\$ 5.03
Category	Description	Hourly Rate
ET2	Equipment Trailer, Class 2	\$ 6.51
ET3	Equipment Trailer, Class 3	\$ 8.70
ET4	Equipment Trailer, Class 4	\$ 9.93
ET5	Equipment Trailer, Class 5	\$ 10.91
ET6	Equipment Trailer, Class 6	\$ 11.88
ET7	Equipment Trailer, Class 7	\$ 14.61
ET8	Equipment Trailer, Class 8	\$ 26.81
EX1	Mini Excavator <4Metric Tons	\$ 14.72
EX4	Excavator 12.1-14 Metric Tons	\$ 53.25
EX5	Excavator 19.1-21 Metric Tons	\$ 57.34
EX6	Excavator 21.1-24 Metric Tons	\$ 67.68
EX7	Excavator 33.1-40 Metric Tons	\$ 97.93
EXA	Breaker attachment	\$ 36.82
EXB	Vib. sheet piling driver atch	\$ 44.68
EXC	Compaction wheel	\$ 15.90
EXD	Thumb attachment	\$ 29.22
EXE	Rock Bucket	\$ 136.25
FB1	Flatbed Truck, Class 1	\$ 13.44
FB3	Flatbed Truck, Class 3	\$ 41.57
FB4	Flatbed Truck, Class 4	\$ 43.73
FB5	Flatbed Truck, Class 5	\$ 45.84
FB6	Flatbed Truck, Class 6	\$ 52.18
FC4	Flatbed/Compressor, Class 4	\$ 56.54
FC5	Flatbed/Compressor, Class 5	\$ 62.88
FC6	Flatbed/Compressor, Class 6	\$ 69.22
FL4	Forklift, 4,000-4,999 lbs. Cap	\$ 20.26
FL5	Forklift, 5,000-5,999 lbs. Cap	\$ 24.04
FL8	Forklift, 8,000-8,999 lbs. Cap	\$ 30.15
FL9	Forklift, 9,000-9,999 lbs Cap.	\$ 30.15
FM1	Butt fusion machine	\$ 9.04
FM2	Service pipe freezer	\$ 7.28
FT4	Fuel Trailer, Class 4	\$ 23.10
GE1	Generator <5 KW	\$ 9.09

GE5	Generator-20K-50K Watts	\$ 43.77
Category	Description	Hourly Rate
HD1	Dir. Drill <7,000 lbs pullback	\$ 69.41
HD2	Dir. Drill 7,001 to 10K lbs PB	\$ 85.72
HD5	Dir. Drill 20001 to 30K lbs PB	\$ 182.53
HJ1	Hydraulic Shoring Jack	\$ 15.43
LD5	Wheel Loader 80-99 HP	\$ 62.10
LD7	Wheel Loader 110-119 HP	\$ 67.21
LD8	Wheel Loader 120-134 HP	\$ 79.75
LD9	Wheel Loader 135-149 HP	\$ 89.91
LDA	Asphalt grinder attachment	\$ 65.13
LDB	Adj. asphalt spreader box	\$ 11.50
LDE	Side dump bucket	\$ 10.63
LDF	Screen separator for backfill	\$ 7.34
LT1	Light Tower 0-6000 lbs GVWR	\$ 23.54
MI2	Measuring Instrument , Laser	\$ 7.62
OR1	All terrain vehicle	\$ 22.53
OT1	Paving oil trailer, Class 1	\$ 9.75
PB1	Hydraulic hammer	\$ 54.58
PC1	Hydraulic snap cutter	\$ 11.88
PL1	Pipe locator	\$ 17.56
PP2	Pneumatic Punch <-2"	\$ 5.49
PP4	Pneumatic Punch 2.1"-3"	\$ 7.06
PP6	Pneumatic Punch 3.1"-4"	\$ 9.75
PP7	Pneumatic Punch 4.1"-5"	\$ 9.75
PT1	Pipe trailer, Class 1	\$ 6.64
PT2	Pipe trailer, Class 2	\$ 6.64
PU1	Pickup Truck, Class 1	\$ 31.87
PU2	Pickup Truck, Class 2	\$ 28.21
PV5	Paving truck, Class 5	\$ 54.36
RF4	Forklift, R/T 8,000-9,999 lbs	\$ 58.93
RM6	Rodding Truck, Class 6	\$ 77.74
RO1	Walk behind roller<2,000 lbs	\$ 29.79
RT2	Reel Trailer, Class 2	\$ 5.61
RT3	Reel Trailer, Class 3	\$ 6.50
RT5	Reel Trailer, Class 5	\$ 49.53
Category	Description	Hourly Rate
RT6	Reel Trailer, Class 6	\$ 8.48
SD1	Service Drill	\$ 3.09
SE1	Shop Tools	\$ 17.99

SL4	Slugging truck, Class 4	\$ 58.36
SL6	Slugging truck, Class 6	\$ 67.01
SP1	Steel Crossing Plate	\$ 2.65
SS4	Skid steer ldr. Class 4	\$ 39.86
SS5	Skid steer ldr. Class 5	\$ 44.87
SS6	Skid steer ldr. Class 6	\$ 37.77
SS7	Skid steer ldr. Class 7	\$ 51.53
SSA	Hydraulic Breaker attachment	\$ 53.25
SSD	Asphalt Planer attachment	\$ 26.08
SSE	Broom attachment	\$ 8.69
SSG	Slot Mill attachment	\$ 26.08
ST1	Trailer, Pressure Washer	\$ 24.54
SV1	Storage Container	\$ 3.50
SW1	12-14" All purpose saw	\$ 6.92
SW2	Chain saw	\$ 6.28
SW3	Concr. saw, 12" max. blade cap	\$ 6.48
SW4	Con.saw,12.1"-14" max bld cap	\$ 14.47
SW5	Con.saw,14.1"-18" max bld cap	\$ 18.23
SW6	Con.saw,18.1"-24" max bld cap	\$ 30.72
SW7	Concrete coring machine	\$ 46.47
TA7	Fuel and Lube Truck Class 7	\$ 111.99
TB8	Truck Tractor Class 8	\$ 103.62
TC1	Trench compactor small rammer	\$ 9.04
TC2	Trench compactor large rammer	\$ 10.13
TC3	Trench compactor vib. roller	\$ 45.58
TH7	Telehandler	\$ 79.23
TK2	Mechanics truck, Class 2	\$ 28.21
TK3	Mechanics truck, Class 3	\$ 33.12
TK4	Mechanics truck, Class 4	\$ 37.76
TK5	Mechanics truck, Class 5	\$ 46.17
TL2	Wheel loader, 40 -49 hp	\$ 38.66
Category	Description	Hourly Rate
TL3	Wheel loader, 50 -59 hp	\$ 38.08
TM1	Trenching machine <14 hp	\$ 17.23
TM5	Trenching machine >131 hp	\$ 284.89
TMA	Conveyor attch. (use with TM5)	\$ 27.78
TP1	Air motor	\$ 7.28
TP2	Tapping machine <1"	\$ 11.17
TP3	Tapping machine 1"-2"	\$ 12.59
TP4	Tapping machine 2<	\$ 23.52

TT1	Water trailer, Class 1	\$ 22.34
UT1	Utility trailer, Class 1	\$ 5.03
UT2	Utility trailer, Class 2	\$ 5.03
VP2	Vibratory plate 17" wide	\$ 7.08
VP3	Vibratory plate 21" wide	\$ 12.57
VP4	Vibratory plate 25" wide	\$ 23.71
VR1	Vibratory roller <3750 lbs	\$ 22.79
VR2	Vibratory roller 3751-6400 lbs	\$ 39.01
VT2	Vacuum Trailer, Class 2	\$ 48.10
VT6	Vacuum Trailer, Class 6	\$ 59.81
WM1	Welding machine	\$ 11.29
WP1	Water main test pump	\$ 11.50
WP3	Water pump 2"-2.9"	\$ 11.50
WP4	Water pump 3"-3.9"	\$ 13.17
WP5	Water pump 4"-4.9"	\$ 22.17
WT6	Water Truck, Class 6	\$ 50.04

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

This is an on-call as needed agreement.

For each job under this agreement, the City will request a detailed task order proposal from the Contractor. The Contractor proposal Shall include an itemized breakdown of hourly labor and equipment rates as well as all materials and material markup costs. The City's project manager will issue a notice to proceed if the proposal is accepted. The Contractor will issue an invoice at the completion of each task order, and shall include a detailed breakdown of all hourly charges for labor and equipment , materials, and material mark up costs.

MAINTENANCE SERVICE AGREEMENT PACIFIC UNDERGROUND CONSTRUCTION, INC.

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until August 30, 2023 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum of three one-year extensions. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be Water and Sewer Repairs as further described in **Exhibit A.**
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$50,000.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Fifty Thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for each subsequent extended one-year term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the immediately preceding prior year of service.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination,

SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this Agreement, in whole or in part, on behalf of CITY.

5.1. **Non-Appropriations.** Notwithstanding anything contained in this Agreement to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for CITY for any reason whatsoever in any fiscal year, for payments due under this Agreement, CITY will immediately notify SERVICE PROVIDER of such occurrence, and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for CITY or are otherwise available for payments.

5.2. **Temporary Suspension of Services.** CITY'S need for services may be suspended due to unforeseeable or unavoidable circumstances beyond its control. Such circumstances include, but are not limited to, earthquake, fire, explosion, flood or other natural catastrophe; governmental legislation, condemnation, acts, orders, or regulation; war or acts of terrorism; strikes or labor difficulties; and quarantine, epidemic, or pandemic. CITY shall provide a 5-days' written notice or less under urgent circumstances to temporarily suspend services at specific CITY facilities. CITY reserves the right to request which CITY facilities are to be serviced or not serviced due to unforeseeable or unavoidable circumstances; and the level of service at each CITY facility. Upon suspension, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid up to the date of the suspension. No further payments will be made for services provided after the date of the suspension. CITY shall provide 5 days' written notice when the circumstances for the suspension of specific facilities' services are removed for SERVICE PROVIDER to commence providing services.

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

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

provide the services of SERVICE PROVIDER under this Agreement, together with the reasonably anticipated quantities thereof, if requested by CITY.

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

8.1. **Insurance Types and Amounts.**

- 8.1.1. **Commercial General Liability (CGL).** SERVICE PROVIDER shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.2. **Automobile Liability.** SERVICE PROVIDER shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if SERVICE PROVIDER does not own automobiles, then SERVICE PROVIDER shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.3. **Workers' Compensation Insurance and Employer's Liability.** SERVICE PROVIDER shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If SERVICE PROVIDER is self-insured, SERVICE PROVIDER shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- 8.1.4. **Pollution (Environmental) Liability.** If the performance of SERVICE PROVIDER's work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, SERVICE PROVIDER shall procure and maintain Pollution Liability covering the SERVICE PROVIDER'S liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous

materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

8.1.5. Professional Liability.

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

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

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

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

8.2.1. General Liability and pollution liability (when pollution liability applies).

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

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

8.2.1.3. Insurance shall be primary non-contributing.

8.2.2. Workers Compensation.

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

- 8.3. **Qualification of Insurers.** All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.
- 8.4. **Certificates.** SERVICE PROVIDER shall furnish CITY with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, SERVICE PROVIDER shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to SERVICE PROVIDER's agreement with CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. A "material change" is a change that results in non-compliance with any insurance requirements in this section 8. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

10. **Compliance with Law.**

- 10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage

rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

- 10.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
- 10.4. Compliance with Wage and Hour Laws: SERVICE PROVIDER, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

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

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

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

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

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

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

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

Address of SERVICE PROVIDER is as follows:

Pacific Underground Construction, Inc.
1817 Stone Avenue
San Jose, CA 95125

Address of CITY is as follows:

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

15. **Licenses, Permits and Fees.** SERVICE PROVIDER shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.
16. **Service Provider's Proposal.** If applicable, this Agreement shall include SERVICE PROVIDER'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

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17. **Maintenance of Records.**

- 17.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then SERVICE PROVIDER shall retain said records until such action is resolved.
- 17.2. **Access to and Audit of Records.** CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of SERVICE PROVIDER and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of CITY or as part of any audit of CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 17.3. **Ownership of Work Product.** All documents or other information developed or received by SERVICE PROVIDER for work performed under this Agreement shall be the property of CITY. SERVICE PROVIDER shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

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

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

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

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

22. **Defense and Indemnification.**

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

contained in this Agreement by SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

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

22.3. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by SERVICE PROVIDER.

22.4. Right to Offset. CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (22) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

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

27. Binding Agreement. Notwithstanding the provisions of Section 20 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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

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

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

(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND

(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow
Print Name

Christina J. Turner
Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

Pacific Underground Construction, Inc.

City Attorney

By: _____

Donald A. Larkin
Print Name

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

Date: _____

Date: August 2, 2021

By: _____

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

Date: August 2, 2021

423419
Contractor's License Number(s) (if applicable)

1000007603
Contractor's DIR Registration Number(s) (if applicable)

Expiration Date(s) 5/31/2022

Expiration Date(s) 6/30/2022

Seal:

U:\Legal Forms\Consultant Agreements\City Maintenance Service Agreement.Docx

Attachment: PU Executed - City Maintenance Service Agreement (3161 : Approve On-Call Water and Sewer Repair Agreements)

EXHIBIT A SCOPE OF SERVICES

This project is to provide water and sewer repairs on an on-call, as-needed, time-and-materials basis for a period of two (2) years with the option for three (3) additional single year extensions. Any tasking shall be initiated solely by the City. Execution of this agreement by the City does not in any way guarantee that any tasking or request for on-call services will be issued to any party. Moreover, execution of this agreement by the City shall not entitle contracted parties to any form of payment or compensation from the City without first having issued tasking or request for services from a contractor.

Typical work to be performed under this contract includes repair of water service leaks, water main leaks, hydrant repair, valve replacement, water service replacement, meter installation, sewer main repairs, sewer lateral repair, manhole repair or installation, backfill of excavations, compaction, and final paving of streets. From time to time the City may request service for a backhoe with operator and/or laborers to assist the City repair crew. The Contractor also may be requested to do patch paving work. City staff and equipment will be made available for assistance with shutdowns and some activities.

The work to be performed under this contract consists of furnishing all tools, equipment, materials, supplies, and manufactured articles to complete the services as needed. It shall also include the furnishing of all transportation and services, including fuel, power, water, and essential communications, and for the performance of all labor, work, or other operations required for the fulfillment of the contract in strict accordance with the Contract Documents and City's Standard Details for Construction Standard Details for Construction -Link currently in effect.

The Contractor may utilize the services of specialty subcontractors on those parts of the work that, under normal contracting practices, are performed by specialty subcontractor. It is understood that at least 50 percent of the work to be performed shall be performed by the successful Contractor. Any subcontractor used must adhere to the same terms and conditions as the successful contractor. The Contractor is representing to City that he/she and any subcontractor has all appropriate licenses, certifications, and registrations to perform the work hereunder. The Contractor shall be fully responsible to the City for the performance of his/her subcontractors, and of persons either directly or indirectly employed by them.

City Responsibilities

City's personnel will identify and assess specific projects or repairs. The City will notify Contractor of general locations requiring construction or repair, and a general description of the field conditions at repair locations, and materials to be provided by the City. The City's Project Manager or designated representative will direct the general process to be followed but shall not generally direct the means or methods to be used by the Contractor. The City will provide base maps or record drawings of facilities when they are requested and available. All work to be completed will be agreed upon prior to the commencement of work with a general scope of services. Drawings will be provided if applicable. The City will issue a written task order and attach the contractor's scope of work for projects that are not an emergency. Notification of residents whose service may be interrupted will be the responsibility of the City.

Contractor's Responsibilities

The Contractor will provide a scope of work for each project that is not an emergency. The scope of work will be the basis for the project and will serve as supplement to the contract documents for that particular project. The scope of work shall include a not to exceed amount for the project. The Contractor shall be responsible for providing the following to complete the services in a timely manner as outlined below:

- Qualified Labor
- Tools
- Equipment, including all necessary Safety Equipment
- Materials and Supplies
- Transportation
- Services (including fuel, power, water, and communications)
- Sheeting and shoring as required
- Traffic control devices and measures

For an emergency repair the Contractor shall make every effort to begin the repair within four (4) hours of notification that a repair is needed. Notification of the repair will be made in the form of a phone call. The City is aware that the Contractor may have other commitments. The Contractor shall notify the City if they do not have the manpower to mobilize a crew to begin the repair within the allotted time. If the Contractor cannot mobilize the City will contact the other Contractor on the list. If none of the Contractors on the short list derived this solicitation can do the work within the time frame, the City reserves the right to seek assistance from another contracting firm.

Contractor is responsible for damage resulting from performing work and clean-up of effected area. The Contractor shall incur these damage costs and not pass these charges to the City.

The Contractor shall be cautioned that the City has Asbestos Cement Pipe (ACP) in some areas of the water distribution system as well as the wastewater collection system. Some of the repairs may be on ACP lines. The Contractor and its employees shall be properly trained for working on these ACP lines. All current OSHA standards shall be followed.

As some of the infrastructure falls outside of City limits, the Contractor will have to obtain encroachment permits, if needed, in the jurisdiction where the work is taking place.

Repair Standards

The Contractor is responsible for meeting all contract conditions and City's Standard Details for Construction (link on page 9), specifications, and drawings. If the City's Inspectors determine that any repair work is substandard, the Contractor shall be advised thereof orally and in writing, and shall redo all such work at the expense of the Contractor. The City's Project Manager and Inspectors will determine a time when the re-work is to be completed and re-inspect the repair to determine if the repair has been performed satisfactorily. The Contractor shall comply with all Federal, State, and Local safety rules and regulations.

Materials and Supplies

At the time of notification, the City will provide the Contractor with a list of City supplied materials. The Contractor is responsible for having a reliable supply chain in place to obtain, in a timely manner, all additional materials and supplies needed for the required repair. All materials and supplies obtained by the Contractor for the work must be new and free from defects. There will be no mark-up or other cost charged to the City for materials and supplies used from the City's

inventory. The City will deliver small materials and fittings such as repair clamps, corp stops, etc. to the project site. Any bulk materials such as aggregate base, temporary asphalt paving, etc. provided by the City shall be picked up by the Contractor at the City's Corporation Yard.

Disposal of Materials

All materials shall be disposed of in a manner that does not adversely affect the environment and is consistent with local, state, and federal laws and regulations.

Response Schedule

Emergency Repair - The Contractor will make every effort to begin emergency repairs within the notification specified herein, or in accordance with a schedule approved by the City. Notification to the Contractor may be in the form of a telephone call, facsimile, or e-mail, depending on the urgency of the repair. The City reserves the rights, in its sole discretion, to require a more rapid response should it deem it to be necessary. A typical emergency repair will have a response time of four (4) hours. If repair cannot be started within this period, the City reserves the right to obtain the services of other Contractors.

Scheduled Repair - If a scheduled repair cannot be started within twenty-four (24) hours of the City's scheduled time of repair, the Contractor shall provide the City accurate estimate of when work can start. The City will work with the Contractor in regards to other commitments the Contractor may have. However, the City reserves the right to seek outside assistance from other Contractors if scheduling cannot be agreed upon and repairs are determined by the City, in its sole discretion, to be as required.

Physical Location of Underground Utilities

The City is responsible for providing all utility maps or record drawings to perform repairs.

Facilities Shown or Indicated – Unless it is otherwise expressly provided in the section below, **Protection of Existing Facilities**, the City shall not be responsible for the accuracy or completeness of information or data shown on the City's water and sewer system base maps or any other utility information, and the Contractor shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Utilities for coordination of the work with the owners of such Underground Utilities during construction, for the safety and protection thereof and repairing any damage thereto resulting from the work, the cost of which will be considered as having been included in the contract price. Existing utility lines that are shown, or the locations of which are made known to the Contractor prior to excavation and that are to be retained, and all utility lines that are constructed during excavation operations shall be protected from damage during excavation and back-filling and if damaged, shall be immediately repaired by the Contractor except as the owner of the utility or other facility may otherwise direct. All repairs due to damage are subject to inspection and approval by an authorized representative of the property owner before being concealed by backfill or other work. The obligations set forth in this paragraph and other paragraphs concerning underground work shall apply to such damage as may occur after back-filling or is not discovered until after completion of the back-filling.

Facilities Not Shown or Indicated - If an Underground Utility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the City's water and sewer system base maps and not otherwise made known to the Contractor prior to excavation, which the Contractor could not reasonably have been expected to be aware of based on the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the repair, the

Contractor shall identify the owner of such Underground Utility and give written notice thereof to the City in accordance with the requirements of the next section, Protection of Existing Facilities. In the event that the Contractor damages any existing utility lines that are not shown or the locations of which are not made known to the Contractor prior to excavation, a written report thereof shall be made immediately to the City. If directed by the City, repairs shall be made by the Contractor.

To the extent required by Government Code section 4215, all costs of locating, repairing damage to, and removing or relocating such utility facilities not shown or indicated, and for the necessary idling of equipment on the project which was actually working on that portion of the work which was interrupted or idled by removal or relocation of such utility facilities not shown or indicated, which costs were not incurred due to the failure of the Contractor to exercise reasonable care, will be paid for as time and materials.

Protection of Existing Facilities

General - The Contractor shall protect all existing utilities and improvements not designated for removal and shall restore damaged or temporarily relocated utilities and improvements to a condition equal to or better than they were prior to such damage or temporary relocation. Restoration shall be to the reasonable satisfaction of the City or to the affected utility or franchisee.

The Contractor shall verify the exact locations and depths of all utilities or improvements shown and the Contractor shall make exploratory excavations of all utilities or improvements that may interfere with the Work. The number of exploratory excavations required shall be that number which is sufficient to determine the alignment and grade of the utility or improvement. The Contractor shall notify and obtain concurrence with City staff of that number of exploratory excavations.

It shall be the Contractor's responsibility to see that all utilities or other improvements are adequately protected from damage due to such operations. The Contractor shall exercise care in all excavations to avoid damage to existing underground facilities. This shall include hand digging in those areas where underground facilities are known to exist until they have been sufficiently located to avoid damage to the facilities. No additional compensation shall be provided the Contractor for compliance with the provisions of this section or for the damage and repair of facilities due to the lack of such care.

Right-of-Way - The Contractor shall not do any work that would affect any oil, gas, sewer, or water pipeline; any telephone, telegraph, communication wire or cable, or electric transmission line; any fence; or any other structure, nor shall the Contractor enter upon the right-of-way involved until notified by the City's representative that the City has secured authority therefore from the appropriate authority. All oil and gasoline pipelines, power, and telephone or other communication cable ducts, gas and water mains, irrigation lines, sewer lines, storm drain lines, poles, and overhead power and communication wires and cables encountered along the line of the Work shall remain continuously in service during all the operations under the Contract, unless other arrangements satisfactory to the City are made with the owner of said pipelines, duct, main, irrigation line, sewer, storm drain, pole, or wire or cable.

In case it shall be necessary to move the property of any public utility or franchise holder, the Contractor shall provide written and just cause for utilities to be moved, and such utility company or franchise holder will, upon request of the Contractor, be notified in writing by the City to move such property within a specified reasonable time. When utility lines that are to be removed are encountered within the area of operations, the Contractor shall notify the City's Engineer a sufficient time in advance for the necessary measures to be taken to prevent interruption of service.

This procedure is intended to prevent the Contractor from arbitrarily deciding to cut through any other utility's or any franchisee's facilities. It allows the City to coordinate such work with those agencies and set the timeline and sequence of such work. After authorization has been obtained, the Contractor shall give said party due notice of its intention to begin work, and shall give said party convenient access and every facility for removing, shoring, supporting, or otherwise protecting such pipeline, transmission line, ditch, fence, or structure, and for replacing same. The Contractor shall provide such special protection as may be necessary to protect all known utilities and other improvements that may be impaired during construction operations and shall take all possible precautions for the protection of unforeseen utility lines or other improvements to provide for uninterrupted service.

Utilities to be Removed/Relocated - Where the proper completion of the repair work requires the temporary or permanent removal and/or relocation of an existing utility or other improvement that is shown, the Contractor shall remove and, without unnecessary delay, temporarily replace or relocate such utility or facility. In all cases of such temporary removal or relocation, restoration to the former location shall be accomplished by the Contractor in a manner that will restore or replace the utility or improvement as nearly as possible to its former location and to as good or better condition than found prior to removal.

Restoration of Pavement:

A. General. All paved areas, including asphalt concrete berms, cut or damaged during construction, shall be replaced with in accordance with the specifications of the public authority that has jurisdiction over the site of the work. The City of Morgan Hill and the County of Santa Clara own public right of ways within the City's service area. All temporary and permanent pavements shall conform to the requirements of the affected pavement owner. All pavements that are subject to partial removal shall be neatly saw cut in straight lines per specifications.

B. Temporary Resurfacing. Wherever required by the public authority with jurisdiction over the site of the work, the Contractor shall place temporary surfacing promptly after back-filling and shall maintain such surfacing for the period of time fixed by said authority before proceeding with the final restoration of improvements.

C. Permanent Resurfacing. In order to obtain a satisfactory junction with adjacent surfaces, the Contractor shall comply with the applicable City or County Specifications, at its expense. The City will pay for initial testing. Any required re-testing and correction costs will be the responsibility of the Contractor.

D. Restoration of Sidewalks or Private Driveways. Wherever sidewalks or private roads have been removed for purposes of construction, the Contractor shall place suitable temporary sidewalks or roadways promptly after back-filling and shall maintain them in satisfactory condition for the period of time fixed by the authorities having jurisdiction over the affected portions before proceeding with the final restoration or, if no such period of times is so fixed, the Contractor shall maintain said temporary sidewalks or roadways until the final restoration thereof has been made. Final restorations shall be in accordance with any applicable City and/or general construction codes.

Notification by the City - For routine repairs, the City shall notify Underground Service Alert (1-800-642-2444) forty-eight (48) hours prior to any excavation in the vicinity of any existing underground facilities, including all water, sewer, storm drain, gas, petroleum products, or other pipelines; all

buried electric power, communications, or television cables; all traffic signal and street lighting facilities; and all roadway and state highway rights-of-way.

Facility Access

Continuous access to the City's facilities shall be provided at all times during the Project. Such access shall be suitable for large vehicles, e.g. chemical delivery and sludge hauling trucks. Access routes shall be provided for each planned project.

Water Quality Protection and Stormwater Quality

The Contractor shall take all necessary steps to protect the storm drain system from discharges of construction-related wastewater, including saw cutting slurry, concrete washout, sediment-contaminated and runoff, sewage overflows, and highly-chlorinated discharges from water line testing. This will require the use of Best Management Practices (BMPs) such as providing sediment controls on downstream storm drain inlets, collecting and removing saw cutting slurry, providing an area for concrete washout, and directing highly-chlorinated discharges to the sanitary sewer or by dechlorinating this water. The Contractor is responsible for damage resulting from performing repair and clean-up of effected area.

Trench Excavation

The maximum length of trench excavation in advance of the pipe laying operation shall be 50 feet, and the maximum amount of trench remaining open without backfill shall be 50 feet. No trench in public areas shall be left open during periods when the Contractor is not at the site of work; trenches in these areas shall either be backfilled and temporarily paved, where applicable, or covered with steel trench plates as specified in the technical specifications.

Underground Facilities

The Contractor shall exercise care in all excavations to avoid damage to existing underground facilities. This shall include potholing and hand digging in those areas where underground facilities are known to exist until they have been sufficiently located to avoid damage to the facilities.

Prior to fabrication of any materials, the Contractor shall verify the locations and elevations of existing underground facilities to ensure proper connection and/or clearance.

The Contractor shall exercise care in maintaining those pipes and facilities to be abandoned and/or removed which are required for the continuing operation of the existing facilities until such time as they can be abandoned. The Contractor shall exercise extreme caution in working in any area adjacent to existing facilities. It is essential that the existing facilities be maintained in service until the new work is ready for full time operation and is placed in service.

No additional compensation shall be provided the Contractor for compliance with the provisions of this section for the damage and repair of such facilities due to the lack of care, and the Contractor shall be responsible for the direct and indirect costs resulting from the damage and repair of such facilities.

Working Hours

For Emergency Repairs working hours may be any day of the week at any time. The crews that respond to the emergency shall comply with applicable labor codes for hours worked.

For Scheduled Repairs normal City staff working hours are from 7:00 a.m. to 3:30 p.m., excluding weekends and City holidays. Unless otherwise approved in writing by the City, repair work shall be allowed only between the hours of 7:00 a.m. and 8:00 p.m. on weekdays and, when approved in writing in advance by the City, 9:00 a.m. to 6:00 p.m. on weekends and holidays. These working hours may be adjusted on a job by job basis depending on nature of the project and specific encroachment permit conditions for the project.

The Contractor shall notify the City at least 48 hours prior to any work outside the normal working hours defined above, on weekends or holidays.

Noise Abatement

All operations at the site of the repairs shall be performed so as to minimize unnecessary noise. Special measures shall be taken to suppress noise during night hours. Noise levels due to Contractor's activities shall not exceed the levels specified by local ordinance.

Internal combustion engines used on the work shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated without said muffler.

Warranty and Scheduled Maintenance

The Contractor hereby agrees to make, at its own expense, all repairs or replacements necessitated by defects in materials or workmanship, in those components provided, installed, replaced and/or modified by the Contractor, and pay for any damage to other works resulting from such defects, which becomes evident within one (1) year after the date of acceptance of installation work, or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Agreement. This warranty shall include all parts and labor and the performance of all manufacturers' recommended maintenance. This in no way shall limit, amend, or reduce any manufacturer's warranty. The Contractor further assumes responsibility for a similar guarantee for all work and materials provided by subcontractors. This warranty shall not apply to existing equipment that was not modified or significantly adjusted so as to change its operation. The Contractor also agrees to indemnify, defend and hold the City harmless from liability of any kind arising from damage due to covered defects. Prior to the final acceptance of installation work, the Contractor shall provide phone numbers for around-the-clock notification of the need for emergency service repairs, a schedule showing specific dates for routine maintenance service calls.

The Contractor shall respond within four (4) hours of City's emergency service call after receipt of notice from the City, and promptly make all repairs arising out of defective materials, workmanship, or equipment. If a service response does not occur within four (4) hours, or diligent efforts are not made to effect repairs, the City will notify the Contractor (by fax or voice mail if no representative is available) of its intent to secure another service provider. Thereafter, the City is authorized to make such repairs, and the Contractor shall be liable for the cost thereof. In case of emergency, where, in the opinion of the City, delay could cause serious loss or damage, repairs may be made without notice being sent to the Contractor, and the expense in connection t The Contractor shall direct all of its equipment suppliers and/or manufacturers to promptly provide to it and to the City any and all information concerning product defects or other problems and shall promptly forward to the City any such information received, whether before, during, or after the warranty period.

Prior to the expiration of the warranty period, the City reserves the right to hold a meeting and require the attendance of the Contractor. The purpose of the meeting is to review warranties, bonds, and maintenance requirements, and determine required repair or replacement of defective items.

COMPANY NAME: Pacific Underground Construction, Inc.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

On-Call Services for Water and Sewer Repairs

This work is subject to prevailing wage. The hourly wages to be paid laborers, workers, or mechanics shall not be less than the DIR prevailing wage rates for an hour's work in the same trade or occupation in Santa Clara County. Prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>.

<u>Description</u>	<u>Unit</u>	<u>Hourly Rate</u>
1. LABOR		
a. Project Manager	Hour	\$ <u>230.00</u>
b. Foreman/Superintendent	Hour	\$ <u>200.00</u>
c. Equipment Operator	Hour	\$ <u>175.00</u>
d. Journeyman	Hour	\$ <u>140.00</u>
e. Laborer or Equivalent	Hour	\$ <u>140.00</u>
2. EQUIPMENT		
a. Boom Truck	Hour	\$ <u>200.00</u>
b. Service Vehicle (utility body pickup) or Equivalent	Hour	\$ <u>60.00</u>
c. Backhoe (Case 580E or comparable)	Hour	\$ <u>100.00</u>
d. Welder	Hour	\$ <u>50.00</u>
e. Compressor (150 cfm)	Hour	\$ <u>45.00</u>
f. 5 yd Dump Truck	Hour	\$ <u>95.00</u>
g. 24-inch Vibratory Smooth Drum Roller	Hour	\$ <u>35.00</u>
3. MOBILIZATION AND DEMOBILIZATION		

Attachment: PU Executed - City Maintenance Service Agreement (3161 : Approve On-Call Water and Sewer Repair Agreements)

Mobilization and Demobilization25 % (Fill In)

4. OVERHEAD AND PROFIT

Overhead and Profit

15 % (Fill In)

5. MATERIALS MARKUP

Materials Markup - Cannot exceed 25%

25 % (Fill In)

6. SUBCONTRACTOR MARKUP

Subcontractor Markup

10 % (Fill In)

EXHIBIT C
SCHEDULE OF PERFORMANCE

This is an on-call as needed agreement.

For each job under this agreement, the City will request a detailed task order proposal from the Contractor. The Contractor proposal Shall include an itemized breakdown of hourly labor and equipment rates as well as all materials and material markup costs. The City's project manager will issue a notice to proceed if the proposal is accepted. The Contractor will issue an invoice at the completion of each task order, and shall include a detailed breakdown of all hourly charges for labor and equipment , materials, and material mark up costs.



CITY COUNCIL STAFF REPORT

MEETING DATE: September 1, 2021

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

APPROVE ANTENNA GROUND LICENSE AGREEMENT FOR NEW CELL TOWER AT THE OUTDOOR SPORTS CENTER AND RELATED SIDE LETTER AGREEMENT WITH FACILITY OPERATOR

RECOMMENDATION(S)

1. Authorize the City Manager to execute the Cell Tower Hosting Side Letter Agreement with MHOSC; and
2. Authorize the City Manager to execute the Antenna Ground License with New Cingular Wireless PCS for the siting of a new cell tower at the Outdoor Sports Center.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to consider an agreement to host a new cell tower at the Outdoor Sports Center (OSC). The City currently hosts several cell towers on City property including the Nob Hill Water Reservoir, the Woodland Acres Water Reservoir, and El Toro. The annual rents received support the General Fund and Water Fund.

The City was approached by a representative of AT&T indicating that they were interested in siting a new cell tower at the OSC. While the site is not on a hill like the City's other sites, its proximity to the freeway and relative lack of nearby towers made AT&T interested in the site. Their plan includes mounting nine panel antennae on the stadium light pole closest to the intersection of Condit and San Pedro and creating a new equipment shelter nearby. They have finished site design and have received a conditional use permit from Development Services.

While the City is naturally interested in the additional rental income of \$48,000 annually, getting an additional cell tower sited to serve the community is a second worthwhile benefit. Many people have complained about pockets of poor cell service in the community on social media and the use of mobile devices continues to grow. Adding a new tower will definitely enhance the experience of many residents and visitors in Morgan Hill.

Since the City has ceded some of its land use control at the OSC to the site operator, MHOSC, proceeding with the siting requires the approval of a side letter agreement that memorializes our mutual understanding. Staff has negotiated a revenue split with MHOSC that provides 50% of the revenue to the City, which would be booked in the General Fund, 25% of the revenue to MHOSC to support operations and maintenance at the facility, and 25% of the revenue to the OSC Reserve Fund to support facility refurbishment and replacement activities.

Staff recommends approval of both the Cell Tower Hosting Side Letter Agreement (Attachment 1) and the Antenna Ground License with AT&T (doing business as New Cingular Wireless PCS) (Attachment 2).

COMMUNITY ENGAGEMENT: Not Applicable

No community engagement activities were completed for this aspect of the tower siting because Development Service's permitting process already included public noticing and two public Planning Commission meetings for this tower.

ALTERNATIVE ACTIONS:

The Council could decline to approve the agreement.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission approved the conditional use permit for the site on November 10, 2020. While the Council has not previously considered a cell tower at this location, all of the City's current license agreements for cell towers have been reviewed and approved by the City Council in the past.

FISCAL AND RESOURCE IMPACT:

The annual rent for the site is \$48,000 and escalates by 3.5% annually. As detailed above, \$24,000 would come to the General Fund, \$12,000 would be dedicated to the OSC Reserve Fund, and \$12,000 would be directed to MHOSC to support their operations and maintenance.

All expenses associated with siting and constructing the tower are to be borne by AT&T. There are no planned City expenses associated with constructing the project.

Negotiating and administering cell tower agreements is an activity included in the work program of the Community Services Department and City Manager's Office.

CEQA (California Environmental Quality Act): Categorical Exemption

The Director of Community Development determined that the project is exempt pursuant to Section 15303 Class 3, as it involves the construction and location of limited numbers of new, small facilities or structures, and the installation of small new equipment and facilities in small structures, and has further determined that none of the exceptions to the exemption apply.

LINKS/ATTACHMENTS:

1. Attachment 1: Cell Tower Hosting Side Letter Agreement

2. Attachment 2: Agreement with AT&T (weblink)

Cell Tower Hosting Side Letter Agreement

This Side Letter to the Agreement for the Operation and Maintenance of the Outdoor Sports Center (AGREEMENT) is entered into on _____ 2021, by and between the City of Morgan Hill (CITY) and MHOSC, LLC (OPERATOR). The purpose of this side letter is to clarify the sharing of revenues associated with a cell tower hosted at the facility.

RECITALS

Whereas CITY and OPERATOR entered into the AGREEMENT for the operation and maintenance of the Outdoor Sports Center (CENTER) on July 2, 2019; and

Whereas the AGREEMENT includes details on the financial aspects of operating CENTER including payment schedules, fees, and the establishment of a reserve fund; and

Whereas, CITY reserved the right to further develop or improve the CENTER for the benefit of the OSC operation and enhancement of the sports related function at the facility, in its sole discretion; and

Whereas AT&T has submitted plans to CITY to develop a cell tower at CENTER that includes payments to CITY for hosting the tower; and

Whereas the AGREEMENT is silent on the sharing of revenues collected by CITY related to cell tower property use agreements; and

Whereas CITY and OPERATOR wish to share cell tower payments to support CENTER operations, CENTER facility reserve funds, and CITY services.

Now, Therefore, the parties agree as follows:

1. All payments from AT&T or any successor entity shall be made directly to CITY.
2. CITY shall forward 25% of payments received from the cell tower at CENTER to OPERATOR to support OPERATOR operations and maintenance at CENTER.
3. CITY shall deposit 25% of payments received from the cell tower at CENTER into the Reserve Fund established pursuant to the AGREEMENT to support the refurbishment and replacement of facilities and equipment at the CENTER.
4. OPERATOR shall reasonably cooperate and facilitate the construction of the cell tower and not unreasonably limit access to the construction site.
5. CITY shall require AT&T to provide reasonable notice to OPERATOR regarding construction planning, scheduling, and access requirements to the construction site.

6. CITY shall provide OPERATOR with an opportunity to comment on construction plans submitted for the cell tower before CITY approves them. CITY reserves the right to approve the construction plans in its sole discretion.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first set forth above.

MHOSC, LLC

By

Date

[Signature]
8/23/2021

By

Date

[Signature]
8/19/21

By

Date

[Signature]
8-23-24

City of Morgan Hill:

By

Christina Turner, City Manager
Date

Approved to Form:

By

Donald Larkin, City Attorney
Date

Attest:

By

Michelle Bigelow, City Clerk
Date



CITY COUNCIL STAFF REPORT

MEETING DATE: September 1, 2021

PREPARED BY: Charlie Ha, Supervising Civil Engineer

APPROVED BY: City Manager

ADOPT RESOLUTION DECLARING THE SUMMARY VACATION OF A PORTION OF THE SUTTER BOULEVARD STREET EASEMENT, AND THE ADJACENT LANDSCAPE AND PUBLIC SERVICE EASEMENTS BETWEEN BUTTERFIELD BOULEVARD AND DIGITAL DRIVE

RECOMMENDATION(S)

1. Adopt resolution declaring the Summary Vacation of:
 - a. A portion of Sutter Boulevard street easement between Butterfield Boulevard and Digital Drive; and
 - b. Adjacent 15-foot wide Landscape and Public Service Easements on both sides of Sutter Boulevard between Butterfield Boulevard and Digital Drive;
2. Direct the City Clerk to file a certified copy of the Resolution of Vacation in the Office of the Recorder of Santa Clara County; and
3. Authorize the City Manager to sign Quitclaim Deeds of the vacated portion of Sutter Boulevard on behalf of the City and direct the City Clerk to file in the Office of the Recorder of Santa Clara County.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure

2020-2021 Strategic Priorities

Transportation

GUIDING DOCUMENTS

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

As part of the original Morgan Hill Business Park subdivision in 2001, Sutter Boulevard was proposed to be extended from the intersection of Butterfield Boulevard and Sutter Boulevard to the dead-end stub of Sutter Boulevard (formerly Sutter Place), just north of Digital Drive, as shown on the attached site map of the Sutter Extension (Attachment 1). However, the extension to complete the missing segment of Sutter Boulevard was never constructed, although the street easement along with a landscape easement and public service easement were dedicated to the City on the recorded Parcel Map. The Sutter Boulevard extension remained unimproved until 2020, when the developer of the Butterfield Village Apartments began construction on the Sutter Boulevard extension.

As part of the conditions of approval for the Design Review Permit (Approval Certificate No. 20-005; application number SR2019-0015) of the 389-unit Butterfield Village Apartment Project located on the west side of Butterfield Boulevard, south of Jarvis Drive, the developer, J TJ Morgan Hill RE, LLC, was required to construct the said

extension of Sutter Boulevard (formerly Sutter Place) as shown on the attached Site Map (Attachment 1).

As part of the Butterfield Village Apartment Project's Design Review approval, the developer realigned Sutter Boulevard to meet the required lot size of the private park proposed as part of the Butterfield Village Apartment Project and as shown on the attached site map of the Sutter Boulevard Extension (Attachment 2).

The Butterfield Village Apartment Project has completed the realignment and extension of Sutter Boulevard. The required street right-of-way and public service easements have been granted to the City for the realignment and extension of Sutter Boulevard. Therefore, the old street alignment of Sutter Boulevard, between Butterfield Boulevard and Digital Drive, is no longer necessary and the street easement and the adjacent landscape and public service easements can be vacated by summary vacation by adoption of the attached resolution (Attachments 3, 4 and 5).

The recommended vacation of the Sutter Boulevard street easement, and the adjacent landscape and public service easements, conforms to California Streets and Highways Code, Sections 8330, 8333, and 8334 as follows: (1) said portion of Sutter Boulevard has been superseded by relocation; (2) said landscape and public service easements adjacent to said portion of Sutter Boulevard has been superseded by relocation; and (3) said portion of Sutter Boulevard is an excess right-of-way no longer required for street or highway purposes.

All concerned utility companies have been contacted in writing and no opposition was received. A public service easement will not be reserved over the portion of Sutter Boulevard proposed to be vacated since there are new public service easements that have been granted over the re-routed and newly constructed portion of Sutter Boulevard.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the Summary Vacation of the Sutter Boulevard street easement, and the adjacent landscape and public service easements.

ALTERNATIVE ACTIONS:

There are no feasible alternative actions, as Sutter Extension has been constructed based on a new alignment which supersedes the old street easement.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On October 17, 2018, Ordinance 2287 was introduced by the City Council to approve the Development Agreement for the Butterfield Village Apartment Project.

On October 24, 2018, the City Council approved Ordinance 2287.

On March 24, 2020, the City Council approved an extension of the Butterfield Village Apartment Project's Improvement Agreement for the public improvements required to

be performed by the project including the construction of the Sutter Boulevard Extension.

FISCAL AND RESOURCE IMPACT:

Development review costs for this project are paid for by development processing fees.

CEQA (California Environmental Quality Act):

Project: An Environmental Impact Report (EIR) for the Butterfield-Keenan (MWest) General Plan Amendment Project (GPA 14-04) (November 2014) and an Addendum (April 2015) were prepared for the project (State Clearinghouse #2014072009). The EIR, Mitigation Monitoring and Reporting Program (MMRP) and Statements of Overriding Consideration were adopted by City Council Resolution May 6, 2015. In addition, an Initial Study/Consistency Checklist demonstrating consistency with the Butterfield-MWest General Plan Amendment was prepared September 2018. Because all potentially significant effects (a) have been analyzed adequately in an earlier EIR pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to the prior EIRs to the greatest extent feasible, including mitigation measures that are imposed upon the proposed project, nothing further is required. The design is consistent with the project as previously analyzed pursuant to CEQA.

LINKS/ATTACHMENTS:

1. Site Map - Butterfield Village
2. Site Map - Sutter Extension
3. Resolution - Summary Vacation of Sutter Extension
4. Resolution - Exhibits A and B
5. Resolution - Exhibits C and D



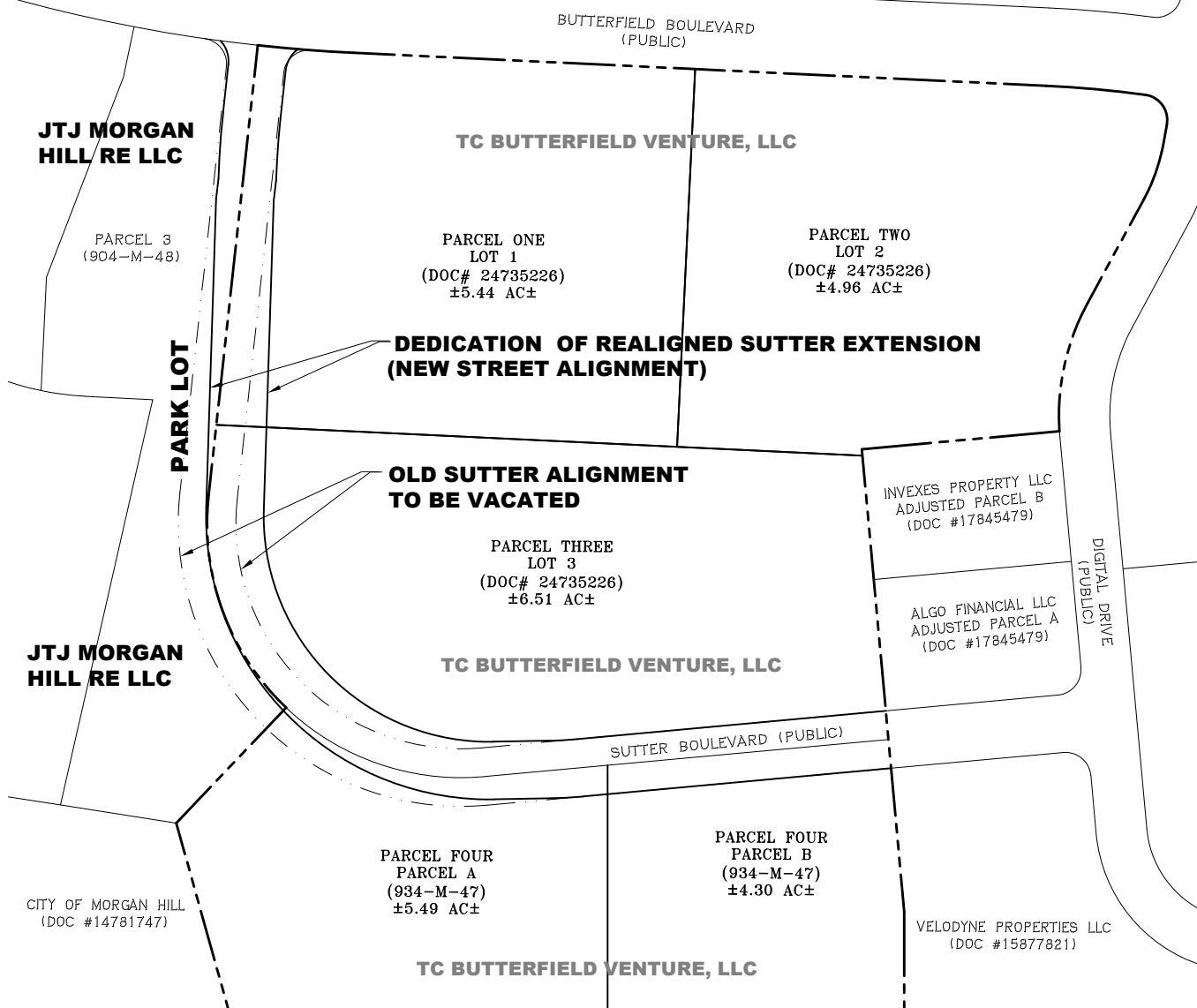
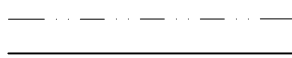
Attachment: Site Map - Butterfield Village (3158 : SUMMARY VACATION OF SUTTER BLVD)


CITY OF MORGAN HILL
 Development Services
 Engineering Land Development
G:\1R-14\Proj\GIS\John\Charlie_ButterfieldVillage.mxd

**SITE MAP
 BUTTERFIELD VILLAGE**

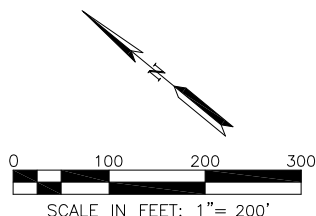


0 200 400 800 1,200 1,600
 Feet

PLOT DATE: July 12, 2021
FILE PATH: W:\Jobs 14\142002\Drawings\Final\Exhibits\Sutter Vacation&Dedication\SITE MAP.dwg**LEGEND**

ORIGINAL SUTTER STREET ALIGNMENT

DEDICATION OF NEW STREET ALIGNMENT



RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
8055 CAMINO ARROYO GILROY, CA 95020
PHONE: (408) 848-0300 FAX: (408) 848-0302

SITE MAP
SUTTER BOULEVARD EXTENSION
MORGAN HILL, CALIFORNIA
JULY 2021

JOB NUMBER: 142002

SHEET 1 OF 1

RECORDING REQUESTED BY:

CITY OF MORGAN HILL

WHEN RECORDED MAIL DOCUMENT TO:

CITY CLERK
CITY OF MORGAN HILL
17575 PEAK AVENUE
MORGAN HILL, CA 95037

RECORD AT NO FEE
PER GOVERNMENT CODE SECTION 6103 &
27383

SPACE ABOVE THIS LINE FOR RECCORDER'S USE

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL DECLARING ITS SUMMARY
VACATION OF THE SUTTER BOULEVARD STREET
EASEMENT, AND THE ADJACENT LANDSCAPE AND
PUBLIC SERVICE EASEMENTS, BETWEEN
BUTTERFIELD BOULEVARD AND DIGITAL DRIVE**

WHEREAS, pursuant to the provisions of the California Streets and Highways Code, Section 8330 *et seq.*, the City Council may summarily vacate street or highway that has been superseded by relocation;

WHEREAS, pursuant to the provisions of Section 8333, the City Council may summarily vacate a public service easement if the easement has been superseded by relocation;

WHEREAS, pursuant to the provisions of Section 8334, the City Council may summarily vacate an excess right-of-way of a street or highway not required for street or highway purposes; and

WHEREAS, the City Engineer of the City of Morgan Hill has recommended that the hereinafter described properties presently held for public purposes is unnecessary for present or prospective municipal purposes, as the alignment of Sutter Boulevard, between Butterfield Boulevard and Digital Drive, has been re-routed and constructed;

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

SECTION 1: The City Council of the City of Morgan Hill hereby finds from all evidence

Attachment: Resolution - Summary Vacation of Sutter Extension [Revision 3] (3158 : SUMMARY VACATION OF SUTTER BLVD)

submitted that the Sutter Boulevard street easement, and the adjacent landscape and public service easements, between Butterfield Boulevard and Digital Drive, as fully described in Exhibits “A”, “B”, “C”, and “D”, are unnecessary for present or prospective public street, landscape and public service easement purposes as said portion of Sutter Boulevard has been superseded by relocation, and are hereby vacated;

SECTION 2: The order of vacation of Sutter Boulevard street easement, and the adjacent landscape and public service easements, between Butterfield Boulevard and Digital Drive, conforms to California Streets and Highways Code, Sections 8330, 8333, and 8334 as follows: (1) said portion of Sutter Boulevard has been superseded by relocation; (2) said landscape and public service easements adjacent to said portion of Sutter Boulevard has been superseded by relocation; and (3) said portion of Sutter Boulevard is an excess right-of-way no longer required for street or highway purposes.

SECTION 3: All concerned utility companies have been notified in writing of the proposed summary vacation and no opposition was received. The reservation of a public service easement over the portion of Sutter Boulevard proposed to be vacated was not necessary since new public service easements have been granted over the re-routed and newly constructed portion of Sutter Boulevard.

SECTION 4: From and after the date this Resolution is recorded, the portion of street right-of-way and public service easements described here as vacated will no longer constitute a public street and public service easement.

SECTION 5: The vacation hereby releases all public right-of-way rights for streets and highway purposes to the two adjacent property owners, JTJ MORGAN HILL RE, LLC, and TC Butterfield Venture, LLC as fully described in Exhibits “A”, “B”, “C”, and “D”.

SECTION 6: The City Manager is hereby authorized to sign the following Quitclaim Deeds on behalf of the City:

- a) City of Morgan Hill Quitclaim to JTJ MORGAN HILL RE, LLC; and
- b) City of Morgan Hill Quitclaim to TC BUTTERFIELD VENTURE, LLC.

SECTION 7: The City Clerk is hereby directed to cause said Quitclaim Deeds to be notarized and recorded in the Office of the Recorder of Santa Clara County. No fees shall be charged for recordation.

SECTION 8: The City Clerk is hereby directed to cause a certified copy of this Resolution of Summary Vacation, attested by said Clerk under seal, to be recorded without acknowledgment, certificate of acknowledgment or further proof in the Office of the Recorder of Santa Clara County. No fees shall be charged for recordation.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the September 1, 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 a regular meeting held on September 1, 2021.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

Attachment: Resolution - Summary Vacation of Sutter Extension [Revision 3] (3158 : SUMMARY VACATION OF SUTTER BLVD)

**“EXHIBIT A”
LEGAL DESCRIPTION FOR VACATION
OF THE “SUTTER BOULEVARD” STREET EASEMENT AND
THE ADJACENT “LANDSCAPE AND PUBLIC SERVICE EASEMENT”
TO JTJ MORGAN HILL RE, LLC**

Sutter Boulevard (Street Easement):

All that real property situated in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of “Sutter Boulevard” formerly “Sutter Place”, as offered for dedication on the Parcel Map filed October 10, 2001, in Book 743 of Maps, at Pages 3 through 6, Records of Santa Clara County, California, being a portion of “Parcel 3” as shown on the Parcel Map for Lot Line Adjustment filed June 22, 2017 in Book 904 of Maps, at Pages 47 and 48, Records of Santa Clara County, California, being more particularly described as follows:

BEGINNING at a corner on the south line of said “Parcel 3” being the easterly terminus of a line bearing N85°48'25"W a distance of 188.05' as shown on said “Parcel Map for Lot Line Adjustment”; thence along said south line, N85°48'25"W, a distance of 34.00 feet to the westerly line of said “Sutter Boulevard”, also being the beginning of a non tangent curve to the right, from which the radius point bears S85°48'25"E a radial distance of 334.00 feet; thence along said westerly line, northeasterly along the curve, through a central angle of 52°39'49", a distance of 307.00 feet; thence continuing along said westerly line, N56°51'24"E, a distance of 505.89 feet to the beginning of a tangent curve to the left, from which the radius point bears N33°08'36"W a radial distance of 30.00 feet; thence continuing along said westerly line, northerly along the curve, through a central angle of 88°02'42", a distance of 46.10 feet to the southerly line of “Butterfield Boulevard” and the beginning of a non tangent curve to the left, from which the radius point bears N58°48'42"E a radial distance of 1,846.00 feet; thence along said southerly line, southeasterly along the curve, through a central angle of 01°57'18", a distance of 62.99 feet to the south line of said “Parcel 3”; thence along said south line, S56°51'24"W, a distance of 534.79 feet to the beginning of a tangent curve to the left, from which the radius point bears S33°08'36"E a radial distance of 300.00 feet; thence continuing along said south line, southwesterly along the curve, through a central angle of 52°39'49", a distance of 275.75 feet to the **POINT OF BEGINNING**.

Containing 28,274 square feet, more or less.

As shown on "Exhibit B", attached hereto and made a part hereof.

Landscape and Public Service Easement:

All that real property situated in the City of Morgan Hill, County of Santa Clara, State of California, being all of the 15-foot wide “Landscape and Public Service Easement” (L&PSE), offered for dedication on the Parcel Map filed October 10, 2001, in Book 743 of Maps, at Pages 3 through 6, Records of Santa Clara County, California, contained within the Boundary of “Parcel 3” as shown on the Parcel Map for Lot Line Adjustment filed June 22, 2017 in Book 904 of Maps, at Pages 47 and 48, Records of Santa Clara County, California, being adjacent to, and contiguous with, the above described “Sutter Boulevard”, and being more particularly described as follows:

COMMENCEING at a corner on the south line of said “Parcel 3” being the easterly terminus of a line bearing N85°48'25"W a distance of 188.05' as shown on said “Parcel Map for Lot Line Adjustment”, and the northwesterly line of “Sutter Boulevard” also to the southerly line of said “Parcel 3”; thence along said south line, N85°48'25"W, a

"EXHIBIT A"

distance of 34.00 feet to the **POINT OF BEGINNING**; thence continuing along said south line, N85°48'25"W, a distance of 15.00 feet to the westerly line of said "Landscape and Public Service Easement" and to the beginning of a non tangent curve to the right, from which the radius point bears S85°48'25"E a radial distance of 349.00 feet; thence along said westerly line, northeasterly along the curve, through a central angle of 52°39'49", a distance of 320.79 feet; thence continuing along said westerly line, N56°51'24"E, a distance of 505.89 feet to the beginning of a tangent curve to the left, from which the radius point bears N33°08'36"W a radial distance of 15.00 feet; thence continuing along said westerly line, northerly along the curve, through a central angle of 88°02'42", a distance of 23.05 feet to the southerly line of the "15' Landscape and Public Service Easement" being adjacent to, and contiguous with "Butterfield Boulevard" as shown on said "Parcel Map", also being the beginning of a non tangent curve to the left, from which the radius point bears N58°48'42"E a radial distance of 1,861.00 feet; thence along said southerly line, southeasterly along the curve, through a central angle of 00°47'48", a distance of 25.88 feet, to the westerly line of said "Sutter Boulevard" as shown on said "Parcel Map", also being the beginning of a non tangent curve to the right, from which the radius point bears N61°35'09"W a radial distance of 30.00 feet; thence along said westerly line, southwestwardly along the curve, through a central angle of 28°26'33", a distance of 14.89 feet; thence continuing along said westerly line, S56°51'24"W, a distance of 505.89 feet to the beginning of a tangent curve to the left, from which the radius point bears S33°08'36"E a radial distance of 334.00 feet; thence continuing along said westerly line, southwestwardly along the curve, through a central angle of 52°39'49", a distance of 307.00 feet to the **POINT OF BEGINNING**.

Containing 12,540 square feet, more or less.

As shown on "Exhibit B", attached hereto and made a part hereof.

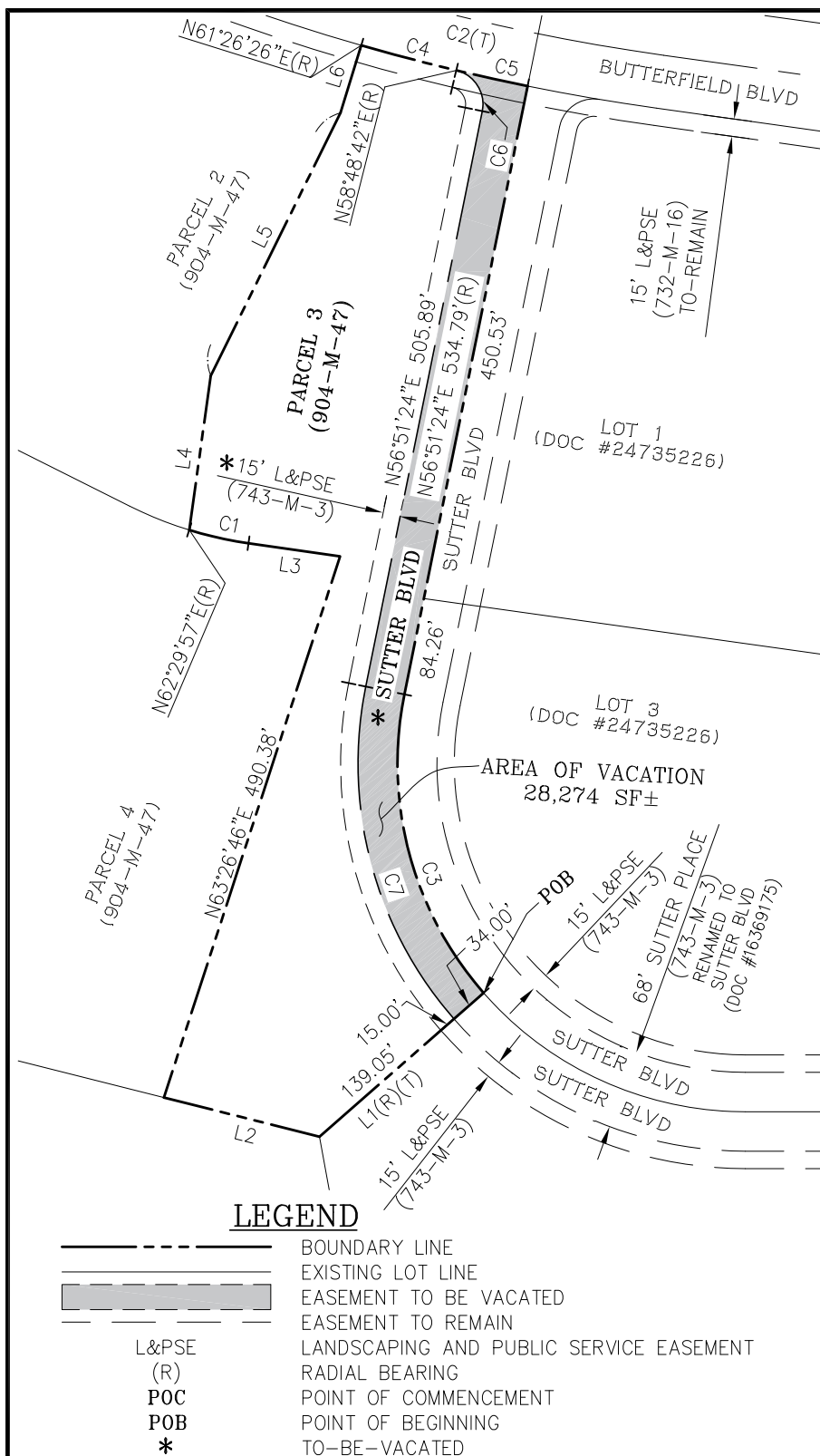
Note: "Sutter Boulevard" was formerly "Sutter Place".

END OF DESCRIPTION.

This description was prepared by me or under my direction pursuant to the requirements of the Professional Land Surveyor's Act.

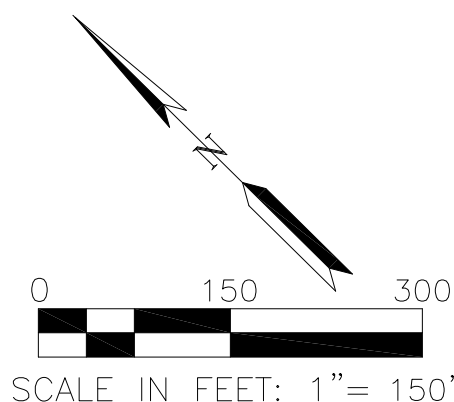
Bryan Pierce, PLS 8859 Date

Attachment: Resolution - Exhibits A and B (3158 : SUMMARY VACATION OF SUTTER BLVD)



LINE TABLE		
LINE	BEARING	DIST
L1	N85°48'25"W	188.05'
L2	N30°29'11"W	138.37'
L3	N36°26'43"W	79.74'
L4	N53°20'32"E	134.11'
L5	N71°40'33"E	252.76'
L6	N62°30'40"E	60.79'

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	52.45'	336.00'	008°56'40"
C2	147.69'	1846.00'	004°35'02"
C3	275.75'	300.00'	052°39'49"
C4	84.70'	1846.00'	002°37'44"
C5	62.99'	1846.00'	001°57'18"
C6	46.10'	30.00'	088°02'42"
C7	307.00'	334.00'	052°39'49"



"EXHIBIT B"

PLAT TO ACCOMPANY DESCRIPTION FOR VACATION OF THE "SUTTER BOULEVARD" STREET EASEMENT AND THE ADJACENT "LANDSCAPE AND PUBLIC SERVICE EASEMENT" TO JTT MORGAN HILL RE, LLC BEING A PORTION OF "PARCEL 3" AS SHOWN ON THE PARCEL MAP FOR LOT LINE ADJUSTMENT FILED JUNE 22, 2017, IN BOOK 904 OF MAPS, AT PAGES 47 AND 48, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA



SHEET 1 OF 2

RUGGERI-JENSEN-AZAR

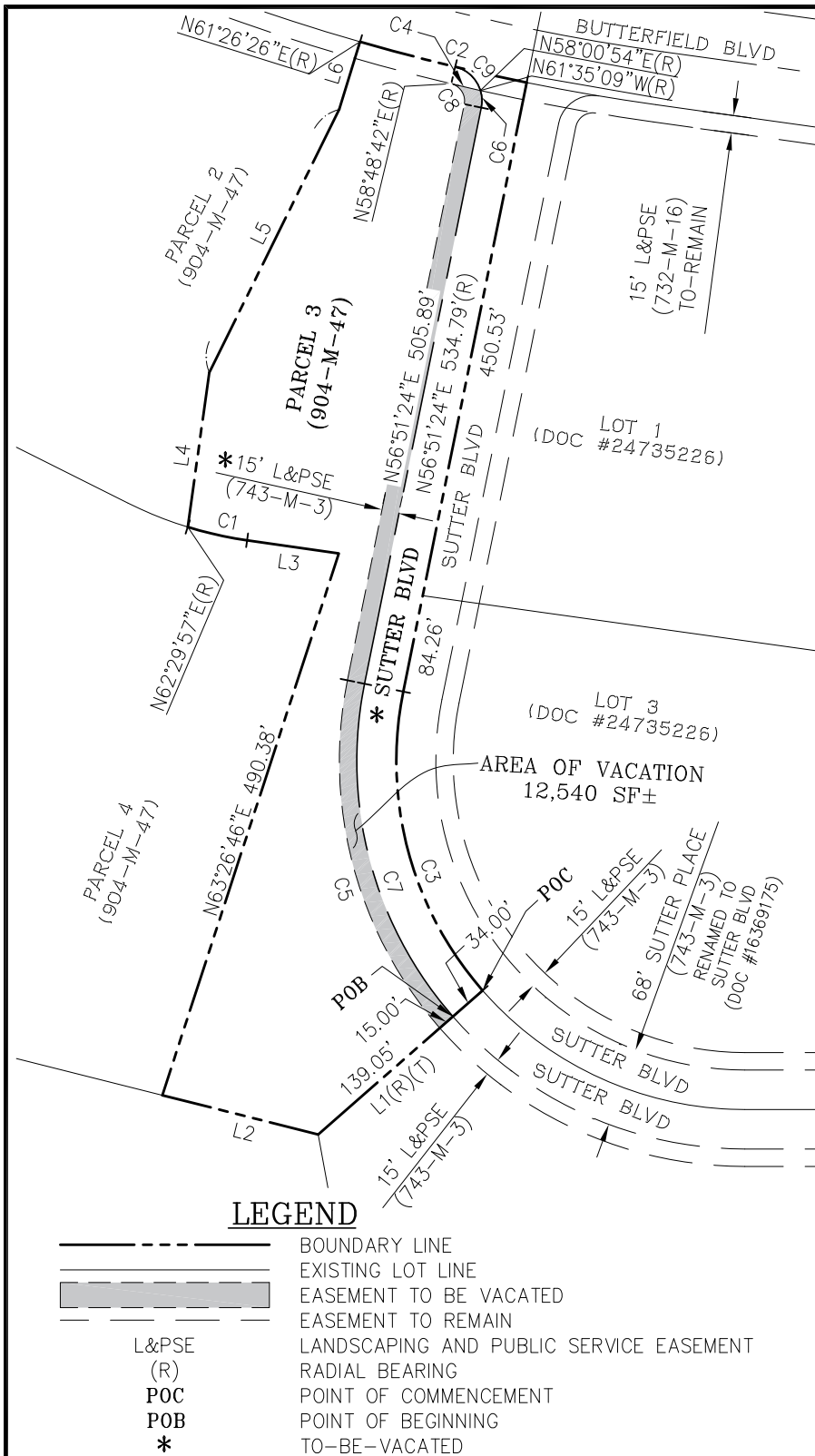
ENGINEERS • PLANNERS • SURVEYORS

 8055 CAMINO ARROYO GILROY, CA 95020
 PHONE: (408) 848-0300 FAX: (408) 848-0302

 SCALE:
 1" = 150'

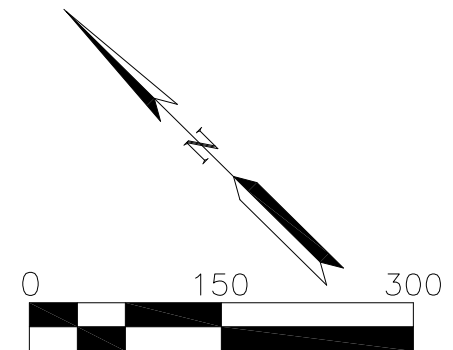
 DATE:
 07/22/2021

 JOB NO.:
 142002



LINE TABLE		
LINE	BEARING	DIST
L1	N85°48'25"W	188.05'
L2	N30°29'11"W	138.37'
L3	N36°26'43"W	79.74'
L4	N53°20'32"E	134.11'
L5	N71°40'33"E	252.76'
L6	N62°30'40"E	60.79'

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	52.45'	336.00'	008°56'40"
C2	147.69'	1846.00'	004°35'02"
C3	275.75'	300.00'	052°39'49"
C4	25.88'	1861.00'	000°47'48"
C5	320.79'	349.00'	052°39'49"
C6	14.89'	30.00'	028°26'332"
C7	307.00'	334.00'	052°39'49"
C8	23.05'	15.00'	088°02'42"
C9	31.21'	30.00'	059°36'09"



SCALE IN FEET: 1" = 150'

"EXHIBIT B"

PLAT TO ACCOMPANY DESCRIPTION FOR VACATION OF THE "SUTTER BOULEVARD" STREET EASEMENT AND THE ADJACENT "LANDSCAPE AND PUBLIC SERVICE EASEMENT" TO JTJ MORGAN HILL RE, LLC BEING A PORTION OF "PARCEL 3" AS SHOWN ON THE PARCEL MAP FOR LOT LINE ADJUSTMENT FILED JUNE 22, 2017, IN BOOK 904 OF MAPS, AT PAGES 47 AND 48, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA

RJA

SHEET 2 OF 2

RUGGERI-JENSEN-AZAR

ENGINEERS • PLANNERS • SURVEYORS

 8055 CAMINO ARROYO GILROY, CA 95020
 PHONE: (408) 848-0300 FAX: (408) 848-0302

 SCALE:
 1" = 150'

 DATE:
 07/22/2021

 JOB NO.:
 142002

**“EXHIBIT C”
LEGAL DESCRIPTION FOR VACATION
OF THE “SUTTER BOULEVARD” STREET EASEMENT AND THE
ADJACENT “LANDSCAPE AND PUBLIC SERVICE EASEMENTS”
TO BUTTERFIELD VENTURE, LLC**

Sutter Boulevard (Street Easement):

All that real property situated in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of “Sutter Boulevard”, as offered for dedication on the Parcel Map filed October 10, 2001, in Book 743 of Maps, at Pages 3 through 6, Records of Santa Clara County, California, being portions of “Lot 1” and “Lot 3”, as described as in the Certificate of Compliance for Lot Line Adjustment recorded December 04, 2020 as Document No. 24735226, Official Records of Santa Clara County, California; and being portions of “Parcel A” and “Parcel B” as shown on the Parcel Map For Lot Line Adjustment filed December 08, 2020 in Book 934 of Maps, at Pages 47 and 48, Records of Santa Clara County, California, being more particularly described as follows:

BEGINNING at the south corner of said “Lot 3”; thence along the southeast line of said “Parcel B”, S45°23'54"W a distance of 34.00 feet to the west line of said “Sutter Boulevard”; thence along said west line, N44°36'06"W, a distance of 478.65 feet to the beginning of a tangent curve to the right, from which the radius point bears N45°23'54"E a radial distance of 334.00 feet; thence continuing along said westerly line, northerly along the curve, through a central angle of 48°47'41", a distance of 284.44 feet to the north line of said “Parcel A”; thence along said north line, S85°48'25"E, a distance of 34.00 feet to the beginning of a non tangent curve to the right, from which the radius point bears S85°48'25"E a radial distance of 300.00 feet and to the south line of “Parcel 3” as shown on the Parcel Map filed in Book 904 of Maps, at Pages 47 and 48, Records of Santa Clara County, California; thence along said south line, northeasterly along the curve, through a central angle of 52°39'49", a distance of 275.75 feet; thence continuing along said south line, N56°51'24"E, a distance of 534.79 feet to the westerly line of “Butterfield Boulevard” and the beginning of a non tangent curve to the left, from which the radius point bears N56°51'24"E a radial distance of 1,846.00 feet; thence along said westerly line, southeasterly along the curve, through a central angle of 01°57'18", a distance of 62.99 feet to the east line of said “Sutter Boulevard” and the beginning of a non tangent curve to the left, from which the radius point bears S54°54'06"W a radial distance of 30.00 feet; thence along said east line, westerly along the curve, through a central angle of 88°02'42", a distance of 46.10 feet; thence continuing along said east line, S56°51'24"W, a distance of 505.89 feet to the beginning of a tangent curve to the left, from which the radius point bears S33°08'36"E a radial distance of 266.00 feet; thence along said east line, southerly along the curve, through a central angle of 101°27'30", a distance of 471.03 feet; thence continuing along said east line, S44°36'06"E, a distance of 478.65 feet to the southeast line of said “Lot 3”; thence along said southeast line, S45°23'54"W a distance of 34.00 feet to the **POINT OF BEGINNING**.

Containing 77,133 square feet, more or less.

As shown on "Exhibit D", attached hereto and made a part hereof.

Landscape and Public Service Easement:

All that real property situated in the City of Morgan Hill, County of Santa Clara, State of California, being all of the 15-foot wide “Landscape and Public Service Easements” (L&PSE), offered for dedication on the Parcel Map filed October 10, 2001, in Book 743 of Maps, at Pages 3 through 6, Records of Santa Clara County, California, contained within the boundaries of “Lot 1” and “Lot 3”, as described as in the Certificate of Compliance for Lot Line Adjustment recorded December 04,

"EXHIBIT C"

2020 as Document No. 24735226, Official Records of Santa Clara County, California; and contained within the boundaries of "Parcel A" and "Parcel B" as shown on the Parcel Map For Lot Line Adjustment filed December 08, 2020 in Book 934 of Maps, at Pages 47 and 48, Records of Santa Clara County, California, being adjacent to, and contiguous with, the above described "Sutter Boulevard" contained within the boundaries of said "Lot 1", said "Lot 3", said "Parcel A", and said "Parcel B".

As shown on "Exhibit D", attached hereto and made a part hereof.

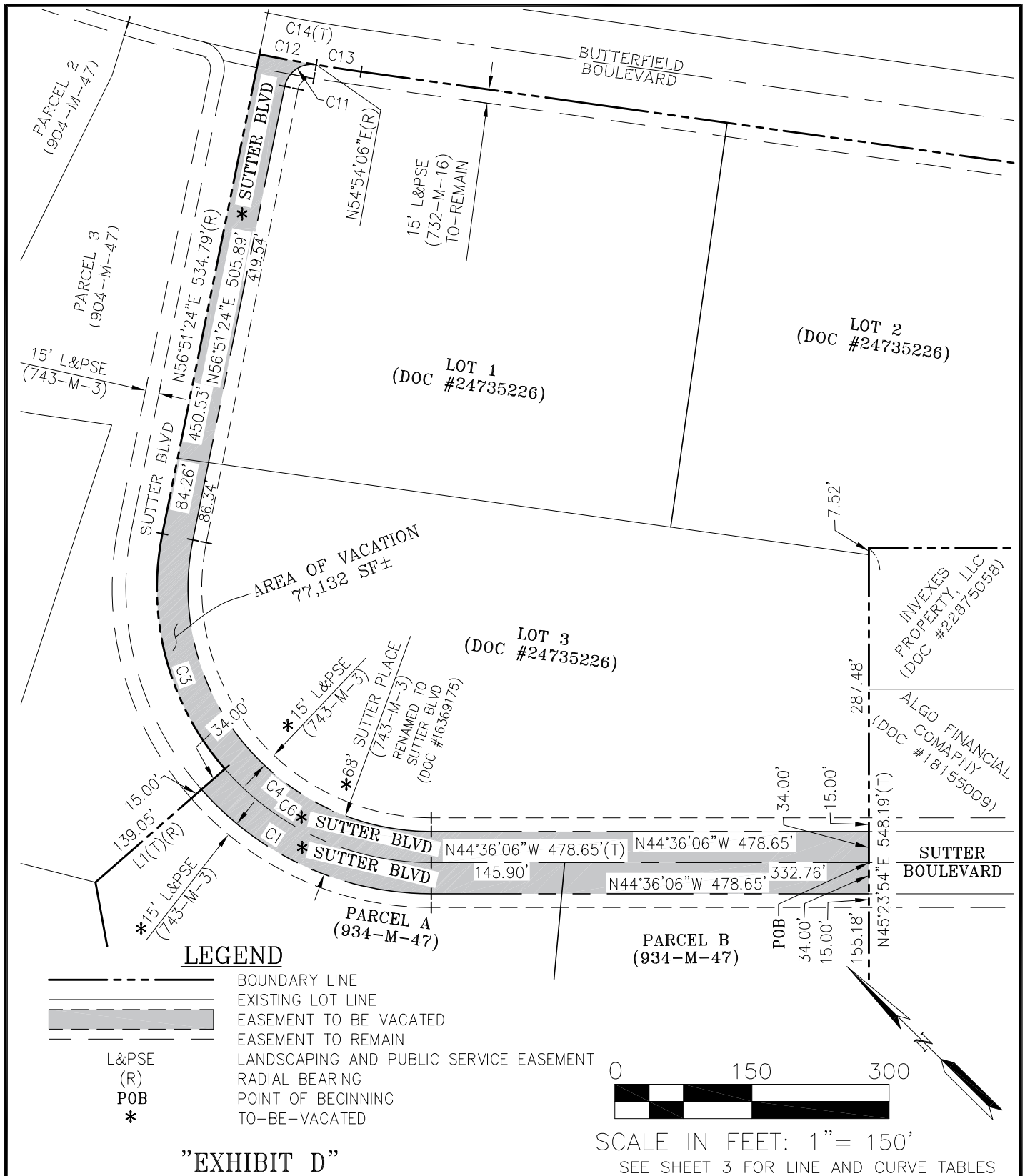
Note: "Sutter Boulevard" was formerly "Sutter Place".

END OF DESCRIPTION.

This description was prepared by me or under my direction pursuant to the requirements of the Professional Land Surveyor's Act.

Bryan Pierce, PLS 8859 Date

Attachment: Resolution - Exhibits C and D (3158 : SUMMARY VACATION OF SUTTER BLVD)



"EXHIBIT D"

PLAT TO ACCOMPANY DESCRIPTION FOR VACATION OF THE "SUTTER BLVD" STREET EASEMENT AND THE ADJACENT "LANDSCAPE AND PUBLIC SERVICE EASEMENTS" TO BUTTERFIELD VENTURE, LLC BEING PORTIONS OF "LOT 1" AND "LOT 3" AS DESCRIBED IN THE CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT RECORDED DECEMBER 04, 2020, AS DOCUMENT NO. 24735226, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA; AND BEING PORTIONS OF "PARCEL A" AND "PARCEL B" AS SHOWN ON THE PARCEL MAP FOR LOT LINE ADJUSTMENT FILED DECEMBER 08, 2020, IN BOOK 934 OF MAPS, AT PAGES 47 AND 48, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA

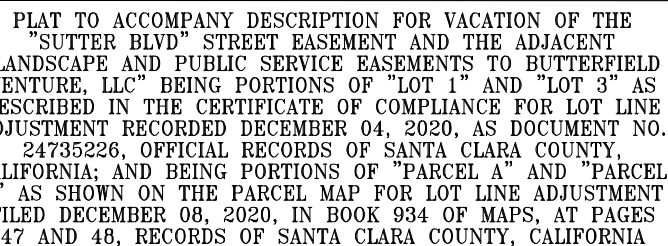
RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
8055 CAMINO ARROYO GILROY, CA 95020
PHONE: (408) 848-0300 FAX: (408) 848-0302

SHEET 1 OF 3

SCALE:
1" = 150'

DATE:
07/22/2021

JOB NO.:
142002



SCALE:
1" = 150'

DATE:
07/22/2021

JOB NO.:
142002

LINE TABLE		
LINE	BEARING	DIST
L1	N85°48'25"W	188.05'

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	284.44'	334.00'	048°47'41"
C2	297.22'	349.00'	048°47'41"
C3	275.75'	300.00'	052°39'49"
C4	471.03'	266.00'	101°27'30"
C5	444.47'	251.00'	101°27'30"
C6	255.49'	300.00'	048°47'41"
C7	23.05'	15.00'	088°02'42"
C8	25.88'	1861.00'	000°47'48"
C9	14.89'	30.00'	028°26'33"
C10	31.21'	30.00'	059°36'09"
C11	46.10'	30.00'	088°02'42"
C12	62.99'	1846.00'	001°57'18"
C13	49.72'	1846.00'	001°32'36"
C14	112.71'	1846.00'	003°29'54"

"EXHIBIT D"

PLAT TO ACCOMPANY DESCRIPTION FOR VACATION OF THE "SUTTER BLVD" STREET EASEMENT AND THE ADJACENT "LANDSCAPE AND PUBLIC SERVICE EASEMENTS" TO BUTTERFIELD VENTURE, LLC BEING PORTIONS OF "LOT 1" AND "LOT 3" AS DESCRIBED IN THE CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT RECORDED DECEMBER 04, 2020, AS DOCUMENT NO. 24735226, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA; AND BEING PORTIONS OF "PARCEL A" AND "PARCEL B" AS SHOWN ON THE PARCEL MAP FOR LOT LINE ADJUSTMENT FILED DECEMBER 08, 2020, IN BOOK 934 OF MAPS, AT PAGES 47 AND 48, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA

SHEET 3 OF 3

RJA
RUGGERI-JENSEN-AZAR
 ENGINEERS ■ PLANNERS ■ SURVEYORS
 8055 CAMINO ARROYO GILROY, CA 95020
 PHONE: (408) 848-0300 FAX: (408) 848-0302

SCALE:
NONE

DATE:
07/22/2021

JOB NO.:
142002



CITY COUNCIL STAFF REPORT

MEETING DATE: September 1, 2021

PREPARED BY: Maria Angeles, Senior Civil Engineer
APPROVED BY: City Manager

ADOPT RESOLUTION DECLARING THE SUMMARY VACATION OF A PORTION OF MONTEREY ROAD STREET RIGHT-OF-WAY, NORTH OF COCHRANE ROAD, AND RESERVATION OF A PUBLIC SERVICE EASEMENT

RECOMMENDATION(S)

1. Adopt resolution declaring the Summary Vacation of a portion of Monterey Road street right-of-way, north of Cochrane Road, and reservation of a public service easement;
2. Direct the City Clerk to file a certified copy of the Resolution of Vacation in the Office of the Recorder of Santa Clara County; and
3. Authorize the City Manager to sign Quitclaim Deeds of the vacated portion of Monterey Road on behalf of the City and direct the City Clerk to file in the Office of the Recorder of Santa Clara County.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2020-2021 Strategic Priorities

Transportation

GUIDING DOCUMENTS

Morgan Hill 2035 General Plan
Vision Zero

REPORT NARRATIVE:

On October 2, 2019, the City Council considered a preliminary proposal for the elimination of the high-speed right turn at the northeast corner of the Monterey Road and Cochrane Road intersection (Attachment 1). These modifications were proposed to improve pedestrian safety and connectivity at the intersection while adhering to the Complete Streets and Vision Zero guidelines. The reconfiguration proposal was prompted by 1) the Design Permit application (File number SR2019-0023) Monument Land Company LLC, for a commercial office development (Techcon Project) proposed on two vacant parcels with Assessor Parcel Numbers 726-34-016 and 726-34-017; and 2) the City's desire to improve pedestrian safety and connectivity at the intersection.

On April 22, 2020, Council adopted Resolution 20-025 that approved the Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Plan (MMRP) for the Techcon Project. Along with the MND, Council also approved an improvement agreement with Monument Land Company LLC for the construction of the redesigned Monterey Road and Cochrane Road intersection improvements.

On December 2, 2020, Council accepted the intersection improvements as complete and approved an Amended and Restated Improvement Agreement with the Monument Land Company LLC relating to the public improvements at the Cochrane and Monterey intersection.

With the completion of the intersection modifications, there is approximately 10,825 sq. ft. of excess right-of-way that is no longer required for street purposes. Therefore, it is recommended that the excess right-of-way be vacated and quitclaimed to the adjacent property owner(s). The area proposed to be vacated is shown on the attached Site Map (Attachment 2).

The recommended action to summarily vacate the excess right-of-way along Monterey Road conforms to Section 8334(a) of the California Streets and Highways Code which states, "The legislative body of a local agency may summarily vacate any of the following: (a) An excess right-of-way of a street or highway not required for street or highway purposes."

All concerned utility companies have been contacted in writing and no opposition was received to the proposed right-of-way vacation. However, there are existing public utilities in the area to be vacated; therefore, a public service easement will need to be reserved over the vacated area.

Staff is recommending that Council approve the summary vacation of a portion of Monterey Road right-of-way and the reservation of a public service easement by adoption of the attached resolution (Attachments 3 and 4).

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the summary vacation of the excess Monterey Road right-of-way and the reservation of a public service easement.

ALTERNATIVE ACTIONS:

There are no feasible alternative actions, as the reconfiguration of the northeast corner of Monterey Road and Cochrane Road intersection has been constructed and the excess street right-of-way can be vacated as it is no longer needed.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On October 2, 2019, the City Council provided preliminary feedback on the reconfiguration of the Monterey Road and Cochrane Road intersection.

On April 22, 2020, Council adopted Resolution 20-025 approving the Techcon Project's Mitigated Negative Declaration (MND), Mitigation Monitoring and Reporting Plan (MMRP), and the Improvement Agreement for the construction of the redesigned Monterey Road and Cochrane Road intersection improvements.

On December 2, 2020, Council accepted the intersection improvements as complete and approved an Amended and Restated Improvement Agreement with the developer relating to the public improvements at the Cochrane and Monterey intersection.

FISCAL AND RESOURCE IMPACT:

Development review costs for this project are paid for by development processing fees.

CEQA (California Environmental Quality Act):

Project: Mitigated Negative Declaration adopted by Council Resolution 20-025.

LINKS/ATTACHMENTS:

1. Map and Schematic of Monterey/Cochrane Intersection Improvements
2. Site Map
3. Resolution - Summary Vacation of a Portion of Monterey Road
4. Resolution - Exhibits "A" and "B"



Attachment: Map and Schematic of Monterey/Cochrane Intersection Improvements (3149 : SUMMARY VACATION OF A PORTION OF

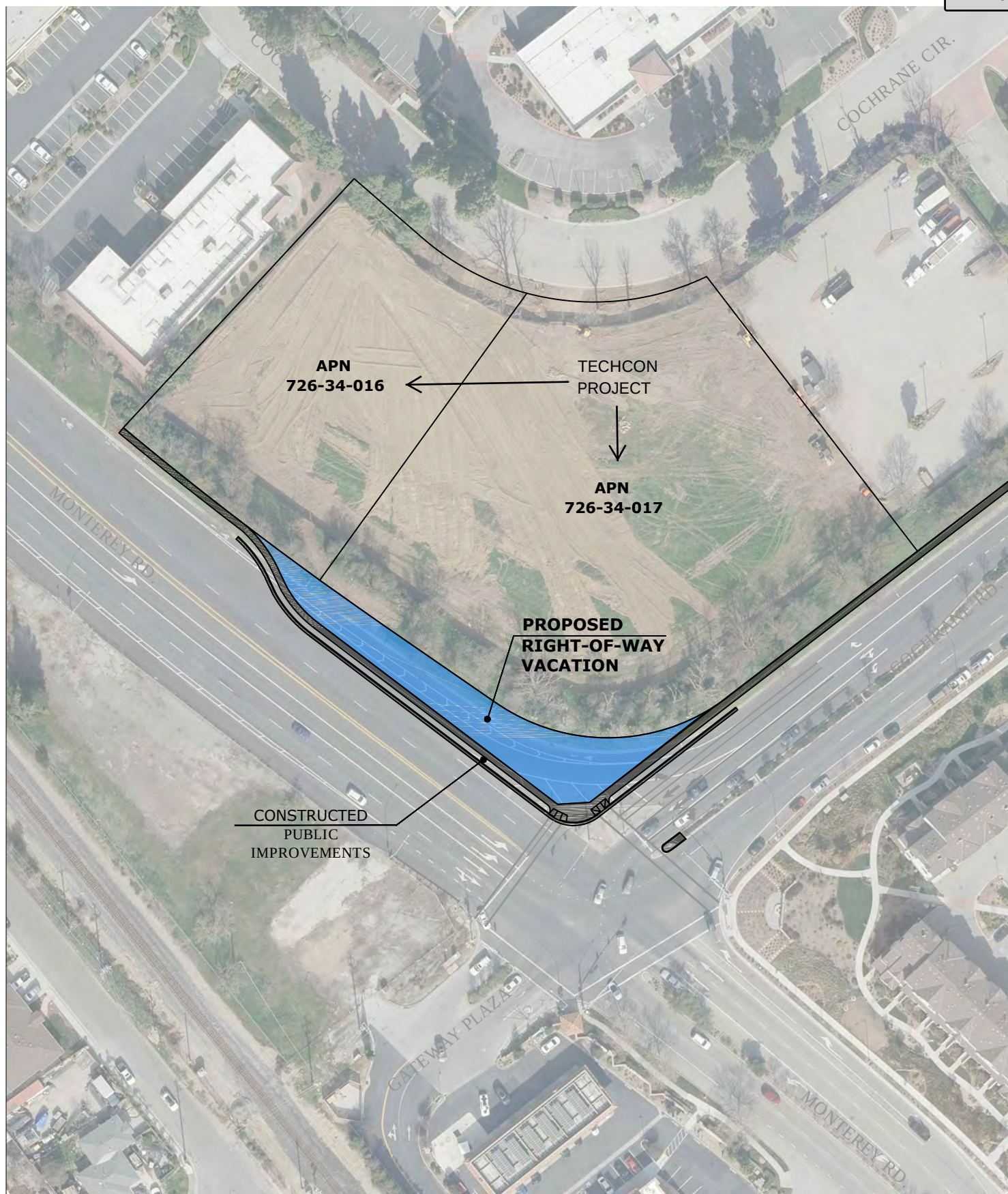


Public Works

MAP AND SCHEMATIC INTERSECTION IMPROVEMENTS NORTHEAST CORNER OF MONTEREY RD. AND COCHRANE RD.



Packet Pg. 82



Attachment: Site Map [Revision 1] (3149 : SUMMARY VACATION OF A PORTION OF MONTEREY ROAD, NORTH OF COCHRANE ROAD)



CITY OF MORGAN HILL

Public Works

SITE MAP SUMMARY VACATION OF A PORTION OF MONTEREY ROAD



SCALE: 1"=100'

Packet Pg. 83

RECORDING REQUESTED BY:

CITY OF MORGAN HILL

WHEN RECORDED MAIL DOCUMENT TO:

CITY CLERK
CITY OF MORGAN HILL
17575 PEAK AVENUE
MORGAN HILL, CA 95037

RECORD AT NO FEE
PER GOVERNMENT CODE SECTION 6103 & 27383

SPACE ABOVE THIS LINE FOR RECCORDER'S USE

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL DECLARING ITS SUMMARY
VACATION OF A PORTION OF MONTEREY ROAD
RIGHT-OF-WAY, LOCATED NORTH OF COCHRANE
ROAD, AND THE RESERVATION OF A PUBLIC SERVICE
EASEMENT**

WHEREAS, pursuant to the provisions of Section 8334, the City Council may summarily vacate an excess right-of-way of a street or highway not required for street or highway purposes; and

WHEREAS, the City Engineer of the City of Morgan Hill has recommended that the hereinafter described property presently held for public purposes is unnecessary for present or prospective municipal purposes, as the northeast corner of Monterey Road and Cochrane Road has been re-configured;

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

SECTION 1: The City Council of the City of Morgan Hill hereby finds from all evidence submitted that the street right-of-way of a portion of Monterey Road (a public street) located north of Cochrane Road, as fully described in Exhibits "A" and "B", is unnecessary for present or prospective public street as said portion of Monterey Road has been superseded by relocation, and is hereby vacated;

SECTION 2: All concerned utility companies were notified in writing of the proposed summary vacation and one utility company requested that a public service easement be maintained over their respective public facilities.

SECTION 3: Public convenience and necessity require the reservation of a Public Service Easement over the portion of Monterey Road to be vacated to construct, maintain, operate, replace, remove, renew, and enlarge lines of pipe, conduits, cables, wires, poles, and other convenient structures, equipment, and fixtures for any and all existing and future public facilities.

SECTION 4: The order of vacation of Monterey Road right-of-way, located north of Cochrane Road, conforms to California Streets and Highways Code Section 8334 as follows: said portion of Monterey Road is excess right-of-way no longer required for street or highway purposes.

SECTION 5: From and after the date this Resolution is recorded, the portion of right-of-way described here as vacated will no longer constitute a public street. However, public convenience and necessity require the reservation of a public service easement.

SECTION 6: The vacation hereby releases all public right-of-way rights for streets and highway purposes to the property owner of the two adjacent parcels (with Assessor Parcel Numbers 726-34-016 and 726-34-017), Monument Land Company LLC.

SECTION 7: The City Manager is hereby authorized to sign Quitclaim Deeds with Monument Land Company LLC on behalf of the City.

SECTION 8: The City Clerk is hereby directed to cause said Quitclaim Deeds to be notarized and recorded in the Office of the Recorder of Santa Clara County. No fees shall be charged for recordation.

SECTION 9: The City Clerk is hereby directed to cause a certified copy of this Resolution of Summary Vacation, attested by said Clerk under seal, to be recorded without acknowledgment, certificate of acknowledgment or further proof in the Office of the Recorder of Santa Clara County. No fees shall be charged for recordation.

PASSED, APPROVED, AND ADOPTED by the City Council of Morgan Hill at its meeting held on this 1st day of September 2021 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

∞ 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 September 1, 2021.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

Exhibit "A"

Legal Description to accompany vacation of a Portion of Monterey Road, and area to be reserved for P.S.E. City of Morgan Hill, County of Santa Clara

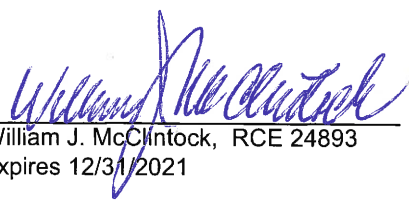
All that real property situated in the City of Morgan Hill, County of Santa Clara, State of California and being more particularly described as follows:

Beginning at a point on the northerly right-of-way line of Monterey Road, which is also coincident to the westerly common corner of Parcels 2 and 3 and as said parcels and right-of-way line are shown on that certain Parcel Map filed for record in Book 564 of Maps at Pages 21 and 22; said point and common corner being the **POINT OF BEGINNING**; thence from said point and along said northerly right-of-way line, along a curve to the left from a radial bearing of North 35°03'31" East, having a radius of 2,750.00 feet, through a central angle of 1°15'00", for an arc length of 60.00 feet; thence South 56°11'29" East, a distance of 104.36 feet; thence along a curve to the left, having a radius of 150.00 feet, through a central angle of 72°06'56", for an arc length of 188.80 feet; thence leaving said right-of-way line of Monterey Road, South 51°41'35" West, a distance of 130.05 feet; thence South 89°40'27" West, a distance of 30.77 feet; thence North 52°33'38" West, a distance of 228.88 feet; thence along a tangent curve to the right, having a radius of 101.50 feet, through a central angle of 25°17'01", for an arc length of 44.79 feet to a point of a reverse curve; thence along a tangent curve to the left from a radial bearing of South 62°43'23" West, having a radius of 110.00 feet, through a central angle of 26°03'27", for an arc length of 50.03 feet to a point on said northerly right-of-way line of Monterey Road; thence along said northerly right-of-way line, along a curve to the left from a radial bearing of North 36°39'56" East, having a radius of 2,750.00 feet, through a central angle of 1°36'25", for an arc length of 77.12 feet to the **POINT OF BEGINNING**, and containing an area of 10,825 square feet, more or less.

END OF DESCRIPTION

See **Exhibit "B"** plat to accompany, attached hereto and made a part hereof

This description was prepared by me or under my direction in conformance with the requirements of the Professional Land Surveyor's Act.


William J. McClintock, RCE 24893
Expires 12/31/2021

Date 5/25/2021



L:\Projects\Bill\219061 Swing - Cochrane Circle\dwg\219061 Plat & Legal - Quitclaim.dwg - 5/25/2021 2:23 PM - Plotted 5/25/2021 2:24 PM by Miguel Morfin
Xrefs: 219061 Lo Existing



MH engineering Co.

16075 VINEYARD BOULEVARD MORGAN HILL, CA 95037

(408) 779-7381

SCALE: none

JOB #: 219061

SHEET

DRAWN BY: miguelm

DATE: May 2021

1 of 1

LEGEND



Boundary of Vacation
Parcel Line
Centerline
Public Service Easement
Radial Bearing

Cochrane Circle

N36°39'56"E (r)
R = 110.00'
Δ = 26°03'27"
L = 50.03'
S62°43'23"W (r)

R = 101.50'
Δ = 25°17'01"
L = 44.79'

R = 2,750.00'
Δ = 1°36'25"
L = 77.12'

S35°03'31"W (r)

Point of Beginning

R = 2,750.00'
Δ = 1°15'00"
L = 60.00'

N52°33'38"W

S56°11'29"E

104.36'

R = 150.00'

Δ = 72°06'56"

Portion of Monterey Road Vacated
by the City of Morgan Hill and
area to be reserved for P.S.E.
10,825 sq.ft.

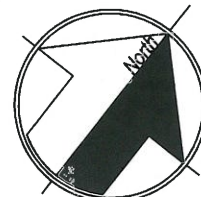
228.88'

S89°40'27"W

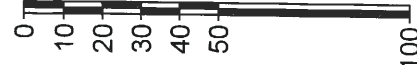
S51°41'35"W

130.05'

Cochrane Road

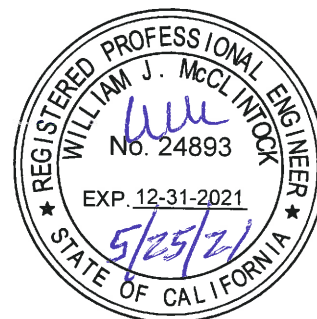


SCALE: 1"=50'



Parcel 2
564 -M- 21-22

Parcel 3
564 -M- 21-22

**Exhibit "B"**

Plat to accompany vacation of a Portion of
Monterey Road, and area to be reserved for P.S.E.
City of Morgan Hill, County of Santa Clara



MH engineering Co.

16075 VINEYARD BOULEVARD MORGAN HILL, CA 95037

(408) 779-7381

SCALE: none

JOB #: 219061

SHEET

DRAWN BY: miguelm

DATE: May 2021

1 of 1



CITY COUNCIL STAFF REPORT

MEETING DATE: September 1, 2021

PREPARED BY: James Sylvain, Deputy Director Utility Services
APPROVED BY: City Manager

RECEIVE 2020 URBAN WATER MANAGEMENT PLAN AND 2020 WATER SHORTAGE CONTINGENCY PLAN

RECOMMENDATION(S)

1. Receive 2020 Urban Water Management Plan and 2020 Water Shortage Contingency Plan; and
2. Open and close the public hearing for the 2020 Urban Water Management Plan and 2020 Water Shortage Contingency Plan.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure

2020-2021 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Water System Master Plan

REPORT NARRATIVE:

Background

The City of Morgan Hill, as a water supplier, must submit an Urban Water Management Plan (UWMP) to the Department of Water Resources (DWR) in accordance with California Water Code requirements. The purpose of the UWMP is to review and maintain the reliability of urban water supplies, ensure that future beneficial use can be complemented by sufficient water supply, continue to promote policies and programs that benefit water conservation and provide a means for response during water supply shortages and drought conditions. In addition to being filed every five years, the UWMP must satisfy requirements defined in the Urban Water Management Planning Act (UWMPA) of 1983 and any amendments thereof.

Since passage of the UWMPA, there have been more than 20 amendments to the Act. According to the UWMPA, an UWMP must be prepared by an urban water supplier that supplies over 3,000 acre-feet (AF) of water a year, or services 3,000 or more connections. The City of Morgan Hill currently pumps approximately 7,808-acre feet per year to supply over 14,400 service connections.

In June 2018, DWR completed the review of the City's 2015 UWMP and its supplements and issued a letter of completeness. The UWMPA has undergone significant expansion and revision since the last UWMP Guidebook was prepared in

2015. Prolonged droughts, groundwater overdraft, regulatory revisions, and changing climatic conditions not only affect each supplier's water reliability determinations, but also the broad picture of statewide water reliability overseen by DWR, the State Water Resources Control Board (State Water Board), and the Legislature. Accordingly, the Act has grown to address changing conditions, and it guides California's water resources management. Thus, this 2020 UWMP includes updates to the 2015 UWMP and addresses additional amendments to the UWMPA and new guidelines established by DWR.

It is very important to note that as a Water Retailer the City relies on the Santa Clara Valley Water District (Valley Water) to provide supply data for the City's UWMP. Valley Water serves as the water wholesaler and the ground water management agency and is responsible for providing water supply to the City as a water retailer. Consequently, the City must utilize data provided by Valley Water to develop the supply projections. Valley Water's 2020 UWMP was approved in June 2021 and is available for review as Attachment 3.

The City has contracted with Akel Engineering for water system planning services. Akel is a highly experienced firm and has a very strong understanding of the City's water system. Akel also provides similar services for the City of Gilroy and has significant experience with the water supply in the South County as well as long-time experience in working with Valley Water.

HIGHLIGHTS OF THE 2020 UWMP

Water Supply

The City currently uses local groundwater as the sole source of water supply and does not purchase or import water from any other water suppliers or entities. It extracts its water from the Coyote Valley subarea of the Santa Clara subbasin and the Llagas subbasin. Those subbasins are monitored and addressed by the Valley Water District. The January 2021 Groundwater Condition Report from Valley Water notes that groundwater levels were about the same as the 5-year average in Coyote Valley subarea but about 13 feet lower than the 5-year average in the Llagas subbasin. Additionally, groundwater pumping for 2020 was above the 5-year average for both subbasins. However, groundwater recharging for 2020 was below the 5-year average for both subbasins.

The actual volume pumped for 2020 from the Coyote and Llagas subbasins are 1,626 acre-feet (AF) and 6,182 acre-feet (AF) respectively for a total of 7,808 acre-feet (AF).

As discussed previously, the City's sole source of potable water is groundwater. As such, the only method available to provide additional capacity for growing demand is the construction of new wells. It should also be noted that the City staff is continuing to look at other conceptual alternatives. City staff have worked with Valley Water during the agency's development of its Draft Countywide Water Reuse Master Plan which includes three potential options for recycled water alternatives that would support Morgan Hill. Additionally, the City continues to review options with our partners at Valley Water and the City of Gilroy for the use of recycled water from the South County Regional

Wastewater Authority (SCRWA) to support increased water supply resiliency in Morgan Hill. Newer technologies related to treated water augmentation (TWA) are now bringing additional options for the City and our partners at Valley Water to explore.

The City's total capacity is approximately 21,600 acre-feet per year; its firm capacity, calculated as the total capacity excluding the largest well, is approximately 19,200 acre-feet per year. The existing firm capacity can meet the City's current demands. The projected water supply capacity in this report is calculated from annual natural recharge at Llagas subbasin of the Gilroy-Hollister Groundwater Basin and the Coyote Valley subarea of the Santa Clara subbasin.

Table 1. Water Supplies – Projected

Water Supply Source	Additional Detail on Water Supply	Projected Water Supply				
		2025	2030	2035	2040	2045
		(AF)	(AF)	(AF)	(AF)	(AF)
Groundwater (not desalinated)	Coyote Valley – Santa Clara	2,500	2,500	2,500	2,500	2,500
Groundwater (not desalinated)	Gilroy-Hollister Valley – Llagas Area	22,000	22,000	22,000	22,000	22,000
Recycled Water	South Bay Water Recycling	0	700	1,500	2,200	2,900
Total		24,500	25,200	26,000	26,700	27,400

Supply Reliability

AB2242 (2018) requires an urban water supplier to include in its UWMP an assessment of the reliability of its water service to customers during normal, dry, and multiple dry years. In addition to assessing supply and demands, the UWMP also considers the reliability of the water supply and vulnerability to seasonal or climatic changes. The reliability assessment includes a comparison of projected water use versus expected water supply for the next 25 years. The UWMP considers three types of climatic conditions as described below:

1. **Average Water Year** – The average water year is a year that represents the median runoff levels from precipitation as well as the same general pattern of runoff. The supply quantities would be like historical average supplies.
2. **Single Dry Year** – The single dry year is defined as the individual year with the lowest usable water supply. This condition can be derived as the year with the lowest annual supply and is represented by the year 1977.
3. **Five-Consecutive-Year Drought** – The five-consecutive-year drought is defined as the five consecutive years with the lowest usable water supply. The multiple dry years are detrimental to the water supply system because of their adverse

effect on the levels of local and state-wide reservoirs, as well as groundwater levels. Available supply for these conditions is constituted as the minimum historical yields for a running average of five years. Consistent with the Valley Water 2020 UWMP, the period between 1988 and 1992 was selected to represent the five-consecutive-year drought. The reduced supply volumes are compared with the projected demands out to 2045.

Table 3. Single Dry Year Supply and Demand Comparison

	2025 (AF)	2030 (AF)	2035 (AF)	2040 (AF)	2045 (AF)
Supply	19,600	20,160	20,800	21,360	21,920
Demand	8,671	10,181	11,623	13,008	14,372
Difference	10,929	9,979	9,177	8,352	7,548

Single Dry-Year Base Year 1977.

Table 4. Multiple Dry Years Supply and Demand Comparison

		2025 (AF)	2030 (AF)	2035 (AF)	2040 (AF)	2045 (AF)
First year	Supply	19,110	19,656	20,280	20,826	21,372
	Demand	8,671	10,181	11,623	13,008	14,372
	Difference	10,439	9,475	8,657	7,818	7,000
Second year	Supply	20,335	20,916	21,580	22,161	22,742
	Demand	8,671	10,181	11,623	13,008	14,372
	Difference	11,664	10,735	9,957	9,153	8,370
Third year	Supply	18,865	19,404	20,020	20,559	21,098
	Demand	8,671	10,181	11,623	13,008	14,372
	Difference	10,194	9,223	8,397	7,551	6,726
Fourth year	Supply	19,110	19,656	20,280	20,826	21,372
	Demand	8,671	10,181	11,623	13,008	14,372
	Difference	10,439	9,475	8,657	7,818	7,000
Fifth year	Supply	18,865	19,404	20,020	20,559	21,098
	Demand	8,671	10,181	11,623	13,008	14,372
	Difference	10,194	9,223	8,397	7,551	6,726

Five Consecutive Year Drought Base Years 1988-1992.

Water Loss Audit

Water loss is water from the distribution system that the City does not collect any revenue for. This water loss can be attributed to two factors. The first is for planned flushing of the system for maintenance and testing, typically for the fire protection system. The second is for system failures and issues due to water seepage, leaks, pipe failures and water theft.

As part of the 2020 UWMP update, urban water suppliers are required to quantify the previous five years distribution system water losses in a manner consistent with the American Water Works Association (AWWA) water system balance methodology. The City has completed the required water loss audit worksheet in accordance with the DWR guidelines for the years 2016-2019, while the audit for 2020 will be completed before the October 2021 deadline. Table 5 documents the reported water loss volumes for 2016-2019. For preliminary reporting purposes the 2020 water loss value was estimated based on historical water loss volumes, as a percentage of total water produced, and then applied to the 2020 water production. In general, the city shows a decrease in water loss volumes over the past five years.

Table 5. Last Five Years of Water Loss Audit Reporting

Reporting Period Start Date	Volume of Water Loss (AF)
January 2016	606
January 2017	541
January 2018	574
January 2019	453
January 2020	305

Conservation Targets

Senate Bill X7-7 (SBX7-7) was approved by the Governor of California on November 10, 2009, requiring urban water suppliers to set target goals for water conservation, which were to be achieved by the year 2020. These goals were referred to as the “20X2020” goals and included reducing per capita consumption by 20 percent by the year 2020.

The future needs of the supply source were evaluated by applying the per capita consumption rate, expressed as gallons per capita per day (GPCD), to the projected population.

The city had an average GPCD of 192 from 1995 to 2000, while the average from 2001 to 2010 remained relatively flat at approximately 200 GPCD. Conservation efforts were

successful in lowering the water consumption to a per capita water consumption rate of 123 GPCD in the year 2015, and 150 GPCD in the year of 2020.

Due to ongoing water conservation policies and practices within the City's service area, the 2020 per capita water demand target has been achieved.

Water Shortage Contingency Plan

The City's Water Shortage Contingency Plan (WSCP) is a separately adopted planning document that most notably outlines levels of water shortage conditions, demand reduction methods to be implemented in the event of a water shortage, and the process the City will implement to perform an annual Supply and Demand assessment. The requirement to develop a separate WSCP outside the UWMP is new and this will be the first time the WSCP is created as a separate document for the City. The WSCP was previously included as a chapter in the UWMP. One key purpose of this separation is to allow the WSCP to be updated more frequently than the 5 year cycle of the UWMP.

The WSCP also includes discussion of the City's communication protocols during a water shortage, methods of determining compliance and enforcing water use prohibitions, estimating the financial consequences of a water shortage, and the methods the City has in place to monitor and report the effectiveness of any water demand reduction methods implemented. The City updated its conservation ordinance for water waste prevention in September 2015 through the adoption of Ordinance 2159 and declared a level 2 water restriction on June 16, 2021, which reduces the number of days to irrigate from 3 to 2 days per week.

In the face of increasing drought conditions, the City staff are recommending that the WSCP be separated into 6 levels to allow for additional actions to be taken as drought conditions impact the City and region. These actions are included in the table below. Should the new levels be approved with the WSCP, the City will need to update its Water Waste Ordinance to maintain consistency. City staff will bring back the Water Waste Ordinance before the end of the year to reflect the new water shortage contingency plan levels in the City's Municipal Code. This will allow for additional actions to be taken early on should drought conditions continue through the winter.

Table 6. Water Shortage Contingency Plan Levels

Shortage Level	Percent Shortage Range	Shortage Response Actions (Narrative description)
1	Up to 10%	Water Supply Shortage exists when City Council determines and agrees that 1% - 10% consumer demand reduction is necessary to make more efficient use of water.
2	Up to 20%	Water Supply Shortage exists when City Council determines and agrees that 11% - 20% consumer demand reduction is necessary to make more efficient use of water.
3	Up to 30%	Water Supply Shortage exists when City Council determines and agrees that 21% - 30% consumer demand reduction is necessary to make more efficient use of water.
4	Up to 40%	Water Supply Shortage exists when City Council determines and agrees that 31% - 40% consumer demand reduction is necessary to make more efficient use of water.
5	Up to 50%	Water Supply Shortage exists when City Council determines and agrees that 41% - 50% consumer demand reduction is necessary to make more efficient use of water.
6	>50%	Water Supply Shortage is referred to as Water Shortage Emergency, and exists when City Council determines and agrees that a consumer demand reduction of greater than 50% is necessary to maintain public water supplies.

Demand Management

To maintain ongoing demand and achieve the water use targets as stipulated in the 2014, Assembly Bill 2067 which amended the UWMPA to 6 more general requirements. The following lists each requirement and gives a summary of City activities to meet the requirement.

1. Water Waste Prevention Ordinance

In September 2015, the City adopted Ordinance 2159, which included the City's water conservation program and established three levels of water rationing plan. The water waste prevention ordinance is also documented in the Water Shortage Contingency Plan.

2. Metering

To encourage additional water conservation, the City has an ordinance in place that requires separate meters installed at multi-unit residences and in multi-use

developments. Research has shown that water users responsible for paying for their own water use an average of 15% less water than if metered separately.

3. Conservation Pricing

Historically, the City's pricing structure charged customers at different rates based on amount of water delivered; customers using more water were charged at a higher rate than those using less water. Currently, the City water rates use a combination of fixed rates, based on meter size, as well as a potential variable rate component where rates increase based on increases in consumption.

4. Public Outreach and Rebate Programs

The City, in cooperation with Valley Water, has multiple programs in place to reduce water consumption by raising public awareness of water conservation. Additionally, they are incentivizing replacement of high-water use fixtures through both optional and mandated fixture replacement programs. The City uses information programs such as bill inserts, demonstration gardens, special events, literature rack, new resident orientation, newspaper columns, and newsletters as well.

5. Programs to Assess and Manage Distribution System Real Loss

The City has implemented a system water audit to determine if leaks in the supply and distribution system exist and a method for repair if the leaks become significant. The system audit is performed by tracking the actual metered water use, which can be compared to total well production. Production is tracked monthly and reviewed annually to determine if the system exhibits significant losses.

6. Water Conservation Program Coordination and Staffing Support

The City supports the water conservation program using 0.25 full time equivalent staff allocation.

Next Steps

Following this review by the City Council and the community engagement outlined in this report, the draft UWMP will be placed before Council for adoption at its October 6th meeting. Additionally, this fall, City staff will be bringing forward to the Council an update to the Water System Master Plan followed by a user rate study for water rates.

COMMUNITY ENGAGEMENT: Inform

The UWMPA requires that the adopted UWMP demonstrate the water agency solicited public participation. In accordance with the stated law, the City will hold a public hearing for members of the community to provide comments, learn about existing and future water supplies of the City, and raise concerns towards the plan. A notice of the public hearing was published in the local newspaper on August 13 and 20, 2021, notifying interested parties that the draft 2020 UWMP was available at various City facilities and on the City's web page (www.morganhill.ca.gov) for review two successive weeks prior to adoption, which is scheduled on October 6. In addition to the public hearing held for this item with the Council, the City will host a workshop/town hall meeting for the public

on September 9th, in anticipation of the 2020 UWMP being adopted by the Council on October 6th.

ALTERNATIVE ACTIONS

The City Council may provide feedback and alternate direction on the content of the UWMP or the WSCP. Depending upon the feedback, the City may be required to return for second review by the Council prior to going to the Council for approval.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City last adopted the 2015 UWMP on August 24, 2016. The City updated its Water System Master Plan on October 18, 2017. This will be the first time the City Council is required to adopt its WSCP.

FISCAL AND RESOURCE IMPACT:

Funding for this project was included in the fiscal year (FY) 2020-2021 Capital Improvement Program (CIP) budget and funded through the Water Fund, which is paid for by customer rates

CEQA (California Environmental Quality Act): Categorical Exemption

The analysis of long-term water supply strategies is exempt from CEQA under Public Resources Code § 21102, 21150 (Feasibility or planning studies for possible future actions that the agency has not approved, adopted, or funded).

LINKS/ATTACHMENTS:

1. Public Review Draft Morgan Hill UWMP (weblink)
2. Public Review Draft Morgan Hill WSCP (weblink)
3. Valley Water Urban Water Management Plan (weblink)



CITY COUNCIL STAFF REPORT

MEETING DATE: September 1, 2021

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

APPROVE A DISPOSITION AND DEVELOPMENT AGREEMENT AMENDMENT AND AMENDMENT TO THE FISCAL YEAR 2021-22 BUDGET FOR THE DEPOT - LATALA PROJECT

RECOMMENDATION(S)

1. Adopt resolution authorizing the City Manager to execute an amendment to the Disposition and Development Agreement for the Hale Lumber site; and
2. Adopt resolution amending the Fiscal Year 2021-22 Budget appropriating \$755,591 from the Public Facilities Fund (346) and \$138,263 from the Undergrounding Fund (350).

COUNCIL PRIORITIES, GOALS & STRATEGIES

GUIDING DOCUMENTS

Morgan Hill 2035 General Plan

BACKGROUND:

On October 3, 2018, the City Council approved a Disposition and Development Agreement (DDA) with Latala Group, LLC (Developer) for the realignment of Depot Street, Community Cultural Center (CCC) parking lot enhancements, and development of a 3,000 square foot office space as part of the residential project on the Hale Lumber site in exchange for .29-acres of public right-of-way on Depot Street. In March of 2019, it was determined that further environmental review was required prior to processing the tentative map and final map. To allow for the completion of the environmental assessment, a minor amendment to the DDA was approved to extend the map processing timeline.

The Planning Commission reviewed and awarded 49-allotments for the mixed-use project on January 22, 2019, followed by the RDCS Development Agreement (DA) adopted by City Council on April 17, 2019. Subsequent approvals in 2019 include the Tentative Map and Design Review permit. The Developer filed for the final map in compliance with the DDA and started the process for the off-site improvement agreement in March 2020.

The State of California declared a State of Emergency on March 4, 2020, due to the COVID-19 pandemic and the City of Morgan Hill Director of Emergency Services declared a local emergency on March 13, 2020, which was ratified and extended by the City Council on March 18, 2020. The Shelter-in-Place restrictions affected residents and

business operations, including the construction and building trades. The impacts of these restrictions caused the cost of construction and building materials to increase. Additionally, inflation costs, lack of labor, and lack of financing has further impacted projects under construction.

Due to the affects of the pandemic, the Developer is requesting the following:

- time extensions to project deadlines and DDA updates;
- construction cost estimate adjustments including City's contribution; and
- a reimbursement agreement for the undergrounding of the PG&E utilities adjacent to the railroad tracks

REPORT NARRATIVE:

Time Extensions to project deadlines and DDA updates

Time Extensions: On February 17, 2021, the Council adopted a Resolution extending Planning, Subdivision, and Building permit approvals due to COVID-19 Emergency. This Resolution extends the effectiveness of entitlements by an additional eighteen months. The DDA outlined tasks to be completed during different stages. This amendment, if approved, would extend the dates within the DDA by eighteen months.

DDA updates: A draft site plan was created for the mixed-use portion of the project that identified 48 units. During the RDCS application process, it was determined that the project could yield an additional unit for a total of 49-units. The project received approvals for a 49-unit project by the Planning Commission and City Council in 2019. This amendment will update the DDA to reflect 49-units.

Construction cost estimate adjustments including City's contribution

Depot Street Realignment and Parking Lot Enhancements: As described within the existing DDA, the realignment of Depot Street includes selling .29-acres of the existing Depot Street right-of-way and vacating that portion of the street for redevelopment. The City receives credit from the Developer for street frontage improvements on Depot Street south of the CCC parking lot entrance, as this would have been required for the development of the Hale Lumber site if the road was not realigned. The remaining balance for the construction of Depot Street with parking lot improvements would be contributed from the RDCS fees associated with the new development. The table below describes the City's contribution of the cost and payment resources outlined in the DDA.

TABLE 1.1

CREDIT FROM VALUE OF DEPOT STREET	\$303,178
CREDIT FROM DEPOT STREET FRONTAGE IMPREOVEMENTS	\$213,739
CREDIT FROM RDCS COMMITMENTS (MUNI INFRASTRUCTURE)	\$193,904
CREDIT FROM RDCS COMMITMENTS (TRANSPORTATION)	\$190,905
TOTAL COST FOR REALIGNMENT	\$901,726

The DDA states cost estimates will be reconfirmed during off-site permit review. As the off-site permit is currently under review, the City has received new cost estimates for the construction. The new estimates show the increase in costs associated with materials

and construction and how the COVID-19 pandemic and inflation have affected the construction industry, and this project in particular. Additionally, as the project has progressed, additional costs previously not accounted for in the original cost estimates have been discovered. The City will need to contribute an additional \$996,520 to cover the costs to realign Depot Street with associated offsite improvements for the project, bringing the City's total contribution to \$1.9 million. The funding sources to cover these expenses would be allocated from the following areas:

TABLE 1.2

FEE CREDITS FOR RDCS INFRASTRUCTURE	\$98,000
FEE CREDITS FOR RDCS SCHOOL PEDESTRIAN SAFETY	\$49,000
FEE CREDITS FOR TRAFFIC IMPACT FEES	\$93,929
REIMBURSEMENT FROM THE CITY FROM PUBLIC FACILITIES FUND	\$755,591
TOTAL ADDITIONAL CONTRIBUTION	\$996,520

Office Space for Public Use: The project includes an approximate 3,000 square foot office building to be purchased by the City for use as a non-profit services center. The appraised price at the time of approval for the DDA was \$800,000. The City is funding the acquisition of the non-profit service center building from the Recreation Center Impact Fund (360). The current estimated cost for office space has increased to \$320 per square foot, totaling in \$960,000 for the office space. Staff recommends continuing the plan for the purchase as the cost of purchasing this building will be less than half the cost of constructing a separate facility. Funding to purchase the building was included in the development of the FY 2021-22 Fiscal Year Capital Improvement Program based on the project moving forward.

Undergrounding of Utilities

Consistent with our guiding documents, the City would like to underground PG&E utilities that run adjacent to the railroad along the east property line of the Hale Lumber Site. The best time to complete this project is before or during the construction of the new project. The bid for the undergrounding project is \$138,263. A reimbursement agreement with the Developer would allow the Developer to complete the construction work at the same time of their project. If the reimbursement agreement is approved, the funds for the reimbursement of the project will come from the Undergrounding Fund (350). Staff recommends appropriating funds now for this enhancement to ensure funds are accounted for. The reimbursement agreement for these funds will return to the Council at the time the public improvements agreement is developed.

COMMUNITY ENGAGEMENT: Inform

All prior City Council and Commission Actions for this project included a notice to the public. City staff and the Developer have engaged the Downtown Association, the Downtown Restaurant Association, the Chamber of Commerce, the Freedom Fest event representative, Mardi Gras event representative, and Bingo representative on this project.

ALTERNATIVE ACTIONS:

The Council may deny the proposed DDA amendment and/or the reimbursement agreement. While the project would still be allowed to move forward under the approved DDA, this could ultimately result in a loss of this project. If the project does not move

forward, a new development proposal could be submitted that would not include the realignment of Depot Street, nor the ability to purchase office space for public purposes. Additionally, the project's proximity to the Caltrain Station positions this property to be eligible for unlimited density, extended height, and no on-site parking under current law for projects within a ½ mile of a transit station.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- April 18, 2018 – ENA was presented and approved by City Council.
- July 20, 2018 – Planning Commission Workshop on Downtown Housing and Retail Capacity, Trends, and Opportunities.
- August 21, 2018 – Presentation to the Parks and Recreation Commission for the opportunity to purchase the 3,000 square foot office space within the proposed development. Parks and Recreation Commission recommended approval to City Council.
- September 5, 2018 – Presented opportunity to purchase the 3,000 sq ft office building for non-profits.
- October 3, 2018 – City Council approved a Disposition Development Agreement memorializing the realignment of Depot Street, the parking lot enhancements for the CCC, the development of office space within the mixed-use project site, and the vacation of Depot Street.
- January 22, 2019 – Planning Commission awarded 49 allotments to the project's RDCS application.
- April 17, 2019 – City Council approved the RDCS Development Agreement for the 49 allotments.
- September 10, 2019 – Planning Commission approved the Tentative Map for the project and recommended approval of the Design Review Permit to City Council.
- October 2, 2019 – City Council reviewed and approved the Design Review Permit for the project.

FISCAL AND RESOURCE IMPACT:

Attachment 3 provides details on the original and newly proposed project funding, including all proposed credits and reimbursements for the public improvements. This includes the updated cost estimates, fee credits for RDCS Infrastructure and school pedestrian safety, Fee credits for Traffic Impacts, and the appropriation of \$755,591 from the Public Facilities Fund (346). The Public Facilities Fund has approximately \$1.1 million in funding. Dollars within the fund were collected from the previous project commitments in the former RDCS and are typically used for public improvements on street and sidewalk infrastructure.

City staff are additionally proposing the appropriation of \$138,263 in funding from the Undergrounding Fund (350) to support the undergrounding of the City's portion of overhead lines adjacent to the project.

CEQA (California Environmental Quality Act):

The Final Master Environmental Impact Report (FMEIR) for the Morgan Hill Downtown Specific Plan was certified in November 2009 in conformance with California Environmental Quality Act (CEQA) Guidelines Section 15175(a), which identified the impacts of the Downtown Specific Plan in order to streamline the later environmental review of projects and approvals required to implement the Specific Plan. The intent was for the Downtown Specific Plan MFEIR to be a program-level document from which subsequent development consistent with the Specific Plan could tier from in conformance with CEQA Guidelines Section 15176(d)).

In addition, an Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, was prepared in accordance with CEQA and certified by the Morgan Hill City Council on July 27, 2016. (SCH #2015022074). CEQA Guidelines Section 15164 states that the lead agency or a responsible agency shall prepare an Addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

An Addendum was completed and provided CEQA analysis for the project as part of the adopted 2009 Downtown Specific Plan MFEIR. As part of the Addendum, a Transportation Impact Analysis concluded consistency with both the General Plan and Downtown Specific Plan. The Addendum found no impacts that were not previously disclosed in the General Plan FEIR or the Downtown Specific Plan Master FEIR, nor would it result in a substantial increase in the magnitude of any significant environmental impacts previously identified. This amendment to the DDA and Reimbursement Agreement is a fiscal change by nature, therefore will not result in a change to the outcome of the Addendum.

LINKS/ATTACHMENTS:

1. Resolution for DDA Amendment
2. Exhibit A to Resolution for DDA Amendment
3. Cost, Credit and Reimbursement Detail
4. Budget Resolution
5. Exhibit A to Budget Resolution - Budget Scorecard

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MORGAN HILL, AND THE LATALA GROUP, LLC, FOR THE PURCHASE BY THE CITY OF PROPERTY; FOR THE SALE OF PROPERTY BY THE CITY; AND FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS INCLUDING SURFACE PARKING ENHANCEMENTS AT THE COMMUNITY AND CULTURAL CENTER, AND THE REALIGNMENT OF DEPOT STREET

WHEREAS, the City of Morgan Hill (“City”) is the owner of (i) the Community and Cultural Center (the “CCC”) located on an approximate eight (8) acre parcel located at the northeast corner of East Dunne Avenue and Monterey Road in Morgan Hill California, designated by Assessors Parcel Number 726-13-052 (the “CCC Property”) and (ii) Depot Street, a City street that runs north-south between East Main Avenue and East Dunne Avenue; and

WHEREAS, the City desires to sell, and the The Latala Group, LLC (“Developer”) desires to buy, for fair market value, Depot Street right-of-way, which totals .29 acres; and

WHEREAS, the Downtown Specific Plan, and the General Plan 2035 guide development in Morgan Hill. These documents envision the realignment of Depot Street to connect to Church Street, improving transportation circulation and movement in the Downtown area. To reach this goal, the City has been examining opportunities that could lead to realignment of Depot Street by exploring development opportunities with adjacent properties; and

WHEREAS, Developer and the City entered into a Disposition Development Agreement on October 3, 2018 for the purposes of memorializing an agreement between themselves to redevelop the sites as follows: 1) a mixed-use housing development with office space on the Hale Lumber Property located at 17020 Depot Street, Morgan Hill (APN: 726-13-049), including the .29 acre portion of the former Depot Street alignment, 2) the realignment of Depot Street to connect with Church Street, 3) and surface parking lot enhancements on with no net loss in parking on the CCC property; and

WHEREAS, The State of California declared a State of Emergency on March 4, 2020 due to the COVID-19 pandemic and the City of Morgan Hill Director of Emergency Services declared a local emergency due to the COVID-19 pandemic on March 13, 2020 which was ratified and extended by the City Council on March 18, 2020; and

WHEREAS, The County of Santa Clara declared an Order of the Health Officer on March 16, 2020, ordering a Shelter in Place for County residents and restricting business operations to slow the spread of COVID-19. These restrictions included restrictions on all operations other than

essential operations, including construction, planning, and buildings with further Order revisions providing for limited operations; and

WHEREAS, the impacts of these restrictions caused the cost of construction and building materials to increase including inflation costs, lack of labor, and lack of financing; and

WHEREAS, the City Council of the City of Morgan Hill wishes to support local residents, business owners, and property owners throughout this emergency and in their recovery; and

WHEREAS, this amendment will update the DDA to be consistent with RDCS allotments awarded and will memorialize: 1) an 18-month time extension to all task related timelines within the DDA and 2) allow the City to contribute additional funds toward the construction of the realigned Depot Street with associated off-site improvements; and

WHEREAS, the City Council has determined that the Project is consistent with the Downtown Specific Plan and the 2035 General Plan; and

WHEREAS, the Final Master Environmental Impact Report for the Morgan Hill Downtown Specific Plan was certified in November 2009 in conformance with California Environmental Quality Act (CEQA) Guidelines Section 15175(a), identified the impacts of the Downtown Specific Plan in order to streamline the later environmental review of projects and approvals required to implement the Specific Plan. The intent was for the Downtown Specific Plan FEIR to be a program-level document from which subsequent development consistent with the Specific Plan could tier from (in conformance with CEQA Guidelines Section 15176(d)); and

WHEREAS, an Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, was prepared in accordance with CEQA and certified by the Morgan Hill City Council on July 27, 2016. (SCH #2015022074); and

WHEREAS, CEQA Guidelines Section 15164 states that the lead agency or a responsible agency shall prepare an Addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred; and

WHEREAS, an Addendum was prepared to provide a program-level CEQA analysis of the proposed project, as part of the adopted 2009 Downtown Specific Plan EIR. The TIA prepared for the project concluded consistency with both the General Plan Final Environmental Impact Report (FEIR) and the Downtown Specific Plan Master Environmental Impact Report (MFEIR) and was incorporated within the Addendum; and

WHEREAS, the Addendum found no impacts that were not previously disclosed in the General Plan FEIR or the Downtown Specific Plan Master FEIR, nor does it result in a substantial increase in the magnitude of any significant environmental impacts previously identified; and

WHEREAS, this amendment to the DDA is financial in nature and does not change the CEQA analysis for the project, therefore no further analysis is required; and

WHEREAS, the City's overall contribution of land and funds does not exceed the value that the City is receiving in return. The City is receiving a net benefit from this DDA; and

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

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

SECTION 2. That the sales price of \$960,000 at \$320 per square foot as provided in the amended DDA for the sale of the office building to the City represents fair market value of the property.

SECTION 3. That the City hereby approves and authorizes the City Manager and City Clerk to execute and enter into the Amended Agreement with Developer, in substantially the form attached hereto as Exhibit A, together with such further minor conforming, technical or clarifying changes or revisions as may be agreed to and approved by the City Attorney which do not materially increase the obligations of the City there under. Further, the City Manager and City Clerk are authorized and directed to take such further actions and execute such documents on behalf of the City of Morgan Hill as are necessary to carry out the transaction contemplated by the Agreement, including without limitation, one or more deeds, use agreements, easements, assignment and assumption agreements, and certificates of completion.

SECTION 4. This Resolution shall take effect immediately upon adoption.

PASSED, APPROVED, AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 1st day of September, 2021 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

∞ 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. _____, adopted by the City Council at the meeting held on September 1, 2021.

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

DATE: _____

Michelle Bigelow, City Clerk

SECOND AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT

HALE LUMBER, DEPOT STREET, AND COMMUNITY CULTURAL CENTER

THIS AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT ("**Amendment**") is dated as of this 1st day of September, 2021, is entered into by and between the CITY OF MORGAN HILL, a California municipal corporation ("**City**"), and the Latala Group, LLC, a California Limited Liability Company ("**Latala**" or "**Developer**"). Developer and City are sometimes referred to individually as a "Party", and collectively as the "Parties."

RECITALS

The following recitals are a substantive portion of this Amendment:

On October 3, 2018, the Parties entered into a Disposition and Development Agreement (DDA) to develop property located at the northeast corner of East Dunne Avenue and Depot Street in Morgan Hill, California, designated as APN: 726-13- 049 for a mixed-use residential development project ("Project").

On March 12, 2019 an amendment to the DDA was approved to allow for an extension of time to process the tentative and final map. This time extension allowed for the completion of the project-level environmental assessment

Pursuant to the DDA, the Developer is required to meet entitlement application submittal timelines and achieve construction tasks by a specified date.

The State of California declared a State of Emergency on March 4, 2020, due to the COVID-19 pandemic and the City of Morgan Hill Director of Emergency Services declared a local emergency due to the COVID-19 pandemic on March 13, 2020, which was ratified and extended by the City Council on March 18, 2020.

Shelter in Place for county residents and restricting business operations other than essential operations included but was not limited to construction, planning and building.

These responses to the COVID-19 pandemic crises have been critical to protect public health and safety. However, these restrictions have, and will continue to cause, financial stress such as cost of construction and building material increases, inflation costs, lack of labor, and lack of financing.

This amendment will update the DDA to be consistent with RDCS allotments awarded and will memorialize: 1) an 18-month time extension to all task related timelines within the DDA and 2) allow the City to contribute additional funds toward the construction of the realigned Depot Street with associated off-site improvements.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. All task related timelines within the DDA are extended by 18-months. Developer can apply for an additional 18-month time extension with the review and approval authority by the City of Morgan Hill City Manager.
2. The DDA will allow for the construction of up to 49-units to be consistent with the approved RDCS DA, and subsequent approved entitlements.
3. Section 3.8 shall be amended to include:

The City's contribution to the construction of the realignment of Depot Street with associated off-site improvements for the project will be increased by \$996,520 per the updated cost estimates from the following funding sources:

TABLE 1.2

Fee Credits for RDCS Infrastructure	\$98,000
Fee Credits for RDCS School Pedestrian Safety	\$49,000
Fee Credits for Traffic Impact Fees	\$93,929
Reimbursement from the City from Public Facilities Fund	\$755,591
TOTAL ADDITIONAL CONTRIBUTION	\$996,520

4. Section 3.10 of the DDA is amended to read as follows:

3.10 Mixed Use Construction.

Developer shall construct an approximate 3,000-square foot "warm shell" ground floor office building on the Project Property to be conveyed to City for public purpose ("Office Building"). If approved by City, Developer may construct condominiums on the second and third floors of the building. The Office Building shall be conveyed from Developer to City at Fair Market Value of \$960,000 based upon \$320 per square foot valuation (Purchase Price). Should the size of the portion of the building be increased or decreased the payment by City shall be adjusted based upon the \$320 per square foot calculation.

- (a) Should the building include residential units, Developer shall convey to City only the office portion of the building.
- (b) Conditional Use Permit. A CUP will be required if the Project is residential only, and not Mixed Use.
- (c) Agreements regarding common areas. The City will not participate in or become a member of the Home Owners Association (HOA) contemplated to be

formed for the residential areas of the project. The City will be responsible for maintenance and repair of grounds specifically designated as a part of the commercial parcel to a commercially reasonable standard and will limit access of commercial tenants and their customers to those commercial areas as designated on a mutually agreed upon plan to be determined during site review. City agrees that HOA-maintained areas are for residents and their guests only, and not for City's use.

As to those common structures necessitating replacement or common maintenance/servicing (roof, exterior paint, common water lines), the City will contribute to the cost of the repair, replacement, servicing, in a manner proportionate to the square footage cost of the improvements, commensurate with the proportionate square footage of commercial occupancy. Should the residential or mixed-use portion not be constructed, and City purchases the office building in fee simple than City will be solely responsible for any maintenance and there will be no common area.

To the extent that the City has not maintained the commercial space and associated landscaping in a commercially reasonable manner, HOA may notice City, describe failure, and City will respond to HOA and or replace or repair within 60 days. City intends to maintain a cooperative relationship with the HOA, indicative of the long term occupancy of a portion of the project.

The Parties hereto have executed this Agreement as of the date last date written below.

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Date: _____

Christina Turner, City Manager

Date: _____

APPROVED AS TO FORM:

The Latala Group, LLC

Donald A. Larkin, City Attorney

Date: _____

By:_____
Print Name and Title of Signer.

Date: _____

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

24197079

Regina Alcomendras
Santa Clara County - Clerk-Recorder

06/06/2019 11:16 AM

Titles: 1 Pages: 5

Fees: \$0.00

Taxes: \$0

Total: \$0.00



127-04-18-062

**AMENDMENT TO
DISPOSITION AND DEVELOPMENT AGREEMENT**

by and between the
CITY OF MORGAN HILL,
a California municipal corporation

and
THE LATALA GROUP, LLC
a California Limited Liability Company

regarding the
**HALE LUMBER SITE, DEPOT STREET REALIGNMENT
AND COMMUNITY & CULTURAL CENTER**

Attachment: Exhibit A to Resolution for DDA Amendment [Revision 4] (3166 : Disposition Development Agreement Amendment and

**AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT
HALE LUMBER, DEPOT STREET, AND COMMUNITY CULTURAL CENTER**

THIS AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT ("**Amendment**") is dated as of this 12th day of March, 2019, is entered into by and between the CITY OF MORGAN HILL, a California municipal corporation ("**City**"), and the Latala Group, LLC, a California Limited Liability Company ("**Latala**" or "**Developer**"). Developer and City are sometimes referred to individually as a "Party", and collectively as the "Parties."

RECITALS

The following recitals are a substantive portion of this Amendment:

On November 20, 2018, the Parties entered into a Disposition and Development Agreement (DDA) to develop property located at the northeast corner of East Dunne Avenue and Depot Street in Morgan Hill, California, designated as APN 726-13- 049 for a mixed-use residential development project ("Project").

Pursuant to the DDA, Developer is required to submit specific entitlement applications no later than December 31, 2018.

Furthermore, pursuant to the DDA, Developer is required to file a Tentative Map no later than February 28, 2019, and the Final Map no later than August 30, 2019.

On June 11, 2018, Developer applied for an environmental assessment of its Project.

On December 3, 2018, Developer submitted a tentative map for the Project.

City determined that a project-level environmental assessment is necessary for processing of the Tentative Map, but it will not be completed in time to allow for the processing of the Tentative Map and Final Map as described in the DDA section 3.6, and therefore, time for compliance needs to be extended for filing of the Final Map.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

Section 3.6 of the DDA is amended to read as follows:

3.6 Subdivision Maps Required. Developer shall file all required Tentative and Final Maps in compliance with Title 17 of the MHMC, and as required by RDSCS to exercise allotments.

- (a) Tentative map. Tentative map shall be filed no later than February 28, 2019. Developer's engineer shall timely respond to all corrections requested by the city engineer until it has been marked as "Approved as Submitted."

- (b) Final Map. Within 6 months of approval the tentative map, Developer must file its phase 1 Final Map and execute the Subdivision Improvement Agreement if improvements have not been constructed. Within six months of approval of the phase 1 Final map by City Council, Developer shall apply to the Engineering and Public Works Department for all entitlements necessary for the off-site improvements.

The Parties hereto have executed this Agreement as of the date last date written below.

ATTEST:

CITY OF MORGAN HILL


City Clerk

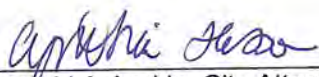

Christina Turner, City Manager

Date: 3/12/19

Date: 3/12/19

APPROVED AS TO FORM:

The Latala Group, LLC


for Donald A. Larkin, City Attorney

By: 

Date: 2-20-19

Paul Latala - Pres, LGL
Print Name and Title of Signer.

Date: 2/19/19

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 ClaraOn Feb 19, 2019 before me, Victoria Rossi, Notary

Date

Here Insert Name and Title of the Officer

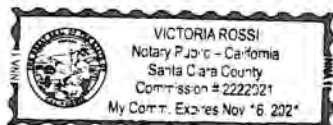
personally appeared Paul Andrew Latala

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

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 Disposition Development Agreement

Document Date: _____

Number of Pages: 2

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Paul Andrew Latala☐ 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: _____

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

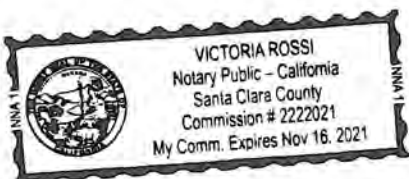
County of Santa ClaraOn May 28, 2019
Datebefore me, Victoria Rossi, Notary
Here Insert Name and Title of the Officerpersonally appeared Christina Turner

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

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: _____

Document Date: _____

Number of Pages: _____

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: _____

24072193

Regina Alcomendras
Santa Clara County - Clerk-Recorder
11/29/2018 02:13 PM

CONFORMED COPY

Copy of document recorded.
Has not been compared with original.

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

127-04-18-062

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between the
CITY OF MORGAN HILL,
a California municipal corporation

and
THE LATALL GROUP, LLC
a California Limited Liability Company

regarding the
**HALE LUMBER SITE, DEPOT STREET REALIGNMENT
AND COMMUNITY & CULTURAL CENTER**

Attachment: Exhibit A to Resolution for DDA Amendment [Revision 4] (3166 : Disposition Development Agreement Amendment and

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LIST OF EXHIBITS

Exhibit A-1	Exiting Site Map, Depot Street
Exhibit A-2	Legal Description –Depot Street
Exhibit A-2.1	Legal Description – Legal Plat
Exhibit B	Conceptual Site plan
Exhibit C	Form of Grant Deeds (With Covenants)

DISPOSITION AND DEVELOPMENT AGREEMENT

HALE LUMBER, DEPOT STREET, AND COMMUNITY CULTURAL CENTER

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("**Agreement**") dated as of this 20th day of November, 2018 ("**Date of Agreement**"), is entered into by and between the CITY OF MORGAN HILL, a California municipal corporation ("**City**"), and the Latala Group, LLC, a California Limited Liability Company ("**Latala**" or "**Developer**"). Developer and City are sometimes referred to individually as a "**Party**", and collectively as the "**Parties**."

RECITALS

The following Recitals are a substantive part of this Agreement; capitalized terms used and not otherwise defined are defined in Section 1.1 of this Agreement:

- A. Robert and Linda Hammond, Trustees of the Robert and Linda Hammond Revocable Trust, Robert Hammond Jr., and Robert Traurig (collectively, the "**Hale Lumber Property Owners**") are the owners of that certain approximately two (2) acre real property located at the northeast corner of East Dunne Avenue and Depot Street in Morgan Hill, California, designated as APN 726-13- 049 (the "**Hale Lumber Property**"). The Hale Lumber Property Owners currently operate a lumber yard, Hale Lumber, on the Hale Lumber Property.
- B. The Developer is the Latala Group, LLC, a California Limited Liability Company.
- C. City is the owner of (i) the Community and Cultural Center (the "**CCC**") located on approximately eight (8) acre real property located at the corner of Dunne Avenue and Monterey Road in Morgan Hill California, designated as APN 726-13-052 (the "**CCC Property**") and (ii) a portion of Depot Street, a City street that runs north-south, adjacent to the CCC between East Dunne Avenue and East Fifth Street, consisting of approximately .29 acres ("**Depot Property**").
- D. The area encompassing the Hale Lumber Property, CCC Property, and Depot Property are shown on the attached map, attached hereto as Exhibit "A" and incorporated herein by this reference.
- E. The Downtown Specific Plan ("**DSP**") and the Morgan Hill 2035 General Plan guide development in Morgan Hill. These documents envision the realignment of Depot Street through the existing CCC parking lot to connect to Church Street, improving transportation circulation and movement in the Downtown area. To realize this, City has been examining opportunities that could lead to the realignment of Depot Street by exploring development opportunities with adjacent properties.

F. The City and the Developer have entered into an "Exclusive Negotiating Agreement," dated as of April 18, 2018 (ENA), which provides for the Parties to negotiate towards a Disposition and Development Agreement with respect to the Project. This Agreement is entered into pursuant to and in furtherance of certain provisions of the ENA. Notwithstanding the foregoing, the Parties acknowledge that this Agreement differs in certain respects from certain terms of the ENA. Upon mutual execution and delivery of this Agreement, this Agreement shall supersede and replace the ENA which shall be hereby terminated, except to the extent that certain provisions thereof expressly remain in effect.

G. Developer and City have entered into this Agreement for the purpose of memorializing an agreement between themselves that Developer shall redevelop the sites as follows: 1) a mixed use development on the Project Property with a 3,116 square feet ground floor office building which will include multi-family residential space on the second floor and second floor; 2) the realignment of Depot Street to connect with Church Street, and 3) the replacement of the parking spaces and parking lot enhancements for the CCC Property (the "**Project**").

H. Developer will privately acquire the Hale Lumber Property from the Hale Lumber Property Owners. City will not be a party to this transaction and will not be a third-party beneficiary of this transaction.

I. To implement the purposes of this Agreement, City desires to sell a portion of Depot Street ("Depot Property") to the Developer for fair market value and Developer desires to acquire the property from City on an "As Is with All Faults" basis.

J. Together, the Hale Lumber Property and the Depot Property are the "**Project Property**".

K. Developer shall realign Depot Street and construct the new Depot Street, which will impact the current CCC parking. Developer shall replace parking within the CCC parking lot and construct associated parking lot enhancements for purposes of public parking.

L. Upon completion of construction of the ground floor office building, Developer shall offer to the City the ground floor office portion of the building for purchase for fair market value as further described below.

M. The Project relies on the following analysis under the California Environmental Quality Act ("**CEQA**") (set forth in Public Resources Code, section 21000 *et seq.*): Draft Master Environmental Impact Report for the Morgan Hill Downtown Specific Plan, together with the Final Master Environmental Impact Report for the Morgan Hill Downtown Specific Plan (SCH #2008012025) (together, "**FEIR**") certified by the City Council on November 4, 2009 by Resolution Number 6282. This Project is further described in the Program Level Addendum for the Hale Lumber and Community and Cultural Center project ("**ADDENDUM**"). Collectively, the FEIR and ADDENDUM are the "**CEQA Project Review**."

N. On September 11, 2018, the City Planning Commission conducted a review pursuant to Government Code Section 65402 and determined that the Project described is consistent with the City's General Plan.

The execution and performance of this Agreement is in the best interests of City and the health, safety and welfare of its residents, and is in accord with the provisions of applicable federal, state, and local law.

A G R E E M E N T

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

1. DEFINITIONS; REPRESENTATIONS AND WARRANTIES; CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL.

1.1 Definitions.

"Affiliate of Developer" means an entity or person that is directly or indirectly controlling, controlled by, or under common control with Developer. For the purposes of this definition, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity or a person, whether through the ownership of voting securities, by contract, or otherwise, and the terms "controlling" and "controlled" have the meanings correlative to the foregoing.

"Agreement" means this Disposition and Development Agreement between City and Developer.

"As-Is Condition" is defined in Section 2.13.

"CEQA" California Environmental Quality Act is defined in Recital M.

"City" means the City of Morgan Hill, a California municipal corporation.

"City Council" means the City Council of the City of Morgan Hill.

"City Infrastructure" means the Depot Street realignment, Depot Street utility relocation, CCC parking resurfacing, striping, construction of new spaces, and lot enhancements.

"City Party" means a City employee, agent or representative.

"City Properties" means that Depot Property and Community and Cultural Center (CCC) properties.

"City's Actual Knowledge" or words to that effect shall mean the present, actual knowledge of Christina Turner, the City Manager, excluding constructive knowledge or duty of inquiry, existing as of the Date of Agreement.

"Claims" means liabilities, obligations, orders, claims, damages, governmental fines or penalties, and expenses of defense with respect thereto, including reasonable attorneys' fees and costs.

"Close of Escrow" is defined in Section 2.6.4.

"Closing" is defined in Section 2.6.4.

"Commenced Construction of the City Infrastructure" shall be deemed to have occurred when the Developer has completed plans, obtained all required permits and commenced construction of the Improvements, including on the CCC parking lot and for the realigned Depot Street.

"Control" is defined in Section 1.3.1.

"Date of Agreement" means the date that this Agreement is approved by the City Council at a noticed public hearing.

"Day-to-Day Management" means active, day-to day-management responsibilities for the activities of Developer.

"Default" means the failure of a Party to perform any action or covenant required by this Agreement within the time period provided following applicable notice and opportunity to cure period.

"Depot Property" means that approximately .29-acre portion of Depot Street in-between 5th Street and East Dunne Avenue.

"Developer" is defined in recital B.

"Documents" is defined in Section 2.12.

"Downtown Specific Plan" or "DSP" means the plan, and any appendices or amendments thereto, adopted by City Council by Ordinance Number 1956 on November 18, 2009.

"Environmental Laws" means, collectively: (i) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*, (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, *et seq.*, (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*, (iv) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*, (v) the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.*, (vi) the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, *et seq.*, (vii) the Clean Water Act, as amended, 33 U.S.C. § 1251, *et seq.*, (viii) the Oil Pollution Act, as amended, 33 U.S.C. § 2701, *et seq.*, (ix) California Health & Safety Code § 25100, *et seq.* (Hazardous Waste Control), (x) the Hazardous Substance Account Act, as amended, Health & Safety Code § 25300, *et seq.*, (xi) the Unified Hazardous Waste and Hazardous Materials

Management Regulatory Program, as amended, Health & Safety Code § 25404, *et seq.*, (xii) Health & Safety Code § 25531, *et seq.* (Hazardous Materials Management), (xiii) the California Safe Drinking Water and Toxic Enforcement Act, as amended, Health & Safety Code § 25249.5, *et seq.*, (xiv) Health & Safety Code § 25280, *et seq.* (Underground Storage of Hazardous Substances), (xv) the California Hazardous Waste Management Act, as amended, Health & Safety Code § 25170.1, *et seq.*, (xvi) Health & Safety Code § 25501, *et seq.*, (Hazardous Materials Response Plans and Inventory), (xvii) Health & Safety Code § 18901, *et seq.* (California Building Standards), (xviii) the Porter-Cologne Water Quality Control Act, as amended, California Water Code § 13000, *et seq.*, (xix) California Fish and Game Code §§ 5650-5656 and (xx) any other federal, state or local laws, ordinances, rules, regulations, court orders or common law related in any way to the protection of the environment, health or safety.

"Escrow Agent" means Chicago Title, 675 North First Street, Suite 300, San Jose, California 95112 (Christina Molotla, Escrow Officer).

"Final Completion" means Final completion of all City Infrastructure and acceptance by the City Council.

"Final Environmental Impact Report" or **"FEIR"** is defined in Recital M.

"Governmental Requirements" means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County, the City,

"Grant Deeds" means the grant deeds for the conveyance of the properties from City to Developer or from the Developer to the City to be executed and recorded at the Closing substantially in the form attached hereto as Exhibit "C" and incorporated herein by this reference.

"Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government under any Environmental Laws, including any material or substance which is defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste" or "hazardous substance" under any Environmental Laws.

"Improvements" means the improvements to be constructed by the Developer upon the Project Property and the offsite improvements relating thereto.

"Initial Litigation Challenge" is defined in Section 6.23.

"Municipal Code" means the Morgan Hill Municipal Code.

"Mixed Use" is defined in Morgan Hill Municipal Code Chapter 18.128.020.

"Mixed Use Project" means the office space and the residential development proposed by Developer on the Project Property.

"Notice" means a written notice in the form prescribed by Section 6.2.

"Office Building" means the 3,116 square feet office building constructed by Developer to be sold to the City.

"Organizational Documents" means the Certificate of Formation and Operating Agreement of the Developer, as the same may be amended from time to time.

"Permitted Transfer" is defined in Section 1.3.2.

"Planning Commission" means the Planning Commission of the City of Morgan Hill.

"Project" is defined in Recital G.

"Project Agreements" means this Agreement and the Grant Deeds (once recorded).

"Project Approvals" means all of the discretionary approvals by the City which will permit the Project in its entirety to proceed.

"Property Claims" is defined in Section 2.16.

"Reports" is defined in Section 2.12.

"Residential Development Control System" or **"RDCS"** is contained in Morgan Hill Municipal Code Chapter 18.156.

"Schedule of Performance" means the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished.

"Substantially Complete" or **"Substantial Completion"** shall be deemed to have occurred when (i) Substantial completion of all City Infrastructure as reasonably determined by the City Manager.

"Title Company" means Chicago Title.

"Transfer" means any assignment or transfer of this Agreement or the Project Property or any portion thereof or any interest therein.

"Title Policy" is defined in Section 2.8.

"Unrecorded Agreements" is defined in Section 2.12.

"Warm Shell" means a commercial building with all wiring, sheetrock, a heating and cooling (HVAC) system including all electronic controls and duct work, drop ceilings, plumbing and restrooms including all fixtures, interior lighting, hardscape and landscape to the standard of a high quality office building in the City of Morgan Hill.

1.2 Representations and Warranties.

1.2.1 City Representations. City represents and warrants to Developer as follows:

- a) Authority. City is a California municipal corporation with full right, power, and lawful authority to perform its obligations hereunder, and the execution, delivery, and performance of this Agreement by City has been fully authorized by all requisite actions on the part of the City Council.
- b) No Conflict. City's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement, or order to which City is a party or by which City is bound.
- c) No Litigation or Other Proceeding. To City's Actual Knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder, or delay the ability of City to perform its obligations under this Agreement, or that would adversely affect the Depot Property or the ability of Developer to develop the same as contemplated by this Agreement.
- d) No City Bankruptcy. City is not the subject of any bankruptcy proceeding, and no general assignment or general arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of City's assets has been made.
- e) Right to Possession. No person or entity other than City has the right to use, occupy, or possess the City Properties, or any portion thereof. City shall not enter into any lease or other agreement respecting use, occupancy, or possession of the Depot Property or any portion thereof that would affect the ability of the Developer to complete its obligations without the written consent of Developer.
- f) Condition of Depot Property. City has no notice of any pending or threatened action or proceeding arising out of the condition of the Depot Property or any alleged violation of any Environmental Laws. Except as otherwise disclosed by City, to City's Actual Knowledge, the Depot Property is in compliance with all Environmental Laws.
- g) Until the expiration or earlier termination of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 1.2.1 not to be true, immediately give written Notice of this fact or condition to Developer. The foregoing representations and warranties shall survive each Closing for a period of 12 months.

1.2.2 Developer's Representations.

Developer represents and warrants to City as follows:

(a) Authority. Developer is a limited liability company duly organized in the State of California and is qualified to do business and is in good standing under the laws of the State of California. The Organizational Documents provided (or to be provided) by Developer to City are true and complete copies of the originals. Developer has full right, power and lawful authority to undertake all of its obligations hereunder and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite company actions on the part of Developer.

(b) No Conflict. Developer's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement, or order to which Developer is a party to.

(c) No Litigation or Other Proceeding. To Developer's current actual knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder, or delay the ability of Developer to perform its obligations under this Agreement.

(d) No Developer Bankruptcy. Developer is not the subject of any bankruptcy proceeding, and no general assignment or general arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of Developer's assets has been made.

(e) Until Final Completion or earlier termination of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 1.2.2 not to be true, immediately give written Notice of such fact or condition to City. The foregoing representations and warranties shall survive each Closing and continue until Final Completion.

(f) The Developer is an experienced developer of mixed use and residential projects.

1.3 Change in Ownership, Management and Control of Developer. The qualifications and identity of Developer are of particular concern to City. It is because of those unique qualifications and identity that City has entered into this Agreement with Developer.

1.3.1 Additional Matters. Except for Permitted Transfers as provided in Section 1.3.2, the term "Transfer" for the purposes of this Section 1.3.1 shall include any significant change in the Control of Developer by any method or means. The term "**Control**" as used in the immediately preceding sentence, shall mean the power to direct the Day-to-Day Management of Developer, and it shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise, directly or indirectly, more than 50% of the voting rights attributable to the controlled corporation or

limited liability company, and, with respect to any individual, partnership, trust, other entity, or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the Day-to-Day Management of the controlled entity. An assignment of this Agreement to an Affiliate of Developer, shall be subject to prior review and approval by the City Manager. Any Transfers, except those delineated below shall be subject to prior review and approval by the City Manager. City Manager's criteria shall be the capitalization, financial capacity, experience and ability of the successor Developer to assume all rights and obligations entered into by Developer through this Agreement.

1.3.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, each of following Transfers are permitted and shall not require City consent under this Section 1.3.2 (each, a "**Permitted Transfer**"):

- (a) Any lien or encumbrance on the Mixed Use Project to secure the funds necessary for acquisition, construction, and/or permanent financing of the Project;
- (b) Permanent financing of a portion of the Project following its Substantial Completion; or
- (c) Dedications and grants of easements and rights of way required in accordance with the Project Approvals.

2. **SALE OF PROPERTY AND INFRASTRUCTURE IMPROVEMENTS.**

2.1 Purchase and Sale. The City and the Developer desire by this Agreement for the City to acquire from the Developer an office building, and for City to convey the Depot Property to Developer, in two separate closings. Developer shall develop a mixed use project, together with other onsite and offsite improvements (collectively, the "Improvements").

2.2 City Conveyance to Developer. In the first closing, City shall convey to Developer a portion of the current Depot Street alignment such that Developer is provided an additional approximately .29 acres to add to the Mixed Use Project. The Grant Deed to the Developer shall contain a reversionary clause in that the Depot Property shall revert to the City upon Developer's failure to complete the construction and relocation of Depot Street by June 30, 2022. Developer is not entitled to construct any portion of its project on the Depot Street portion until the relocation and vacation of Depot Street are complete. The City shall have the right to re-enter and take possession of the conveyed Depot Property from Developer with all improvements thereon if after conveyance to Developer of title to the Depot Property the Developer has failed to complete construction of the relocated road. The funds from this sale may be treated as a credit in escrow to be considered as City's contribution to the realignment of Depot Street. The Developer acknowledges and understands that the Depot Property will be conveyed to the Developer for purposes of development pursuant to this Agreement and not for speculation in undeveloped land.

2.3 Developer Conveyance to City. Once Developer has constructed the office building, in the second closing, Developer shall convey to City, on the terms and conditions provided in this Agreement, a ground floor office building ("**Office Building**") of approximately 3,116 square feet to be used by the City as office space for public purposes. The office building shall be constructed on the Project Property owned by Developer. Should developer not construct either a mixed use condominium or a residential condominium above the Office Building, Developer shall convey to City the Office Building Parcel in fee simple absolute. If Developer constructs either condominium project as planned than Developer shall convey City all air rights to the Office Building via Grant Deed.

2.4 City Conditions Precedent. City's obligation to proceed with the disposition of the Depot Property to Developer pursuant to the terms of this Agreement is subject to the fulfillment or waiver by City of each and all of the conditions precedent described below ("City Conditions Precedent"). The City Conditions Precedent are solely for the benefit of City and shall be fulfilled or waived within the time periods provided for herein, and in any event, no later than the closing of escrow for each applicable transaction, as the case may be. Except as otherwise indicated, all City Conditions Precedent shall apply to both the closings.

2.4.1 No Default. Developer shall not be in Default under this Agreement or the other Project Agreements, and no event shall have occurred which with the passage of time or giving of Notice or both would constitute a Default by Developer hereunder or under any of the other Project Agreements.

2.4.2 Execution and Delivery of Documents. City and Developer shall have executed and acknowledged the Grant Deeds for the applicable closing, and City and Developer shall each have executed (and, where appropriate, acknowledged), and delivered into escrow all other documents that each Party is required to deliver into escrow pursuant to this Agreement.

2.4.3 Delivery of Funds. Developer shall deposit into escrow the Purchase Price and such other funds, including escrow costs, recording fees, and other closing costs as are necessary to comply with Developer's obligations under this Agreement for the Depot Property closing.

2.4.4 Credit Option. The Parties may agree to credit the purchase price to Developer in place of Developer depositing fees in escrow in the amount of \$303,178.00.

2.4.5 Evidence of Available Funds. In connection with closing of the Depot Property transaction, Developer shall demonstrate evidence of available funds equal to the purchase price, regardless of whether it is to be deposited into escrow.

2.4.6 Financial Documentation. Developer shall provide the City with sufficient financial documentation prior to commencing construction of City

Infrastructure that Developer has the financial capacity to complete construction of the City Infrastructure.

2.4.7 Insurance. Developer shall have provided proof of insurance as required by Section 6.1 below.

2.4.8 Organizational Documents. Developer shall have submitted the Organizational Documents for Developer confirming that the Developer is a valid Limited Liability Company formed as a California LLC.

2.4.9 Anything herein to the contrary notwithstanding, so long as the applicable City Conditions Precedent above are satisfied or waived by the City, Developer shall have the right to acquire the Depot Property in accordance with this DDA.

2.5 Developer Conditions Precedent. Developer's obligation to proceed with the acquisition of the Depot Property from City pursuant to the terms of this Agreement is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent described below ("Developer Conditions Precedent"). The Developer Conditions Precedent are solely for the benefit of Developer and shall be fulfilled or waived within the time periods provided for herein, and in any event, no later than the closing of escrow for each applicable transaction, as the case may be.

2.5.1 No Default by City. City shall not be in Default under this Agreement or the other Project Agreements, and no event shall have occurred which with the passage of time or giving of Notice or both would constitute a default by City hereunder or under the other Project Agreements.

2.5.2 Execution and Delivery of Documents by City. City and Developer shall have executed and acknowledged the applicable Grant Deed for the applicable transaction, and City shall have executed (and, where appropriate, acknowledged) and delivered into escrow all other documents that City is required to deliver into escrow pursuant to Section 2.6.5.

2.5.3 Permits. Subject to payment of the applicable fees and completion of all application requirements, City shall be ready to issue the demolition and grading permit(s) necessary for the Developer to perform the work for the Initial Site Preparation for the applicable portion of the Project.

2.5.4 Title Policy. The Parties shall request that the Title Company, upon payment of Title Company's regularly scheduled premium, issue the Title Policy upon recordation of the Grant Deed subject only to the Pre -Approved Exceptions or the Condition of Title.

2.5.5 Absence of Proceedings. There shall be an absence of any condemnation, environmental or other pending governmental or any type of

administrative or legal proceedings with respect to the Depot Property, or applicable part thereof, which would materially and adversely affect Developer's intended uses of the Depot Property or the development or value of the Depot Property, or applicable part thereof.

2.5.6 No Material Adverse Change. There shall not have occurred between the Date of Agreement and the Closing a material adverse change to the physical, environmental or title condition of the Depot Property, or applicable part thereof.

2.5.7 No Leases or Parties in Possession. City shall have demonstrated to Developer the ability to deliver fee title of the Depot Property to Developer free and clear of any tenants, lessees, licensees or any third party occupants or parties in possession, and executed the Title Company's standard form Commercial Owner's Affidavit as required by Section 2.6.5(f) below.

2.6 Escrow. The Parties will open escrow for the conveyance of the Depot Property to Developer. Within five days following Developer's delivery of a notice of completion of the Office Building, the Parties shall open an escrow for the conveyance of the Office Building to City.

2.6.1 Costs of Escrow. All customary fees, charges, and costs chargeable by Escrow Agent for the escrows including recording fees, document fees, title insurance premiums, and documentary transfer taxes, if any, due with respect to the conveyance of the Depot Property to Developer and the Office Building to City shall be paid by Developer or the City, as the case may be, in accordance with the custom in Santa Clara County.

2.6.2 Escrow Instructions. This Agreement constitutes the joint escrow instructions of Developer and City with respect to the conveyances of the Depot Property to Developer and the Office Building to City, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. Insurance policies for fire or casualty are not to be transferred. To the extent that substantial funds aside from those to cover the costs of escrow are received in the escrow shall be deposited in interest-bearing accounts for the benefit of the depositing Party in any state or national bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such accounts. If, in the opinion of either Party, it is necessary or convenient in order to accomplish the Closing, such Party may provide supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control. The Closing shall take place as set forth as described herein. Escrow Agent is instructed to release City's and Developer's escrow closing statements to the respective Party.

2.6.3 Authority of Escrow Agent. Escrow Agent is authorized to, and shall:

(a) For the Depot Property, charge City for that portion of the premium of the Title Policy allocable to a CLTA standard owner's policy of title insurance and charge Developer for the any excess premium of the Title Policy allocable to extended coverage, including any endorsements requested by Developer.

(b) For the Office Building, charge Developer for that portion of the premium of the Title Policy allocable to a CLTA standard owner's policy of title insurance and charge City for the any excess premium of the Title Policy allocable to extended coverage, including any endorsements requested by City.

(c) Charge Developer for escrow fees associated with the closing of the purchase and sale of the Depot Property, as applicable. Charge City for escrow fees associated with the closing of the purchase and sale of the Office Building, as applicable.

(d) Charge City or Developer, as the case may be, all other charges and costs referred to in Section 2.6.1.

(e) Disburse funds, if any, to City and record the Grant Deed for the Depot Property, as applicable, when both the Developer Conditions Precedent for the Project have been fulfilled or waived in writing by Developer and City, as applicable and after City has provided notice of acceptance of all infrastructure; or Developer has provided payment and performance bonds to the City in amount to completely cover the costs of construction of all of the public improvements. Immediately following recordation of the Grant Deed, Escrow Agent shall record any other recordable documents delivered into escrow for the Closing.

(f) Do such other actions as necessary, including obtaining and issuing the Title Policies, to fulfill its obligations under this Agreement.

(g) Direct City and Developer to execute and deliver any instrument, affidavit, and statement, and to perform any act, reasonably necessary to comply with the provisions of FIRPTA, if applicable, and any similar state act and regulations promulgated thereunder.

(h) Prepare and file with all appropriate governmental or taxing authorities uniform settlement statements, closing statements, tax withholding forms including IRS 1099-S forms, and be responsible for withholding taxes, if any such forms are provided for or required by law.

2.6.4 Closing. The escrow for conveyance of the Depot Property and the Office Building close (each, a "**Close of Escrow**") within 30 days after the satisfaction, or waiver by the appropriate Party, Conditions Precedent, and

acceptance of the City of all Developer constructed City Infrastructure. For purposes of this Agreement, a "**Closing**" shall mean the time and date each Grant Deed is recorded with the Santa Clara County Recorder.

2.6.5 Delivery of Documents and Closing Funds. At or before the Closing, Developer and City as applicable to their respective parcels shall deposit into escrow the following items with respect to Depot Property and the Office Building:

- (a) Funds in an amount necessary to consummate the Closing, including the applicable escrow costs, respectively;
- (b) executed and acknowledged Grant Deed for each respective property transaction;
- (c) an original executed Preliminary Change of Ownership Report for each respective property transaction;
- (d) a duly executed non-foreign certification in accordance with the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, for each respective property transaction;
- (e) a duly executed California Form 593-W Certificate or comparable non-foreign person affidavit each respective property transaction; and
- (f) a Commercial Owner's Affidavit in the standard form of the Title Company for each respective property transaction.
- (g) At each Closing, City and Developer shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to close the escrow and consummate the conveyance of the Depot Property or Office Building in accordance with the terms hereof.

2.7 Condition of Title. Developer and City will work together in good faith to remove exceptions to the title policy or agree to accept the exceptions.

2.8 Title Insurance. Concurrently with recordation of each Grant Deed, the Title Company shall issue to the appropriate Party such policy of title insurance for the respective property, which at appropriate Party's option may be an ALTA extended coverage owner's policy (or if requested by the appropriate Party a CLTA standard owner's policy of title insurance with survey exceptions) (each, a "**Title Policy**") as may be required by the appropriate Party, and/or the appropriate Party's lenders or other institutions that may be providing financing for the Project, together with endorsements as are reasonably requested by the appropriate Party and/or the appropriate Party's lenders or other institutions, insuring that the appropriate Party has a valid fee ownership interest in the respective property, subject only to Pre-Approved Exceptions and the Condition of Title. The Title Policy for each property shall be in the amount as specified by the appropriate Party. The premium for each Title Policy, plus any additional costs

related thereto (except for such costs to remove any title exceptions agreed to be removed by the appropriate Party, which shall be at the appropriate Party's sole cost), including the cost of surveys, and any endorsements requested by appropriate Party shall be paid by the appropriate Party.

2.9 Property Taxes and Assessments. Ad valorem taxes and assessments levied, assessed, or imposed on the Depot Property or the Office Building for any period prior to the applicable Closing, if any, shall be paid by appropriate Party. Ad valorem taxes and assessments levied, assessed, or imposed on either property acquired by either Party or any other improvements thereon, for the period after the applicable Closing shall be paid by the appropriate Party.

2.10 Access to Property. Prior to the Closing, City shall cooperate to enable representatives of Developer to obtain the right of access to all portions of the Depot Property for the purposes of implementing this Agreement. Developer agrees to provide written Notice to City at least twenty-four (24) hours prior to undertaking any studies or work upon the Depot Property.

2.11 Indemnity. Developer shall indemnify, defend, protect, and hold City harmless from any Claims arising out of the acts, omissions, negligence, or willful misconduct of Developer or its employees, agents, contractors, subcontractors, or representatives in connection with such studies and investigations, except for Claims arising from or related to any pre-existing condition on or of the City Properties or Claims to the extent caused by the active negligence or willful misconduct of Developer or its employees, agents, contractors, or representatives. In addition, in the event Developer causes any damage to any portion of the City Properties, Developer shall promptly restore the City Properties as nearly as possible to the physical condition existing immediately prior to Developer's entry onto the City Properties. Developer shall deliver to City, within ten (10) days of receipt thereof, a complete copy of any written investigation, test, report or study which Developer conducts, or causes to be conducted, with respect to the involved Depot Property.

2.12 Documents. The Parties represent and warrants that, to the best of their current actual knowledge, as of the Date of Agreement, the Parties have furnished each other with copies or provided each other with access to any and all material existing surveys, inspection reports, environmental and/or hazardous material reports, and any other data, reports, studies, agreements, correspondence, and other writings (collectively, "**Reports**") pertaining to the physical, environmental, and/or title condition of the Depot Property and the Hale Lumber Property, or applicable portion thereof, and the use and development of the Property, or applicable portion thereof. The Parties also represent and warrant that, each has furnished each other with copies of any and all unrecorded leases, service contracts, easements, licenses, and/or other unrecorded agreements (collectively, "**Unrecorded Agreements**," and with the Reports, "**Documents**") affecting the respective property, or portion thereof. The Parties shall notify each other in writing of any material changes to any Documents of which Developer

becomes aware before Closing. Developer shall terminate any Unrecorded Agreements prior to Closing.

2.13 AS-IS CONVEYANCE.

DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS CONVEYING AND DEVELOPER IS TAKING TITLE TO, AS OF THE APPLICABLE CLOSING, THE DEPOT PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS, CONDITION AND STATE OF REPAIR INCLUSIVE OF ANY AND ALL FAULTS AND DEFECTS, LEGAL, PHYSICAL, OR ECONOMIC, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE CLOSING ("**AS-IS CONDITION**") AND THAT, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, THE REPORTS OR THE DOCUMENTS, DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES FROM CITY, OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES OR ATTORNEYS AS TO ANY MATTERS CONCERNING THE DEPOT PROPERTY

2.14 Independent Investigation. Developer acknowledges, agrees, represents, and warrants that, prior to Closing, Developer will have been given a full opportunity to obtain, review, inspect, and investigate each and every aspect of the Depot Property, either independently or through agents of the Developer's choosing, including the following:

- (a) The size and dimensions of the Depot Property;
- (b) The availability and adequacy of water, sewage, fire protection, and any utilities serving the Depot Property;
- (c) All matters relating to title including extent and conditions of title to the Depot Property, taxes, assessments, and liens;
- (d) All legal and governmental laws, statutes, rules, regulations, ordinances, limitations on title, restrictions or requirements concerning the Depot Property including zoning, use permit requirements and building codes;
- (e) Natural hazards, including flood plain issues, currently or potentially concerning or affecting the Depot Property;
- (f) The physical, legal, economic, and environmental condition and aspects of the Depot Property, and all other matters concerning the conditions, use or sale of the Depot Property, including any permits, licenses, agreements, liens, zoning reports, engineers' reports, and studies and similar information relating to the Depot Property. This examination of the condition of the Depot Property has included examinations for the presence or absence of Hazardous Materials as Developer deemed necessary or desirable;

- Property;
- (g) Any easements and/or access rights affecting the Depot
 - (h) Any contracts and other documents or agreements affecting the Depot Property; and
 - (i) All other matters of material significance affecting the Depot Property.

2.15 Disclaimers. Developer acknowledges and agrees that except as expressly set forth in this Agreement: (a) neither City, nor any City Party, has made any representations, warranties, or promises to Developer, or to anyone acting for or on behalf of Developer, concerning the condition of the City Properties or any other aspect of the Properties; (b) the condition of the Properties has been independently evaluated by Developer prior to the Closing; and (c) any information including any engineering reports, architectural reports, feasibility reports, marketing reports, title reports, soils reports, environmental reports, analyses, or data or other similar reports, analyses, data or information of whatever type or kind, if any, which Developer has received or may hereafter receive from City or any City Party were and are furnished without warranty of any kind and on the express condition that Developer has made its own independent verification of the accuracy, reliability and completeness of such information and that Developer may rely on the foregoing at its own risk.

2.16 Waivers and Releases. Developer hereby waives and releases City and City Parties, as of the Closing for the Depot Property, from any Claims or other compensation whatsoever, in law or equity, of whatever kind or nature, whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, now existing or which may in the future arise, including lost business opportunities or economic advantage, and special and consequential damages, arising out of, directly or indirectly, or in any way connected with: (a) all warranties of whatever type or kind (excepting therefrom warranties set forth in Section 1.2 above) with respect to the physical or environmental condition of the Properties, whether express (except as set forth in Section 1.2), implied or otherwise, including those of fitness for a particular purpose, tenantability, habitability or use; (b) use, management, ownership or operation of the Depot Property, whether before or after Closing; (c) the physical, environmental or other condition of the Properties; (d) the application of, compliance with or failure to comply with any and all Applicable Laws with respect to the Properties; (e) Hazardous Materials in, on, or under the Properties; and (f) the As-Is Condition of the Properties; the foregoing are collectively referred to as "**Property Claims**".

Notwithstanding the foregoing to the contrary, the release and waiver of Property Claims set forth in this Section 2.16 shall not apply to (a) any Property Claims to the extent arising from the active negligence or willful misconduct of City or any City Party, (b) any breaches or Defaults by City of any covenants, agreements, representations, or warranties set forth in this Agreement, (c) any breaches or Defaults by City of any other Projects Agreements to which City is a party, or (d) any fraud committed by City or any City Party.

3. DEVELOPMENT OF THE PROJECT.

3.1 Permits. Developer, at its expense, shall exercise commercially reasonable efforts to secure or cause to be secured any and all permits and approvals which may be required by City and any other governmental agency having jurisdiction over the applicable portion of the Project, including permits for the demolition and removal of any temporary structures or improvements, if any, on the Project Property. Upon approval of the General Plan Amendment and the Zoning Amendment, but no later than December 31, 2018, Developer shall submit all entitlement applications, at its own expense, including but not limited to RDCS application, Subdivision Map, Development Agreement, and Conditional Use Permit (if required), along with any required environmental documents/reports concerning the proposed Project, for City consideration. Applications for on-site and off-site improvements shall be as detailed below and as contained in the Subdivision Improvement Agreement. No entitlements for residential construction may be permitted until allotments have been awarded through the RDCS. Timeline for application for an Encroachment Permit shall be included in the construction timeline negotiated pursuant to Section 3.9 below.

3.2 Execution of Agreement. The execution of this Agreement does not constitute the granting of, or a commitment to grant or obtain, any land use permits, or approvals required by City or any other government agency. City shall process within a reasonable time all entitlements, following application from the Developer, with the City retaining discretion on all items.

3.3 Costs of Development. All the costs of site preparation (including demolition and removal of all temporary structures or improvements on the CCC Property and the Project Property), planning, designing, constructing and developing the Project, or applicable Phase thereof, incurred by Developer shall be borne solely by Developer.

3.4 Residential Development Control System Application (RDCS). Pursuant to MHMC section 18.156.060, Developer must apply for allotments through the RDCS. Project is not required to compete, but must achieve a minimum score. If approved by the City and subject to reasonable conditions, Developer shall construct up to 48 residential dwelling units on the Hale Lumber property.

(a) Developer understands and agrees that its RDCS application will be processed according to the RDCS manual approved by City Council in September 2018. If Developers' application fails to meet the minimum score of 160 points to receive allotments, it must submit a new RDCS application.

(b) All residential development shall be constructed pursuant to a separately negotiated Development Agreement.

(c) Measure S Allocations. So long as the Project achieves the required minimum score, City shall award up to 48 Downtown residential allocations in accordance with Measure S for the Latala residential project. City is not waiving its discretionary rights under Measure S.

3.5 Allocation of Sewage Treatment Credits. The City has a sewer credit program available to certain developers within the former downtown redevelopment area (RDA) on a first come, first served basis. To the extent available, this project is located in the former RDA area and is eligible to receive credit for sewer impact fees.

3.6 Subdivision Maps Required. Developer shall file all required Tentative and Final Maps in compliance with Title 17 of the MHMC, and as required by RDCS to exercise allotments.

- (a) Tentative map. Tentative map shall be filed no later than February 28, 2019. Developer's engineer shall timely respond to all corrections requested by the city engineer until it has been marked as "Approved as Submitted."
- (b) Final Map. Within 6 months of approval the tentative map, but no later than August 30, 2019, Developer must file its phase 1 Final Map and execute the Subdivision Improvement Agreement if improvements have not been constructed. Within six months of approval of the phase 1 Final map by City Council, Developer shall apply to the Engineering and Public Works Department for all entitlements necessary for the off-site improvements.

3.6.1 Final Map. Developer may process the Final Map as a Phased Map. Due to the fact that a portion of the project is proposed to be located within a current City Street, and the City desires to vacate the portion of Depot Street after construction of the realigned Depot Street, Developer may submit a Phase 1 Final map to allow it to commence construction on the mixed use project concurrently with construction of the off-site improvements. The Phase 2 Final Map would contain the remaining portion of the project that is contained within the Depot Property.

3.6.2 Subdivision Map(s). City shall process the Subdivision (Tentative and Final) Maps for the Mixed Use Project in compliance with Title 17. Construction of City Infrastructure shall be a condition of approval required by the Tentative map.

3.7 Developer to Construct City Infrastructure Improvements. Subject to all of the other terms and conditions set forth in this Agreement, the Developer shall develop or cause the development of the City Improvements in accordance with the City's Municipal Code, and the plans, drawings and documents submitted by the Developer and reasonably approved by the City as set forth herein. These Improvements shall be a condition of the approved tentative map. The off-site Improvements shall generally consist of the following:

3.7.1 Realignment of Depot Street. In order to acquire .29 additional acres for Developer's project, and to receive points through the City's RDCS, Developer agrees to cause Depot Street to be realigned, including utility relocation. The Depot Street realignment will result in an approximately .7 acre realigned street. Substantial completion of the realignment of Depot Street is a condition precedent

to Developer being issued permits for the demolition of the current alignment portion of Depot Street.

3.7.2 Redesign and Construction of CCC Parking Lot Developer shall cause the CCC Parking Lot to be redesigned so that there is no net loss of parking to the CCC. If approved by the City, Developer shall replace Morgan Hill Community and Cultural Center ("CCC") parking and on-street parking on a 1:1 basis resulting in no net loss of parking concurrently with the road construction. Developer shall replace parking by resurfacing and restriping the remaining CCC parking lot spaces, construct new parking in underutilized landscaped areas, and construct parking enhancements. The CCC has 240 spaces currently. Developer covenants that at the conclusion of the Project that the CCC will have 240 spaces.

3.7.3 City Infrastructure. The Developer shall construct and develop the City Infrastructure in accordance with this Agreement. City Improvements shall be constructed per City standards, and shall be reviewed and approved to the satisfaction of the City Engineer. All such work related to the City Infrastructure shall be performed by licensed contractors.

3.8 Financing of City Improvements

3.8.1 Depot Street.

City and Developer agree on the construction and improvements and to expend the estimated cost of Depot Street alignment in the amount of \$710,821, which includes a 20% contingency consistent with the "Order of Magnitude Cost Analysis Hale Lumber/Community Center Depot Street Realignment" dated August 13, 2018. Cost estimates will be reconfirmed during off-site permit review.

City shall contribute \$303,178.00 received from the sale of Depot Property to Developer. Developer and City agree this transaction may occur as a credit in escrow.

Developer will pay \$213,739.00 toward the reconstruction of the realigned Depot Street as described in the cost estimate portion of Depot Street project frontage.

Developer will pledge between 8 ($8 \times \$1,000 \times 48 \text{ units} = \$384,000$) and 10 ($10 \times \$1,000 \times 48 \text{ units} = \$480,000$) points under the Transportation and/or Municipal Infrastructure portions of the RDCS manual at \$1,000 each unit up to 48 units which pledge will contribute up to \$193,904.00 to the remaining construction costs for Depot Street realignment.

If the project exceeds the budget, the City would require approval from City Council to amend this Agreement.

If the project costs less than the estimate, the City keeps the funds as they are cost for development fees. Those fees will stay in the accounts separated RDCS accounts and go towards the account associated projects.

3.8.2 CCC Parking Lot.

The parking improvements are estimated to cost \$190,905, including a contingency, pursuant to the "Order of Magnitude Cost Analysis Hale Lumber/Community Center Community Surface Improvements" dated August 13, 2018. Developer Fees pledged towards the RDSC commitments will fund the parking lot improvements.

3.9 Timing of City Improvements

Developer will work with City on phasing construction plan to insure minimal disruption to CCC facilities. The CCC parking lot construction shall be performed concurrently with the road construction.

Parties agree to negotiate in good faith a construction timeline for realignment of Depot Street to minimize impacts to the travelling public. Developer acknowledges that the current alignment of Depot Street must remain open to the public during construction of the realignment to the greatest extent possible. Developer shall not build in or obstruct in anyway the current Depot Street alignment until Substantial Completion of the Depot Street realignment without written permission of the City.

Construction of parking facilities and Depot Street realignment shall begin in 2020, and be completed within 18 months from the date of commencement of construction.

3.10 Mixed Use Construction.

Developer shall construct a 3,116 square foot "warm shell" ground floor office building on the Project Property to be conveyed to City for public purpose ("Office Building"). If approved by City, Developer may construct up to eight condominiums on the second and third floors of the building. The Office Building shall be conveyed from Developer to City at Fair Market Value of \$800,812 based upon \$257 per square foot valuation (Purchase Price) established by appraisal dated August 3, 2018 by Valbridge Property Advisors/Hulberg Associates. Should the size of the portion of the building be increased or decreased the payment by City shall be adjusted based upon the \$257 per square foot calculation.

- (a) Should the building include residential units, Developer shall convey to City only the office portion of the building.
- (b) Conditional Use Permit. A CUP will be required if the Project is residential only, and not Mixed Use.
- (c) Agreements regarding common areas. The City will not participate in or become a member of the Home Owners Association (HOA) contemplated to be formed for the residential areas of the project. The City will be responsible for maintenance and repair of grounds specifically designated as a part of the commercial parcel to a commercially reasonable standard and will limit access of

commercial tenants and their customers to those commercial areas as designated on a mutually agreed upon plan to be determined during site review. City agrees that HOA-maintained areas are for residents and their guests only, and not for City's use.

As to those common structures necessitating replacement or common maintenance/servicing (roof, exterior paint, common water lines), the City will contribute to the cost of the repair, replacement, servicing, in a manner proportionate to the square footage cost of the improvements, commensurate with the proportionate square footage of commercial occupancy. Should the residential or mixed use portion not be constructed, and City purchases the office building in fee simple than City will be solely responsible for any maintenance and there will be no common area.

To the extent that the City has not maintained the commercial space and associated landscaping in a commercially reasonable manner, HOA may notice City, describe failure, and City will respond to HOA and or replace or repair within 60 days. City intends to maintain a cooperative relationship with the HOA, indicative of the long term occupancy of a portion of the project.

3.11 Depot Street Transactions.

City shall sell to Developer the Depot Property, and Developer shall purchase from City a portion of Depot Street on the terms and conditions and for the fair market value amount as described below.

If City approves the General Plan Amendment and the Zoning Amendment, City shall sell to Developer for the fair market value of \$303,178.00, based upon \$24.00 per square foot valuation for the approximately .29-acre portion of existing Depot Street to be made part of the Mixed Use Project development site. These funds may be placed in escrow, and shall be released to Developer upon verification from the City that Developer has applied for, and City has approved, all entitlements necessary to relocate Depot Street. Developer and City agree this transaction may occur as a credit in escrow.

Subject to applicable hearing and notice requirements, City shall vacate a portion of Depot Street from 5th Street to East Dunne Avenue. City shall use its best efforts to notice for public hearing, if required, the vacation of Depot Property so that it is scheduled before City Council at the same meeting at which the Phase 2 Final Map is considered. If the Depot Street realignment is complete, this may occur as a summary vacation.

In order to assure that the development of the Depot Street realignment occurs in a timely manner and prior to demolition of the existing Depot Street required for the Project, Depot Street alignment shall be constructed to substantial completion prior to any demolition or construction occurring in the Depot Property area. Developer shall provide performance and payment bonds, regardless of whether these bonds are accompanied by a

Subdivision Improvement Agreement, guaranteeing construction of the Depot Street realignment, and the demolition of the current Depot Street.

Until Developer constructs the realigned Depot Street and it is accepted by the City and opened for public use, Developer agrees to keep Depot Street open to the public to the maximum extent possible. Developer shall be responsible for all maintenance of Depot Street once it has been vacated and conveyed to Developer. Any closing of Depot Street prior to the opening of the Depot Street realignment shall only be done with the prior written approval of the City.

Developer shall not allow any lien or stop notice to be placed on the Depot Property arising from any work performed or materials provided by Developer or its contractors, subcontractors, agents or representatives until after the vacation is complete.

4. COVENANTS, RESTRICTIONS AND AGREEMENTS.

4.1 Taxes and Assessments. After the Closing, it shall be Developer's responsibility to pay prior to delinquency all ad valorem real estate taxes and assessments on the Depot Property, subject to Developer's right to contest in good faith any such taxes.

4.2 Effect and Duration of Covenants. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding upon and inure for the benefit and in favor of City, and its successors and assigns. City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. This Agreement and the covenants shall run in favor of City without regard to whether City has been, remains or is an owner of any land or interest in the Project. Subject to the limitations on remedies set forth in Section 5, City shall have the right, if this Agreement or the covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it may be entitled under the terms of this Agreement.

4.3 Limitations of this Agreement. By its execution of this Agreement, City is not committing itself to or agreeing to undertake: (a) approval of the proposed development Project described, or (b) any other acts or activities requiring the subsequent independent exercise of discretion by City or any agency or department thereof. In addition, nothing in this Agreement shall be construed to limit the application of CEQA to any change to the DDA or the proposed Project, or to changes to the foregoing, or to control the actions of City in meeting its CEQA obligations. In fulfilling its obligations under CEQA, City reserves full and complete discretion with respect to any such CEQA approvals without reference to this Agreement. City shall not be liable, in any respect, to Developer for its action or inaction in fulfilling its CEQA obligations. City will not consider the approval of any DDA or the proposed Project, or to changes to the foregoing, unless and until it has fully reviewed and considered the environmental impacts in accordance with CEQA. City

is not, and shall not be considered to be, obligated by this Agreement, or otherwise, to approve the proposed Project or any changes to this Agreement or any other agreement. After CEQA review, City is not obligated, by this Agreement or otherwise, to adopt findings of overriding considerations for approval of or to take any other action in support of the proposed Project or any changes to this Agreement or any changes to the foregoing. City is not precluded from rejecting any change to this DDA or the proposed Project or imposing mitigation measures as a condition of Project approval, which measures mitigate or avoid direct or indirect environmental effects of the proposed Project.

4.4 Access to Project Site. Due to the location of the Mixed Use Project, access to the Project may at times be limited due to special circumstances. City and Developer agree to discuss in good faith the creation of an easement over City Property to allow for an emergency access to the Project.

5. DEFAULTS AND REMEDIES.

5.1 Default Remedies– General. Failure by either Party to perform any action or covenant required by this Agreement within 30 days following receipt by the failing Party of written Notice from the other Party specifying the failure shall constitute a “Default” under this Agreement; provided, however, that if the failure to perform cannot be reasonably cured within such 30 day period, a Party shall be allowed additional time as is reasonably necessary to cure the failure so long as such Party commences to cure the failure within the 30 day period and thereafter diligently prosecutes the cure to completion. Subject to the limitations of Section 6.2 below, any default by either Party under one or more of the other Project Agreements which is not cured following notice and expiration of any applicable cure periods thereunder shall also constitute a Default under this Agreement, and upon occurrence of such Default and without any right to further notice or additional cure period, the non-defaulting Party shall have all remedies available to it under this Agreement, including the right to terminate this Agreement as set forth in Section 5.3 below.

5.2 Legal Actions. Upon the occurrence of a Default by Developer, City shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent, or remedy such Default, or to recover actual damages; provided, however, that in no event shall City’s pre-Closing remedies include specific performance of Developer’s obligation to close escrow on the Depot Property. Developer’s remedies in the event of a Default by City under this Agreement shall be limited to obtaining specific performance or injunctive relief, or terminating this Agreement. Neither Party shall have the right to recover any punitive, consequential, or special damages. All legal actions must be instituted in the Superior Court of the County of Santa Clara, State of California.

5.3 Termination. This Agreement may be terminated: (a) if there is an uncured Default, after Notice from the Party not in default and expiration of all cure periods, (b) if there is a failure of an express Developer Conditions Precedent (which is not waived by the Party whom the condition benefits) by timely Notice from the Party whom the condition benefits, or (c) if City Council denies subsequent discretionary permit(s) required for the

project. If requested by City, upon termination of this Agreement, Developer shall promptly execute and deliver to City a Quitclaim Deed, in recordable form, as to the Depot Property.

5.4 City Option to Repurchase, Reenter, and Repossess.

5.4.1 Depot Property. Subject to notice and opportunity to cure under Section 5.1, City shall have the additional right, at its option, to reenter and take possession of the Depot Property if after conveyance of title to the Depot Property, Developer shall:

(a) Fail to Commence Construction of Mixed Use Project within the time set forth on the Schedule of Performance; or

(b) Abandon or substantially suspend construction of City Infrastructure.

5.4.2 Such rights to reenter and repossess, to the extent provided in this Agreement and (as applicable) Grant Deeds, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

(a) Any mortgage, deed of trust or other security instrument permitted by this Agreement (including, without limitation, any assignment of rents and leases);

(b) Any rights or interests provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments; or

(c) City's rights under this Section 5.4 shall terminate upon Final Completion of the Depot Street Realignment.

5.5 Rights and Remedies Are Cumulative. Except as specified otherwise in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party, except as otherwise expressly provided herein.

5.6 Inaction Not a Waiver of Default. Except as specified otherwise in the Agreement, any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

6. GENERAL PROVISIONS.

6.1 Insurance Requirements. Prior to Commencement of Construction until the completion of construction of the Project, as evidenced by recordation of Notice of Completion, Developer shall take out and maintain or shall cause its contractor to take out and maintain, a commercial general liability policy with a minimum limit of Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage, or such other higher policy limits as may be required by Developer's lenders or other institutions providing financing to Developer for the Project. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001). If commercial general liability insurance or other form with a general aggregate is used, the general aggregate limit shall at least Five Million Dollars (\$5,000,000). Developer and each of its contractors shall also take out and maintain a comprehensive automobile liability policy in an amount not less than One Million Dollars (\$1,000,000).

Until such time as Developer has completed the Project, Developer shall also obtain and maintain builder's all-risk insurance in an amount not less than the full insurable cost of the building shell improvements applicable to that particular portion of the Project to be constructed, or caused to be constructed, on a replacement cost basis, or such other greater policy limits as may be required by Developer's lenders or other institutions providing financing for the Project, and shall furnish or cause to be furnished to City evidence reasonably satisfactory to City that Developer and any contractor with whom it has contracted for the performance of work on the Project or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law.

Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII or otherwise reasonably acceptable to City. The commercial general liability and comprehensive automobile policies hereunder shall name City and City Parties as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Developer on or about the Project, including materials, parts or equipment furnished in connection with such work or operations.

Developer shall furnish City with a certificate of insurance evidencing the required insurance coverage and a duly executed endorsement evidencing such additional insured status. To the extent provided by the insurance carrier, the insurance policies shall be endorsed to notify City of any material change, cancellation or termination of the coverage at least 30 days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by Developer shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by City, and the policy shall so provide. Any insurance, self-insurance or joint self-insurance maintained by City shall be excess of and shall not contribute with the insurance required to be maintained by Developer. The insurance policies shall contain a waiver of subrogation for the benefit of City. The required certificate and endorsement

for the Project shall be furnished by the Developer to City prior to the commencement of construction of the Project.

Any deductibles or self-insured retentions must be declared to and approved by City (which shall not be unreasonably withheld, conditioned or delayed), which may require Developer to provide proof of its ability to pay losses and costs of related investigation, claim administration, and defense expenses within the retention.

6.2 Notices, Demands and Communications Between the Parties

Any approval, disapproval, demand, document or other notice ("**Notice**") which either Party may desire to give to the other Party under this Agreement must be in writing and shall be given by certified mail, return receipt requested and postage prepaid, personal delivery, or reputable overnight courier (but not by facsimile or email), to the Party to whom the Notice is directed at the address of the Party as set forth below, or at any other address as that Party may later designate by Notice.

To City: City of Morgan Hill
Office of the City Manager
17575 Peak Avenue
Morgan Hill, CA 95037
Attention: City Manager

With a copy to: City of Morgan Hill
City Attorney's Office
17575 Peak Avenue
Morgan Hill, CA 95037
Attention: City Attorney

To Developer: The Latala Group, LLC
1999 South Bascom Avenue,
Suite 700
Campbell, CA 95008
Attention: Paul Latala

Any Notice shall be deemed received on the date of delivery if delivered by personal service, on the date of delivery or refused delivery as shown by the return receipt if sent by certified mail, and on the date of delivery or refused delivery as shown by the records of the overnight courier if sent via nationally recognized overnight courier. Notices sent by a Party's attorney on behalf of such Party shall be deemed delivered by such Party.

6.3. Compliance with Laws. Developer shall carry out, and shall ensure that its contractors and subcontractors carry out the Project work in conformity with all Applicable Laws, including all applicable state labor laws and standards; the City zoning and development standards; building, plumbing, mechanical and electrical codes; all other

provisions of the City of Morgan Hill Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* Developer's obligations under this Section 6.3 shall include the obligation to undertake all appropriate inquiries with state and federal governmental enforcement and regulatory agencies as necessary to fully comply with all Applicable Laws.

6.4 Prevailing Wages. For the City Infrastructure improvements and any other work to be performed under this Agreement considered to be a Public Work for purpose of the prevailing wage laws under State law, Developer and any successor or assign shall cause the contractor and any subcontractor to pay prevailing wages in the construction of those improvements as those wages are determined pursuant to Labor Code section 1720 *et seq.* and implementing regulations of the Department of Industrial Relations. Developer shall further cause its contractor and any subcontractor employed on the work to comply with all State laws relating to Public Works, including but not limited to registration, record keeping, and postings.

6.5 Enforced Delay; Extension of Time of Performance. Subject to the limitations set forth below, performance by either Party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to: (a) war and insurrection; (b) strikes, lockouts and labor disputes; (c) riots, floods, earthquakes, fires, casualties, acts of God and acts of the public enemy; (d) epidemics, quarantine restrictions, freight embargoes, and governmental restrictions or priority; (e) delays in issuance of any Project Approvals entitlements or permits necessary to develop any improvements contemplated to be developed for the Project, except for those delays which are caused by actions of the Developer or applicable portion thereof; (f) litigation and arbitration, including court delays; legal challenges to this Agreement, the Project Agreements, the Project Approvals, or any other approval required for the Project or any initiatives or referenda regarding the same; (g) unusually severe weather or unseasonable inclement weather; or (h) moratorium (each a "**Initial Delay**"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if Notice by the Party claiming such extension is sent to the other Party within 30 days of the commencement of the cause or discovery of the cause. If Notice is sent after the 30 day period, then the extension shall commence to run no sooner than 30 days prior to the giving of the Notice. Developer's inability or failure to obtain financing or otherwise timely satisfy the Conditions Precedent to Closing (other than due to clauses (e) and (f) above or due to the acts, failure to act or fault of the City, and other than the Conditions to Closing set forth in Sections 2.5.1, 2.5.5, 2.5.6 and 2.5.7) on or before any date in the Performance Schedule Date shall not be deemed to be a cause outside the reasonable control of the Developer and shall not be the basis for an excused delay unless approved in writing by the City.

6.6 Successors and Assigns. Subject to the restrictions on Developer transfers set forth in Section 1.3 above, all of the terms, covenants and conditions of this Agreement

shall be binding upon Developer and City and their respective successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any permitted successors and assigns as provided.

6.7 Relationship Between City and Developer. It is hereby acknowledged that the relationship between City and Developer is not that of a partnership or joint venture and that City and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided or in the exhibits hereto, City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance, or management of the Project.

6.8 City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

6.9 Counterparts. This Agreement may be signed in multiple counterparts each of which shall be deemed to be an original.

6.10 Integration. This Agreement, including the exhibits hereto, and the other Project Agreements contain the entire understanding between the Parties relating to the transactions contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, other than the other Project Agreements, are merged in this Agreement and shall be of no further force or effect. Each Party is entering this Agreement based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such Party deems material.

6.11 Brokerage Commissions. City and Developer each represents to the other that it has not engaged the services of any finder or broker and that it is not liable for any real estate commissions, broker's fees, or finder's fees which may accrue by means of the conveyance of the Depot Property or Office Building as described in this Agreement, or the negotiation and execution of this Agreement. Each Party shall indemnify, defend, protect and hold the other Party harmless from any and all Claims based upon any assertion that such commissions or fees are allegedly due from the Party making such representations.

6.12 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise. References to specific section numbers shall include all subsections which follow the referenced section.

6.13 Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The words "include" and "including" shall be construed as if followed by the words "without limitation." The Parties acknowledge that

each Party and his, her or its counsel have reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either Party in connection with this Agreement.

6.14 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

6.15 Severability. If any term, provision, condition or covenant of this Agreement or its application to any Party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

6.16 Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day, and including the last day, unless the last day is a holiday, Saturday, or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

6.17 Legal Advice. Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

6.18 Time of Essence. Time is expressly made of the essence with respect to the performance by City and Developer of each and every obligation and condition of this Agreement.

6.19 Cooperation. Each Party agrees to cooperate with the other in this transaction and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement.

6.20 Conflicts of Interest. No City Council member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

6.21 Time for Acceptance of Agreement by City. This Agreement, when executed by Developer and delivered to City, must be authorized, executed, and delivered by City on or before forty five (45) days after signing and delivery of this Agreement by Developer or this Agreement shall be void, except to the extent that Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

6.22 Developer's Indemnity. Developer shall indemnify, defend (with counsel reasonably acceptable to City), protect, and hold City and its officers, employees, agents, and representatives, harmless from, all Claims to the extent arising out of the development of the Project or by anyone directly or indirectly employed or contracted with by Developer that arise out of the construction by or on behalf of Developer of improvements comprising the Project and whether the Claims shall accrue or be discovered before or after termination of this Agreement. Developer's indemnity obligations under this Section 6.22 shall not extend to Claims to the extent caused by the active negligence or willful misconduct of City or its officers, employees, agents or representatives. Insurance limits shall not operate to limit Developer's indemnity obligations under this Section 6.22. Notwithstanding anything to the contrary in this Section 6.22, any claims related to Initial Litigation Challenges shall be controlled exclusively by Section 6.22.

6.23 Cooperation in the Event of Legal Challenge to Project Approvals. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement or the City's initial approval of this Agreement or any of the Project Approvals ("**Initial Litigation Challenge**"), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information.

6.23.1 Meet and Confer. If an Initial Litigation Challenge is filed, upon receipt of the petition, the Parties will have 20 days to meet and confer regarding the merits of such Initial Litigation Challenge and to determine whether to defend against the Initial Litigation Challenge, which period may be extended by the Parties' mutual agreement so long as it does not impact any litigation deadlines. The City and Developer mutually commit to meet all required litigation timelines and deadlines. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement, the settlement shall not become effective unless the amendment or modification is approved by Developer, and by City in accordance with Applicable Laws, and City reserves its full legislative discretion with respect thereto.

6.23.2 Defense Election. If, after meeting and conferring, the Parties mutually agree (each in its sole discretion) to defend against the Initial Litigation Challenge, then the following shall apply:

(a) Developer shall take the lead role defending such Initial Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice;

(b) City may, in its sole discretion, elect to be separately represented by the outside legal counsel of its choice in any such action or proceeding with the reasonable costs of such representation to be paid by Developer;

(c) Developer shall reimburse City, within ten business days following City's written demand therefor, which may be made from time to time during the course of such litigation, all necessary and reasonable costs incurred by City in connection with the Initial Litigation Challenge, including City's administrative, outside legal fees and costs, and court costs.

(d) The Parties intend that the City's role under subsection shall be primarily oversight although the City reserves its right to protect the City's interests, and the City shall make good faith efforts to maximize coordination and minimize its outside legal costs (for example, minimizing filing separate briefs, and duplication of effort to the extent feasible).

(e) For any Initial Litigation Challenge which the Developer has elected to defend under this Section, Developer shall indemnify, and hold harmless the City and City Parties from any liability, damages, claim, action, cause of action, judgment (including City costs to effectuate such judgment, including any attorneys' fees or cost awards, including attorneys' fees awarded under Code of Civil Procedure Section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation), loss (direct or indirect), or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, staff time, expenses or costs) related to such Initial Litigation Challenge; provided, however, such indemnification, defense and hold harmless obligation shall not apply to Claims to the extent caused by the active negligence or willful misconduct of City or any of its agents, employees, officers, contractors or representatives.

6.23.3 Developer Election Not to Defend. If Developer elects, in its sole and absolute discretion, not to defend against the Initial Litigation Challenge, it shall deliver written notice to the City regarding such decision. If Developer elects not to defend, the City has the right, but not the obligation, to proceed to defend against the Initial Litigation Challenge and shall take the lead role defending such Initial Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice, at Developer's sole cost and expense. If Developer elects not to defend, the City has the right, but not the obligation, to terminate this Agreement and consider the Developer's pending application for any related Project Approvals withdrawn. In the event the City does not terminate this Agreement, then if the terms of a proposed settlement would constitute an amendment or modification of this Agreement, the settlement shall not become effective unless the amendment or modification is approved by Developer (which approval shall not be unreasonably withheld), and by City in accordance with Applicable Laws, and City reserves its full legislative discretion with respect

thereto. In the event the Developer unreasonably withholds its approval of such amendment or modification, the City retains the right, but not the obligation, to terminate this Agreement and consider the Developer's application for any related Project Approvals withdrawn.

6.24 Non-liability of Officials and Employees of City. No member, official or employee of City shall be personally liable to Developer, or any successor in interest, in the event of any Default or breach by City or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement. Developer hereby waives and releases any claim it may have against the members, officials, or employees of City with respect to any Default or breach by City or for any amount which may become due to Developer or its successors under the terms of this Agreement.

6.25 Applicable Law; Venue. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of Santa Clara.

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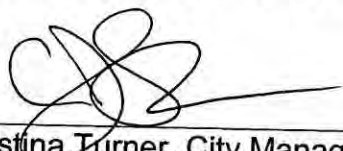
6.26 Survival. The Parties' indemnification obligations under Sections 2.11, 6.11, 6.22 and 6.23 shall survive termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

CITY:

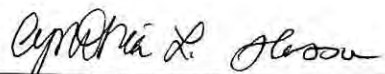
CITY OF MORGAN HILL, a California municipal corporation

By:


Christina Turner, City Manager

APPROVED AS TO FORM:

By:


for Donald A. Larkin, City Attorney

ATTEST:

By:


for Irma Torrez, City Clerk

DEVELOPER:

The Latala Group, LLC
a California Limited Liability Company

By: _____

Name: *Pact Latala*Its: *President*

By: _____

Name: _____

Its: _____

Approved as to Form:

By: _____

Name: _____

Its: _____

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 November 8, 2018 before me, Jenna Marie Luna, Notary Public,

Date

Here Insert Name and Title of the Officer

personally appeared Paul Latala

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: _____

Document Date: _____

Number of Pages: _____

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: _____

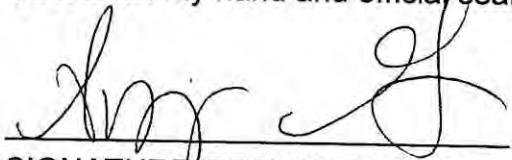
A notary or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara

On November 20, 2018, before me, Angelica Gonzalez, a Notary Public in and for said County and State, personally appeared Christina J. Turner, 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, or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

Exhibit A-1
Existing Depot Street Right-of-Way

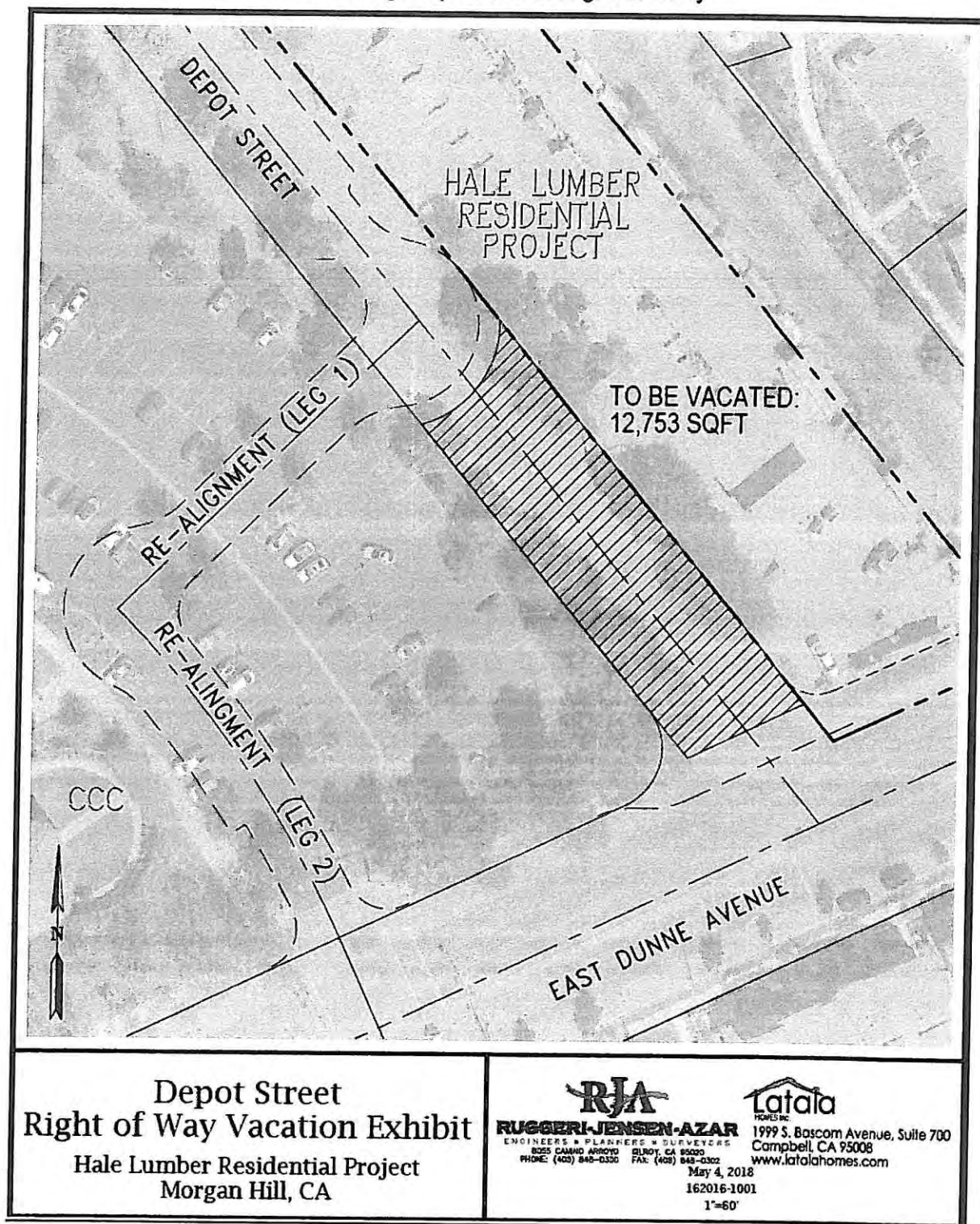


Exhibit A-2Depot Street Right of Way
at Morgan Hill Community Cultural Center

A portion of DEPOT STREET, a street right-of-way, in the City of Morgan Hill, County of Santa Clara, State of California, and is described as follows:

BEGINNING at the at northern corner of the parcel as shown upon that certain CERTIFICATE OF COMPLIANCE LOT LINE ADJUSTMENT, filed for record in Document No. 15899105 in the City of Morgan Hill, County of Santa Clara;

Thence along the southwesterly right-of-way line of DEPOT STREET as said right-of-way is shown on said CERTIFICATE OF COMPLIANCE SOUTH 39°27'00" EAST, a distance of 583.89 feet;

Thence NORTH 64°27'39" EAST 65.13 feet to the northeasterly right-of-way line of DEPOT STREET as said right-of-way is shown on said MAP;

Thence along the northeasterly right-of-way line of DEPOT STREET NORTH 39°27'00" WEST, a distance of 604.61 feet;

Thence SOUTH 55°08'00" WEST, a distance of 60.18 feet to POINT OF BEGINNING.

3



Exhibit B Conceptual Site Plan

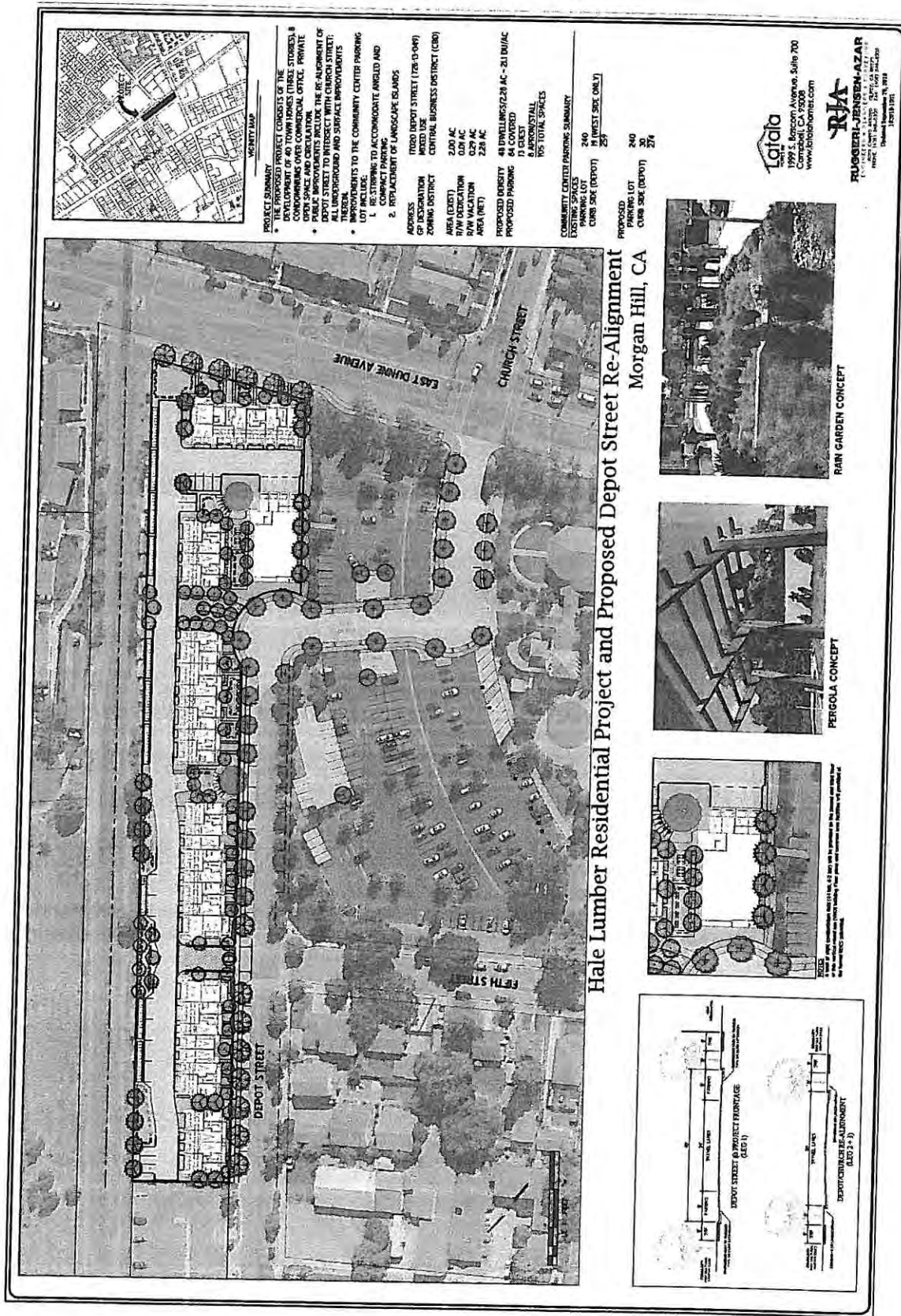


EXHIBIT C

**RECORDING REQUESTED BY AND
AFTER RECORDATION MAIL TO:**

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

*This document is exempt from the payment
of a recording fee pursuant to Government
Code §§ 6103, 27383*

(Space Above This Line for Recorder's Use Only)

**GRANT DEED
(With Covenants)**

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City of Morgan Hill, a California municipal corporation ("**Grantor**"), hereby grants to the Latala Group, LLC, a California Limited Liability Company ("**Latala**"), a California limited liability company ("**Grantee**"), the real property (the "**Property**") located in the City of Morgan Hill, County of Santa Clara, California, known as Santa Clara County Assessor's Parcel Nos. _____ more particularly described in Attachment No. 1 attached hereto and incorporated in this grant deed ("**Grant Deed**") by reference.

1. Covenants. Grantee expressly acknowledges that the Property being granted is City right-of-way open to the public, and that Grantor is granting this property to Grantee upon the condition that Grantee construct a realigned road ("Road Realignment") as provided in the Disposition and Development Agreement between Grantor and Grantee dated as of ____, 2018 ("**DDA**").

2. City Option to Repurchase, Reenter and Repossess. Until such time as a Final Certificate of Completion is issued with respect to the Road Realignment, Grantor shall have the right, in the event of certain specified uncured defaults under the DDA, to repurchase, reenter and take possession of the Property referred to above, as further provided in, and subject to the limitations and conditions in, the DDA. Upon such an occurrence, the Property shall revert with the City. This option shall terminate as to the Property upon the issuance and recordation of a Final Certificate of Completion with respect to the Road Realignment.

EXHIBIT C

3. Effect, Duration and Enforcement of Covenants. It is intended and agreed that the covenants and agreements set forth in this Grant Deed shall be covenants running with the land and that they shall be, in any event and without regard to technical classification or designation, legal or otherwise, to the fullest extent permitted by law and equity, (i) binding for the benefit and in favor of Grantor, as beneficiary; and (ii) binding against Grantee, its successors and assigns to or of the Property and any improvements thereon or any part thereof or any interest therein, and any Party in possession or occupancy of the Property or the improvements thereon or any part thereof.

4. Amendments. Only the Grantor, its successors and assigns, and the Grantee its successors and assigns shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained in this Grant Deed. For purposes of this Section, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property in fee title, and shall not include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property and the Project.

5. Grantee's Acknowledgment. By its execution of this Grant Deed, Grantee has acknowledged and accepted the provisions hereof.

6. Counterparts. This Grant Deed may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

GRANTOR:

City of Morgan Hill, a California municipal corporation

Date: _____, 201 By: *[form document – do not execute]*

_____, City Manager

**[SIGNATURE MUST BE
NOTARIZED]**

EXHIBIT C

ATTEST:

Clerk, City

APPROVED AS TO FORM:

_____, City Attorney

EXHIBIT C

GRANTEE:

The Latala Group, LLC

Date:
201

By:

Name: _____

**[SIGNATURE MUST BE
NOTARIZED]**

Title:

Date:
201

By:

Name: _____

**[SIGNATURE MUST BE
NOTARIZED]**

Title:

EXHIBIT C**RECORDING REQUESTED BY AND
AFTER RECORDATION MAIL TO:**

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

*This document is exempt from the payment
of a recording fee pursuant to Government
Code §§ 6103, 27383*

(Space Above This Line for Recorder's Use Only)

GRANT DEED

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Latala Group, LLC, a California Limited Liability Company ("Latala"), a California limited liability company ("**Grantor**"), hereby grants to the City of Morgan Hill, a California municipal corporation ("**Grantee**"), the real property (the "**Property**") located in the City of Morgan Hill, County of Santa Clara, California, known as Santa Clara County Assessor's Parcel Nos. _____ more particularly described as follows:

PARCEL __: A Condominium comprising: a separate interest in Unit # _____ as shown on the Condominium Plan ("Plan") _____ [attached as Exhibit ____ to the or recorded on _____ (date) , in Book _____, pages _____ of the _____ County Official Records and as further described in the _____ (Enabling Declaration Establishing a Plan for Condominium Ownership or other title used) ("Declaration") recorded on _____ (date) , in Book _____, commencing at page _____ in the _____ County Official Records], and an undivided _____ [specify percentage] interest in the Common Area as described in the Plan and the Declaration, which Condominium is located on the real property described on the Map entitled "Tract No. _____" recorded on _____ [date] , in Book _____ of Maps, pages _____ in _____ County Records.

FURTHER EXCEPTING THEREFROM all numbered Condominium Units shown on the Plan and described in the Declaration other than the Unit conveyed as Parcel I, above, and those portions of the Restricted Common Area, as defined in the Declaration or shown on the Plan, that are set aside and allocated for the exclusive use of the Owners of Condominiums other than the Condominium described as Parcel I.

This conveyance is made and accepted, and the real property is granted, in accordance with and subject to the Declaration, and any amendments to it, and that document is, by

EXHIBIT C

this reference, incorporated into and made a part of this Deed, as though fully set forth at length.

SUBJECT TO:

- A. General and special real property taxes for the current fiscal year; and
- B. Covenants, conditions, restrictions and easements, reservations, rights, declarations, and rights-of-way of record.
- C. Agreements regarding common areas. The City will not participate in or become a member of the Home Owners Association (HOA) contemplated to be formed for the residential areas of the project. The City will be responsible for maintenance and repair of grounds specifically designated as a part of the commercial parcel to a commercially reasonable standard and will limit access of commercial tenants and their customers to those commercial areas as designated on a mutually agreed upon plan to be determined during site review. City agrees that HOA-maintained areas are for residents and their guests only, and not for City's use.

As to those common structures necessitating replacement or common maintenance/servicing (roof, exterior paint, common water lines), the City will contribute to the cost of the repair, replacement, servicing, in a manner proportionate to the square footage cost of the improvements, commensurate with the proportionate square footage of commercial occupancy. Should the residential or mixed use portion not be constructed, and City purchases the office building in fee simple than City will be solely responsible for any maintenance and there will be no common area.

To the extent that the City has not maintained the commercial space and associated landscaping in a commercially reasonable manner, HOA may notice City, describe failure, and City will respond to HOA and or replace or repair within 60 days. City intends to maintain a cooperative relationship with the HOA, indicative of the long term occupancy of a portion of the project.

- D. Counterparts. This Grant Deed may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

EXHIBIT C

GRANTOR:

The Latala Group, LLC

Date:

, 201 By: *[form document – do not execute]***[SIGNATURE MUST BE
NOTARIZED]****Title:****By:****Name:****[SIGNATURE
MUST BE
NOTARIZED]****Title:**

EXHIBIT C**GRANTEE:****CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the Grant Deed dated _____, 2018 from the Latala Group, LLC to the City of Morgan Hill, municipal corporation, is hereby accepted by the undersigned officer on behalf of the City Council of the City of Morgan Hill pursuant to authority conferred by resolution number 5059 of the City Council adopted on February 5, 1997, and the grantee consents to recordation thereof by its duly authorized officer.

CITY OF MORGAN HILL

Dated: _____

Christina Turner, City Manager

Attachment 3

Detail of Public Improvement Funding

Public Improvements	Original DDA	DDA Amendment
Depot Street Improvements	\$ 710,821	\$ 1,514,902
Parking Lot Improvements	\$ 190,905	\$ 407,454
Sale of Property to Developer (Credit)	\$ (303,178)	\$ (303,178)
Developer Cost of Depot Street Frontage (Credit)	\$ (213,739)	\$ (230,659)
Credit Against RDCS Pledge Towards Transportation	\$ (384,809)	\$ (392,000)
Credit Against RDCS Pledge towards Municipal Infrastructure	\$ -	\$ (98,000)
Credit Against RDCS Pledge towards School Ped Safety	\$ -	\$ (49,000)
Credit Against Traffic Impact Fees	\$ -	\$ (93,929)
Reimbursement from Public Facilities Fund (306)	\$ -	\$ (755,591)

Total City Increased Contribution (Shaded Area) - \$996,520

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2021-2022 BUDGET IN THE PUBLIC FACILITIES (NON-AB 1600) FUND (FUND NO. 346) AND UNDERGROUNDING FUND (FUND NO. 350) TO APPROPRIATE \$755,591 AND \$138,263, RESPECTIVELY, THEREFOR

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 this Resolution are set forth in detail in that certain City Council Staff Report entitled "Approve a Disposition Development Agreement Amendment and Amendment to the Fiscal Year 2021-2022 Budget for the Depot - Latala Project" submitted for City Council consideration at its meeting of September 1, 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 Annual Budget for Fiscal Year 2021-2022 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 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 2021-2022 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 2021-2022 Budget of City.

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

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 1st day of September 2021 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

∞ 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. _____ adopted by the City Council at the meeting held on the 1st day of September 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 #**

005

FUND:

346 Public Facilities (Non AB1600)

DEPARTMENT:

8049 Public Facility/Non AB1600

OBJECT:

86360 CONSTRUCTION

AGENDA DATE:

09/01/21

AGENDA ITEM TITLE:

Depot-Latala

	07/01/21 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/22 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	532,183	911,488	372,377	1,071,294
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		-	755,591	(755,591)
RESULT OF RECOMMENDED ACTION	<u>532,183</u>	<u>911,488</u>	<u>1,127,968</u>	<u>315,703</u>

AGENDA BUDGET SCORECARD

FISCAL YEAR 2021-2022

ADJUSTMENT #

006

FUND:

350 Undergrounding Fund

DEPARTMENT:

8057 Undergrounding

OBJECT:

86360 CONSTRUCTION

AGENDA DATE:

09/01/21

AGENDA ITEM TITLE:

Depot-Latala

	07/01/21 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/22 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	868,999	86,073	84,938	870,134
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		-	138,263	(138,263)
RESULT OF RECOMMENDED ACTION	<u>868,999</u>	<u>86,073</u>	<u>223,201</u>	<u>731,871</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: September 1, 2021

PREPARED BY: Nichole Martin, Community Services Coordinator

APPROVED BY: City Manager

APPROVE POLICY CRITERIA FOR ONE-TIME AMERICAN RESCUE PLAN ACT (ARPA) FUNDING FOR COMMUNITY ORGANIZATIONS

RECOMMENDATION(S)

Approve policy criteria for one-time ARPA funding to nonprofit organizations serving the residents and businesses of Morgan Hill.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth

Seniors

and Entire Community

Preserving and Cultivating Public Trust

Preserving Our Community History

Enhancing Equity

Diversity and Inclusiveness

REPORT NARRATIVE:

In March 2021, the American Rescue Plan Act (ARPA) of 2021 was signed into law. The ARPA provides additional funding for state and local governments. The City of Morgan Hill will receive one-time funding of \$10.99 million in two tranches as part of the ARPA. The City Council has elected to make a portion of this funding available to qualifying nonprofit organizations serving the Morgan Hill community.

Following the discussion by the City Council at the Mid-Year Goal Review Workshop, City staff have developed a list of policy criteria for proposed funding. The criteria have been developed based on the Council's discussion on the item. To be considered for this one-time funding, organizations would be required to meet the following criteria:

- The organization requesting funding must be a non-profit
- The organization must show the funds will be used to support the community
- Funds must be used for services for residents or businesses of the City of Morgan Hill
- Requests for funding are for one-time use
- The organization may not have received or be scheduled to receive other funding from the City of Morgan Hill

Additionally, the following criteria would provide priority for funding to organizations which meet it:

- Priority will be given to organizations that can demonstrate they were significantly financially impacted by Covid
- Priority will be given to organizations that can demonstrate a near term impact (1 year) by providing a direct service to Morgan Hill residents or businesses.
- Priority will be given to organizations that have not previously received COVID related funding

In addition to meeting the criteria, organizations would be required to enter into a funding agreement with the City. This agreement would include provisions to require reporting on the uses of the funds for the intended purposes and a summary of the impacts the funds had on the community.

Following Council approval of the criteria at this meeting, an application for funding would be posted on the City website. Funding recommendations will be made to City Council in October 2021 to ensure funds can be awarded quickly.

COMMUNITY ENGAGEMENT: Inform

If approved, City staff would provide information on the City's website and in other electronic communications to inform the community about the funding opportunity and criteria.

ALTERNATIVE ACTIONS:

The Council may adjust the criteria to align with its priorities for the program. This could include an alternative that makes the funding available for private businesses.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Budget updates have been provided at City Council meetings since the Covid-19 pandemic began in Spring 2020. This specific funding was included in the August 18, 2021 Budget Amendments approved by the Council and was also discussed at the August 6, 2021 City Council Mid-Year Goal Setting Workshop.

FISCAL AND RESOURCE IMPACT:

The total funding available is up to \$100,000. This funding would be dependent on the funding requests submitted and the requests approved by Council at a future meeting.

CEQA (California Environmental Quality Act): Not a Project

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



CITY COUNCIL STAFF REPORT

MEETING DATE: September 1, 2021

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

RECEIVE MONTHLY BUDGET UPDATE AND JULY 2021 FINANCIAL AND INVESTMENT REPORTS

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure
Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Community Outreach
Engagement and Messaging
Fiscal Sustainability

REPORT NARRATIVE:

As part of the City Council's expectation to maintain a high level of transparency and to be responsible stewards of public funds, staff is providing this monthly budget update, along with the July 2021 financial and investment reports (Attachment 1 and 2).

July 2021 Financial Report

The Revenue and Expense Summary for the month of July is included on the first page of the monthly financial report (Attachment 2). Overall, General Fund revenues total \$6.5 million mainly from the receipt of American Rescue Plan Act (ARPA) in the amount of \$5.5 million. Expenditures, including encumbrances, amounted to \$4.1 million.

Budget Update

There has been no material change to the City's revenue since the last budget update to the Council on August 18, 2021, except excess Educational Revenue Augmentation Fund (ERAF) distribution. On August 20, 2021, the Controller-Treasurer's Department of the County of Santa Clara notified the cities and agencies within the County that the State of California Controller's Office agreed with the County's methodology of calculating excess ERAF, therefore, set aside provision is no longer required. What this mean is the City of Morgan Hill is expecting to receive an additional \$650,000 in excess ERAF for FY 2021-22. However, the County cautioned cities and agencies in planning and budgeting this source of revenue as future legislation could impact the calculation methodology.

Excess ERAF has becoming a large revenue category for the City in recent years.

Morgan Hill begun to receive excess ERAF distribution in the amount of \$13,000 in FY2013-14 to about \$1.9 million in last fiscal year, FY2020-21. The increase is mainly due to the growth of property tax outpacing the growth of school funding requirement.

COMMUNITY ENGAGEMENT: Inform

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

ALTERNATIVE ACTIONS:

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

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the financial and investment report for each month. At the September 16, 2015 meeting, City Council recommended monthly financial and investment reports be agendaized under the Consent Agenda, and quarterly financial and investment reports be presented to City Council as an "Other Business" item. Beginning in FY 2020-21, budget reports are presented to the Council monthly.

FISCAL AND RESOURCE IMPACT:

The preparation of the report is a part of the Finance workplan. Staff does not recommend any budget adjustments at this time.

CEQA (California Environmental Quality Act):

Not a Project.

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

LINKS/ATTACHMENTS:

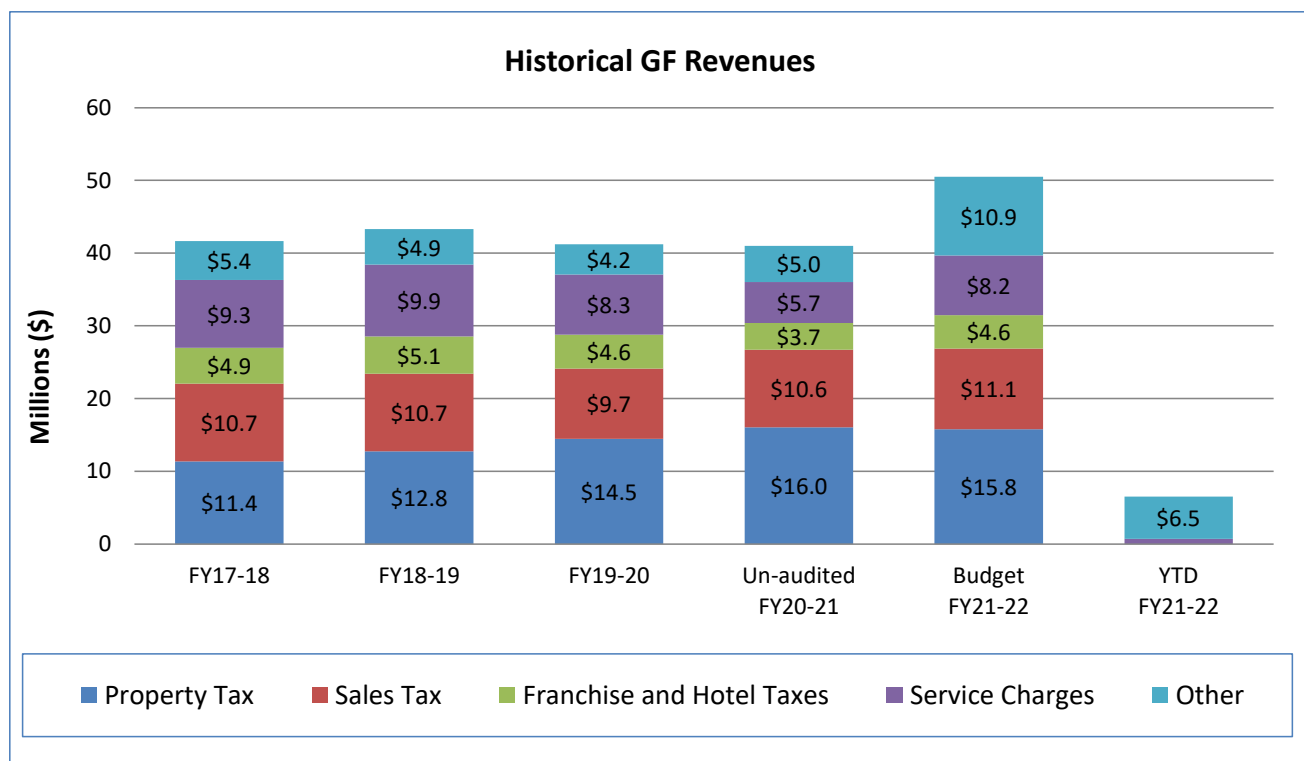
1. July 2021 Financial Statement Analysis
2. July 2021 Financial and Investment Report



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2021-22
FOR THE MONTH ENDED JULY 2021 – 8% OF YEAR COMPLETE

- **General Fund** – Revenues for the month of July totaled \$6.5 million versus about \$0.7 million prior year to date mainly due to the receipt of American Rescue Plan Act (ARPA) in the amount of \$5.5 million. On August 20, 2021, the Controller-Treasurer’s Department of the County of Santa Clara notified the cities and agencies within the County that the State of California Controller’s Office agreed with the County’s methodology of calculating excess Educational Revenue Augmentation Fund (ERAF), therefore, set aside provision is no longer required. As a result the City of Morgan Hill is expecting to receive an additional \$650,000 in excess ERAF for FY2021-22. However, the County cautioned cities and agencies in planning and budgeting this source of revenue as future legislation could impact the calculation methodology. The increase in excess ERAF distribution is mainly due to the growth of property tax outpacing the growth of school funding requirement and this revenue stream is becoming a large revenue category for the City in recent years. Morgan Hill began receiving excess ERAF distribution in FY2013-14 in the amount of \$13,000 and it has grown to about \$1.9 million in last fiscal year FY2020-21.

The chart below shows historical General Fund revenues by major revenue category from FY17-18 through FY19-20 Actual, Un-audited FY20-21, FY21-22 Budget, and YTD as of July 31, 2021.



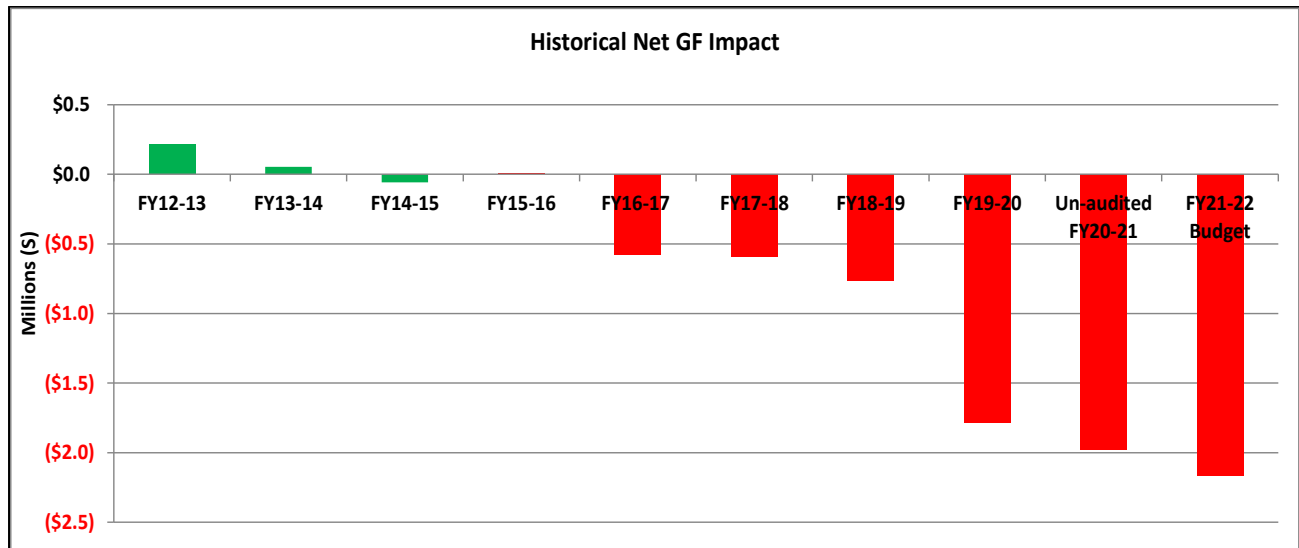
General Fund expenditures and encumbrances as of July 31, 2021 totaled \$4.1 million, of which approximately \$1.2 million is attributable to outstanding encumbrances.

- **Community Services** - The Community Services Department’s recreation operations, as reflected in the schedule presented on page 4 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$140,000 as of July 31, 2021. The large budgeted



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2021-22
FOR THE MONTH ENDED JULY 2021 – 8% OF YEAR COMPLETE

operating loss for recreation operations reflect the restrictions and limited opening of recreation facilities since March 2020 due to shelter-in-place order as a result of coronavirus pandemic.



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

- **Development Services Fund** – Revenues for July totaled \$0.6 million. Expenditures, including encumbrances, totaled \$0.4 million. The fund is budgeted at a higher revenue at \$5.3 million compared to recent years actuals primarily due to the anticipated completion of the updated fee study. Staff, with the assistance of the consultant, is in the process of finalizing a fee study to update the current fees which were developed over five years ago and anticipated its completion in the fall or early winter.
- **Debt Service Funds** – Expenditures for the month totaled \$1,224. The debt service for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued, and are budgeted for in the months delineated in the underlying bond documents. The General Fund's portion of the annual debt service payments is approximately \$200,000, less than one percent of the General Fund's budgeted revenues.
- **Wastewater Operations** – Revenues from Sewer Operations for the month of July totaled \$1.2 million. Expenditures and outstanding encumbrances totaled \$0.8 million or 6% of the budget. The table below



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2021-22
FOR THE MONTH ENDED JULY 2021 – 8% OF YEAR COMPLETE

shows historical Sewer Operations revenues and expenditures from FY17-18 through FY19-20 Actual, Un-audited FY20-21, FY21-22 Budget, and YTD as of July 31, 2021.

(amount in millions)	FY17-18	FY18-19	FY19-20	Un-audited FY20-21	Budget FY21-22	YTD FY21-22
Revenues	10.3	11.4	11.9	13.3	14.1	1.2
Expenditures	10.8	11.4	12.3	13.3	14.0	0.8
Operating Margin	(0.5)	-	(0.4)	-	0.1	0.4
Operating Margin without Encumbrances	(0.3)	0.4	(0.1)	-	0.1	0.5

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations for the month of July totaled \$1.5 million. Water Operations expenditures, including outstanding encumbrances, totaled \$1.5 million for the month of July. Without the encumbrances, however, the expenditures amounted to \$0.7 million. The table below shows Water Operations revenues and expenditures from FY17-18 through FY19-20 Actual, Un-audited FY20-21, FY21-22 Budget, and YTD as of July 31, 2021.

(amount in millions)	FY17-18	FY18-19	FY19-20	Un-audited FY20-21	Budget FY21-22	YTD FY21-22
Revenues	13.0	14.2	15.3	16.5	16.3	1.5
Expenditures	12.1	14.3	16.4	16.5	16.4	1.5
Operating Margin	0.9	(0.1)	(1.1)	-	(0.1)	-
Operating Margin without Encumbrances	1.4	0.8	(0.1)	-	(0.1)	0.8

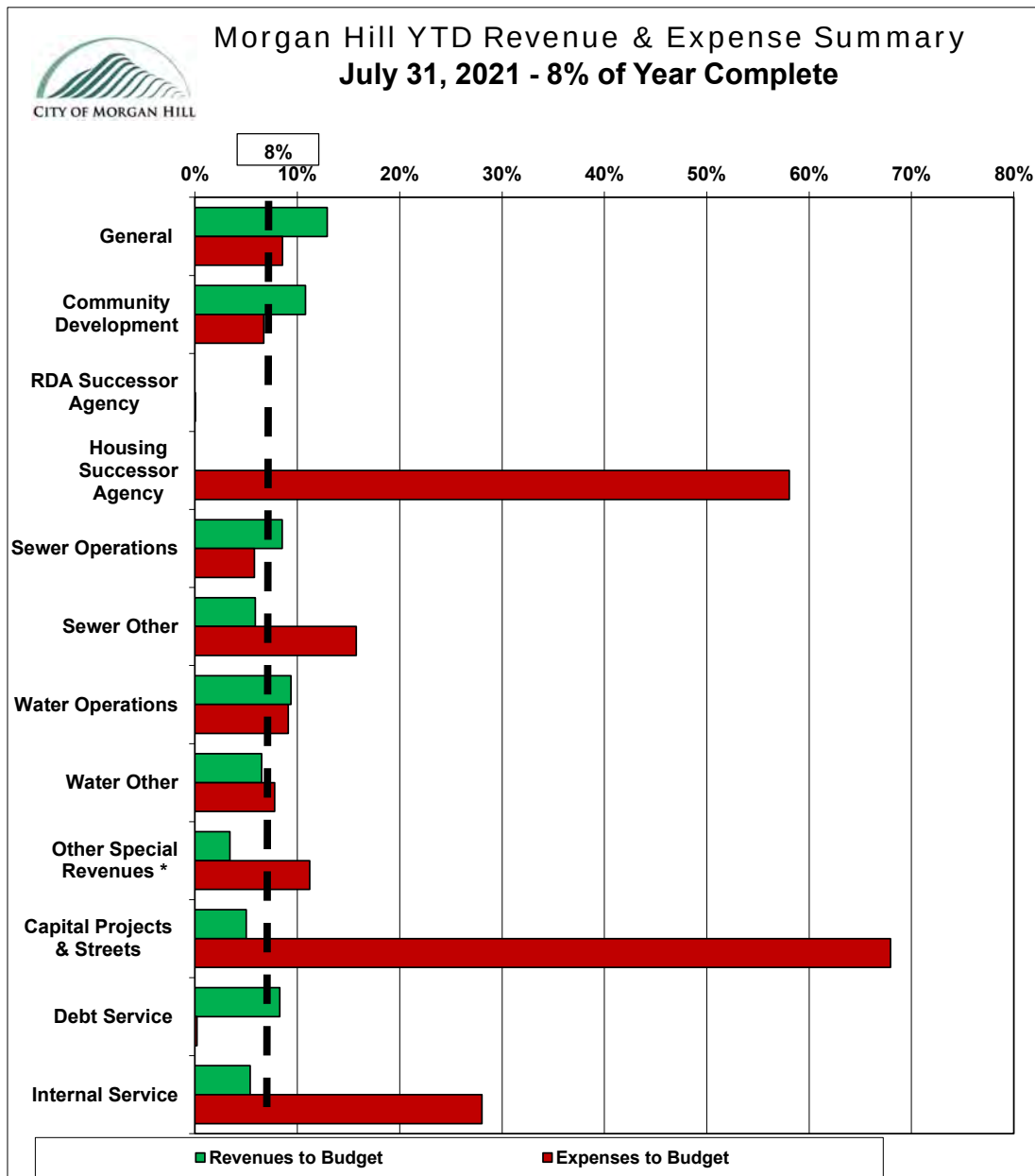
- **Investments** – One security was called and two securities were purchased. Total interest earnings received on investments were \$21,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
July 31, 2021 - 8% of Year Complete



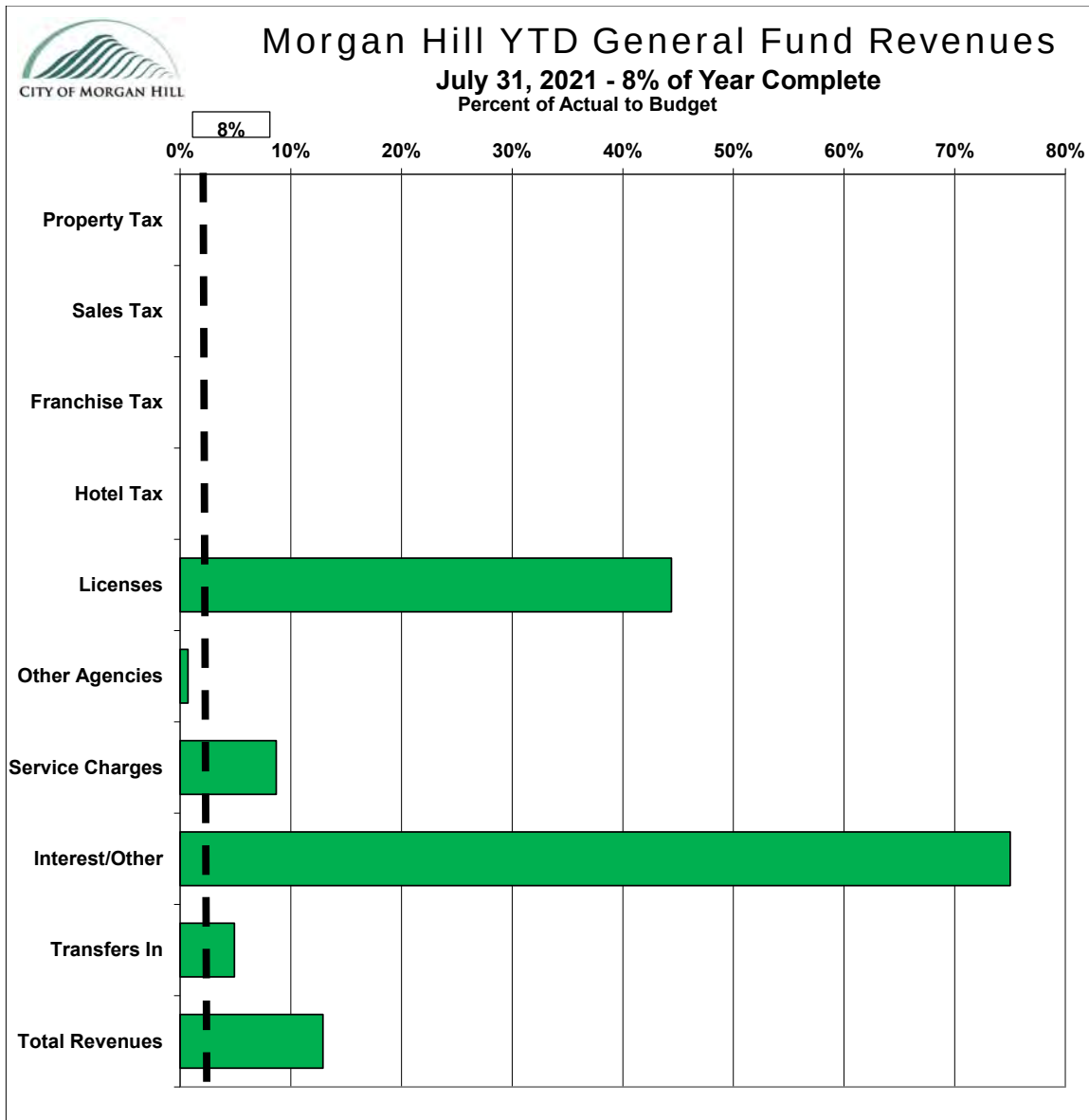
CITY OF MORGAN HILL

Prepared by:
FINANCE DIVISION

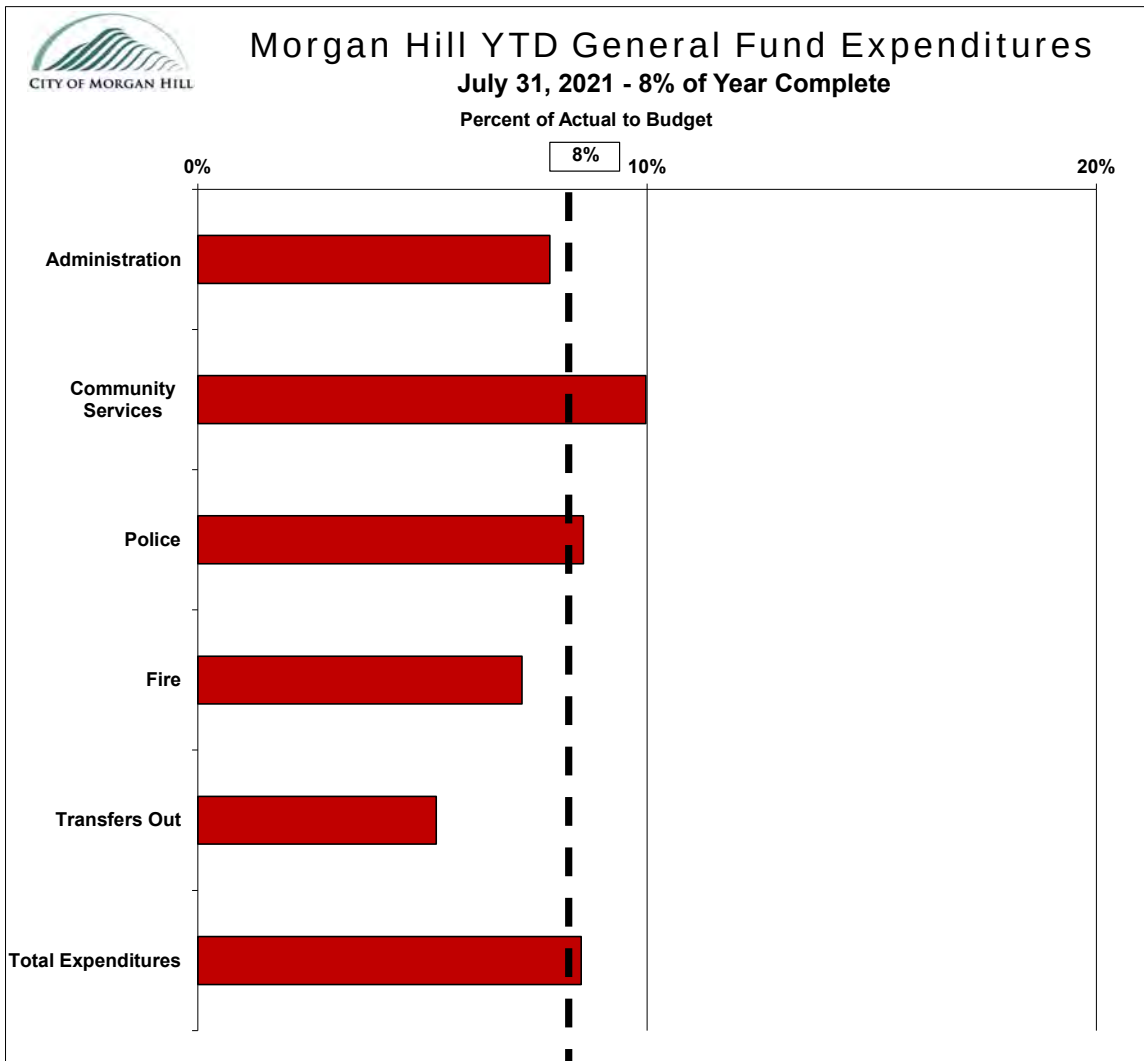


FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 6,524,242	13%	\$ 4,110,083	9%
Community Development	571,391	11%	372,403	7%
RDA Successor Agency	-	n/a	573	0%
Housing Successor Agency	-	n/a	582,769	58%
Sewer Operations	1,203,298	9%	809,569	6%
Sewer Other	705,543	6%	4,476,899	16%
Water Operations	1,532,870	9%	1,490,988	9%
Water Other	458,715	7%	577,893	8%
Other Special Revenues *	134,779	3%	310,323	11%
Capital Projects & Streets	817,052	5%	22,105,807	68%
Debt Service	57,430	8%	1,224	0%
Internal Service	670,651	5%	3,504,849	28%
TOTAL FOR ALL FUNDS	\$ 12,675,970	9%	\$ 38,343,380	22%

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



REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$ 15,771,000	\$ -		\$ -	N/A
Sales Tax	11,098,601	-		-	N/A
Franchise Tax	2,375,000	-		-	N/A
Hotel Tax	2,235,300	-		-	N/A
Licenses	198,825	88,275	44%	90,540	-3%
Other Agencies	437,794	3,030	1%	-	N/A
Service Charges	8,176,736	713,043	9%	340,134	110%
Interest/Other	7,446,359	5,582,870	75%	140,517	3873%
Transfers In	2,768,816	137,025	5%	136,571	0%
TOTAL REVENUES	\$ 50,508,431	\$ 6,524,242	13%	\$ 707,762	822%



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 5,878,826	\$ 460,683	8%	\$ 358,406	29%
Community Services	13,733,468	1,369,940	10%	789,483	74%
Police	19,063,242	1,635,766	9%	1,409,032	16%
Fire	7,388,401	533,134	7%	524,969	2%
Transfers Out	2,083,681	110,559	5%	130,207	-15%
TOTAL EXPENDITURES	\$ 48,147,618	\$ 4,110,083	9%	\$ 3,212,097	28%

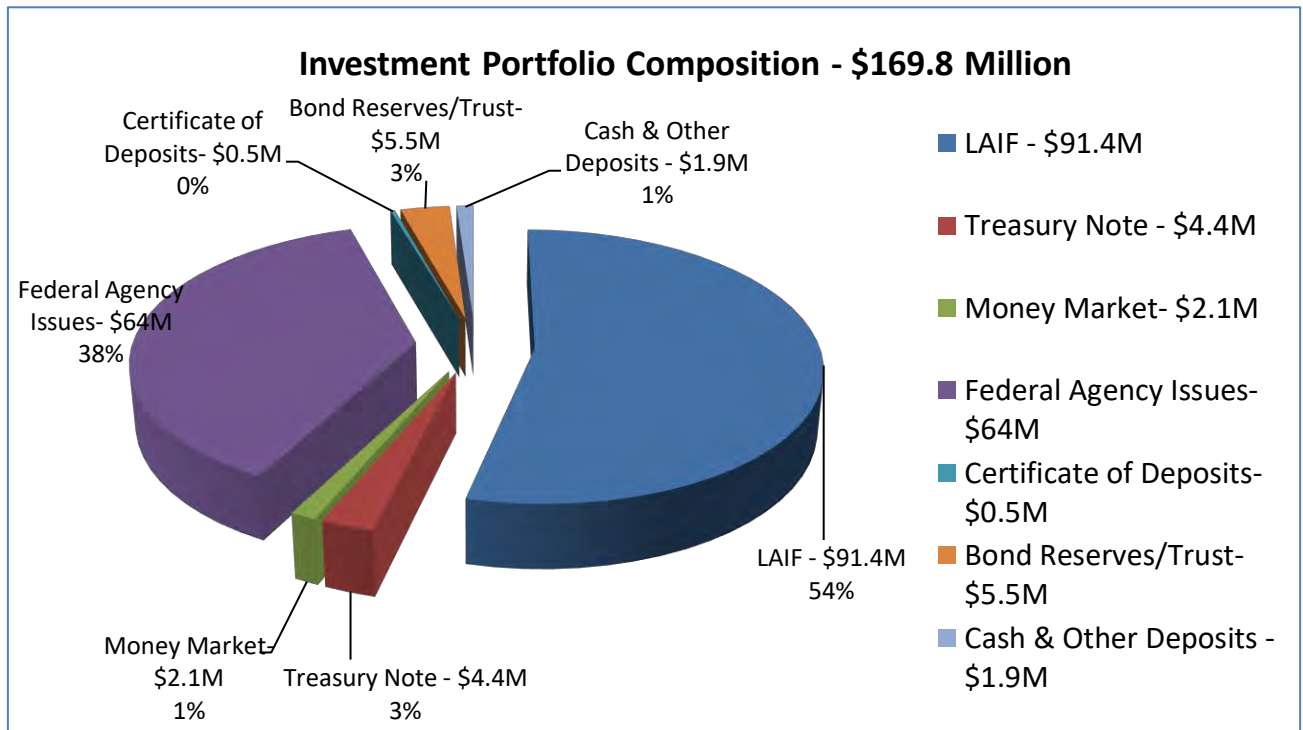


**City of Morgan Hill
Recreation Report - Fiscal Year 2021-22
For the Month Ended July 31, 2021
8% of Year Complete**

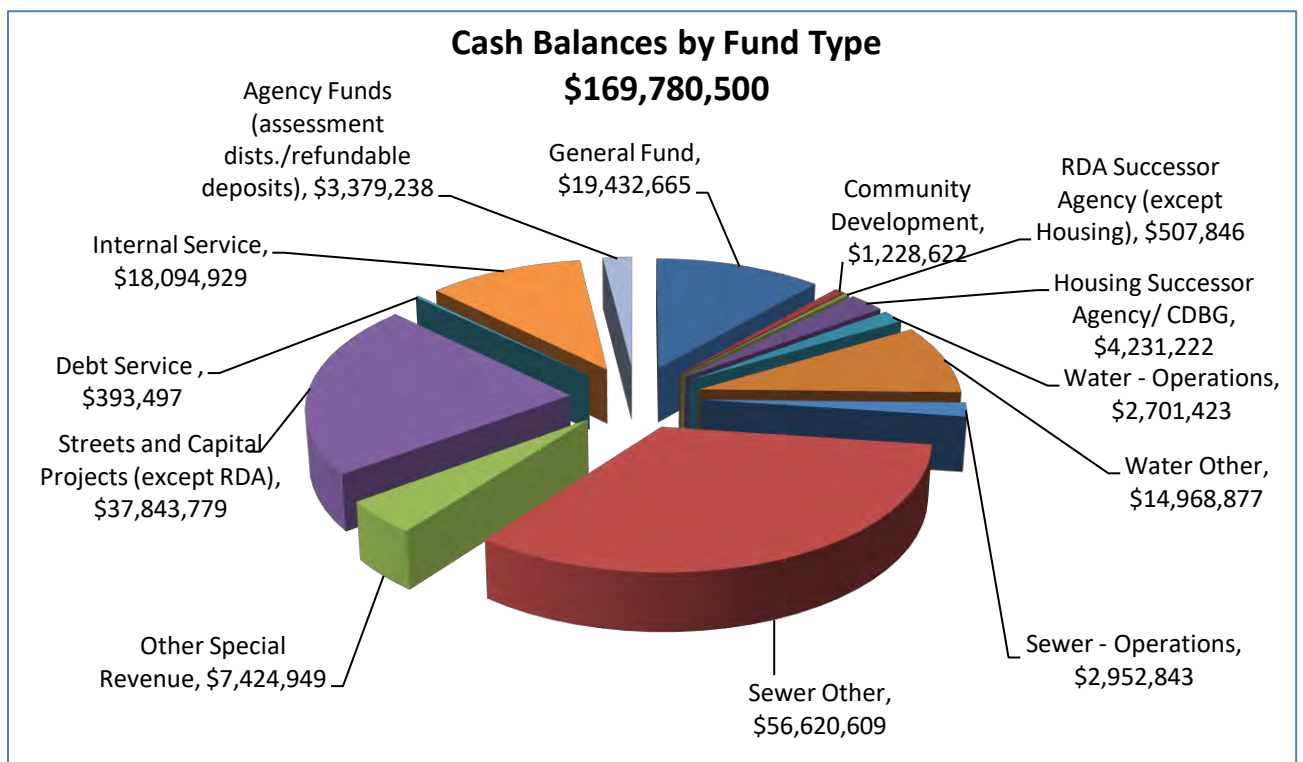
	<u>Budget</u>	<u>July 2021</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 4,238,989	\$ 463,459	\$ 463,459	
Facility Rentals	945,931	68,575	68,575	
Community Services	126,449	14,586	14,586	
Transfers in	75,000	6,250	6,250	
Total Revenues	<u>\$ 5,386,369</u>	<u>\$ 552,870</u>	<u>\$ 552,870</u>	10%
Less: Expenditures				
Membership & Program Services	\$ 5,594,211	\$ 249,254	\$ 249,254	
Facility Rentals	1,313,549	35,150	35,150	
Community Services	641,554	29,572	29,572	
Total Expenditures	<u>\$ 7,549,315</u>	<u>\$ 313,976</u>	<u>\$ 313,977</u>	4%
Net Impact without encumbrances	<u>\$ (2,162,946)</u>	<u>\$ 238,894</u>	<u>\$ 238,893</u>	
Encumbrances	-	-	378,787	
Net Impact with encumbrances	<u>\$ (2,162,946)</u>	<u>\$ 238,894</u>	<u>\$ (139,894)</u>	

City of Morgan Hill Monthly Investment Report - July 31, 2021

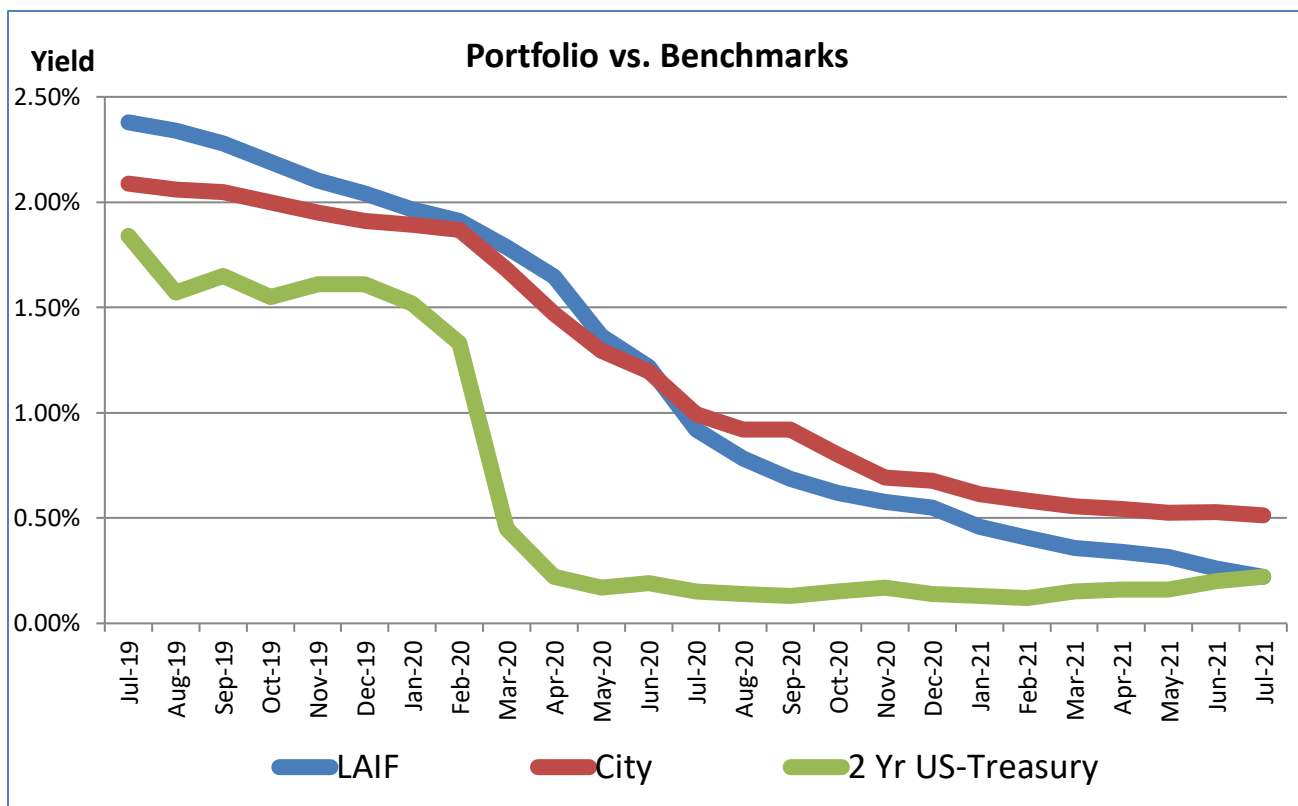
The following are the snapshots of City's investment portfolio as of July 31, 2021. The first chart shows the portfolio composition by investment type:



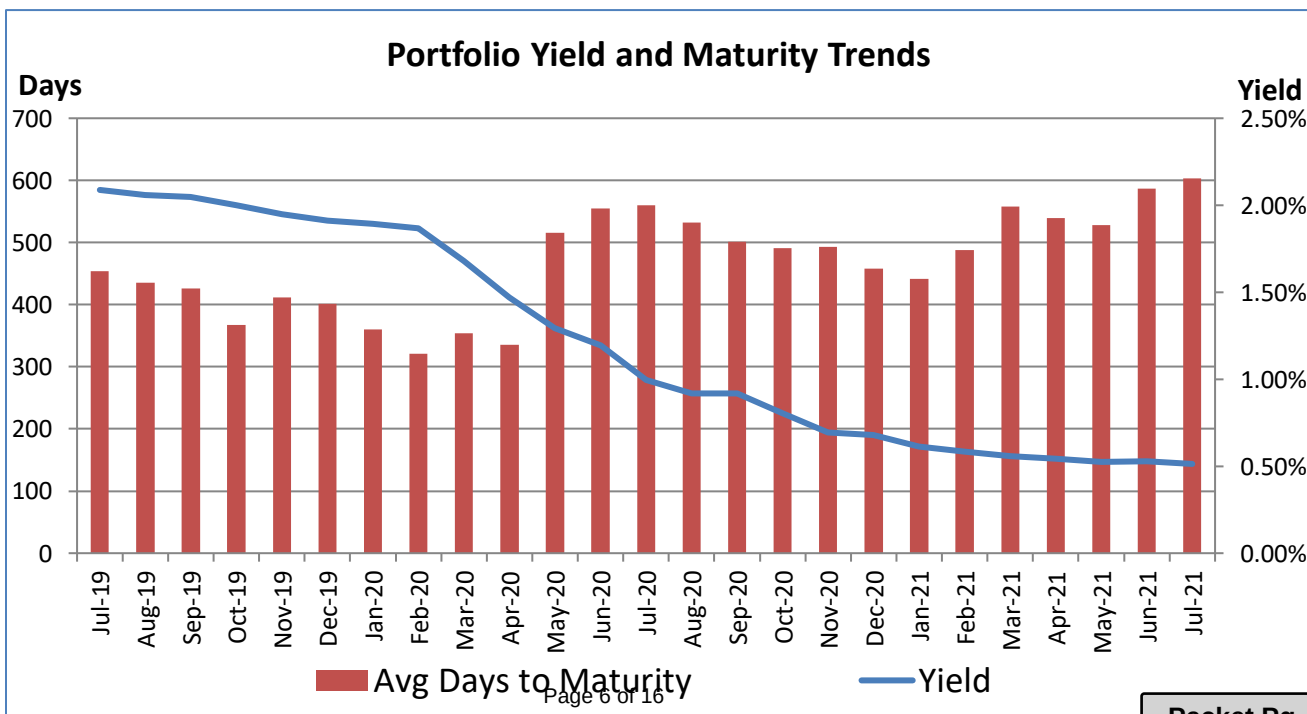
The chart below shows cash balances by fund type reconciled to City's financial system:



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



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





City of Morgan Hill
Investment Portfolio Detail
As of July 31, 2021

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 91,383,987	53.82%	\$ 91,391,570	0.22%		
City Managed							
FNMA Bond	8/25/2016	4,000,000	2.36%	4,003,400	1.40%	8/25/2021	8/25/2021
Treasury Note	4/30/2018	4,414,169	3.28%	4,600,395	2.73%	3/31/2023	3/31/2023
FFCB Bond	4/8/2020	2,000,000	1.18%	2,010,480	0.88%	10/8/2021	4/8/2024
FFCB Bond	5/27/2020	2,000,000	1.18%	1,999,140	0.73%	11/27/2021	5/27/2025
FHLMC Bond	6/3/2020	2,000,000	1.18%	2,003,000	0.60%	12/3/2021	12/3/2024
FHLMC Bond	10/20/2020	2,000,000	1.18%	1,994,300	0.60%	10/20/2021	10/20/2025
FHLMC Bond	10/27/2020	2,000,000	1.18%	1,995,080	0.63%	10/27/2021	10/27/2025
FHLMC Bond	11/2/2020	2,000,000	1.18%	2,000,720	0.32%	11/2/2021	11/2/2023
FFCB Bond	11/3/2020	2,000,000	1.18%	1,995,020	0.54%	11/3/2021	11/3/2025
FNMA Bond	11/18/2020	2,000,000	1.18%	2,001,660	0.65%	11/18/2021	11/18/2025
FHLMC Bond	11/24/2020	2,000,000	1.18%	1,994,980	0.64%	11/24/2021	11/24/2025
FFCB Bond	11/24/2020	1,000,000	0.59%	996,420	0.60%	11/24/2021	11/24/2025
FHLMC Bond	11/25/2020	3,000,000	1.77%	3,000,210	0.63%	11/25/2021	11/25/2025
FHLMC Bond	11/30/2020	2,000,000	1.18%	1,995,340	0.65%	11/26/2021	11/26/2025
FFCB Bond	12/22/2020	2,000,000	1.18%	1,989,500	0.47%	12/22/2021	12/22/2025
FHLB Bond	1/22/2021	2,000,000	1.18%	1,992,360	0.63%	1/22/2022	1/22/2026
FNMA Bond	1/28/2021	2,000,000	1.18%	1,989,080	0.55%	1/28/2022	1/28/2026
FHLB Bond	1/28/2021	2,000,000	1.18%	1,993,100	0.65%	1/28/2022	1/28/2026
FHLB Bond	2/24/2021	2,000,000	1.18%	1,996,360	0.75%	8/24/2021	2/24/2026
FHLB Bond	2/25/2021	2,000,000	1.18%	1,993,600	0.66%	8/25/2021	2/25/2026
FHLB Bond	2/26/2021	2,000,000	1.18%	1,992,220	0.65%	8/26/2021	2/26/2026
FHLB Bond	3/10/2021	2,000,000	1.18%	1,998,420	0.85%	9/10/2021	3/10/2026
FHLB Bond	3/16/2021	2,000,000	1.18%	1,995,120	0.70%	9/16/2021	3/16/2026
FHLB Bond	3/16/2021	2,000,000	1.18%	1,996,820	0.80%	9/16/2021	3/16/2026
FHLB Bond	3/17/2021	2,000,000	1.18%	2,000,960	1.00%	9/17/2021	3/17/2026
FHLB Bond	6/9/2021	2,000,000	1.18%	2,000,480	1.08%	12/9/2021	6/9/2026
FHLB Bond	6/30/2021	2,000,000	1.18%	2,001,720	1.10%	12/30/2021	6/30/2026
FHLB Bond	6/30/2021	3,000,000	1.77%	3,002,700	1.11%	12/30/2021	6/30/2026
FHLB Bond	6/30/2021	2,000,000	1.18%	2,007,040	1.00%	12/30/2021	6/30/2026
FHLB Bond	7/15/2021	3,000,000	1.77%	3,002,940	1.13%	1/15/2022	7/15/2026
FHLB Bond	7/15/2021	2,000,000	1.18%	2,001,580	0.85%	1/15/2022	7/15/2025
CD - Goldman Sachs Bank USA	5/13/2020	250,000	0.15%	250,838	0.50%	5/13/2022	5/13/2022
CD - American Nat'l Bank	5/20/2020	250,000	0.15%	250,645	0.40%	5/20/2022	5/20/2022
Sub Total/Average		\$ 68,914,169	41.27%	\$ 69,045,628	0.70%		
Money Market		\$ 2,139,471	1.26%	\$ 2,139,471	0.01%		
Total City Managed/Average		\$ 162,437,627	96.35%	\$ 162,576,668	0.42%		
Bond Reserve Accounts - Held By Trustees		\$ 1,687,824	0.99%	\$ 1,687,824			
Cash/Deposits		\$ 1,867,645	1.10%	\$ 1,867,645			
PARS Trust		\$ 3,787,404	2.23%	\$ 5,011,927			
GRAND TOTAL/AVERAGE		\$ 169,780,500	100%	\$ 171,144,063			

Attachment: July 2021 Financial and Investment Report (3171 : Monthly Budget Update and July 2021 Financial and Investment Reports)



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT

FOR THE MONTH OF JULY 31, 2021
FOR THE FISCAL YEAR OF 2021-22

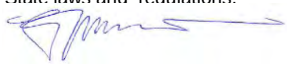
	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	0.22%	\$ 71,340,948	42.02%	\$ 71,346,867
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	0.22%	20,043,039	11.81%	20,044,702
Federal Issues	All Funds Pooled	0.84%	64,000,000	37.70%	63,943,750
US Treasury Notes	All Funds Pooled	2.73%	4,414,169	2.60%	4,600,395
Certificate of Deposits	All Funds Pooled	0.45%	500,000	0.29%	501,483
Dreyfus Treas Cash Management Acct	All Funds Pooled	0.01%	2,139,471	1.26%	2,139,471
	SUBTOTAL		\$ 162,437,627	95.68%	\$ 162,576,668
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility					
Blackrock Liq Fund	Debt Service	0.01%	1	0.00%	1
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	0.01%	1	0.00%	1
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	0.00%	503,079	0.30%	503,079
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	0.01%	595,735	0.35%	595,735
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	0.01%	589,007	0.35%	589,007
	SUBTOTAL		1,687,824	0.99%	1,687,824
Other Cash/Deposits					
General Checking	All Funds		1,830,533	1.08%	1,830,533
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		7,112	0.00%	7,112
PARS - OPEB Trust			2,587,404	1.52%	3,456,602
PARS - PENSION Trust			1,200,000	0.71%	1,555,325
	SUBTOTAL		5,655,049	3.33%	6,879,572
Total Cash and Investments			\$ 169,780,500	100.00%	\$ 171,144,063

CASH ACTIVITY SUMMARY FY 2021-22

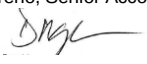
Fund Type	Unaudited 07/1/21 Balance	Change in Cash Balance	7/31/2021 Balance
General Fund	\$ 16,482,660	\$ 2,950,005	\$ 19,432,665
Community Development	972,100	256,523	1,228,622
RDA Successor Agency (except Housing)	11,666,343	(11,158,497)	507,846
Housing Successor Agency/ CDBG	4,593,710	(362,488)	4,231,222
Water - Operations	3,747,502	(1,046,079)	2,701,423
Water Other	8,567,976	6,400,901	14,968,877
Sewer - Operations	3,220,859	(268,016)	2,952,843
Sewer Other	32,031,933	24,588,676	56,620,609
Other Special Revenue	5,770,282	1,654,667	7,424,949
Streets and Capital Projects (except RDA)	40,583,676	(2,739,897)	37,843,779
Debt Service	227,953	165,543	393,497
Internal Service	17,977,892	117,037	18,094,929
Agency Funds (assessment dists./refundable deposits)	3,260,978	118,261	3,379,238
Total	\$ 149,103,863	\$ 20,676,637	\$ 169,780,500

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

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

Prepared by: 
Gina Nazareno, Senior Accountant

Approved by:

Reviewed by: 
Dat Nguyen, Finance Director


Caitlin Jachimowicz, Treasurer



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2021-22
For The Month Ended July 31, 2021
8% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
TAXES							
Property Tax - Secured/Unsecured	\$ 13,485,000	13,485,000	\$ -	n/a	\$ -	\$ -	n/a
Property Tax - RPTTF Residual Distribution	2,144,000	2,144,000	-	n/a	-	-	n/a
Property Tax - Supplemental Roll	142,000	142,000	-	n/a	-	-	n/a
Sales Tax	10,699,601	10,699,601	-	n/a	-	-	n/a
Public Safety Sales Tax	399,000	399,000	-	n/a	-	-	n/a
Transient Occupancy Taxes	2,235,300	2,235,300	-	n/a	-	-	n/a
Franchise (Refuse ,Cable ,PG&E)	2,375,000	2,375,000	-	n/a	-	-	n/a
Property Transfer Tax	541,000	541,000	-	n/a	-	-	n/a
TOTAL TAXES	32,020,901	32,020,901	-	n/a	-	-	n/a
LICENSES/PERMITS							
Business License	159,135	159,135	85,701	54%	90,540	(4,839)	-5%
Other Permits	39,690	39,690	2,574	6%	-	2,574	n/a
TOTAL LICENSES/PERMITS	198,825	198,825	88,275	44%	90,540	(2,265)	-3%
FINES AND PENALTIES							
Parking Enforcement	8,240	8,240	-	n/a	473	(473)	-100%
Bails & Fines	75,854	75,854	-	n/a	-	-	n/a
Administrative Citations	10,331	10,331	682	7%	5,100	(4,418)	-87%
TOTAL FINES AND PENALTIES	94,425	94,425	682	1%	5,573	(4,891)	-88%
OTHER AGENCIES							
Motor Vehicle in-Lieu	26,026	26,026	-	n/a	-	-	n/a
Other Revenue - Other Agencies	437,794	437,794	3,030	1%	-	3,030	n/a
TOTAL OTHER AGENCIES	463,820	463,820	3,030	1%	-	3,030	n/a
CHARGES CURRENT SERVICES							
Police False Alarm Charge	31,340	31,340	360	1%	540	(180)	-33%
Business License Application Review	38,007	38,007	-	n/a	-	-	n/a
Membership Services & Rec Programs	4,238,989	4,238,989	463,459	11%	106,841	356,618	334%
Facility Rentals	945,931	945,931	68,575	7%	70,749	(2,174)	-3%
Community Services	126,449	126,449	14,586	12%	-	14,586	n/a
General Administration Overhead	1,825,440	1,825,440	152,692	8%	148,406	4,286	3%
Other Charges Current Services	970,580	970,580	13,371	1%	13,598	(227)	-2%
TOTAL CURRENT SERVICES	8,176,736	8,176,736	713,043	9%	340,134	372,909	110%
OTHER REVENUE							
Use of money/property	823,436	823,436	72,442	9%	28,702	43,741	152%
Other Revenues	5,961,472	5,961,472	5,509,745	92%	106,242	5,403,503	5086%
TOTAL OTHER REVENUE	6,784,908	6,784,908	5,582,188	82%	134,944	5,447,244	4037%
TRANSFERS IN							
One Time Transfer	180,000	180,000	17,082	9%	17,082	-	0%
Public Safety Facilities Fund	25,000	25,000	-	n/a	-	-	0%
Supplemental Law Enforcement Fund	100,000	100,000	-	n/a	-	-	n/a
Countywide Solid Waste	324,763	324,763	-	n/a	-	-	n/a
Streets	699,735	699,735	-	n/a	-	-	n/a
Park Maintenance	650,000	650,000	54,167	8%	54,167	-	n/a
Sewer Operations	357,159	357,159	29,763	8%	29,536	227	1%
Water Operations	357,159	357,159	29,763	8%	29,536	227	1%
Park Development	75,000	75,000	6,250	8%	6,250	-	n/a
TOTAL TRANSFERS IN	2,768,816	2,768,816	137,025	5%	136,571	454	0%
TOTAL GENERAL FUND	50,508,431	50,508,431	6,524,242	13%	707,762	5,816,480	822%
SPECIAL REVENUE FUNDS							
	6,471,348						
	44,037,083						
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	699,735	699,735	-	n/a	-	-	n/a
Interest / Other Revenue/Other Charges	-	-	-	n/a	-	-	n/a
202 STREET MAINTENANCE	699,735	699,735	-	n/a	-	-	n/a

Attachment: July 2021 Financial and Investment Report (3171 : Monthly Budget Update and July 2021 Financial and Investment Reports)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2021-22
For The Month Ended July 31, 2021
8% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
SPECIAL REVENUE FUNDS							
205 SUPPLEMENTAL LAW ENFORCEMENT FUND							
Interest Income	858	858	-	n/a	-	-	n/a
Police Grant/SLEF/JAG	100,000	100,000	-	n/a	-	-	n/a
205 SUPPLEMENTAL LAW ENFORCEMENT FUND	100,858	100,858	-	n/a	-	-	n/a
206 DEVELOPMENT SERVICES							
Building Fees	3,195,787	3,195,787	315,161	10%	158,567	156,594	99%
Planning Fees	766,776	766,776	88,930	12%	47,889	41,040	86%
Engineering Fees	999,810	999,810	142,864	14%	38,368	104,496	272%
Other Revenue/Current Charges	330,747	330,747	24,437	7%	88,200	(63,763)	-72%
206 DEVELOPMENT SERVICES	5,293,120	5,293,120	571,391	11%	333,024	238,367	72%
207 LONG RANGE PLANNING	869,266	869,266	83,555	10%	38,074	45,482	119%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	3,173	3,173	-	n/a	-	-	n/a
215 and 216 HCD BLOCK GRANT	3,173	3,173	-	n/a	-	-	n/a
225 ASSET SEIZURE	1,931	1,931	-	n/a	-	-	n/a
229 LIGHTING AND LANDSCAPE	2,573	2,573	-	n/a	-	-	n/a
230 COMMUNITY FACILITIES DISTRICT	1,240	1,240	-	0%	-	-	0%
232 ENVIRONMENTAL PROGRAMS	481,008	481,008	50,132	10%	39,202	10,930	28%
234 MOBILE HOME PARK RENT STAB.	757	757	-	n/a	-	-	n/a
235 SENIOR HOUSING	3,869	3,869	-	n/a	-	-	n/a
236 HOUSING MITIGATION	2,446,028	2,446,028	-	n/a	40,711	(40,711)	-100%
237 BEGIN	-	-	-	n/a	-	-	n/a
238 CAL HOMES	-	-	-	n/a	-	-	n/a
240 EMPLOYEE ASSISTANCE	29,089	29,089	1,092	4%	797	295	37%
246 COUNTYWIDE SOLID WASTE	-	-	-	n/a	-	-	n/a
247 ENVIRONMENT REMEDIATION	2,448	2,448	-	n/a	-	-	n/a
250 COMH-SUCCESSOR AGENCY-MHRDA	7,100,496	7,100,496	-	n/a	976	(976)	-100%
255 HOUSING SUCCESSOR AGENCY	215,318	215,318	-	n/a	30,015	(30,015)	-100%
260 PUBLIC ART	-	-	-	n/a	-	-	n/a
TOTAL SPECIAL REVENUE FUNDS	67,759,341	17,250,910	706,169	4%	482,799	223,370	46%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	1,748,480	1,748,480	43,211	2%	429,626	(386,415)	-90%
302 PARK MAINTENANCE	360,613	360,613	-	n/a	-	-	n/a
303 LOCAL DRAINAGE	1,675,036	1,675,036	65,000	4%	65,000	-	n/a
304 LOCAL DRAINAGE/NON AB1600	80,692	80,692	2,051	3%	-	2,051	n/a
306 AGRICULTURE & OPEN SPACE PRESERVATION	180,385	180,385	-	n/a	20,611	(20,611)	-100%
308 STREET CIP	3,300,523	3,300,523	85,877	3%	23,377	62,500	267%
309 TRAFFIC IMPACT	1,468,388	1,468,388	135,473	9%	65,344	70,129	107%
313 FIRE IMPACT	62,830	62,830	-	n/a	5,389	(5,389)	-100%
315 PUBLIC SAFETY FACILITIES IMPACT	801,587	801,587	14,441	2%	35,353	(20,912)	-59%
346 PUBLIC FACILITIES NON-AB1600	611,488	611,488	27,500	4%	-	27,500	n/a
347 PUBLIC FACILITIES IMPACT	265,536	265,536	4,116	2%	23,545	(19,429)	-83%
348 LIBRARY	1,077,617	1,077,617	23,125	2%	98,081	(74,956)	-76%
350 UNDERGROUNDING	86,073	86,073	362,080	421%	-	362,080	n/a
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	591,967	591,967	24,750	4%	-	24,750	n/a
360 COMMUNITY/REC IMPACT FUND	1,730,018	1,730,018	29,428	2%	158,303	(128,875)	-81%
375 QUIMBY FEE	1,623,552	1,623,552	-	n/a	-	-	n/a
TOTAL CAPITAL PROJECTS FUNDS	15,664,785	15,664,785	817,052	5%	924,628	(107,576)	-12%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	307,385	307,385	25,413	8%	25,825	(412)	-2%
441 POLICE FACILITY BOND	385,639	385,639	32,017	8%	31,903	114	0%
TOTAL DEBT SERVICE FUNDS	693,024	693,024	57,430	8%	57,728	(298)	-1%

Attachment: July 2021 Financial and Investment Report (3171 : Monthly Budget Update and July 2021 Financial and Investment Reports)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2021-22
For The Month Ended July 31, 2021
8% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 SEWER OPERATION							
Sewer Service Fees	13,812,501	13,812,501	1,203,298	9%	1,097,358	105,940	10%
Interest Income/Transfers	37,425	37,425	-	n/a	-	-	n/a
Other Revenue/Current Charges	268,241	268,241	-	n/a	335	(335)	-100%
640 SEWER OPERATION	14,118,167	14,118,167	1,203,298	9%	1,097,693	105,605	10%
641 SEWER EXPANSION							
Interest Income	220,194	220,194	278	0%	418	(140)	-34%
Development Impact Fee	6,845,919	6,845,919	306,683	4%	598,768	(292,085)	-49%
641 SEWER EXPANSION	7,066,113	7,066,113	306,961	4%	599,186	(292,225)	-49%
642 SEWER RATE STABILIZATION	195,311	195,311	12,500	6%	-	12,500	n/a
643 SEWER-CAPITAL PROJECT	4,707,648	4,707,648	386,082	8%	365,228	20,854	6%
TOTAL SEWER FUNDS	26,087,239	26,087,239	1,908,841	7%	2,062,107	(153,266)	-7%
650 WATER OPERATION							
Water Sales	15,179,148	15,179,148	1,434,066	9%	1,564,290	(130,224)	-8%
Meter Install & Service	25,215	25,215	3,775	15%	3,406	369	11%
Transfers-In / Interest Income	546,952	546,952	40,696	7%	38,644	2,052	5%
Other Revenue/Current Charges	585,381	585,381	54,332	9%	51,771	2,561	5%
650 WATER OPERATION	16,336,696	16,336,696	1,532,870	9%	1,658,111	(125,242)	-8%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	64,003	64,003	-	n/a	-	-	n/a
Development Impact Fee	1,782,143	1,782,143	29,120	2%	159,531	(130,411)	-82%
651 WATER EXPANSION	1,846,146	1,846,146	29,120	2%	159,531	(130,411)	-82%
652 Water Rate Stabilization	141,222	141,222	10,417	7%	4,167	6,250	150%
653 Water Capital Project	5,047,350	5,047,350	419,178	8%	403,857	15,321	4%
TOTAL WATER FUNDS	23,371,414	23,371,414	1,991,585	9%	2,225,666	(234,082)	-11%
TOTAL ENTERPRISE FUNDS	49,458,653	49,458,653	3,900,426	8%	4,287,774	(387,348)	-9%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,952,577	1,952,577	188,451	10%	157,856	30,595	19%
740 BUILDING MAINTENANCE	3,409,334	3,409,334	94,221	3%	285,413	(191,192)	-67%
741 BUILDING REPLACEMENT	745,508	745,508	57,224	8%	54,865	2,359	4%
745 CIP ADMINISTRATION	1,798,889	1,798,889	-	n/a	-	-	n/a
760 UNEMPLOYMENT INSURANCE	2,513	2,513	-	n/a	8,333	(8,333)	-100%
770 WORKERS COMPENSATION	913,504	913,504	53,054	6%	48,661	4,394	9%
790 EQUIPMENT REPLACEMENT	1,086,223	1,086,223	84,101	8%	84,101	-	n/a
791 EMPLOYEE BENEFITS	1,043,858	1,043,858	50,520	5%	49,498	1,022	2%
795 GENERAL LIABILITY INSURANCE	1,504,188	1,504,188	143,080	10%	71,452	71,628	100%
TOTAL INTERNAL SERVICE FUNDS	12,456,594	12,456,594	670,651	5%	760,179	(89,528)	-12%
TOTAL FOR ALL FUNDS	\$ 196,540,828	\$ 146,032,397	\$ 12,675,970	9%	\$ 7,220,870	\$ 5,455,100	76%

Attachment: July 2021 Financial and Investment Report (3171 : Monthly Budget Update and July 2021 Financial and Investment Reports)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2021-22
For the Month Ended July 31, 2021
8% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRICED YTD
010 GENERAL FUND								
I. ADMINISTRATION								
	CITY COUNCIL	\$ 30,688	\$ 433,850	\$ 30,688	\$ -	\$ 30,688	7%	\$ 30,688
	CITY ATTORNEY	42,833	802,889	42,833	43,483	86,316	11%	42,833
	CITY MANAGER	41,938	638,262	41,938	5,000	46,938	7%	41,938
	HUMAN RESOURCES	43,882	830,904	43,882	-	43,882	5%	43,882
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	42,376	672,320	42,376	20,700	63,076	9%	42,376
	Elections	1,719	28,180	1,719	-	1,719	6%	1,719
	COUNCIL SVCS & RECORDS MGMT	44,095	700,500	44,095	20,700	64,795	9%	44,095
	FINANCE	132,352	2,472,421	132,352	55,712	188,063	8%	132,352
	TOTAL ADMINISTRATION	335,788	5,878,826	335,788	124,895	460,683	8%	335,788
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	249,254	5,594,211	249,254	347,032	596,286	11%	249,254
	Recreation Facility Rentals	35,150	1,313,549	35,150	31,755	66,905	5%	35,150
	Community Services	29,572	641,554	29,572	-	29,572	5%	29,572
	Park Maintenance	48,589	1,159,250	48,589	97,575	146,164	13%	48,589
	Environmental Services	14,736	349,129	14,736	-	14,736	4%	14,736
	Countywide Solid Waste Program	1,867	303,550	1,867	-	1,867	1%	1,867
	Street Maintenance	94,472	2,562,248	94,472	171,144	265,616	10%	94,472
	Downtown Maintenance	8,218	318,869	8,218	70,850	79,068	25%	8,218
	Cable Television	2,408	34,272	2,408	-	2,408	7%	2,408
	COMMUNITY SERVICES	484,267	12,276,632	484,267	718,356	1,202,623	10%	484,267
	CODE COMPLIANCE	11,582	174,873	11,582	-	11,582	7%	11,582
	INFRASTRUCTURE PLANNING & CONGESTION MGMT	20,598	356,583	20,598	-	20,598	6%	20,598
	ECONOMIC DEVELOPMENT PROGRAMS	19,305	925,380	19,305	115,832	135,137	15%	19,305
	TOTAL COMMUNITY SERVICES	535,752	13,733,468	535,752	834,189	1,369,940	10%	535,752
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	88,435	1,421,383	88,435	48,363	136,798	10%	88,435
	Field Operations	658,465	9,244,988	658,465	218,259	876,724	9%	658,465
	Support Services	242,441	2,596,110	242,441	-	242,441	9%	242,441
	Emergency Services/Haz Mat	12,476	202,072	12,476	-	12,476	6%	12,476
	Special Operations	243,395	3,700,816	243,395	6,748	250,143	7%	243,395
	Dispatch Services	117,185	1,897,873	117,185	-	117,185	6%	117,185
	POLICE	1,362,397	19,063,242	1,362,397	273,370	1,635,766	9%	1,362,397
	FIRE	532,559	7,388,401	532,559	575	533,134	7%	532,559
	TOTAL PUBLIC SAFETY	1,894,956	26,451,643	1,894,956	273,945	2,168,901	8%	1,894,956
IV. TRANSFERS								
	Other	110,559	2,083,681	110,559	-	110,559	5%	110,559
	TOTAL TRANSFERS	110,559	2,083,681	110,559	-	110,559	5%	110,559
	TOTAL GENERAL FUND	2,877,054	48,147,618	2,877,054	1,233,028	4,110,083	9%	2,877,054

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City of Morgan Hill
Year to Date Expenses - Fiscal Year 2021-22
For the Month Ended July 31, 2021
8% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRICE YTD
SPECIAL REVENUE FUNDS								
202	STREET MAINTENANCE	361	704,068	361	-	361	0%	
205	PUBLIC SAFETY/SUPP.LAW	604	107,245	604	-	604	1%	
206	DEVELOPMENT SERVICES FUND							
	Planning	120,395	1,956,314	120,395	34,760	155,155	8%	
	Building	135,714	2,233,914	135,714	1,836	137,549	6%	
	Engineering	67,859	1,366,129	67,859	11,840	79,699	6%	
206	DEVELOPMENT SERVICES FUND	323,968	5,556,357	323,968	48,435	372,403	7%	
207	LONG RANGE PLANNING	39,127	756,202	39,127	58,953	98,080	13%	
215/216	CDBG	458	5,499	458	-	458	8%	
225	ASSET SEIZURE	-	54,232	-	14,232	14,232	26%	
229	LIGHTING AND LANDSCAPE	3,454	168,130	3,454	28,316	31,770	19%	
230	COMMUNITY FACILITIES DISTRICT	1,278	42,093	1,278	-	1,278	3%	
232	ENVIRONMENT PROGRAMS	26,428	508,715	26,428	7,495	33,924	7%	
234	MOBILE HOME PARK	37	449	37	-	37	8%	
236	HOUSING MITIGATION	41,251	1,095,875	41,251	88,603	129,854	12%	
237	BEGIN	-	-	-	-	-	n/a	
238	CAL HOMES	-	-	-	-	-	n/a	
240	EMPLOYEE ASSISTANCE	86	28,531	86	-	86	0%	
246	COUNTYWIDE SOLID WASTE PROGRAM	-	1,324,763	-	-	-	n/a	
247	ENVIRONMENTAL REMEDIATION	-	-	-	-	-	n/a	
250	COMH-SUCCESSOR AGENCY-MHRDA	573	6,939,408	573	-	573	0%	
255	HOUSING SUCCESSOR AGENCY	124,435	1,003,785	124,435	458,333	582,769	58%	
260	PUBLIC ART	-	23,500	-	-	-		
TOTAL SPECIAL REVENUE FUNDS		562,060	18,318,852	562,060	704,368	1,266,428	7%	
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	10,495	5,551,383	10,495	3,375,449	3,385,944	61%	
302	PARK MAINTENANCE	55,195	650,000	55,195	-	55,195	8%	
303	LOCAL DRAINAGE	2,504	2,293,385	2,504	43,345	45,849	2%	
304	LOCAL DRAIN. NON-AB1600	240	201,469	240	48,585	48,825	24%	
306	AGRICULTURE & OPEN SPACE PRESERVATION	2,249	96,991	2,249	-	2,249	2%	
308	STREET CIP	1,316	3,371,467	1,316	2,690,529	2,691,845	80%	
309	TRAFFIC IMPACT	77,463	15,471,092	77,463	14,307,590	14,385,053	93%	
313	FIRE IMPACT	-	223,375	-	-	-	n/a	
315	PUBLIC SAFETY FACILITIES IMPACT	19,598	231,805	19,598	-	19,598	8%	
346	PUBLIC FAC.NON AB1600	12,274	372,377	12,274	52,974	65,248	18%	
347	PUBLIC FACILITIES IMPACT	2,277	27,331	2,277	-	2,277	8%	
348	LIBRARY IMPACT	18,059	216,704	18,059	-	18,059	8%	
350	UNDERGROUNDING	95	1,135	95	-	95	8%	
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	30,117	1,160,466	30,117	960,729	990,846	85%	
360	COMM/REC CENTER IMPACT	43	1,454,834	43	394,321	394,364	27%	
375	QUIMBY FEE	-	500,000	-	-	-	n/a	
TOTAL CAPITAL PROJECTS FUNDS		231,925	31,823,813	231,925	21,873,521	22,105,446	69%	
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	886	304,947	886	-	886	0%	
441	POLICE FACILITY BOND DEBT	338	389,497	338	-	338	0%	
TOTAL DEBT SERVICE FUNDS		1,224	694,444	1,224	-	1,224	0%	

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City of Morgan Hill
Year to Date Expenses - Fiscal Year 2021-22
For the Month Ended July 31, 2021
8% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRICE YTD
ENTERPRISE FUNDS								
SEWER								
640	SEWER OPERATIONS	686,291	13,992,048	686,291	123,278	809,569	6%	6%
641	SEWER CAPITAL EXPANSION	27,172	17,978,982	27,172	542,919	570,091	3%	3%
642	SEWER RATE STABILIZATION	95	1,138	95	-	95	8%	8%
643	SEWER-CAPITAL PROJECTS	2,515	10,456,667	2,515	3,904,198	3,906,713	37%	37%
TOTAL SEWER FUND(S)		716,073	42,428,835	716,073	4,570,395	5,286,468	12%	6%
WATER								
	Water Operations	665,705	15,239,783	665,705	762,633	1,428,338	9%	6%
	Utility Billing	46,698	985,735	46,698	9,468	56,166	6%	4%
	Water Conservation	6,485	157,768	6,485	-	6,485	4%	2%
650	WATER OPERATIONS	718,888	16,383,286	718,888	772,101	1,490,988	9%	6%
651	WATER CAPITAL EXPANSION	60,997	2,149,012	60,997	56,271	117,268	5%	4%
652	WATER RATE STABILIZATION	31	371	31	-	31	8%	8%
653	WATER-CAPITAL PROJECTS	1,932	5,274,857	1,932	458,663	460,595	9%	4%
TOTAL WATER FUND(S)		781,848	23,807,525	781,848	1,287,034	2,068,882	9%	7%
TOTAL ENTERPRISE FUNDS		1,497,921	66,236,360	1,497,921	5,857,429	7,355,350	11%	1,3%
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	92,133	2,512,628	92,133	1,196,691	1,288,824	51%	1%
740	BUILDING MAINTENANCE	42,425	3,425,095	42,425	141,189	183,614	5%	1%
741	BUILDING REPLACEMENT	-	310,000	-	-	-	n/a	-
745	CIP ADMINISTRATION	118,982	1,735,361	118,982	6,425	125,407	7%	1%
760	UNEMPLOYMENT	-	20,000	-	-	-	n/a	-
770	WORKERS COMPENSATION	31,314	876,877	31,314	-	31,314	4%	4%
790	EQUIPMENT REPLACEMENT	16,860	1,273,014	16,860	403,041	419,901	33%	-
791	EMPLOYEE BENEFITS FUND	22,983	625,000	22,983	-	22,983	4%	3%
795	GEN. LIABILITY INSURANCE	1,432,806	1,724,061	1,432,806	-	1,432,806	83%	1,0%
TOTAL INTERNAL SERVICE FUNDS		1,757,503	12,502,036	1,757,503	1,747,346	3,504,849	28%	1,7%
REPORT TOTAL		\$ 6,927,687	\$ 177,723,123	\$ 6,927,687	\$ 31,415,693	\$ 38,343,380	22%	\$ 6,5%

Attachment: July 2021 Financial and Investment Report (3171 : Monthly Budget Update and July 2021 Financial and Investment Reports)

		 City of Morgan Hill Fund Activity Summary - Fiscal Year 2021-22 For The Month Ended July 31, 2021 8% of Year Complete							
Fund No.	Fund	Unaudited Fund Balance 06-30-21	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved
010	GENERAL FUND	\$ 17,740,168	\$ 6,524,242	13%	\$ 2,877,054	6%	\$ 3,647,188	\$ 1,233,028	\$ 20,154,327
TOTAL GENERAL FUND		\$ 17,740,168	\$ 6,524,242	13%	\$ 2,877,054	6%	\$ 3,647,188	\$ 1,233,028	\$ 20,154,327
202	STREET MAINTENANCE	6,241	\$ -	n/a	\$ 361	6%	\$ (361)	\$ -	\$ 5,880
205	PUBLIC SAFETY/SUPPL. LAW	195,711	-	n/a	604	5%	(604)	-	195,107
206	DEVELOPMENT SERVICES	(423,104)	571,391	11%	323,968	6%	247,423	48,435	(224,116)
207	LONG RANGE PLANNING	1,134,648	83,555	10%	39,127	5%	44,428	58,953	1,120,123
215 / 216	CDBG	34,847	-	n/a	458	8%	(458)	-	34,389
225	ASSET SEIZURE	143,171	-	n/a	-	n/a	-	14,232	128,939
229	LIGHTING AND LANDSCAPE	182,693	-	n/a	3,454	2%	(3,454)	28,316	150,923
230	COMMUNITY FACILITIES DISTRICT	137,817	-	0%	1,278	3%	(1,278)	-	136,539
232	ENVIRONMENTAL PROGRAMS	214,035	50,132	10%	26,428	5%	23,704	7,495	230,243
234	MOBILE HOME PK RENT STAB.	62,151	-	n/a	37	8%	(37)	-	62,114
235	SENIOR HOUSING	234,443	-	n/a	-	n/a	-	-	234,443
236	HOUSING MITIGATION	4,447,211	-	n/a	41,251	4%	(41,251)	88,603	4,317,357
237	BEGIN	218,320	-	n/a	-	n/a	-	-	218,320
238	CAL HOMES	81,151	-	n/a	-	n/a	-	-	81,151
240	EMPLOYEE ASSISTANCE	68,944	1,092	4%	86	0%	1,006	-	69,950
246	COUNTYRWIDE SOLID WASTE	-	-	n/a	-	n/a	-	-	-
247	ENVIRONMENT REMEDIATION	135,843	-	n/a	-	n/a	-	-	135,843
250	COMH-SUCCESSOR AGENCY-MHRDA	(4,693,361)	-	n/a	573	0%	(573)	-	(4,693,934)
255	HOUSING SUCCESSOR AGENCY	4,306,346	-	n/a	124,435	12%	(124,435)	961,413	3,220,498
260	PUBLIC ART	69,000	-	n/a	-	-	-	-	69,000
TOTAL SPECIAL REVENUE FUNDS		\$ 6,556,107	\$ 706,169	4%	\$ 562,060	3%	\$ 144,109	\$ 1,207,448	\$ 5,492,768
301	PARK DEV. IMPACT FUND	\$ 529,873	\$ 43,211	2%	\$ 10,495	0%	\$ 32,716	\$ 3,375,449	\$ (2,812,860)
302	PARK MAINTENANCE	2,775,515	-	n/a	55,195	8%	(55,195)	-	2,720,320
303	LOCAL DRAINAGE	11,984,228	65,000	4%	2,504	0%	62,496	43,345	12,003,379
304	LOCAL DRAINAGE/NON-AB1600	1,271,739	2,051	3%	240	0%	1,811	48,585	1,224,966
306	AGRICULTURE AND OPEN SPACE PRESERV	6,007,955	-	n/a	2,249	2%	(2,249)	-	6,005,706
308	STREET CIP	3,435,969	85,877	3%	1,316	0%	84,561	2,690,529	830,001
309	TRAFFIC IMPACT FUND	1,231,012	135,473	9%	77,463	1%	58,010	14,307,590	(13,018,569)
315	PUBLIC SAFETY FACILITIES IMPACT	3,648,278	14,441	2%	19,598	8%	(5,157)	-	3,643,121
346	PUBLIC FACILITIES NON-AB1600	1,102,002	27,500	4%	12,274	3%	15,226	52,974	1,064,254
347	PUBLIC FACILITIES IMPACT FUND	1,033,930	4,116	2%	2,277	8%	1,839	-	1,035,769
348	LIBRARY IMPACT FUND	1,494,070	23,125	2%	18,059	8%	5,066	-	1,499,136
350	UNDERGROUNDING	1,073,164	362,080	421%	95	8%	361,985	-	1,435,149
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	203,738	24,750	4%	30,117	3%	(5,367)	960,729	(762,358)
360	COMM/REC CTR IMPACT FUND	1,377,907	29,428	2%	43	0%	29,385	394,321	1,012,971
TOTAL CAPITAL PROJECT FUNDS		\$ 37,169,380	\$ 817,052	5%	\$ 231,925	1%	\$ 585,127	\$ 21,873,521	\$ 15,880,986
420	CIVIC CENTER DEBT	\$ 165,444	\$ 25,413	8%	\$ 886	0%	\$ 24,527	\$ -	\$ 189,971
441	POLICE FACILITY BOND DEBT	171,896	32,017	8%	338	0%	31,679	-	203,575
TOTAL DEBT SERVICE FUNDS		\$ 337,340	\$ 57,430	8%	\$ 1,224	0%	\$ 56,206	\$ (1)	\$ 393,546

		 City of Morgan Hill Fund Activity Summary - Fiscal Year 2021-22 For The Month Ended July 31, 2021 8% of Year Complete							
Fund No.	Fund	Unaudited Fund Balance 06-30-21	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved
640	SEWER OPERATIONS	\$ 3,580,782	\$ 1,203,298	9%	\$ 686,291	5%	\$ 517,007	123,278	3,974,511
641	SEWER IMPACT FUND*	22,815,616	306,961	4%	27,172	0%	279,789	542,919	22,552,486
642	SEWER RATE STABILIZATION	2,690,651	12,500	6%	95	8%	12,405	-	2,703,056
643	SEWER-CAPITAL PROJECTS	9,866,304	386,082	8%	2,515	0%	383,567	3,904,198	6,345,673
650	WATER OPERATIONS	4,020,625	1,532,870	9%	718,888	4%	813,982	772,101	4,062,506
651	WATER IMPACT FUND*	3,406,682	29,120	2%	60,997	3%	(31,877)	56,271	3,318,535
652	WATER RATE STABILIZATION	3,160,467	10,417	7%	31	8%	10,386	-	3,170,853
653	WATER -CAPITAL PROJECT	8,754,608	419,178	8%	1,932	0%	417,246	458,663	8,713,191
TOTAL ENTERPRISE FUNDS		\$ 58,295,735	\$ 3,900,426	8%	\$ 1,497,921	2%	\$ 2,402,505	\$ 5,857,429	\$ 54,840,811
730	INFORMATION SERVICES	\$ 854,321	\$ 188,451	10%	\$ 92,133	4%	\$ 96,318	\$ 1,196,691	\$ (246,052)
740	BUILDING MAINTENANCE	74,519	94,221	3%	42,425	1%	51,796	141,189	(14,874)
741	BUILDING REPLACEMENT	3,587,574	57,224	8%	-	n/a	57,224	-	3,644,798
745	CIP ENGINEERING	(623,064)	-	n/a	118,982	7%	(118,982)	6,425	(748,471)
760	UNEMPLOYMENT	333,729	-	n/a	-	n/a	-	-	333,729
770	WORKERS COMPENSATION	2,114,390	53,054	6%	31,314	4%	21,741	30,000	2,106,131
790	EQUIPMENT REPLACEMENT	5,987,386	84,101	8%	16,860	1%	67,241	403,041	5,651,586
791	EMPLOYEE BENEFITS FUNDS	3,058	50,520	5%	22,983	4%	27,537	-	30,595
795	GEN. LIABILITY INSURANCE	1,324,414	143,080	10%	1,432,806	83%	(1,289,726)	-	34,688
TOTAL INTERNAL SERVICE FUNDS		\$ 13,656,327	\$ 670,651	5%	\$ 1,757,503	14%	\$ (1,086,852)	\$ 1,777,346	\$ 10,792,129
SUMMARY BY FUND TYPE									
GENERAL FUND GROUP		\$ 17,740,168	\$ 6,524,242	13%	\$ 2,877,054	6%	\$ 3,647,188	\$ 1,233,028	\$ 20,154,327
SPECIAL REVENUE GROUP		6,556,107	706,169	4%	562,060	3%	144,109	1,207,448	5,492,768
DEBT SERVICE GROUP		337,340	57,430	8%	1,224	0%	56,206	(1)	393,546
CAPITAL PROJECTS GROUP		37,169,380	817,052	5%	231,925	1%	585,127	21,873,521	15,880,986
ENTERPRISE GROUP		58,295,735	3,900,426	8%	1,497,921	2%	2,402,505	5,857,429	54,840,811
INTERNAL SERVICE GROUP		13,656,327	670,651	5%	1,757,503	14%	(1,086,852)	1,777,346	10,792,129
TOTAL ALL GROUPS		\$ 133,755,057	\$ 12,675,970	9%	\$ 6,927,687	4%	\$ 5,748,283	\$ 31,948,772	\$ 107,554,567

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

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

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

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



CITY COUNCIL STAFF REPORT

MEETING DATE: September 1, 2021

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

ADOPT POLICY REGARDING THE APPOINTMENT OF EMERGENCY STANDBY COUNCIL MEMBERS

RECOMMENDATION(S)

Adopt resolution approving the City Council Policies and Procedures CP-21-01 "Appointment of Emergency Standby City Council Members."

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Community Outreach
Engagement and Messaging

REPORT NARRATIVE:

The Civil Disaster and Emergency Organization Chapter of the City of Morgan Hill's Municipal Code includes the appointment and duties of Emergency Standby Council members in section 2.44.094 entitled "Continuity of Government in the Event of a Disaster." This section authorizes the City to appoint a Standby Council comprised of former council members who reside within the City limits should current members of City Council be unavailable or unable to perform their duties during a large-scale disaster. Without this appointment, the default procedure, per Article 15 of the state of California Government Code declares that when council members are not available during a large-scale disaster, the authority goes to a neighboring municipality's City Council with the largest population.

Morgan Hill City Council Policies and Procedures CP-21-01 has been drafted for approval which includes the Policy Applicability and Reporting of Emergency Standby Council members and appointment.

The need to call upon the Emergency Standby Council could occur in times of extreme emergencies when current City Council members would not be available due to the event effecting their personal lives/safety (i.e. large earthquake). Emergency Standby Council members would be added if a quorum of the elected Council were unable to participate, and would be called upon in reverse chronological order based on their last day of service.

The Emergency Standby Council would be called upon to ratify a local emergency proclamation or assist the City's Emergency Operations Center in getting critical information out to the community. Staff previously reached out to former Council

members who live in Morgan Hill to see if they would be interested in being called upon if needed. Elected Council members would always be called on first.

Based on the recommended policy, the members of the Emergency Standby Council would include: Larry Carr, Steve Tate, Caitlin Jachimowicz, Marilyn Librers, and Marby Lee.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the draft City Council Policies and Procedure CP-21-01 supporting the Municipal Code section “Continuity of Government in the Event of a Disaster” in order to strengthen the City of Morgan Hill’s ability to act independently during a large disaster on issues relative to the community.

ALTERNATIVE ACTIONS:

One alternative action by the Council could be to decline appointment of Emergency Standby Council members. If a large-scale disaster were to occur and current City Council members were not available, the neighboring city with the largest population (San Jose) would step in to ratify any emergency proclamations and/or decisions relative to Morgan Hill.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The updated ordinance was introduced at the January 23, 2019, City Council meeting and approved at the February 6, 2019 Council meeting. The original Emergency Standby Council was appointed at the April 17, 2019, Council meeting. At the January 15, 2020, Council meeting, the Emergency Standby Council was recognized with no changes to its membership.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact to appointing an Emergency Standby Council.

CEQA (California Environmental Quality Act):

Not a Project. Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Chapter 2.44.094 - Continuity of Government (weblink)
2. CITY COUNCIL EMERG STANDY-CM Authority._
3. Emerg Standby Policies Resolution

DRAFT

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-21-01

SUBJECT: APPOINTMENT OF EMERGENCY STANDBY CITY COUNCIL MEMBERS

EFFECTIVE DATE: August 18, 2021

ORIGINATING DEPARTMENT: POLICE DEPARTMENT/OFFICE OF EMERGENCY SERVICES

Background

The primary purpose of this policy is to establish periodic updating of Emergency Standby City Council members in line with Morgan Hill's Municipal Code, Chapter 2.44.094 Civil Disaster and Emergency Organization - Continuity of government in the event of disaster.

Policy

1. Applicability

The Chapter "Civil Disaster and Emergency Organization, section "Continuity of government in the event of disaster" in Morgan Hill's Municipal Code outlines the duties and assignments of the Emergency Standby Council when, during a disaster, sitting council members are unavailable or there is not a quorum. The assignment of the Emergency Standby Council allows the City to appoint past City Council members who reside within Morgan Hill city limits. Emergency Standby Council members will be called upon in reverse chronological order based on their last day of service.

2. Reporting

The Office of Emergency Services shall provide periodic updating as needed (quarterly, semiannually, or annually at the minimum) to the City Council summarizing the need to update the membership of the Emergency Standby Council in the event "members" are no longer available or no longer qualify (moved outside of Morgan Hill city limits). The report shall include the following information:

- Members no longer available
- New members (previous Council members) qualified and interested.

This policy shall remain in effect until modified by the City Council.

APPROVED:

RICH CONSTANTINE, MAYOR

RESOLUTION NO. 21-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE CITY COUNCIL POLICIES AND PROCEDURES CP-21-01 “APPOINTMENT OF EMERGENCY STANDBY CITY COUNCIL MEMBERS”

WHEREAS, the Civil Disaster and Emergency Organization Chapter of the City of Morgan Hill’s Municipal Code includes the appointment and duties of Emergency Standby Council members; and

WHEREAS, this section of the Municipal Code outlines the duties and assignment of the Emergency Standby Council when sitting council members are unavailable or there is not a quorum; and

WHEREAS, the appointment of a standby council allows the City to appoint former council members who reside within the city limits; and

WHEREAS, without this section of the Municipal Code, Article 15 of the State of California Government Code states that when city council members are not available during a large-scale event, the authority goes to a neighboring municipality’s City Council with the largest population; therefore, the authority would fall to the City of San Jose; and

WHEREAS, assigning an Emergency Standby Council strengthens the City of Morgan Hill’s ability to act independently during a large disaster on issues relative to the community; and

WHEREAS, the City of Morgan Hill City Council Policies and Procedures CP-21-01 “Appointment of Emergency Standby City Council Members” was created to support the Municipal Code section “Continuity of Government in the Event of a Disaster”; and

WHEREAS, it is resolved to approve the City of Morgan Hill City Council Policies and Procedures CP-21-01 “Appointment of Emergency Standby City Council Members” 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: To approve the City of Morgan Hill City Council Policies and Procedures CP-21-01 “Appointment of Emergency Standby City Council Members.”

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 September 1, 2021.

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATION ∞

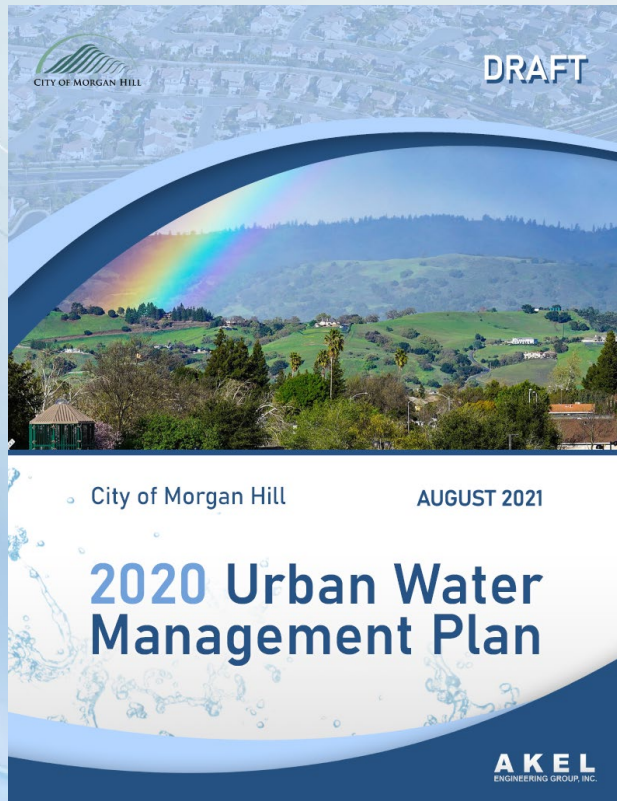
I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 21-XXX, adopted by the City Council at a regular meeting held on September 1, 2021.

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

DATE: _____

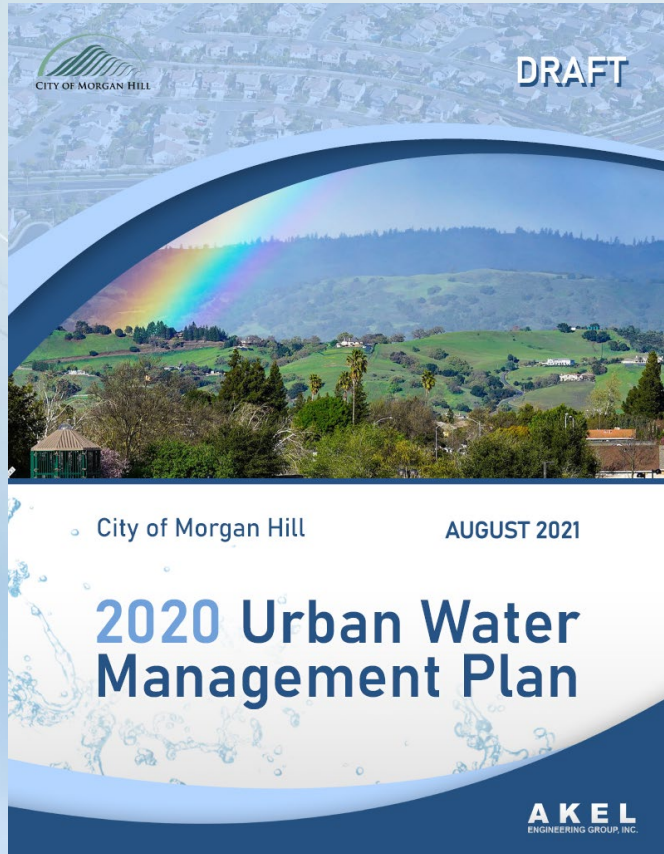
MICHELLE BIGELOW, City Clerk

2020 Urban Water Management Plan and 2020 Water Shortage Contingency Plan



Public Hearing
September 1st, 2021

Presentation Overview



2020 UWMP. What is It?

New Requirements

Notifying Stakeholders and Public Participation

Demand and Supply Projections

Water Shortage Contingency Plan

Next Steps

California Urban Water Management Planning Act

- **Who:** Urban water retailers (at least 3,000 connections or 3,000 acre-feet/year)
- **What:** Assess long-term water supply adequacy and reliability (at least 20-year horizon)
- **Why:** Ensure water supply reliability.
Comply with State law (Section 10610 – 10656).
Maintain eligibility for grants & drought assistance.
- **When:** Every 5 years (July 1, 2021)

Morgan Hill Submitted a **2015** Urban Water Management Plan. This **2020** UWMP complies with the new State requirements

California Urban Water Management Planning Act

Key Components

- Public Participation
- Water Service Area & System Description
- Existing & Future Water Demands
- Water Supply Availability & Reliability
- Current & Future Demand Management Efforts
- Water Shortage Contingency Plan

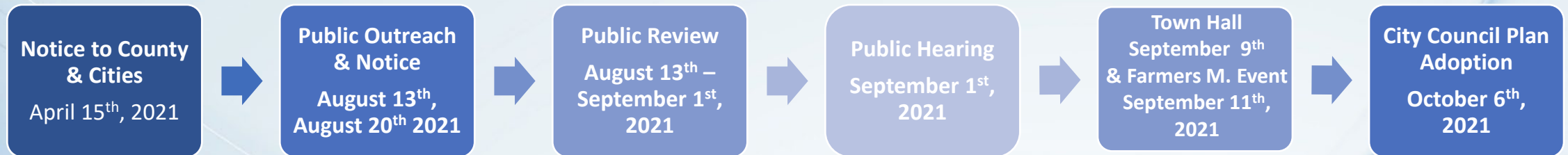
New Requirements

New Requirements	Description
5 Consecutive Dry-Year Water Reliability Assessment	This statutory change requires a Supplier to analyze the reliability of its water supplies to meet its water use over an extended drought period.
Drought Risk Assessment	The DRA requires a Supplier to assess water supply reliability over a five-year period from 2021 to 2025 that examines water supplies, water uses, and the resulting water supply reliability under a reasonable prediction for five consecutive dry years
Seismic Risk	An important aspect of this provision is the intersection of water supply infrastructure planning with a county or regional hazard mitigation plan
Energy Use Information	The Water Code now requires Suppliers to include readily obtainable information on estimated amounts of energy for their water supply extraction, treatment, distribution, storage, conveyance, and other water uses.

New Requirements (Cont'd)

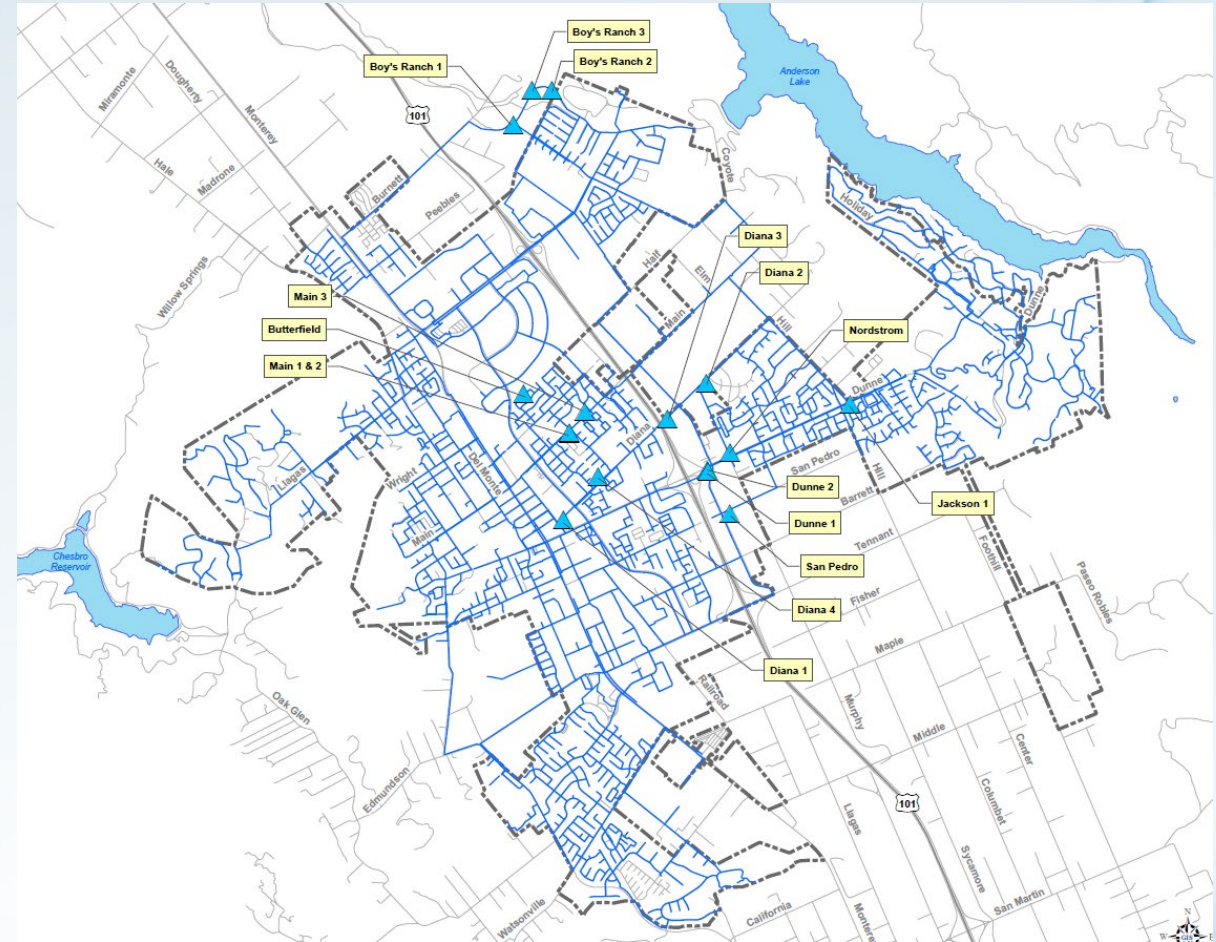
New Requirements	Description
Water Loss Reporting for Five Years	The Water Code added the requirement to include the past five years of water loss audit reports as part of this UWMP
Water Shortage Contingency Plan	In 2018, the Legislature modified the UWMP laws to require a WSCP with specific elements. The WSCP is a document that provides a Supplier with an action plan for a drought or catastrophic water supply shortage
Groundwater Supplies Coordination	In 2014, the Legislature enacted the Sustainable Groundwater Management Act (SGMA) to address groundwater conditions throughout California. The Water Code now requires Suppliers' 2020 UWMPs to be consistent with Groundwater Sustainability Plans (GSP)

Notifying Stakeholders and Public Participation



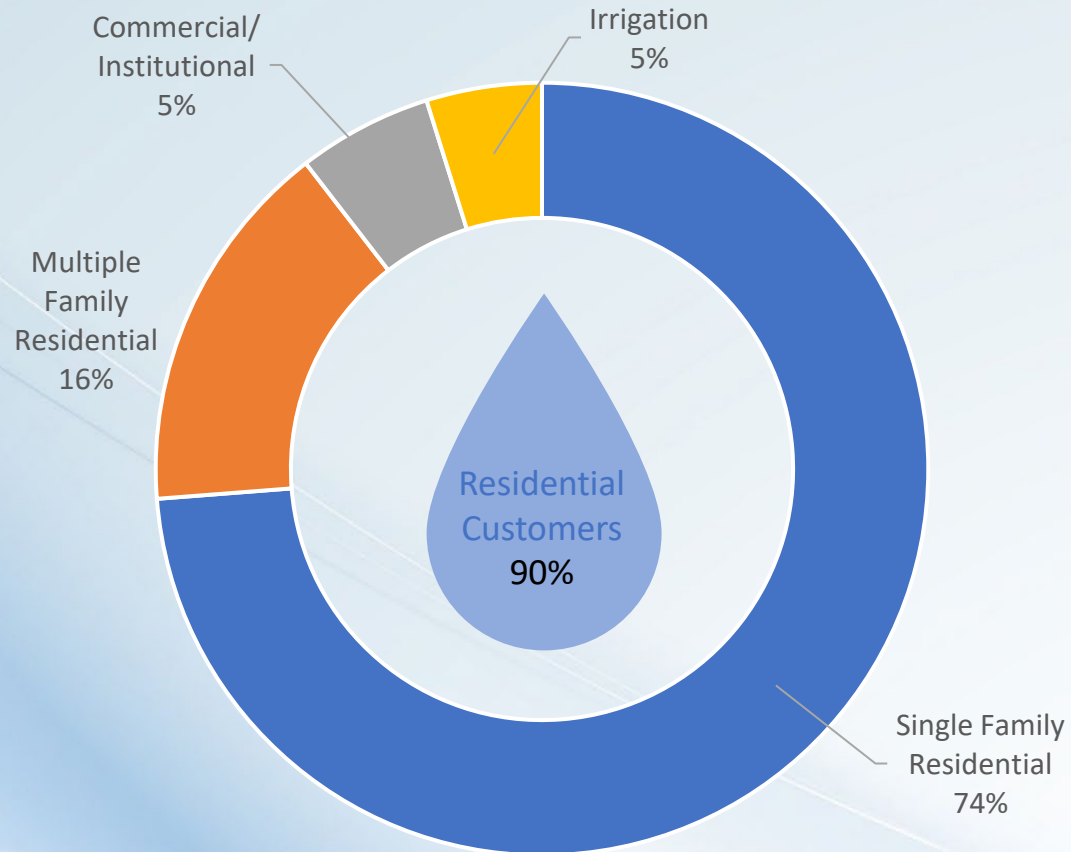
Water Service Overview

- 46,500 population in 2020
- 14,400 active service connections

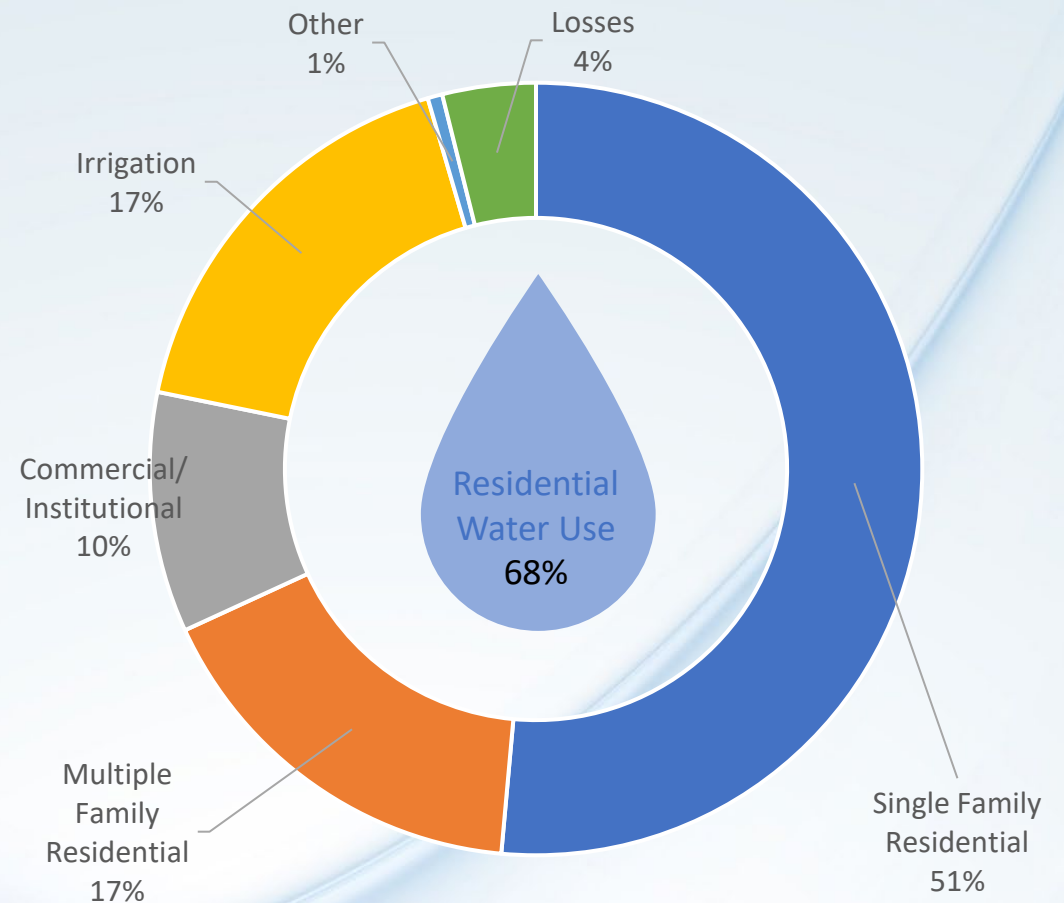


Service Connections vs Water Use

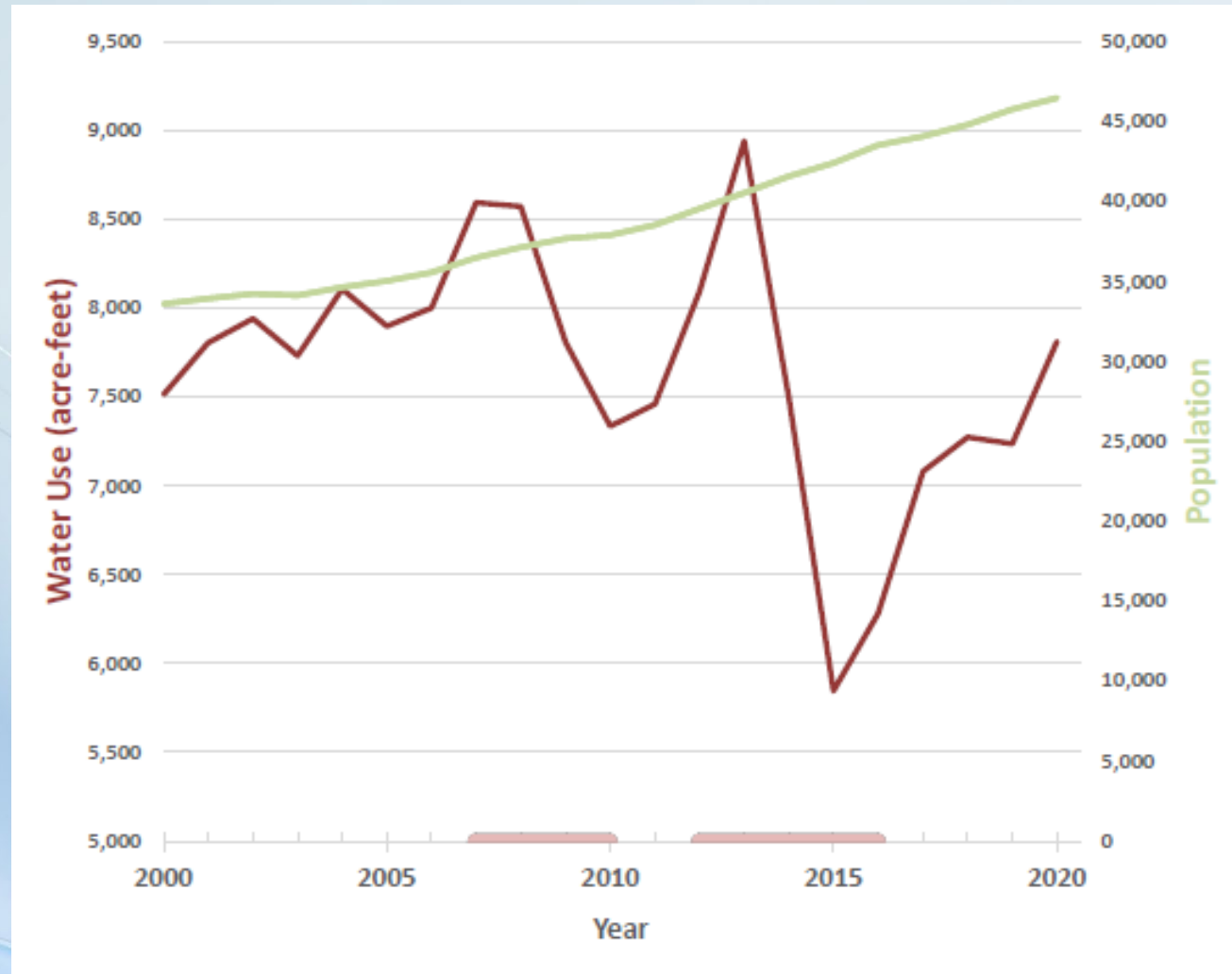
Service Connections



Water Use



Historic Water Use and Population



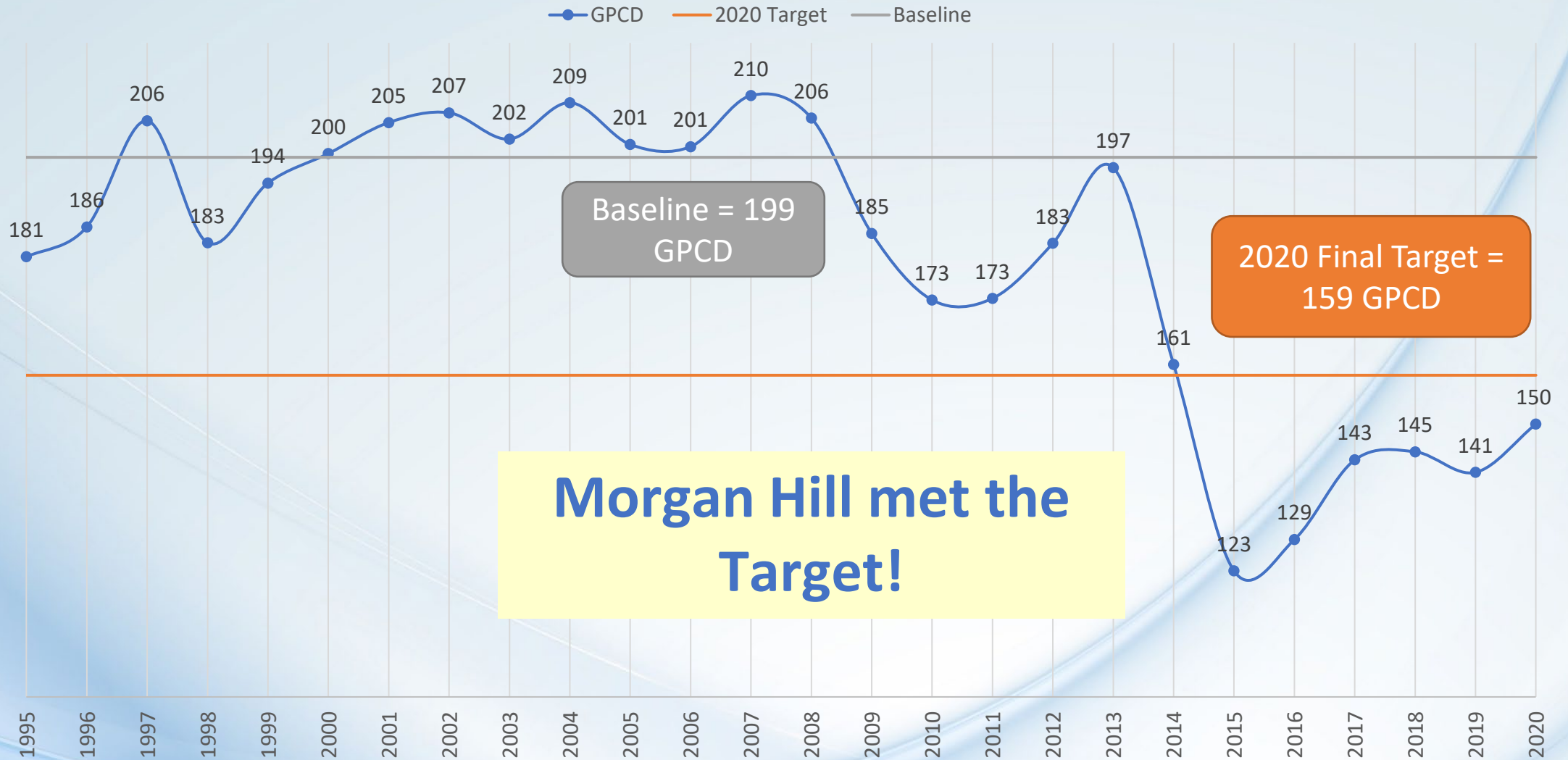
Water Use
Population
Drought Periods

Compliance with Water Conservation Act (SB X7-7)



- Goal is to reduce per capita water use below baseline by:
 - 10% by June 30th, 2015
 - 20% by June 30th, 2020

SB X7-7 Per Capita Water Use



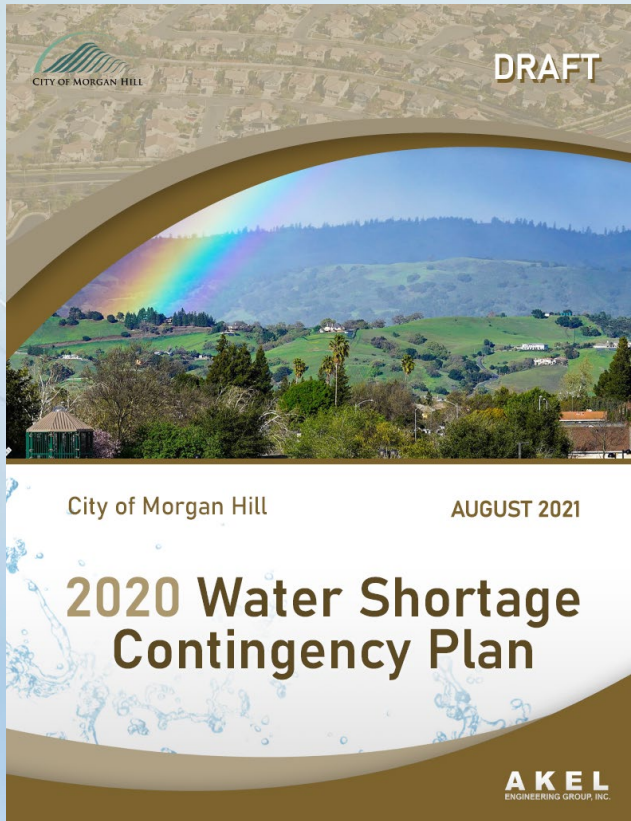
Water Supply vs Demand (Llagas Subbasin)

Normal Year Supply and Demand Comparison (Llagas)					
	2025	2030	2035	2040	2045
Projected Water Supply of the Llagas Subbasin					
Natural Groundwater Recharge	22,478	22,478	22,478	22,478	22,478
Local Surface Water	10,251	13,408	14,597	14,832	15,199
Valley Water CVP Deliveries	12,918	9,626	8,834	8,415	8,201
Recycled Water Supply	1,673	2,069	2,464	2,464	2,464
Recycled Water (WWTP Utility Water)	1,224	1,228	1,232	1,232	1,232
Total Supplies with WWTP Utility Water	48,544	48,808	49,605	49,420	49,574
Total Supplies	47,320	47,580	48,373	48,188	48,342
Projected Average Annual Water Demand					
City of Gilroy	8,646	9,314	10,034	10,809	11,645
City of Morgan Hill	6,865	7,507	8,015	8,557	9,083
Other Users	31,455	30,057	29,296	27,832	26,644
Total Demands	46,966	46,878	47,345	47,198	47,372
Supply vs Demand Comparison					
Difference (Supply - Demand)	354	702	1,028	990	970
Percent of Total Supply	99%	99%	98%	98%	98%

Water Supply vs Demand (Coyote Subbasin)

Normal Year Supply and Demand Comparison (Coyote)					
	2025	2030	2035	2040	2045
Projected Water Supply of the Llagas Subbasin					
Natural Groundwater Recharge	2,301	2,304	2,304	2,304	2,304
Local Surface Water	5,167	6,481	6,495	6,503	6,494
Valley Water CVP Deliveries	4,996	4,377	4,965	5,506	5,852
Total Supplies	12,465	13,162	13,764	14,313	14,650
Projected Average Daily Water Demand					
City of Morgan Hill	1,806	1,974	2,108	2,251	2,389
Other Users	9,316	9,489	9,999	10,427	10,636
Total Demands	11,122	11,463	12,107	12,678	13,025
Supply vs Demand Comparison					
Difference (Supply - Demand)	1,343	1,699	1,657	1,635	1,625
Percent of Total Supply	89%	87%	88%	89%	89%

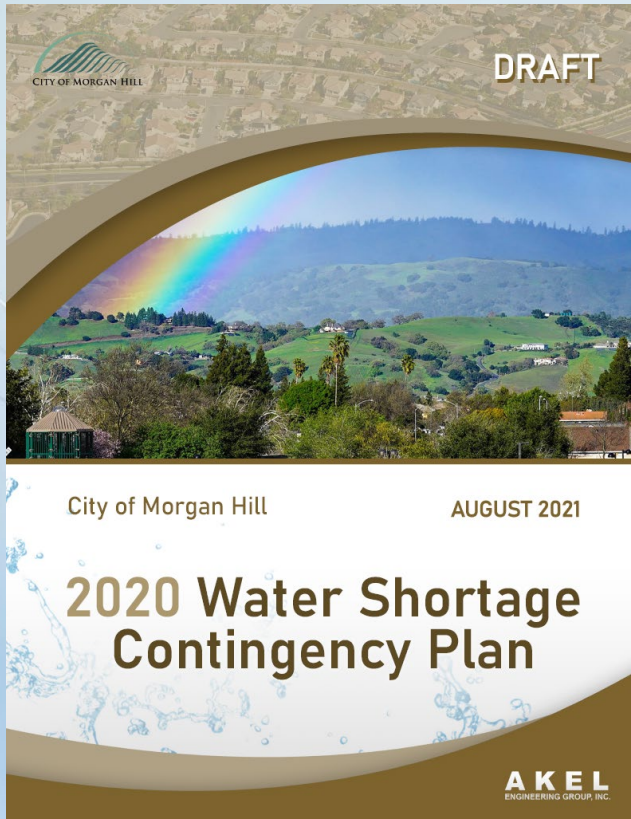
Water Shortage Contingency Plan



Key Updates

- Standalone document
- Annual Supply and Demand Assessment
- Standardized Water Shortage Levels

Water Shortage Contingency Plan



Shortage Level	Shortage Level Condition	Percent Shortage Range
Level 0	Normal	None
Level 1	Alert	Up to 10%
Level 2	Significant	Up to 20%
Level 3	Sever	Up to 30%
Level 4	Critical	Up to 40%
Level 5	Crisis	Up to 50%
Level 6	Emergency	Up to 60%

Next Steps



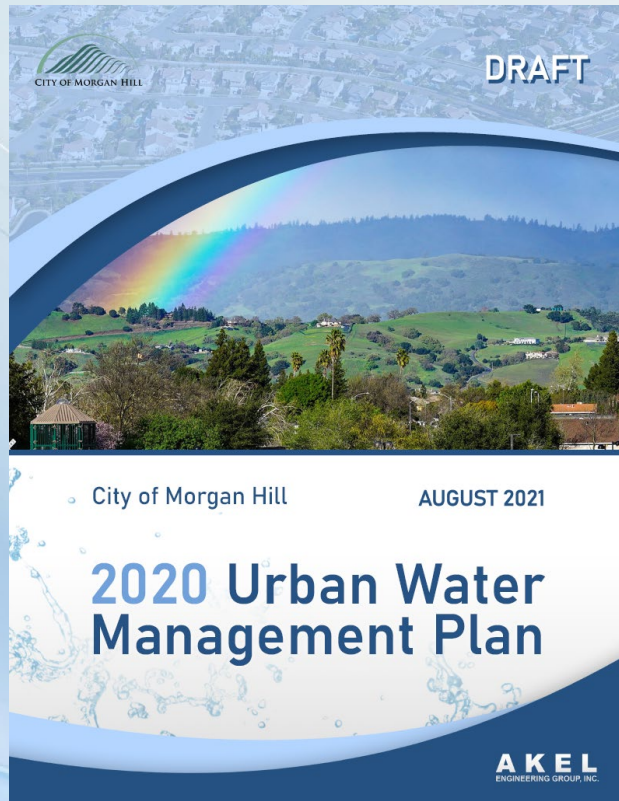
- Urban Water Management Plan Review
- Monitor drought situation and return with further water conservation needs as necessary
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- Update Water System Master Plan
- Water Rate Study – early 2022

2020 Urban Water Management Plan and 2020 Water Shortage Contingency Plan

QUESTIONS?

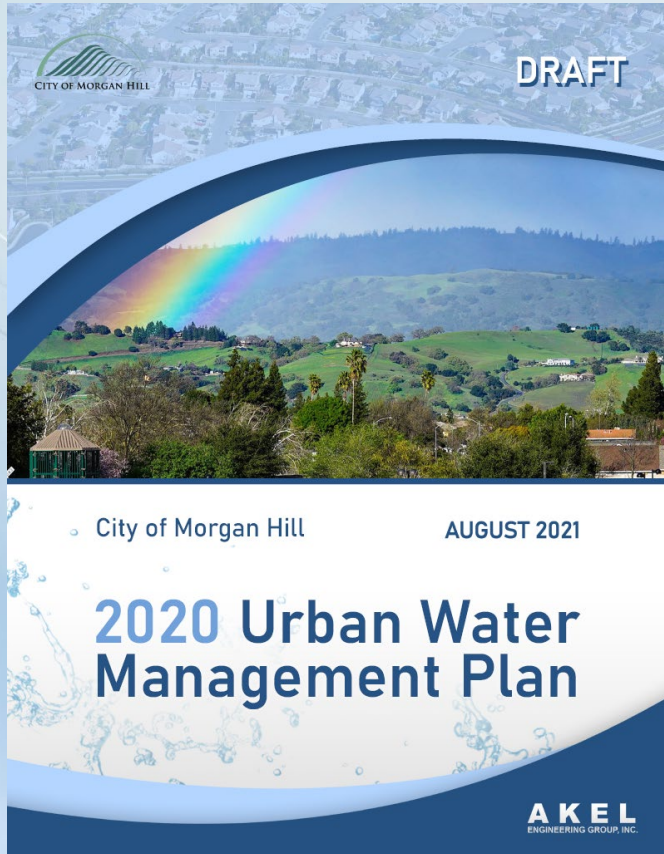
Public Hearing
September 1st, 2021

2020 Urban Water Management Plan and 2020 Water Shortage Contingency Plan



Public Hearing
September 1st, 2021

Presentation Overview



2020 UWMP. What is It?

New Requirements

Notifying Stakeholders and Public Participation

Demand and Supply Projections

Water Shortage Contingency Plan

Next Steps

California Urban Water Management Planning Act

- **Who:** Urban water retailers (at least 3,000 connections or 3,000 acre-feet/year)
- **What:** Assess long-term water supply adequacy and reliability (at least 20-year horizon)
- **Why:** Ensure water supply reliability.
Comply with State law (Section 10610 – 10656).
Maintain eligibility for grants & drought assistance.
- **When:** Every 5 years (July 1, 2021)

Morgan Hill Submitted a **2015** Urban Water Management Plan. This **2020** UWMP complies with the new State requirements

California Urban Water Management Planning Act

Key Components

- Public Participation
- Water Service Area & System Description
- Existing & Future Water Demands
- Water Supply Availability & Reliability
- Current & Future Demand Management Efforts
- Water Shortage Contingency Plan

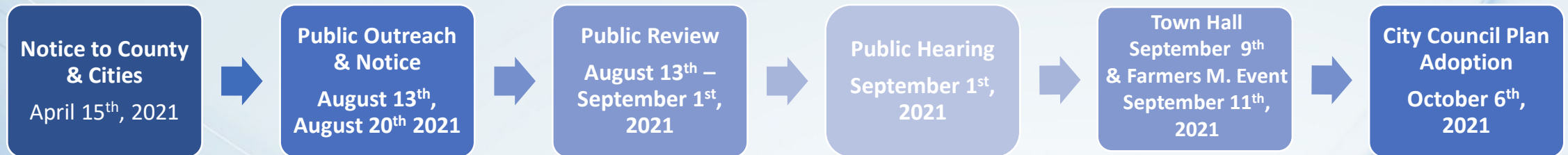
New Requirements

New Requirements	Description
5 Consecutive Dry-Year Water Reliability Assessment	This statutory change requires a Supplier to analyze the reliability of its water supplies to meet its water use over an extended drought period.
Drought Risk Assessment	The DRA requires a Supplier to assess water supply reliability over a five-year period from 2021 to 2025 that examines water supplies, water uses, and the resulting water supply reliability under a reasonable prediction for five consecutive dry years
Seismic Risk	An important aspect of this provision is the intersection of water supply infrastructure planning with a county or regional hazard mitigation plan
Energy Use Information	The Water Code now requires Suppliers to include readily obtainable information on estimated amounts of energy for their water supply extraction, treatment, distribution, storage, conveyance, and other water uses.

New Requirements (Cont'd)

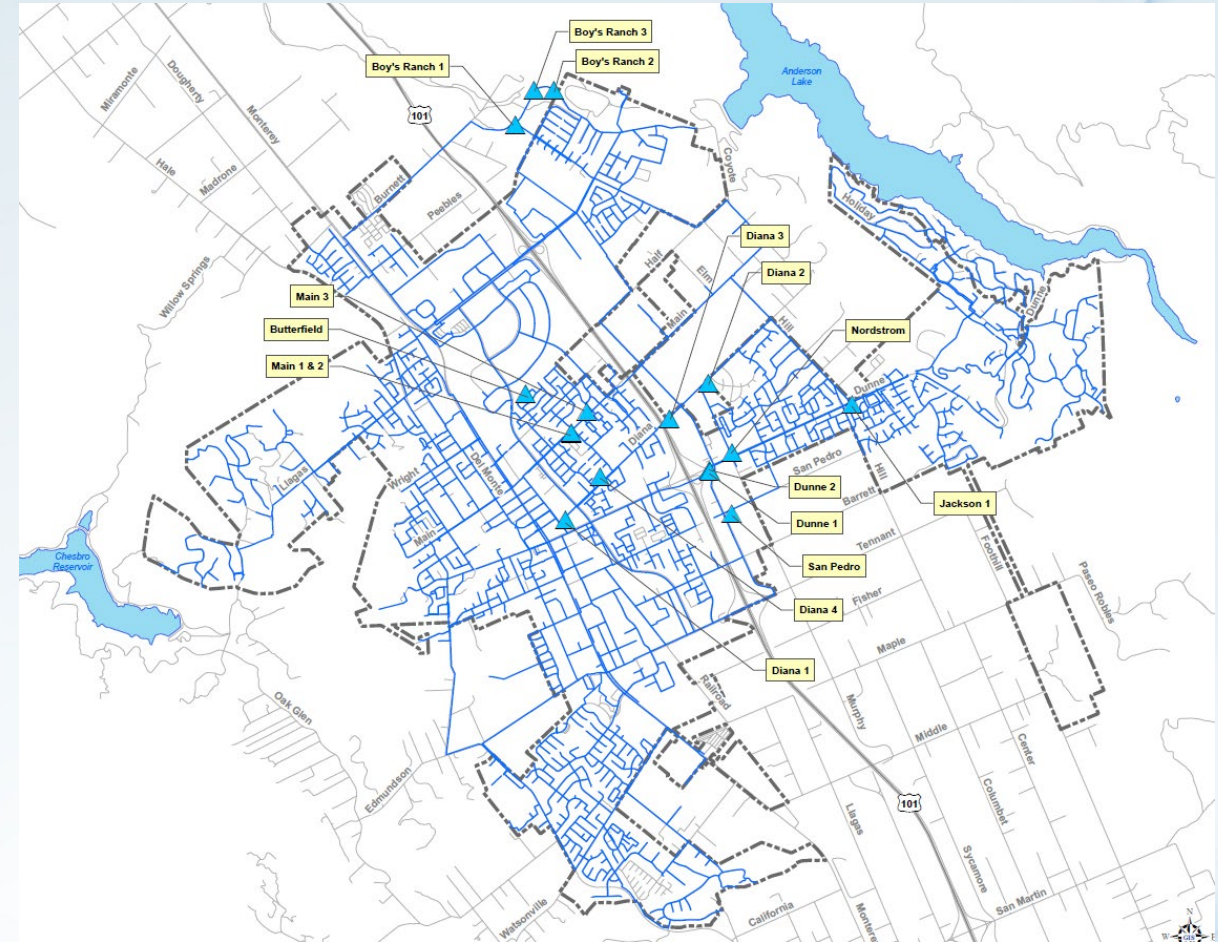
New Requirements	Description
Water Loss Reporting for Five Years	The Water Code added the requirement to include the past five years of water loss audit reports as part of this UWMP
Water Shortage Contingency Plan	In 2018, the Legislature modified the UWMP laws to require a WSCP with specific elements. The WSCP is a document that provides a Supplier with an action plan for a drought or catastrophic water supply shortage
Groundwater Supplies Coordination	In 2014, the Legislature enacted the Sustainable Groundwater Management Act (SGMA) to address groundwater conditions throughout California. The Water Code now requires Suppliers' 2020 UWMPs to be consistent with Groundwater Sustainability Plans (GSP)

Notifying Stakeholders and Public Participation



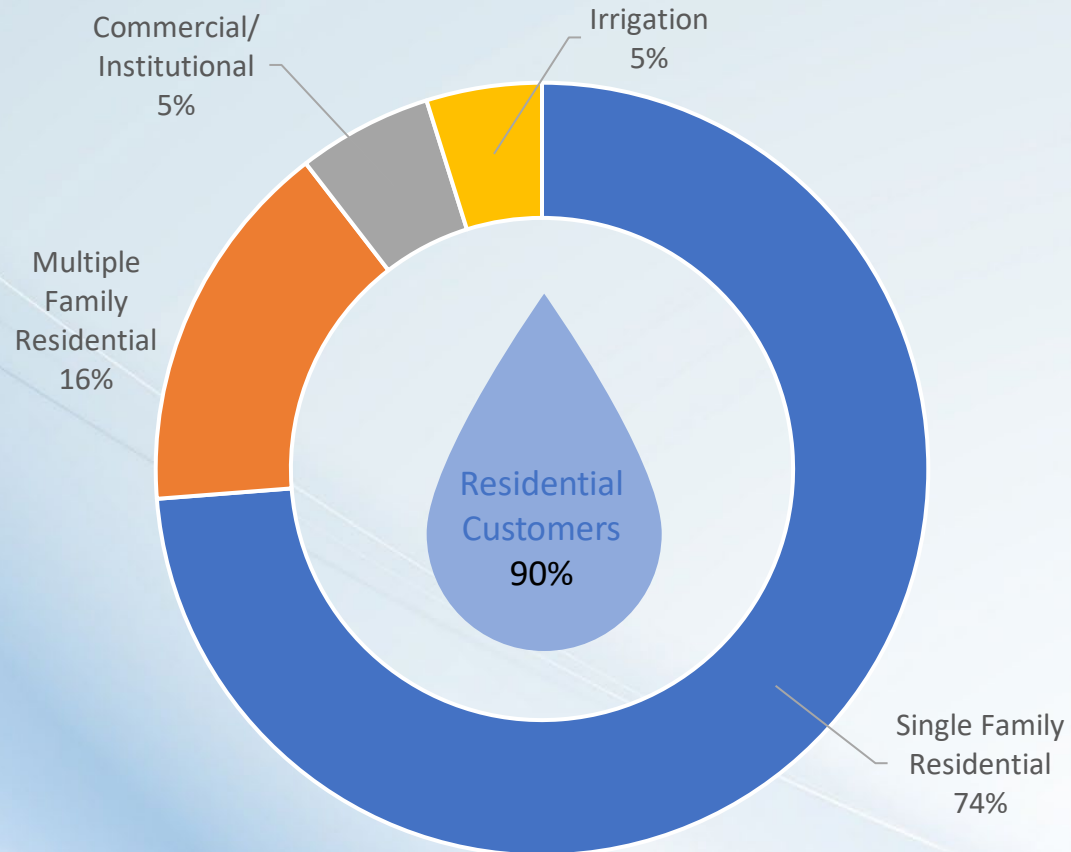
Water Service Overview

- 46,500 population in 2020
- 14,400 active service connections

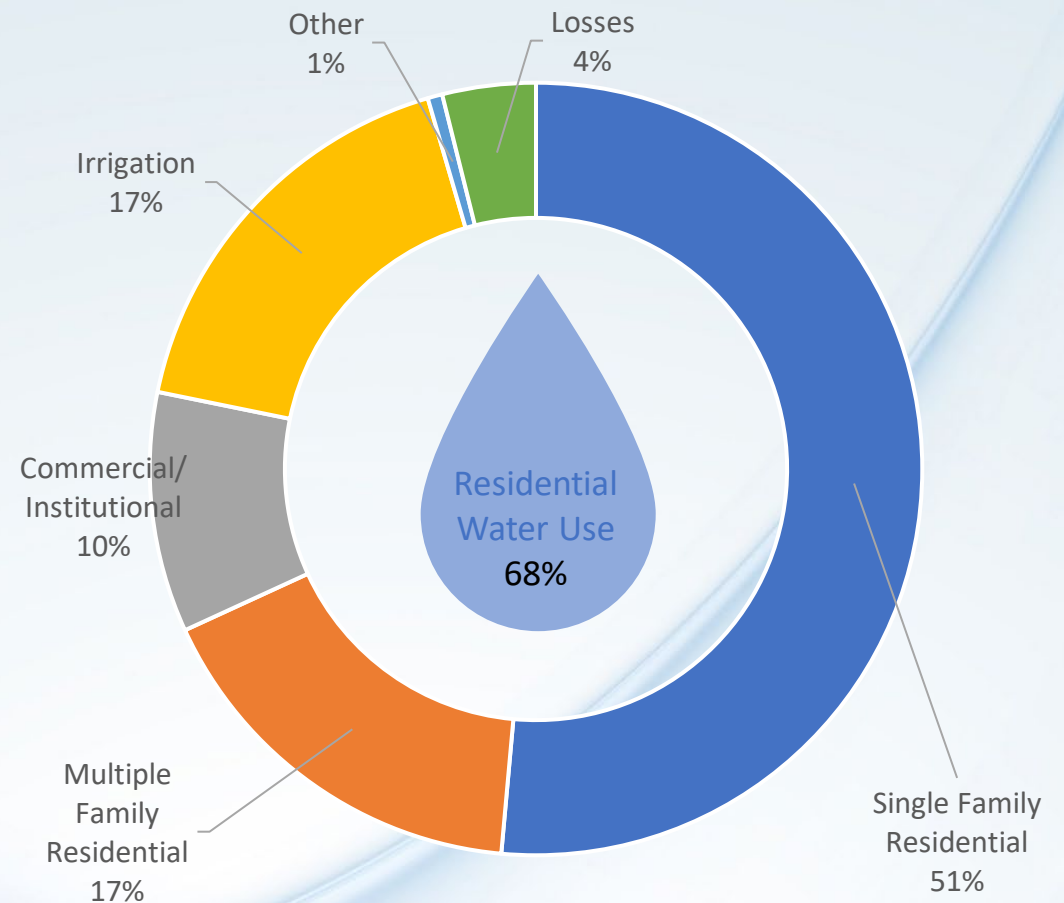


Service Connections vs Water Use

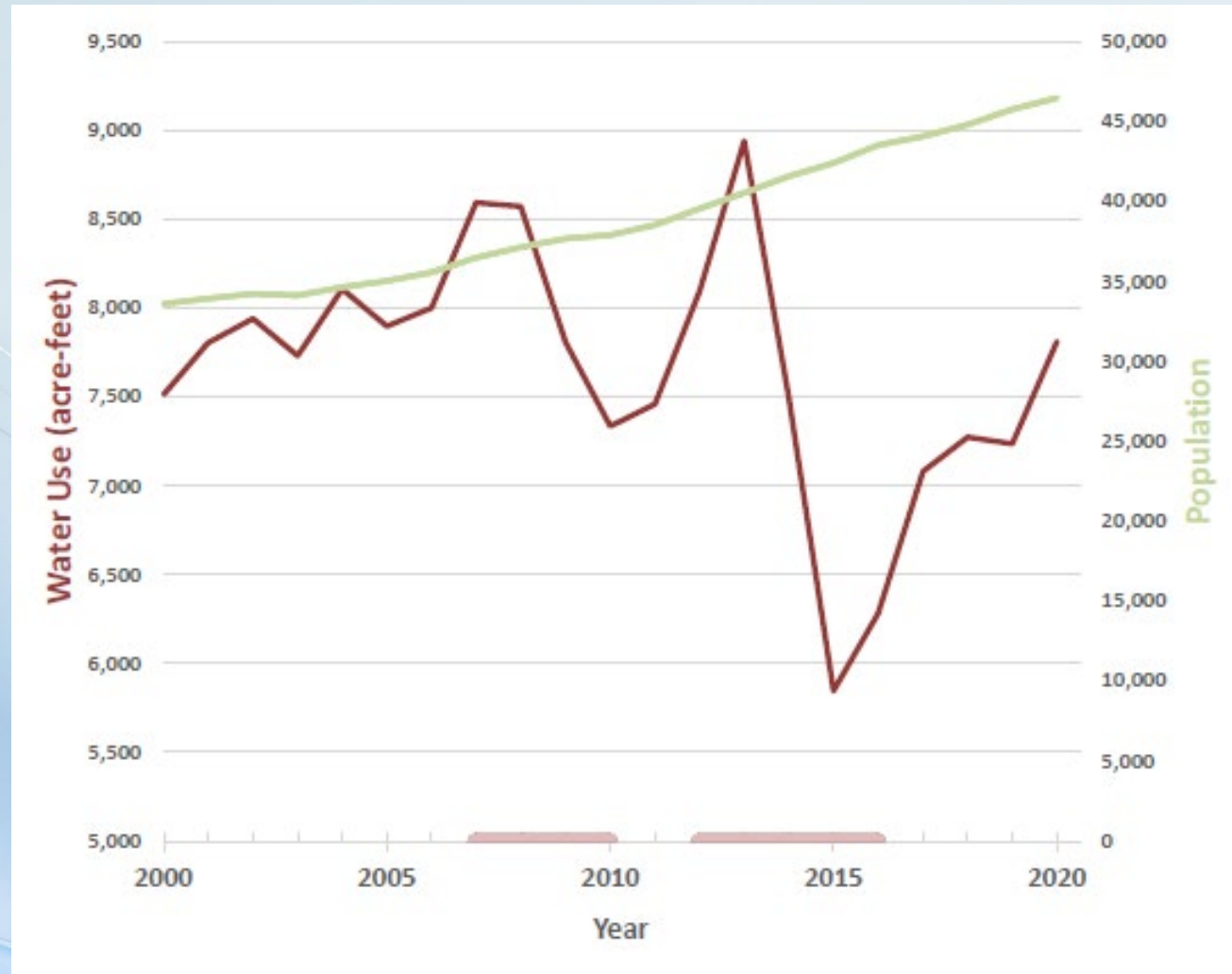
Service Connections



Water Use



Historic Water Use and Population



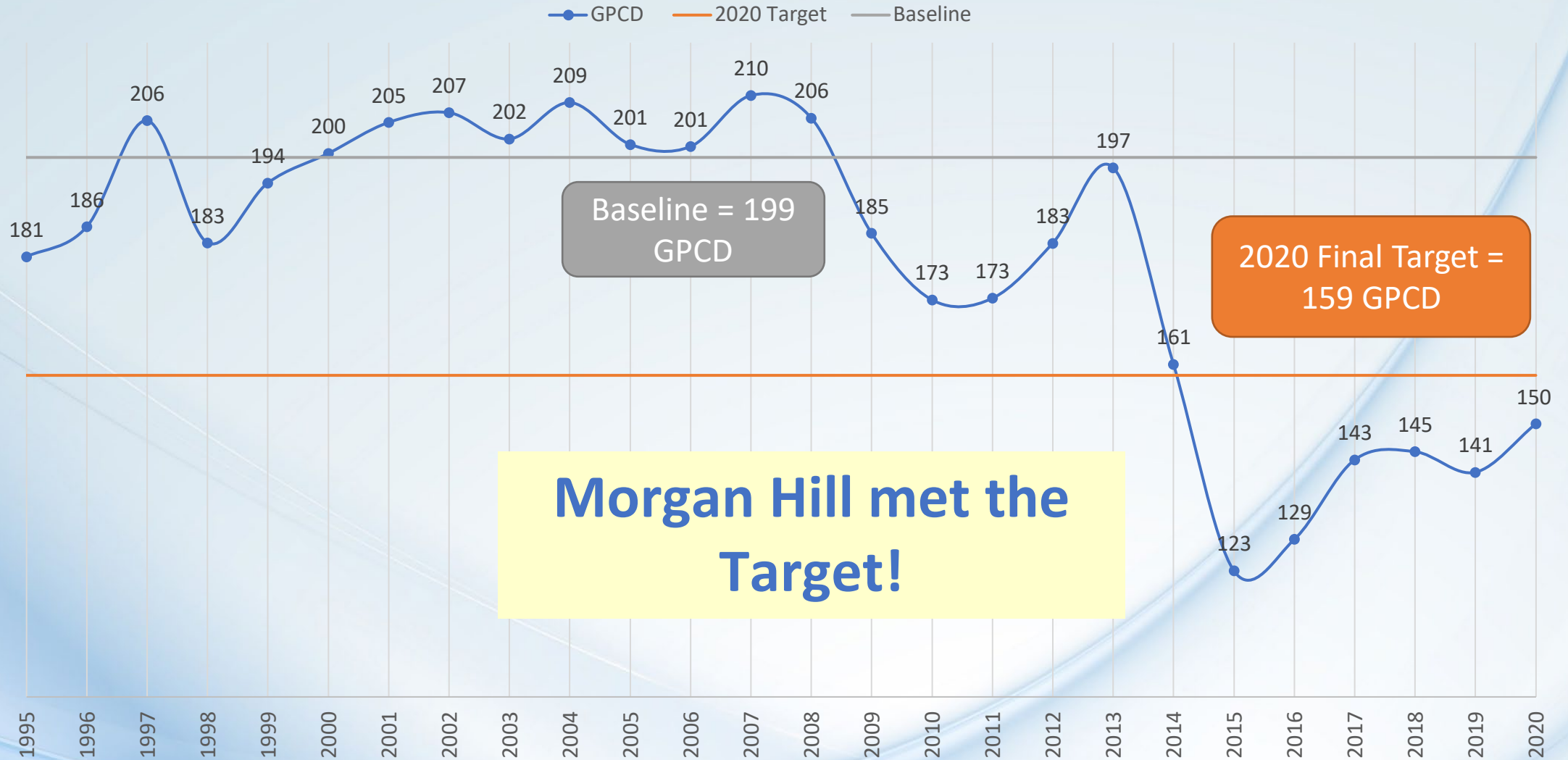
Water Use
Population
Drought Periods

Compliance with Water Conservation Act (SB X7-7)



- Goal is to reduce per capita water use below baseline by:
 - 10% by June 30th, 2015
 - 20% by June 30th, 2020

SB X7-7 Per Capita Water Use



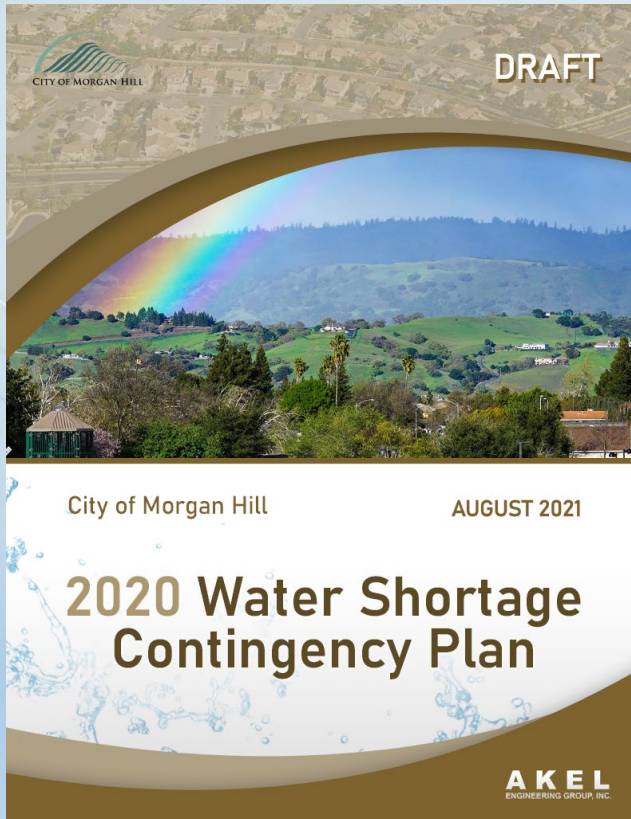
Water Supply vs Demand (Llagas Subbasin)

Normal Year Supply and Demand Comparison (Llagas)					
	2025	2030	2035	2040	2045
Projected Water Supply of the Llagas Subbasin					
Natural Groundwater Recharge	22,478	22,478	22,478	22,478	22,478
Local Surface Water	10,251	13,408	14,597	14,832	15,199
Valley Water CVP Deliveries	12,918	9,626	8,834	8,415	8,201
Recycled Water Supply	1,673	2,069	2,464	2,464	2,464
Recycled Water (WWTP Utility Water)	1,224	1,228	1,232	1,232	1,232
Total Supplies with WWTP Utility Water	48,544	48,808	49,605	49,420	49,574
Total Supplies	47,320	47,580	48,373	48,188	48,342
Projected Average Annual Water Demand					
City of Gilroy	8,646	9,314	10,034	10,809	11,645
City of Morgan Hill	6,865	7,507	8,015	8,557	9,083
Other Users	31,455	30,057	29,296	27,832	26,644
Total Demands	46,966	46,878	47,345	47,198	47,372
Supply vs Demand Comparison					
Difference (Supply - Demand)	354	702	1,028	990	970
Percent of Total Supply	99%	99%	98%	98%	98%

Water Supply vs Demand (Coyote Subbasin)

Normal Year Supply and Demand Comparison (Coyote)					
	2025	2030	2035	2040	2045
Projected Water Supply of the Llagas Subbasin					
Natural Groundwater Recharge	2,301	2,304	2,304	2,304	2,304
Local Surface Water	5,167	6,481	6,495	6,503	6,494
Valley Water CVP Deliveries	4,996	4,377	4,965	5,506	5,852
Total Supplies	12,465	13,162	13,764	14,313	14,650
Projected Average Daily Water Demand					
City of Morgan Hill	1,806	1,974	2,108	2,251	2,389
Other Users	9,316	9,489	9,999	10,427	10,636
Total Demands	11,122	11,463	12,107	12,678	13,025
Supply vs Demand Comparison					
Difference (Supply - Demand)	1,343	1,699	1,657	1,635	1,625
Percent of Total Supply	89%	87%	88%	89%	89%

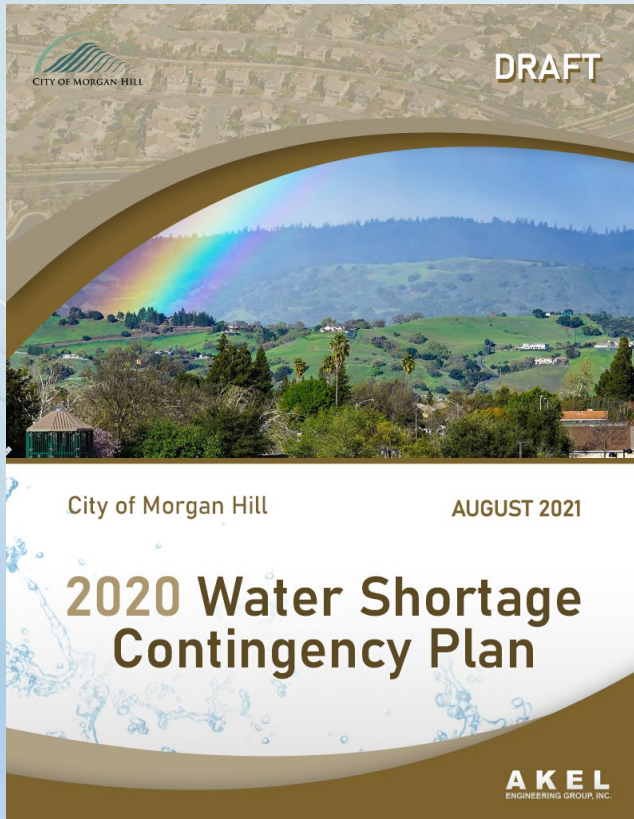
Water Shortage Contingency Plan



Key Updates

- Standalone document
- Annual Supply and Demand Assessment
- Standardized Water Shortage Levels

Water Shortage Contingency Plan



Shortage Level	Shortage Level Condition	Percent Shortage Range
Level 0	Normal	None
Level 1	Alert	Up to 10%
Level 2	Significant	Up to 20%
Level 3	Sever	Up to 30%
Level 4	Critical	Up to 40%
Level 5	Crisis	Up to 50%
Level 6	Emergency	Up to 60%

Next Steps



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QUESTIONS?

Public Hearing
September 1st, 2021



Approve Disposition and Development Agreement Amendment and Amendment to Fiscal Year 2021-2022 Budget Agenda Item #: 6



September 1, 2021

Project Request



DDA Amendment

- Time extension to project deadlines
- Construction cost estimate adjustments including City's Contribution

Reimbursement Agreement

- Underground Utilities

Project Location

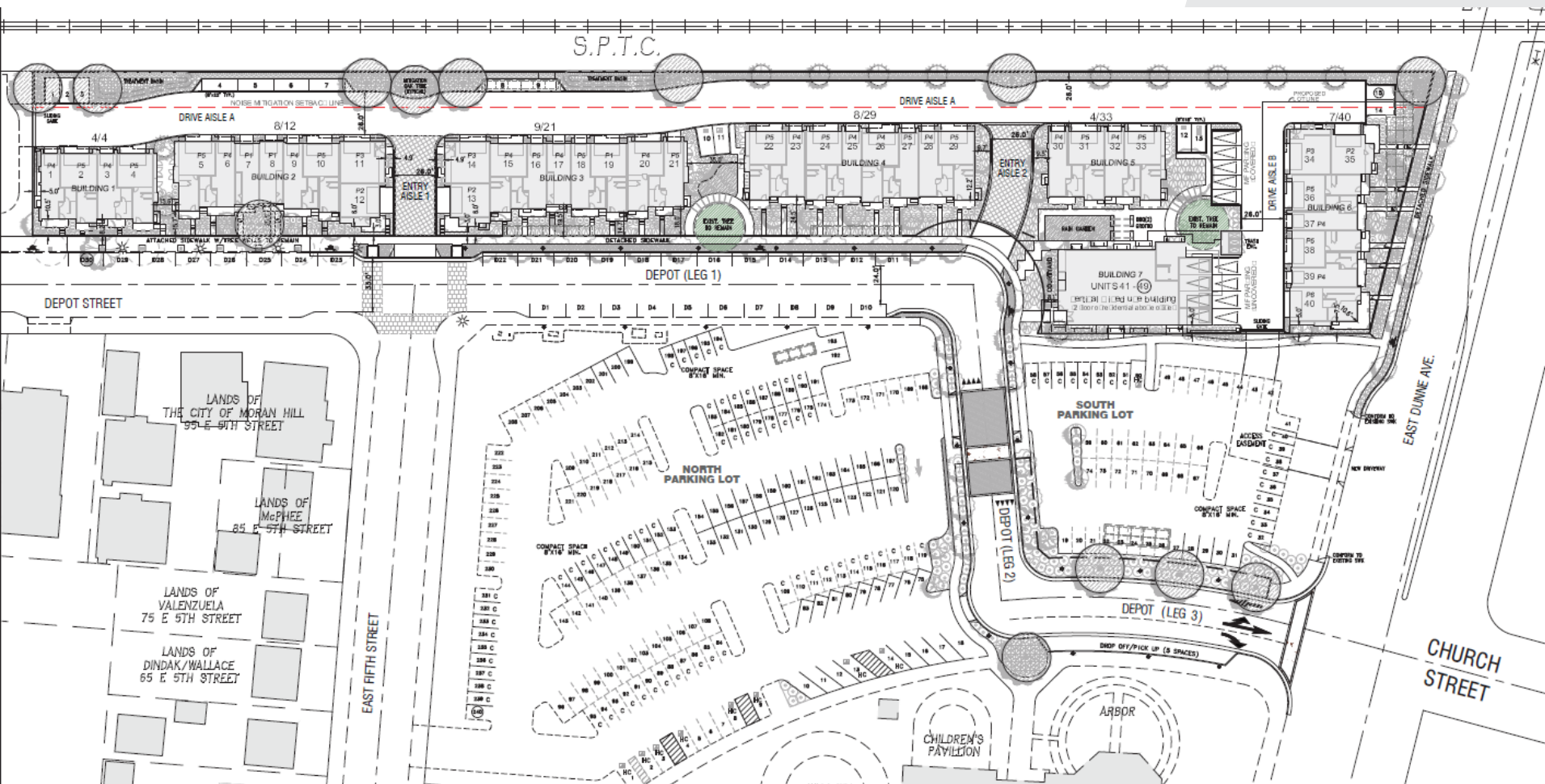


Project Background



- October 2018 - DDA
- March 2019 – Amendment to DDA
- April 2019 – RDCS DA
- September 2019 – Tentative Map
- October 2019 – Design Review Permit

Project Site Plan



Attached Townhomes



Office Space with Lofts



Depot Street Realignment



DDA Timelines

Current DDA

- Includes task timelines

Proposed Amendment

- Extend all timelines by 18-months

Current DDA Financing



City Contributions

TABLE 1.1

Credit from value of Depot Street	\$303,178
Credit from Depot Street Frontage Improvements	\$213,739
Credit from RDCS Commitments (Municipal Infrastructure)	\$193,904
Credit from RDCS Commitments (Transportation)	\$190,905
TOTAL cost for realignment	\$901,726

DDA Amendment



City Additional Contributions

TABLE 1.2

Fee Credits for RDCS Infrastructure	\$98,000
Fee Credits for RDCS School Pedestrian Safety	\$49,000
Fee Credits for Traffic Impact Fees	\$93,929
Reimbursement from the City from Public Facilities Fund	\$775,591
Total Additional Contribution	\$996,520

Reimbursement Agreement



Undergrounding of Utilities

TABLE 1.3

Undergrounding Fund (350)	\$138, 263
----------------------------------	-------------------

Questions?





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September 1, 2021

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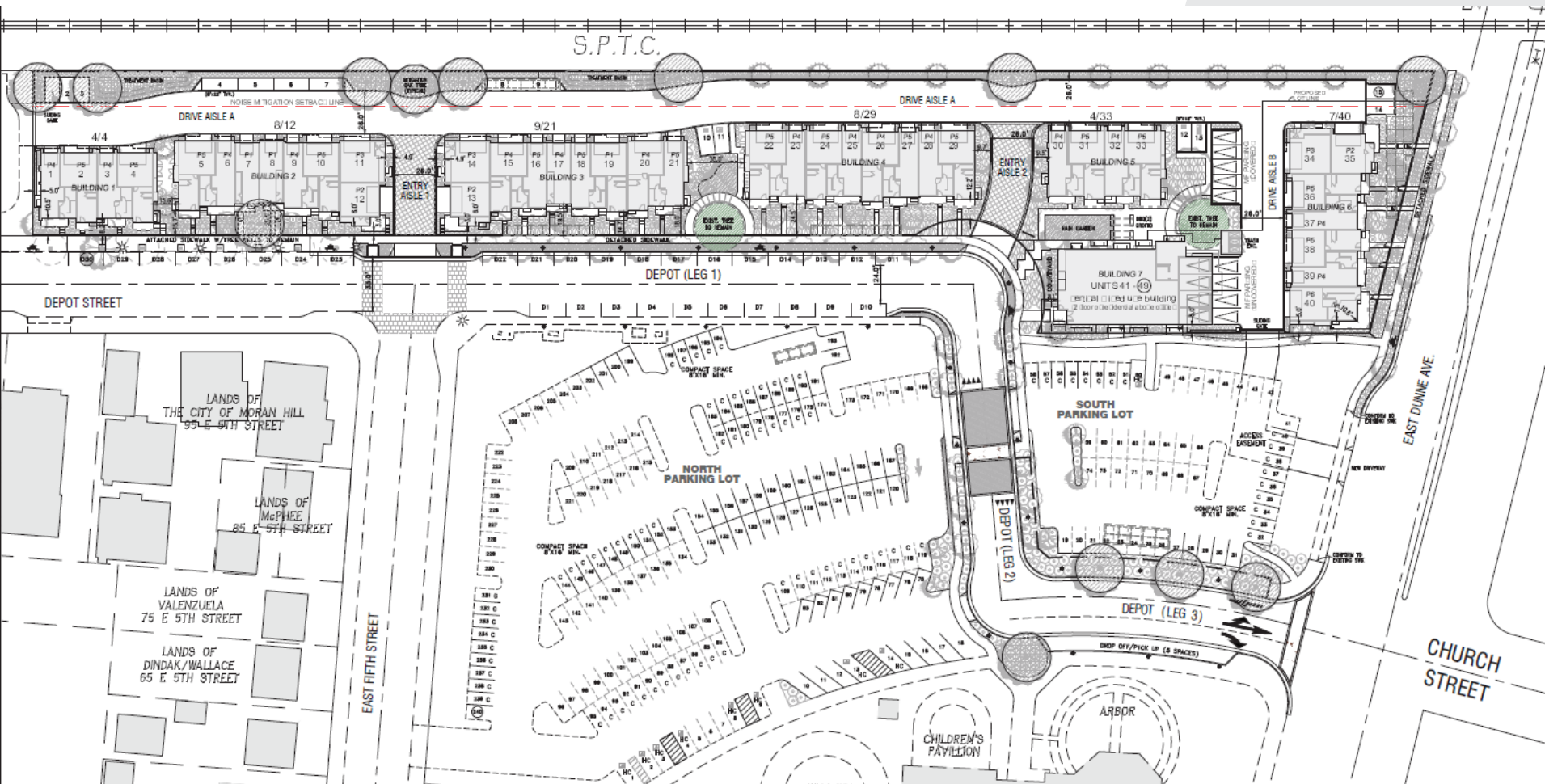


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----------------------------------	-------------------

Questions?



1. Q. What is the purpose of the office space?
 - A. The purpose of the office space is to provide the City with more space that could be used to support non-profits. The office space is the result of feedback and direction by the Council during the project review. The City has temporarily housed non-profits and government entities in an aging temporary office space next to the Council Chambers building. The need for new space increased when the City transferred its non-profit office space at the Friendly Inn to the Boys and Girls Club. The location of the new non-profit space is ideal for the City as it is adjacent to the existing City facility, which will allow the City to share resources between the facilities.
2. Q. Can I see the relative map for this area?
 - A. [Project Plans](#)
3. Q. Where are the .29-acres of public right-of-way on Depot Street?
 - A. South of the current CCC parking lot entrance off Depot Street to East Dunne.
4. Q. What is the City's contribution?
 - A. The City's total contribution is \$1,898,246. The City will utilize funds from the sale of the vacated portion of Depot Street, project related frontage improvement costs paid by developer, RDCS impact fees paid by developer, and pay \$755,591 from the public facilities fund to cover the associated costs for the project.
5. Q. Is the Public Facilities Fund a line item within the General Fund?
 - A. No, the Public Facilities Fund is a capital project fund.
6. Q. Are the numbers outlined in Table 1.1 actual dollars or credits as stated?
 - A. Table 1.1 within the Staff Report outlines costs to the Developer associated with the construction of the public improvements in the project. For example, the City receives funds from selling the vacated portion of Depot Street (credit), those funds will be used toward the costs associated with the construction of the realignment. New projects pay for street frontage improvements and RDCS contributions to the City (credit), those funds will be utilized for the Street realignment and off-site improvements for the new Depot Street. The numbers specifically in Table 1.1 are all credits.
7. Q. Can the project proceed without the Depot Street Realignment? Can I see the map of the realignment?
 - A. This project could not move forward without the realignment of Depot Street as agreed upon within the existing DDA. The General Plan and Downtown Specific Plan Goals discuss the realignment of Depot Street through the CCC parking lot to connect to the East Dunne Avenue and Church Street intersection. This project incorporates development of the office space and condos on the .29-acres of the existing Depot Street. Maps: [Vacated portion of Depot Street](#) and [Depot Street Realignment through CCC parking lot](#).

8. Q. If this project does not move forward, and a new residential project came in that did not include the re-alignment of Depot Street or office space, would the new project be brought forward to City Council for approval?
- A. Due to the location within a half mile from a transit station, a new affordable rental housing project that files in compliance with State Law could propose unlimited density, extend heights an extra 33 feet, and provide as little as zero on-site parking without requiring City Council approval.
9. Q. What are the enhancements with the realignment? How many parking spaces will be eliminated?
- A. Enhancements include paving, new curb and gutters, sidewalks, landscaping, lighting, decorative crosswalks, etc. There will be no net loss of parking stalls with the new realignment. The plan introduces up to 30% compact stalls consistent with the municipal code and introduces new stalls in some of the landscaped area.
10. Q. What are school pedestrian safety fee credits utilized for? What are the specific pedestrian safety improvements for this project?
- A. School pedestrian safety fees are utilized for public improvements on street and sidewalk infrastructure, including crosswalks that are within 2/3 of a mile from a school. There are multiple schools within this distance. The Hale Lumber site currently does not have a sidewalk connection from Railroad Park to East Dunne. This project will complete the street and include new crosswalks in compliance with Vision Zero.
11. Q. Where can I find the Addendum and Transportation Impact Analysis that was completed for the project.
- A. All the environmental related documents can be found on the project environmental webpage. [Depot – Latale Environmental](#)
12. Q. What is no net loss in parking?
- A. We will end up with the same number of parking spaces after project completion. As mentioned above, the plan introduces up to 30% compact stalls consistent with the municipal code and introduces new stalls in some of the landscaped area.

The following links will take you to the project webpage that outlines the project history.

- [Project webpage](#)
- [October 3, 2018 DDA Staff Report](#)



Criteria for One-time ARPA Funding for Community Organizations



Background



- City of Morgan Hill will receive funding of \$10.99 million in ARPA funding.
- The majority of the funding has been allocated for supporting City services directly.
- During the mid-year goal update on August 6, the Council provided feedback on establishing a one-time community grant funding opportunity.
- On August 18, the City Council appropriated \$100,000 for one-time funding for Community organizations.
- City staff are now bringing back this item for the Council to establish criteria for the application process.

Recommended Policy Criteria



- The organization requesting funding must be a non-profit
- The organization must show the funds will be used to support the community
- Funds must be used for services for residents or businesses of the City of Morgan Hill
- Requests for funding are for one-time use
- The organization may not have received or be scheduled to receive other funding from the City of Morgan Hill

Recommended Policy Criteria (Continued)



- Priority will be given to organizations that can demonstrate they were significantly financially impacted by Covid.
- Priority will be given to organizations that can demonstrate a near term impact (1 year) by providing a direct service to Morgan Hill residents or businesses.
- Priority will be given to organizations that have not received or are not scheduled to receive past Covid-19 related funding.

Additional Requirements



- Organizations would be required to enter into a funding agreement with the City.
- The agreement would include provisions to require a reporting of the uses of funds and a summary of the impact of funds.

Council Action



- City staff recommends approving the criteria as recommended.
- The City Council could alternatively choose to change the criteria as it deems appropriate.
- The Council could also alternatively provide City staff with direction to update the criteria and return to Council. This option would delay implementation of the grant program by at least 1 month.

Next Steps



- Following Council approval of the criteria, an application for funding would be posted on the City website.
- Funding recommendations will be made to City Council in October of 2021.

Questions?





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Questions?



From: [D. Muirhead](#)
To: [CC Public Comment](#)
Subject: [EXTERNAL] comment City Council September 1, 2021 Item #7. Criteria for one-time ARPA funding for NGOs
Date: Monday, August 30, 2021 9:53:54 PM

Dear Morgan Hill City Council,

A few comments for your
Meeting September 1, 2021
Item #7. Criteria for one-time ARPA funding for nonprofit organizations

I find that the criteria
"organization may not have received or be scheduled to receive
other funding from the City of Morgan Hill"
lacks specificity as to the time period covered.

As far as only considering non-profits, I know of at least one grocery
business in San Martin that provided some free handouts. Do we have
similar businesses in Morgan Hill? If so, since they meet the criteria
that funds were used to support the community, perhaps they should be
considered.

After ranking requests, likely over-subscribing the funds available,
are partial allocations possible?

Staff states that
"organizations would be required to enter into a funding agreement
with the City. This agreement would include provisions to require
reporting on the uses of the funds for the intended purposes and
a summary of the impacts the funds had on the community."
Having observed multiple grant cycles with Water District and Open Space
Authority, I want to stress that you must not make the application process
nor the reporting process overly burdensome.

When funding recommendations are made to City Council in October 2021,
the scoring for all applicants needs to be included so that the public
can see how City staff chose to distribute the funds. Staff should also
report on feedback from applicants on how "user-friendly" the process was.

Thank you for your consideration,
Doug Muirhead, Morgan Hill

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card numbers, bank routing numbers, gift card numbers, wire transfer information and other personally identifiable
information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by
opening a new helpdesk request online or call 408-909-0055.

Morgan Hill Community Foundation

Support for Morgan Hill City Council Agenda Item 7, September 1, 2021:

**APPROVE POLICY CRITERIA FOR ONE-TIME AMERICAN RESCUE PLAN ACT (ARPA) FUNDING FOR
COMMUNITY ORGANIZATIONS**

The Covid 19 Pandemic has had a tremendous impact on many people globally. The Morgan Hill Community Foundation developed a disaster relief effort and fund early last year to provide needed support to people in our community. Through the generosity of individuals and organizations, donations were received that enabled over \$129,000 to be granted to 14 non-profits to support local relief programs.

In addition, and in partnership with the YMCA and Morgan Hill Unified School District the MHCF enabled \$34,000 to be distributed for essential worker childcare, and partnership with the Downtown association enabled over \$16,000 to support essential workers and distressed restaurants in our area.

With the continuing pandemic and potentially more transmittable and lethal variants of the Covid-19 virus now upon us, the medical emergency is still on our immediate horizon and our work is far from complete. In collaboration with the Morgan Hill Chamber of Commerce we will issue a grant of \$25,000 to sponsor an appropriate, qualifying and carefully overseen COVID-19 Small Business Micro Grant Program supporting Morgan Hill's small businesses (30 and under employees) who have been severely impacted by the ongoing medical crisis and subsequent county-wide business recovery stabilization requirements.

These efforts coincided with the 5 rounds of grants for a wide range of relief programs sponsored and delivered by local charities in total delivered over \$200,000 in grants.

All the above was achieved through partnership and working together with a multitude of people interconnected by one common mission: to relieve negative impacts of the Global Pandemic on our Morgan Hill Community.

The Morgan Hill Community Foundation whole heartily supports tonight's motion to approve policy criteria for one-time ARPA funding to nonprofit organizations serving the residents and businesses of Morgan Hill.

Working together we can continue to make a difference in the lives of our residents and businesses.

Respectively,

Nick Gaich

President, Morgan Hill Community Foundation



Item #8

Monthly Budget Update



September 1, 2021

Overview



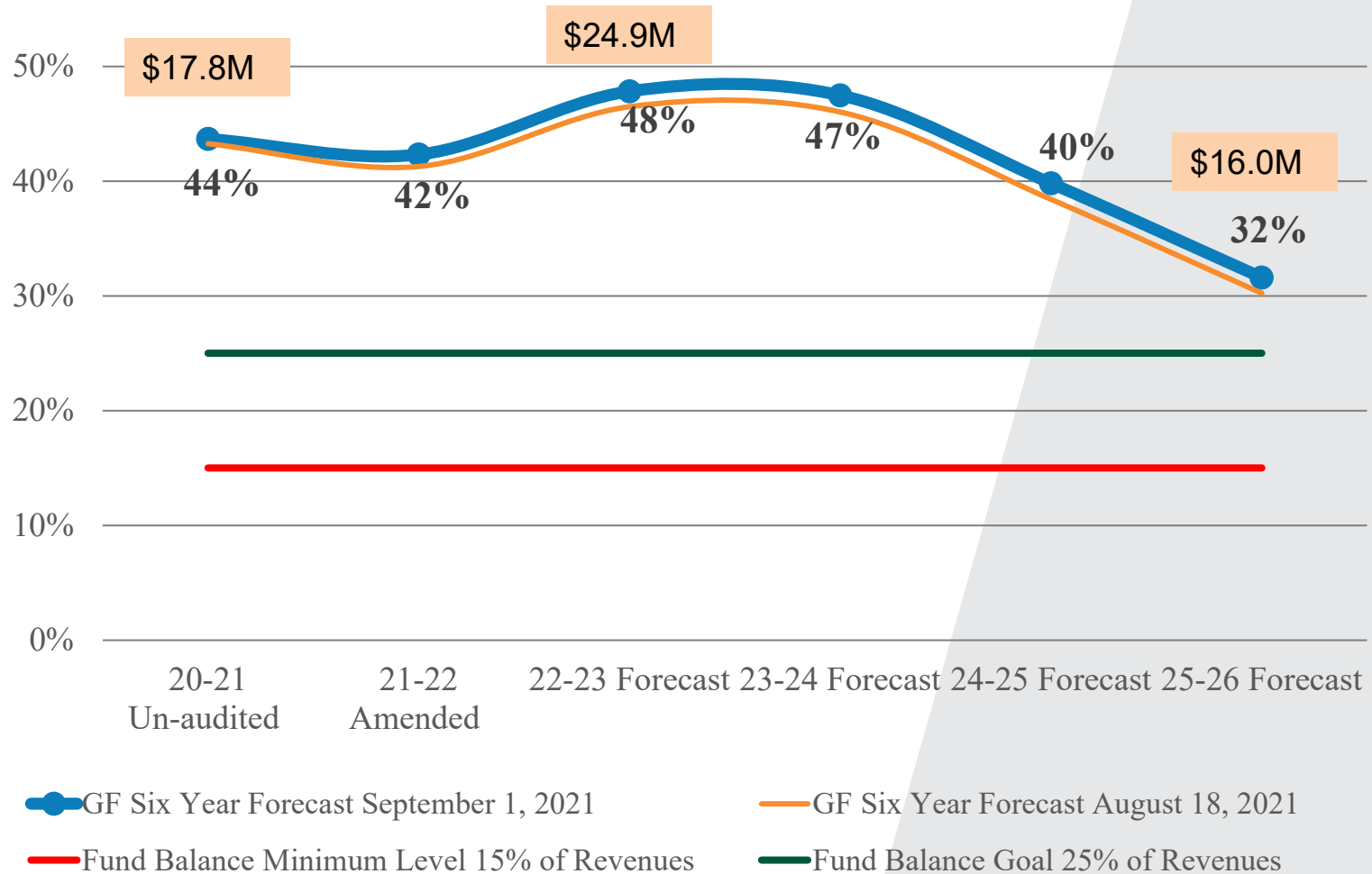
- Monthly Budget Update
- Staff does not recommend any budget adjustments at this time

General Fund



- Excess ERAF \$2.1 million versus \$1.5 million budgeted
- County cautioned cities/agencies in budgeting excess ERAF

Updated General Fund Forecast



Unfunded General Fund Needs - ~~\$5.2~~ **\$4.6** million



- Police \$1.3 million
- Fire: \$2.3 million
- ~~• Infrastructure: \$0.6 million~~
- Operational loss due to RDCS suspension: \$1.0 million

Unfunded Liabilities- \$55.9 million



- Public Employees Retirement System (PERS) - \$52.5 million
- Other Postemployment Benefits (OPEB) - \$3.4 million
- General Fund Share - 67% or \$37.5 million
- Current Funded Status
 - Misc. Plan – 72.9%
 - Safety Plan – 68.5%

Questions?





Item #8

Monthly Budget Update



September 1, 2021

Overview



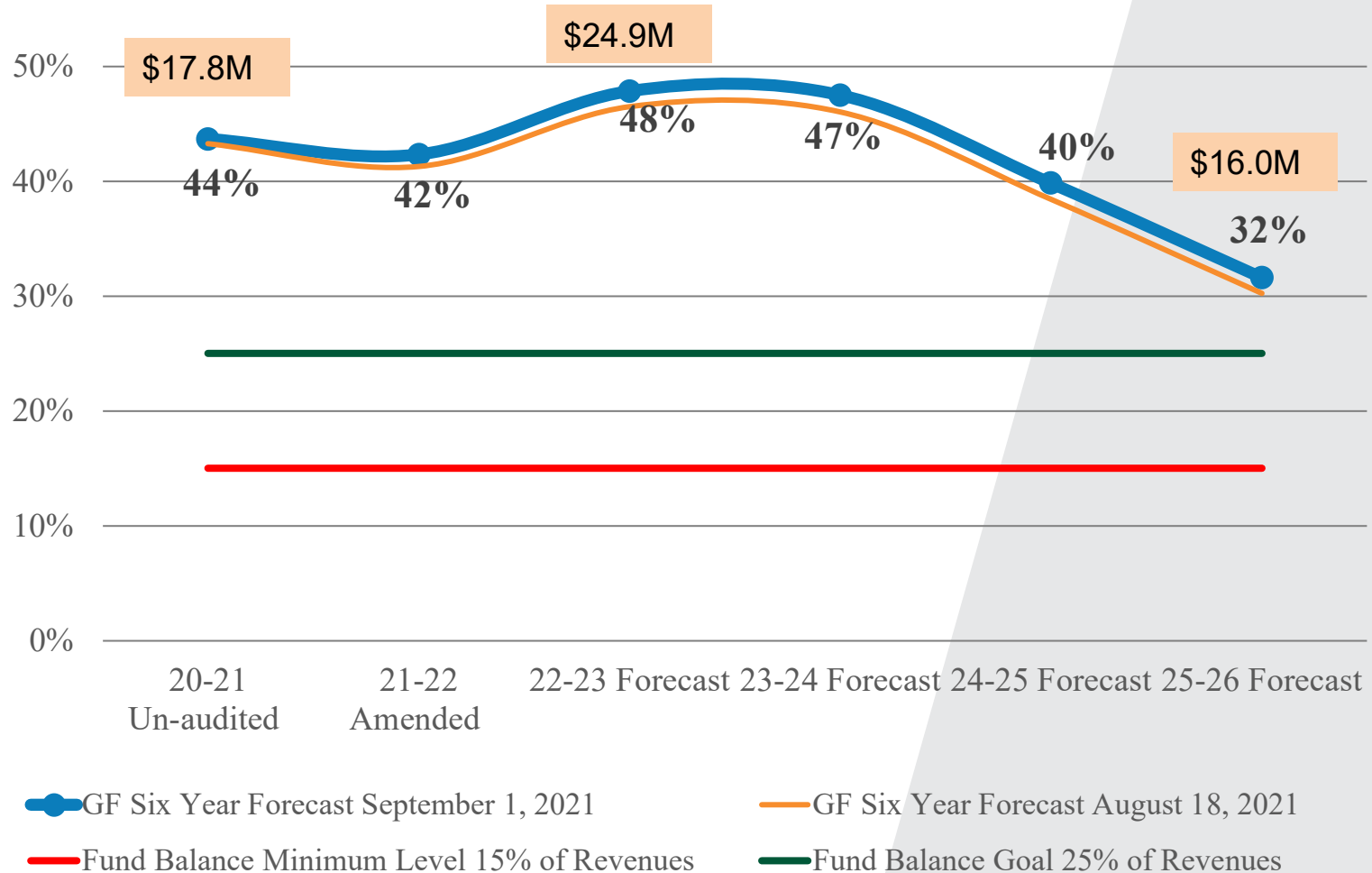
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Questions?



From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Dat Nguyen](#)
Subject: Item 8 - Q&A
Date: Tuesday, August 31, 2021 5:30:55 PM

Please supplement this Q&A.

What are ERAF funds for?

ERAF stands for the Educational Revenue Augmentation Fund. A portion of property tax revenue goes to the Educational Revenue Augmentation Fund (ERAF) to support local school districts. When the amount contributed to ERAF is more than the minimum cost of funding local schools, excess funds are returned to the County, Cities, and Special Districts.

What is the "Other" in the Historical GF Revenues category entail?

It includes categories not already identified in the chart including transfers in from other funds, grants, interest, etc. The largest amount budgeted and revenue received in this category is the American Rescue Plan Act (ARPA) funding of approximately \$5.5 million.

-

Can you explain the 68% change?

The year-to-date expenses plus encumbrances of 68% of appropriations or \$22.1 million in Capital Projects & Streets category comprises carryover encumbrances or contracts already entered into from prior year, including \$14.3 million for Hale Avenue extension project, \$2.7 million for the street repavement and rehabilitation project, and \$1.8 million for the inclusive/Magical Bridge playground. Please refer to page 13 of Attachment B.

-

Can you explain the -74% number in the Other Revenue/Current Changes of Fund 206 Development Services ?

The -74% represents the reduction in Other Revenue/Current Changes of Fund 206 Development Services compared to prior year to date. It is difficult to analyze or draw conclusion of Fund 206 performance when there is only one month into a fiscal year.

-

Why is the ending number for School Pedestrian & Traffic Safety funds negative?

This fund accounts for the Residential Development Control System (RDSCS) fee that the City collected from developers to fund traffic safety projects and improvements close or nearby schools. The negative \$762,358 is the unreserved fund 355 balance as all of the fund 355 balance has been reserved for the Britton Middle School Pedestrian Enhancement Project. This project includes funding from the Community Development Block Grant which the City received the award but not yet the money.



Appointment of Emergency Standby Council



Appointment of Emergency Standby Council

Adopt New Policy

Municipal Code Chapter – Civil Disaster and Emergency Organization

- Authorizes the City to appoint Standby Council when current members unavailable
- Includes the appointment of the Emergency Standby Council
- Members who currently live within the Morgan Hill city limits
- Called upon in reverse chronological order based on last day of service to meet a quorum

Appointment of Emergency Standby Council

Adopt New Policy

Municipal Code Chapter – Civil Disaster and Emergency Organization

- Includes the duties of the Emergency Standby Council
- Ratify a local emergency proclamation
- Assist Emergency Operations Center with critical information dissemination

Appointment of Emergency Standby Council

Adopt New Policy

Municipal Code Chapter – Civil Disaster and Emergency Organization

- The Office of Emergency Services will provide periodic membership updating as needed
- Updates will include; members no longer available and new qualified and interested members

Questions ?



Appointment of Emergency Standby Council



Appointment of Emergency Standby Council

Adopt New Policy



Municipal Code Chapter – Civil Disaster and Emergency Organization

- Authorizes the City to appoint Standby Council when current members unavailable
- Includes the appointment of the Emergency Standby Council
- Members who currently live within the Morgan Hill city limits
- Called upon in reverse chronological order based on last day of service to meet a quorum

Appointment of Emergency Standby Council

Adopt New Policy

Municipal Code Chapter – Civil Disaster and Emergency Organization

- Includes the duties of the Emergency Standby Council
- Ratify a local emergency proclamation
- Assist Emergency Operations Center with critical information dissemination

Appointment of Emergency Standby Council

Adopt New Policy

Municipal Code Chapter – Civil Disaster and Emergency Organization

- The Office of Emergency Services will provide periodic membership updating as needed
- Updates will include; members no longer available and new qualified and interested members

Questions ?

National Preparedness Month

In Morgan Hill we prepare for all hazards; natural, environmental, manmade, and disasters we cannot predict such as the current infectious disease pandemic.

The City of Morgan Hill partners with community members educating and encouraging preparedness for a minimum of seventy-two hours by creating emergency supply kits and family communication plans

The City has a dedicated Community Emergency Response Team (CERT) and Radio Amateur Civil Emergency Service (ham radio) who are trained, regularly practice response, and are ready to provide critical assistance in times of disaster

the City of Morgan Hill will join the nation in focusing on this year's theme, *"Prepare to Protect. Preparing for disasters is protecting everyone you love"*

We proclaim the month of September 2021 to be National Preparedness Month in the City of Morgan Hill, to recognize the importance of preparedness and work together to enhance our resilience and readiness.

Childhood Cancer Awareness Month

During the COVID-19 crisis Jacob's Heart has been keeping medically fragile children and families housed, fed and emotionally supported by steadfastly adhering to the following commitments: 1) Parents of children with cancer and other serious illnesses will be relieved of financial fears and be able to focus attention to their children; 2) No child undergoing intensive treatment in our community will be homeless; 3) Families of seriously ill children will not experience food insecurity during and after the pandemic; and 4) No seriously ill child in our community will ever miss a medical appointment because of lack of transportation

The oncology department at Lucile Packard Children's Hospital at Stanford has worked closely with Jacob's Heart for the past 23 years as a trusted community partner in providing family-centered care that addresses the emotional, practical and financial struggles of families of children with cancer in Morgan Hill

It is important for all Morgan Hill residents to recognize the impact of pediatric cancer on families within our community and honor the children in our community whose lives have been cut short by cancer.

We proclaim September 2021 as Childhood Cancer Awareness Month in the City of Morgan Hill and do hereby honor Jacob's Heart Children's Cancer Support Services for outstanding support to our community and acknowledge the organization's contributions to Childhood Cancer Awareness Month



Special - 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, September 1, 2021 5:30 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.

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:30 p.m. for the purpose of conducting a Water Workshop.

5:30 p.m. Water Workshop

7:00 p.m. Regular Meeting

SPECIAL MEETING

5:30 p.m. Water Workshop

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

WORKSHOP

This workshop is intended to provide the City Council and community with background information on the City's water supply system ahead of review of the City's Urban Water Management Plan and Water Supply Contingency Plan.

REGULAR MEETING

7:00 p.m.

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

PRESENTATIONS

Edward Boss Prado Foundation Donation Presentation for Aquatics Center Passes

PROCLAMATIONS

Proclaiming the month of September 2021 as National Emergency Preparedness Month

Proclaiming the month of September 2021 as Childhood Cancer Awareness Month and

Honoring Jacob's Heart Children's Cancer Support Services

CITY COUNCIL REPORTS

Council Member Borgioli

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

September 1, 2021

OTHER REPORTS

PUBLIC COMMENT

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

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. APPROVE ON-CALL WATER AND SEWER REPAIR AGREEMENTS

Recommendation:

1. Approve and authorize the City Manager to execute an agreement with West Valley Construction Company, Inc. in the not to exceed amount of \$150,000 for on-call as needed water and sewer repairs; and
2. Approve and authorize the City Manager to execute an agreement with Pacific Underground Construction, Inc. in the not to exceed amount of \$50,000 for on-call as needed water and sewer repairs.

2. APPROVE ANTENNA GROUND LICENSE AGREEMENT FOR NEW CELL TOWER AT THE OUTDOOR SPORTS CENTER AND RELATED SIDE LETTER AGREEMENT WITH FACILITY OPERATOR

Recommendation:

1. Authorize the City Manager to execute the Cell Tower Hosting Side Letter Agreement with MHOSC; and
2. Authorize the City Manager to execute the Antenna Ground License with New Cingular Wireless PCS for the siting of a new cell tower at the Outdoor Sports Center.

3. ADOPT RESOLUTION DECLARING THE SUMMARY VACATION OF A PORTION OF THE SUTTER BOULEVARD STREET EASEMENT, AND THE ADJACENT LANDSCAPE AND PUBLIC SERVICE EASEMENTS BETWEEN BUTTERFIELD BOULEVARD AND DIGITAL DRIVE

Recommendation:

1. Adopt resolution declaring the Summary Vacation of:
 - a. A portion of Sutter Boulevard street easement between Butterfield Boulevard and Digital Drive; and
 - b. Adjacent 15-foot wide Landscape and Public Service Easements on both sides of Sutter Boulevard between Butterfield Boulevard and Digital Drive;
2. Direct the City Clerk to file a certified copy of the Resolution of Vacation in the Office of the Recorder of Santa Clara County; and
3. Authorize the City Manager to sign Quitclaim Deeds of the vacated portion of Sutter Boulevard on behalf of the City and direct the City Clerk to file in the Office of the Recorder of Santa Clara County.

4. ADOPT RESOLUTION DECLARING THE SUMMARY VACATION OF A PORTION OF MONTEREY ROAD STREET RIGHT-OF-WAY, NORTH OF COCHRANE ROAD, AND RESERVATION OF A PUBLIC SERVICE EASEMENT

Recommendation:

1. Adopt resolution declaring the Summary Vacation of a portion of Monterey Road street right-of-way, north of Cochrane Road, and reservation of a public service easement;
2. Direct the City Clerk to file a certified copy of the Resolution of Vacation in the Office of the Recorder of Santa Clara County; and
3. Authorize the City Manager to sign Quitclaim Deeds of the vacated portion of Monterey Road on behalf of the City and direct the City Clerk to file in the Office of the Recorder of Santa Clara County.

PUBLIC HEARING

5. RECEIVE 2020 URBAN WATER MANAGEMENT PLAN AND 2020 WATER SHORTAGE CONTINGENCY PLAN

Recommendation:

1. Receive 2020 Urban Water Management Plan and 2020 Water Shortage Contingency Plan; and
2. Open and close the public hearing for the 2020 Urban Water Management Plan and 2020 Water Shortage Contingency Plan.

Estimated Time: 20 Minutes

OTHER BUSINESS

6. APPROVE A DISPOSITION AND DEVELOPMENT AGREEMENT AMENDMENT AND AMENDMENT TO THE FISCAL YEAR 2021-22 BUDGET FOR THE DEPOT - LATALA PROJECT

Recommendation:

1. Adopt resolution authorizing the City Manager to execute an amendment to the Disposition and Development Agreement for the Hale Lumber site; and
2. Adopt resolution amending the Fiscal Year 2021-22 Budget appropriating \$755,591 from the Public Facilities Fund (346) and \$138,263 from the Undergrounding Fund (350).

Estimated Time: 45 Minutes

7. APPROVE POLICY CRITERIA FOR ONE-TIME AMERICAN RESCUE PLAN ACT (ARPA) FUNDING FOR COMMUNITY ORGANIZATIONS

Recommendation:

Approve policy criteria for one-time ARPA funding to nonprofit organizations serving the residents and businesses of Morgan Hill.

Estimated Time: 30 Minutes

8. RECEIVE MONTHLY BUDGET UPDATE AND JULY 2021 FINANCIAL AND INVESTMENT REPORTS

Recommendation:

Accept and file report.

Estimated Time: 10 Minutes

9. ADOPT POLICY REGARDING THE APPOINTMENT OF EMERGENCY STANDBY COUNCIL MEMBERS

Recommendation:

Adopt resolution approving the City Council Policies and Procedures CP-21-01 "Appointment of Emergency Standby City Council Members."

Estimated Time: 15 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Authority:	Gov. Code section 54956.8
Property:	APN's - 762-61-3052 (Community and Cultural Center)
Agency negotiator:	Christina Turner, City Manager and Chris Ghione, Public Services Director
Under negotiation:	Price and Terms of Lease

CONFERENCE WITH LABOR NEGOTIATORS

Authority:	Pursuant to Government Code Section 54957.6
City Negotiators:	Christina Turner City Manager; Donald Larkin, City Attorney; Michael Horta, Human Resources Director; Dat Nguyen, Finance Director
Employee Organization:	Morgan Hill Police Officers Association Employees Covered under Management Resolution #21-025 AFSCME Local 101 Morgan Hill Community Service Officers Association

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.

Supplement & Presentation List

September 1, 2021

City Council Meeting

Supplements

Item 6- Supplement 1 – Depot-Latala – Q&A

Item 7- Supplement 1 – ARPA Funds – Email from Doug Muirhead

Item 7- Supplement 2 – ARPA Funds – Letter from MH Community Foundation-Nick Gaich

Item 8- Supplement 1 – Budget – Q&A

Presentations

Water Workshop- Staff Presentation

Item 5- UWMP - Staff Presentation

Item 6- Depot-Latala – Staff Presentation

Item 7- ARPA Funds – Staff Presentation

Item 8- Budget – Staff Presentation

Item 9- Emergency Council – Staff Presentation



CITY OF MORGAN HILL

Morgan Hill Water Council Workshop September 1, 2021



Workshop Components

Introduction & Background

Water System

Ground Water Supply

Water Conservation

Recycled Water Planning

Next Steps

Background



City of Morgan Hill

- Water Retailer
- Local Government – Enforcement Authority

Valley Water

- Water Wholesaler
- Groundwater Management Agency

Our Water Supply



Morgan Hill is 100% Groundwater

- Two Aquifers
 - **Llagas subbasin** of the Gilroy-Hollister Groundwater Basin
 - **Coyote Valley Subarea** of the Santa Clara Subbasin of Santa Clara Valley Groundwater Basin
- We rely on Valley Water to recharge the groundwater in both locations
- The City pays Valley Water to pump water out of the ground, “Pump Tax”

Our Water Supply

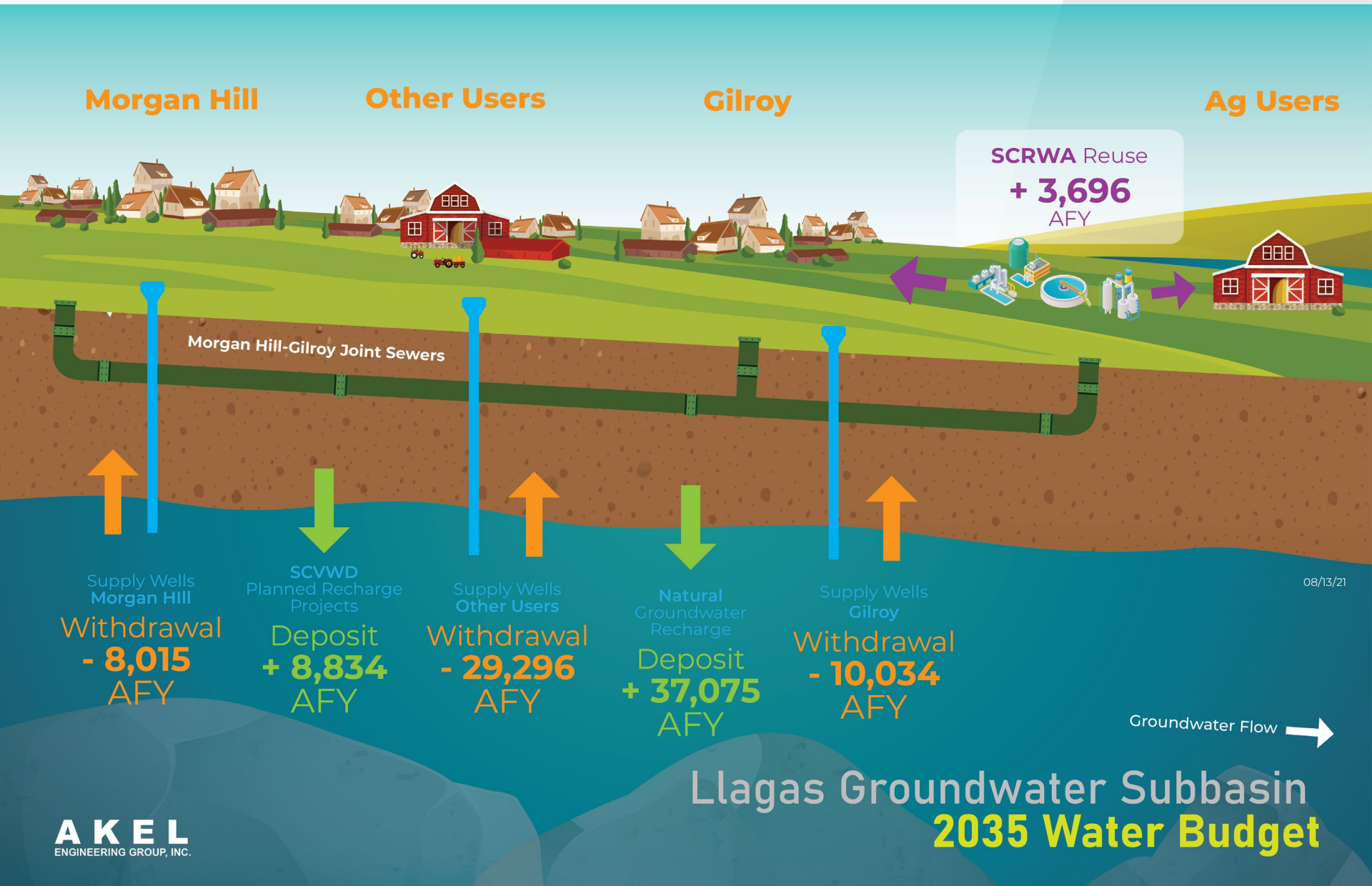
Water is a shared resource

- Communities across the State rely on imported water
- The City relies on Valley Water to recharge our aquifers
- Valley Water purchases imported water to support the region
- 55% of water used in Santa Clara County is imported



<https://www.valleywater.org/your-water/where-your-water-comes>

Our Water Supply



Water System Funding



Morgan Hill is 100% Groundwater

- Rates of approximately \$16.0M Annually
 - Rates Fund maintenance and operations of the City's supply system
 - The City pays Valley Water ~\$4M annually in ground water rates
- Impact Fees are collected to pay for any system expansions needed so that ratepayers are not forced to pay for development related costs

Water System Planning



Major Planning Components

- Urban Water Management Plan – Every 5 Years as required by the State
- Water Loss Contingency Plan – newly required as a separate document
- Water Supply Master Plan – Determines needs of the water system and is the base for user fees and impact fees
- Water Rate Study – Establishes user rates
- Impact Fee Study – Establishes impact fees

Morgan Hill's Water System





Morgan Hill Water System

Water System Setup

- Subbasins (Aquifers).
- Wells
- Storage Tanks
- Booster Stations
- Piping Network
- SCADA (Supervisory Control and Data Acquisition).

Water Supply Capacity and Aquifer Recharge Options

- Wells capacity
- Recharging the aquifers
- Staff work with Valley Water and Future Projects.
- Chart of wells levels (Current versus previous drought)

Current and Projected Water Demand

- Water projection table
- Summary

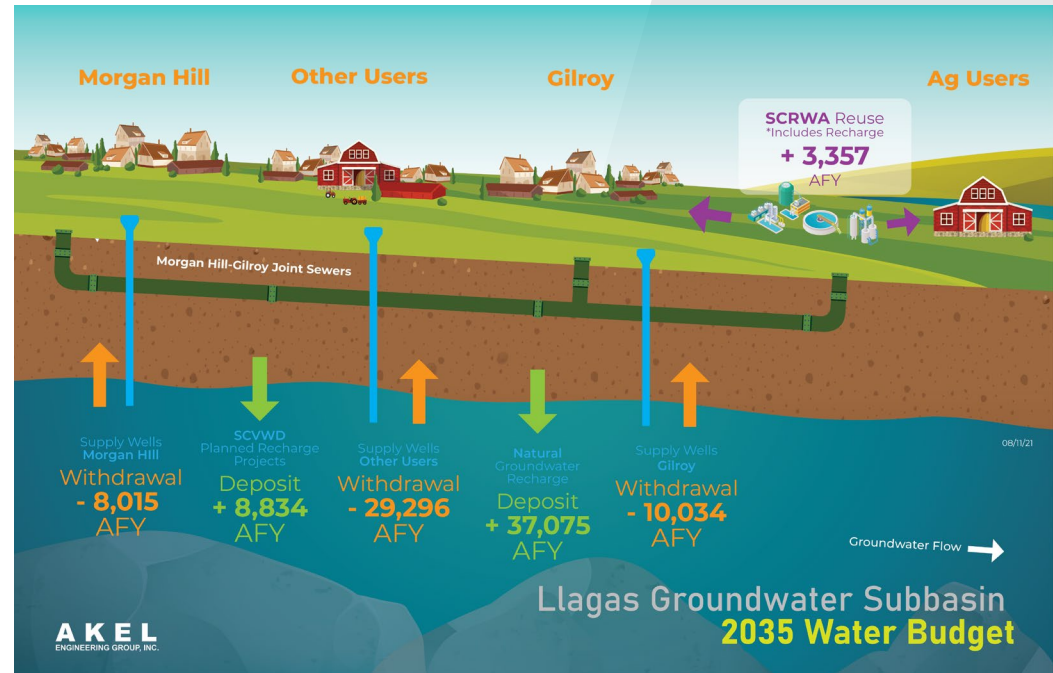
Morgan Hill Water System

MH gets water from one source: Groundwater

That groundwater comes from two subbasins or (aquifers):

Llagas and Coyote which are managed by the Valley Water District.

(What is an aquifer? An aquifer is an underground layer of water-bearing permeable rock.)



Morgan Hill Water System

16 Wells

The groundwater is pumped from the two aquifers using 16 municipal wells with a total pumping capacity of approximately 15mgd. Three (3) wells get their water from the Coyote subbasin while the thirteen (13) other wells get their water from the Llagas subbasin. The wells range from 10-16 inches in diameter and 300-380 feet in depth.



Morgan Hill Water System

12 Storage Tanks

The storage tanks have a total capacity of 10.23 million gallons and store the treated water that is distributed in the system.

They store enough water to serve the residents and allow staff enough time to respond and make repairs to water emergencies.



Morgan Hill Water System

10 Booster Stations

The booster stations play a crucial role; they help to pressurize the system so we can fill the storage tanks and move water through the transmission and distribution water lines.



Morgan Hill Water System

175 Miles of Pipe

175 miles of piping of different sizes and materials which form the transmission and distribution network for delivering treated water to homes and businesses throughout our service area.



Morgan Hill Water System

SCADA

The remote sub-systems mentioned earlier have associated electrical, communications, and instrumentation controls which allow us to monitor the sites continuously using our supervisory control and data acquisition (SCADA) system.



Supply Capacity and Aquifer Recharge Options

Wells capacity

- The combined supply capacity for the 16 wells is approximately 18,600 acre-feet per year with a firm capacity (minus largest unit) of approximately 16,700 acre-feet per year.

Recharge Options

- As we withdraw water from the aquifers, their water levels drop, and the levels will continue to drop until we either stop/reduce pumping or until they are recharged. The situation becomes more challenging when we have a drought as we are experiencing right now.

Recharging the aquifers is done:

- Naturally through rainwater, and
- Imported water as Valley Water District is doing, to replenish our lakes, creeks, ponds, and dams.
- Use reclaimed water from the SRWWTP to recharge the Aquifers.

Figure 2. Estimated Cumulative Managed Recharge in the Coyote Valley

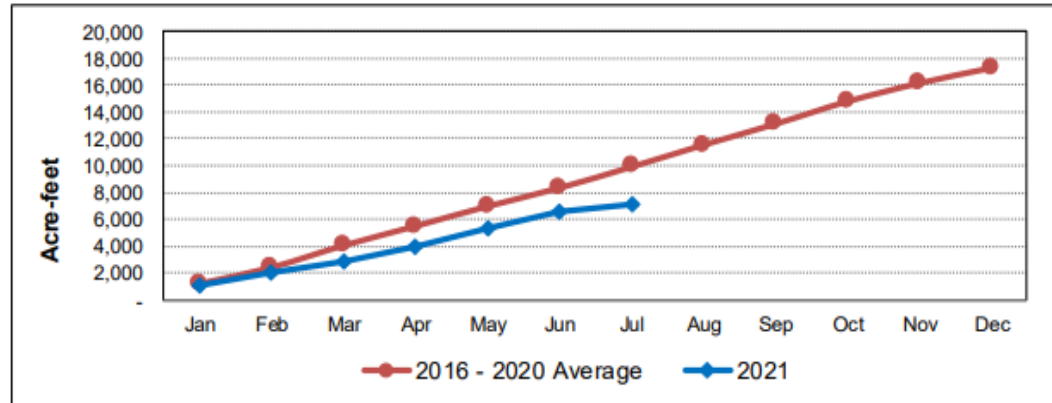
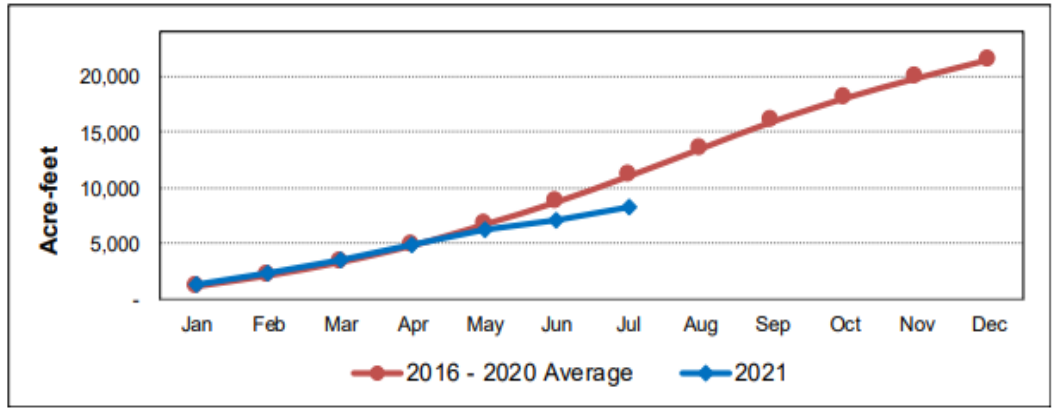


Figure 3. Estimated Cumulative Managed Recharge in the Llagas Subbasin



Morgan Hill Water System



Staff work with Valley Water

Staff continuously monitor our wells' water levels and have regular meetings with Valley Water every two months to ensure the recharge of the aquifers.

Future Projects

- City staff is looking at all options on recycled water as a means of securing additional/new water supply for our community.
- Our 2017 Water System Master Plan calls for the City to install two new groundwater wells (2,600 AFY total capacity) by 2030 for serving anticipated population growth, we are currently exploring sites to build the wells.
- Start study of pipeline improvement project(s) to link the different water zones for increased reliability and redundancy.
- Water supply facility improvements (reservoirs repairs and re-coating) and upsize two (2) existing ones from 0.1 to 0.25 million gallons.

Morgan Hill Water System

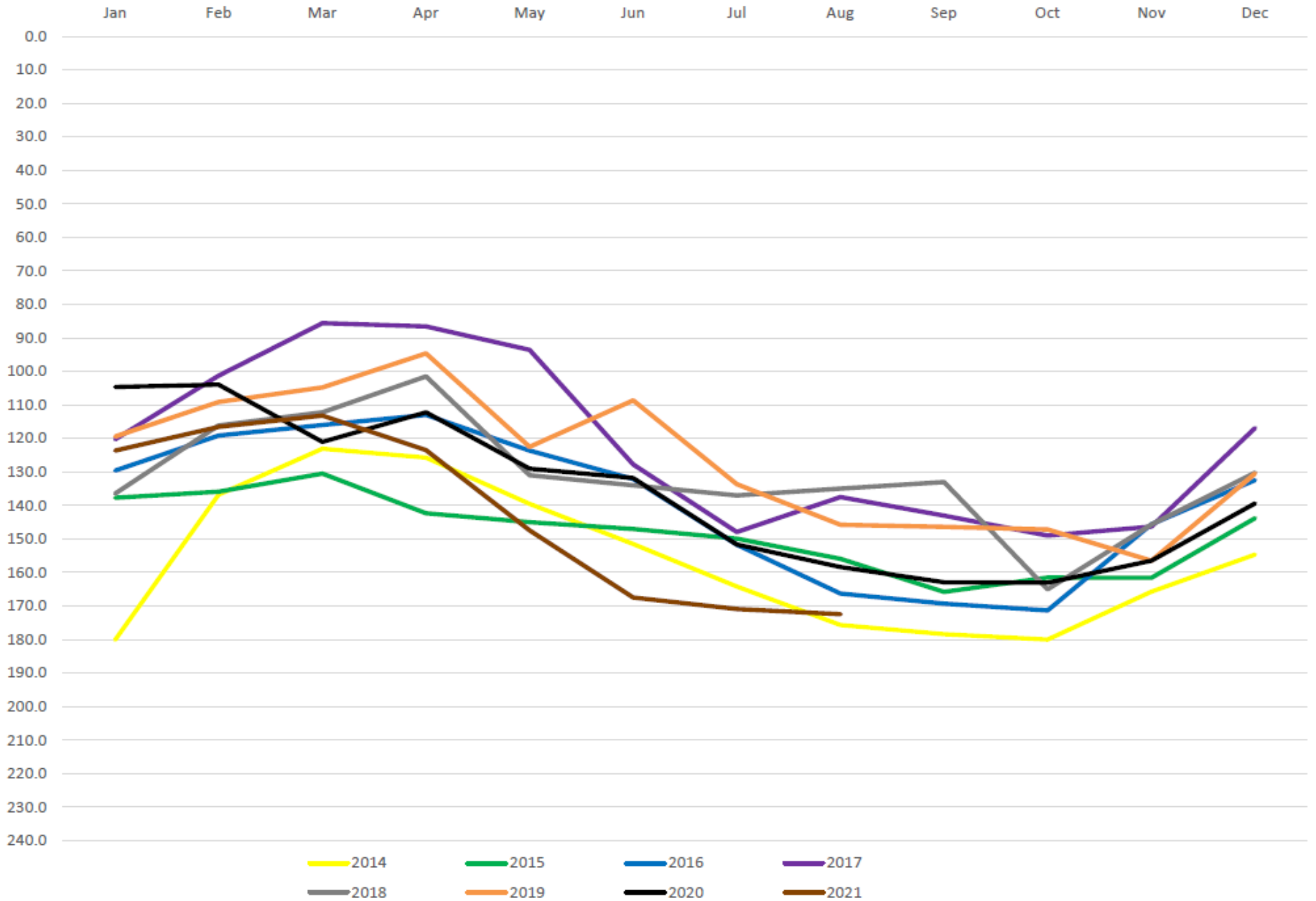
Chart of well levels (Current versus previous drought)

A graphical representation of the well levels for each subbasin for the past 8 years is shown below:

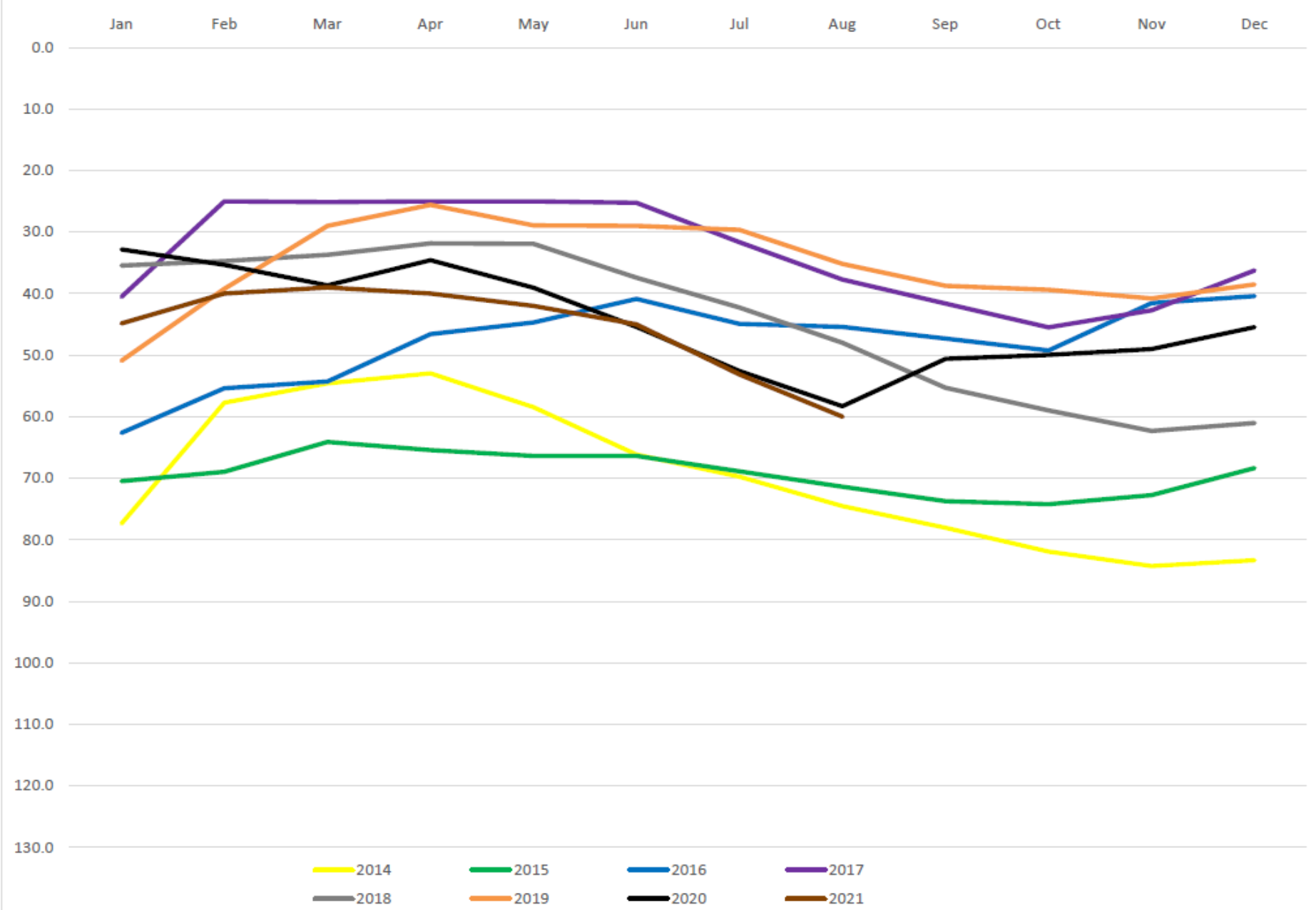
Coyote Subbasin: Boys Ranch
Well # 1

Llagas Subbasin: Diana Well # 1

Boys Ranch #1 Well Static Water Level



Diana #1 Well Static Water Level



Morgan Hill Water System



Projected Water Demand

Demand Type	Projected Demand					
	2020 (AF)	2025 (AF)	2030 (AF)	2035 (AF)	2040 (AF)	2045 (AF)
Potable and Raw Water	7,808	8,671	9,481	10,123	10,808	11,472
Recycled Water	0	0	700	1,500	2,200	2,900
Total	7,808	8,671	10,181	11,623	13,008	14,372

Morgan Hill Water Systemic



Our water supply for 2020 was 7,808 acre-feet which averages to about 7.0 mgd. Our target gallons per capita demand (gpcd) was 159 gpcd, and our actual was 150 gpcd.

The existing firm capacity (approximately 16,700 acre-feet per year) meets the City's current demands. As demands increase, additional groundwater wells and other infrastructure will be constructed as necessary.

Water Conservation & Sustainable Supply

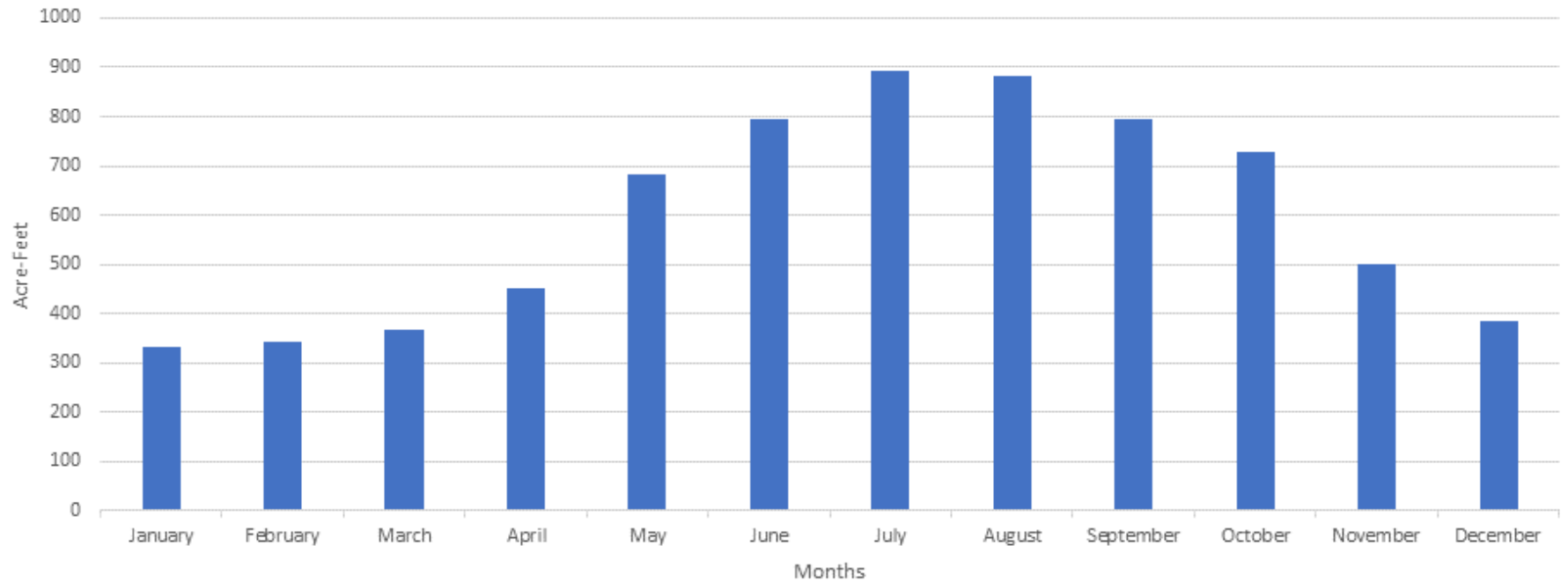


Conservation Outline

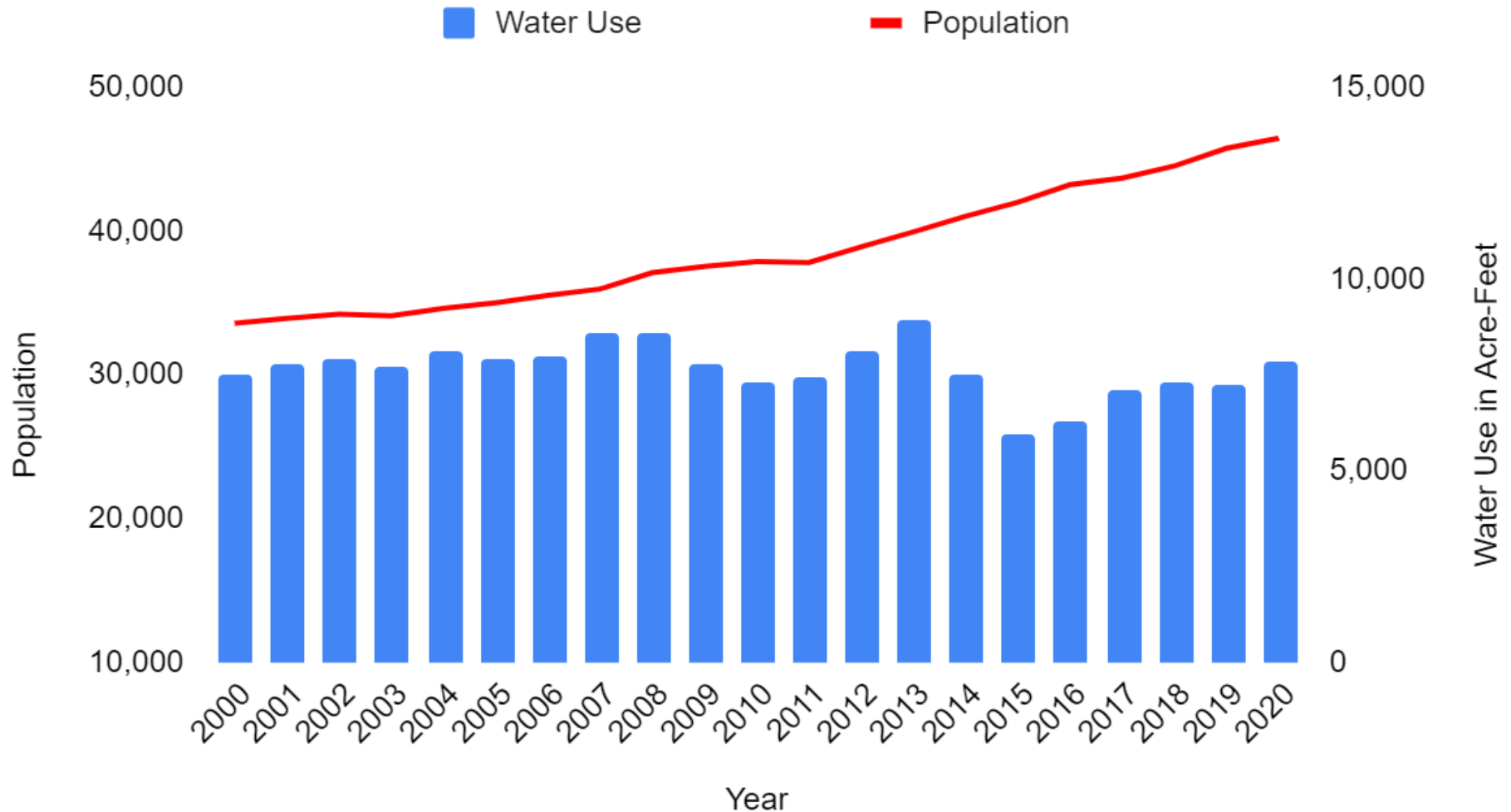


- How We Use Water
- Current Approach
- Recommended Approach
- Planning for a Sustainable Water Supply

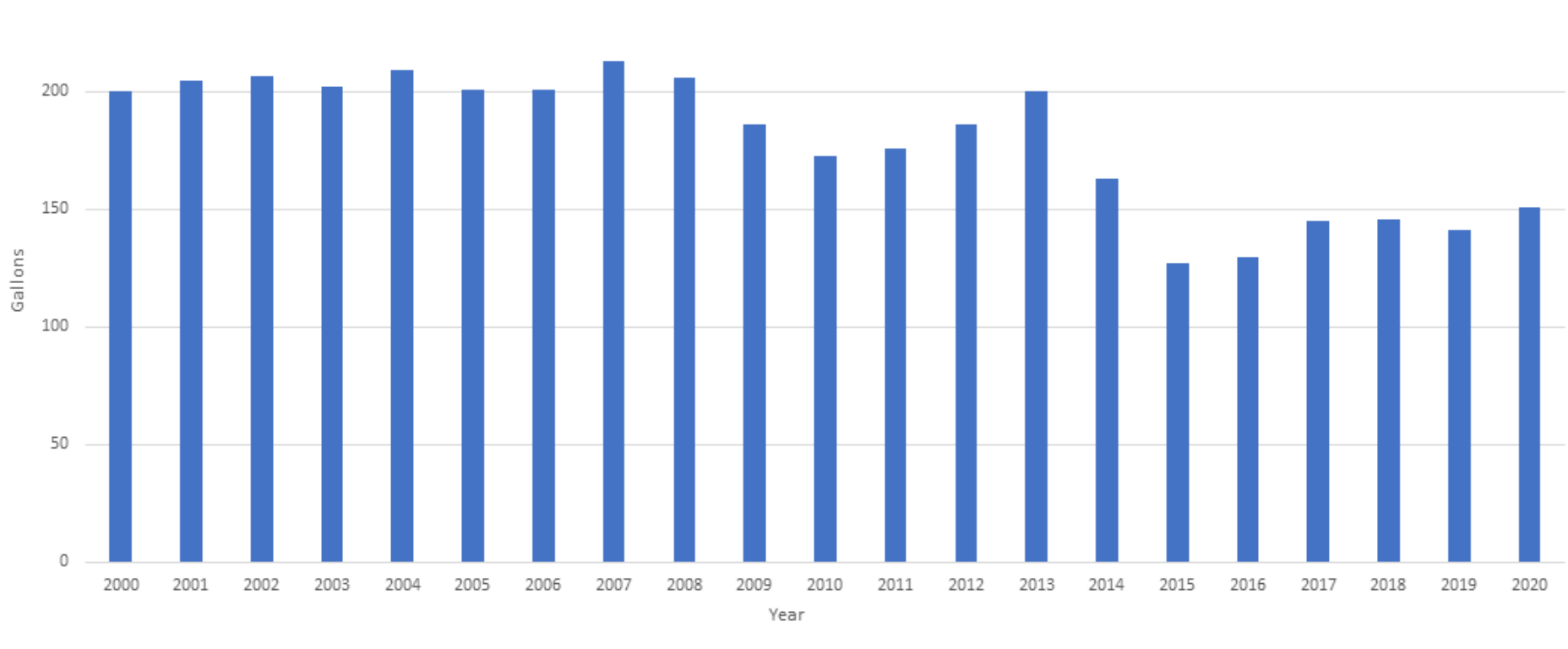
Average Monthly Water Use



Morgan Hill Population and Water Use 2000 - 2020



Water Use Daily Per Person



Morgan Hill Water Shortage Levels

Shortage Level	Shortage Level Condition	Percentage Range
Level 0	Normal	Up to 10%
Level 1	Alert	Up to 20%
Level 2	Severe	Up to 40%
Level 3	Crisis	>40%

Permanent Water Waste Rules

- Limits on Watering Hours, Days, and Duration
- No Excessive Water Flow or Runoff
- No Washing Down Hard or Paved Surfaces
- Obligation to Fix Leaks, Breaks or Malfunctions
- Recirculating Water Required for Water Fountains and Decorative Water Features
- Limits on Washing Vehicles
- Drinking Water Served Upon Request Only

Permanent Water Waste Rules

- Commercial Lodging Establishments Must Provide Guests Option to Decline Daily Linen Services
- No Installation of Single Pass Cooling Systems
- No Installation of Nonrecirculating in Commercial Car Wash and Laundry Systems
- Restaurants Required to Use Water Conserving Dish Wash Spray Valves.
- Commercial Car Wash Systems Must Recycle

Current Levels

- Level 1 – almost no change
- Level 2 – reduced two-day irrigation schedule in summer
- Level 3 – no irrigation + limits on serving new development (likely not enforceable on housing developments)
- No rationing or allocations
- No emphasis on enforcement effort
- Emphasis on faster leak repairs – unenforceable
- “Nuclear” approach to irrigation

Shortage Level	Percent Supply Shortage/Reduction	Morgan Hill Shortage Level	Valley Water Shortage Level Title	Water Supply Condition
Level 0	None	Normal	<i>Normal</i>	At Level 0, no Water Supply Shortage condition exists.
Level 1	Up to 10%	Alert	<i>Alert</i>	A Level 1 Water Supply Shortage condition exists when City Council determines and agrees that 1% - 10% consumer demand reduction is necessary to make more efficient use of water.
Level 2	11 to 20%	Significant	<i>Severe</i>	A Level 2 Water Supply Shortage condition exists when City Council determines and agrees that 11% - 20% consumer demand reduction is necessary to make more efficient use of water.
Level 3	21 to 30%	Severe	<i>Critical</i>	A Level 3 Water Supply Shortage condition exists when City Council determines and agrees that 21% - 30% consumer demand reduction is necessary to make more efficient use of water.
Level 4	31 to 40%	Critical	<i>Critical</i>	A Level 4 Water Supply Shortage condition exists when City Council determines and agrees that 31% - 40% consumer demand reduction is necessary to make more efficient use of water.
Level 5	41 to 50%	Crisis	<i>Emergency</i>	A Level 5 Water Supply Shortage condition exists when City Council determines and agrees that 41% - 50% consumer demand reduction is necessary to make more efficient use of water.
Level 6	> 50%	Emergency	<i>Emergency</i>	A Level 6 Water Supply Shortage condition exists when City Council determines and agrees that a consumer demand reduction of greater than 50% is necessary to maintain public water supplies.

Level	Restrictions and Prohibitions on End Users Category	Additional Explanation or Reference	Penalty, Charge, or Other Enforcement?
Level 0 (Year-Round)	Landscape - Limit landscape irrigation to specific times	Prohibits watering or irrigating lawn, landscape, or other vegetated area 9:00 a.m. and 5:00 p.m. with the following exceptions: - Using a hand-held bucket or similar container - Using a hand-held hose equipped with a positive self-closing water shut-off nozzle or device - For very short periods of time for the express purpose of adjusting or repairing an irrigation system	Yes
Level 0 (Year-Round)	Landscape - Limit landscape irrigation to specific times	Prohibits watering or irrigating of lawn, landscape, or other vegetated area using a system or device that is left unattended for more than fifteen (15) minutes per day per station. Exceptions include low-flow drip systems where no emitter produces flow more than two (2) gallons per hour, and weather based controllers or stream rotor sprinklers with 70% efficiency standard.	Yes
Level 0 (Year-Round)	Landscape - Restrict or prohibit runoff from landscape irrigation	Prohibits watering or irrigating of lawn, landscape, or other vegetated area that causes or allows excessive flow or runoff onto sidewalk, driveway, street, etc.	Yes
Level 0 (Year-Round)	Other - Prohibit use of potable water for washing hard surfaces	No washing down hard or paved surfaces except with the use of hand-held water container, hand-held hose with a positive self-closing water shut-off device, low-volume high-pressure cleaning machine equipped to recycle any water used, or low-volume high-pressure water broom.	Yes
Level 0 (Year-Round)	Other - Customers must repair leaks, breaks, and malfunctions in a timely manner	Requires repairs to be made to breaks, leaks, or other malfunctions no more than ten (10) days upon receiving written notice from the City.	Yes

Level	Restrictions and Prohibitions on End Users Category	Additional Explanation or Reference	Penalty, Charge, or Other Enforcement?
Level 0 (Year-Round)	Water Features - Restrict water use for decorative water features, such as fountains	Prohibits operation of a water fountain or decorative water features that does not use recirculated water.	Yes
Level 0 (Year-Round)	Other	Prohibits using water to wash a vehicle, including but not limited to any automobile, truck, van, bus, motorcycle, boat or trailer, whether motorized or not except by the use of a hand-held water container or hand-held hose with a positive self-closing water shut-off device. This does not apply to any commercial car washing facility.	Yes
Level 0 (Year-Round)	CII - Restaurants may only serve water upon request		Yes
Level 0 (Year-Round)	CII - Lodging establishment must offer opt out of linen service	Requires hotels, motels, and other commercial lodging established to provide customers the option of not having towels and linen laundered daily. Commercial lodging establishments must prominently display notice of this option in each bathroom using clear and easily understood language.	Yes
Level 0 (Year-Round)	CII - Other CII restriction or prohibition	Prohibits installation of a single pass cooling system for buildings requesting new water service.	Yes
Level 0 (Year-Round)	CII - Other CII restriction or prohibition	Prohibits installation of non-recirculating water systems in new commercial conveyor car wash and new commercial laundry systems.	Yes
Level 0 (Year-Round)	CII - Commercial kitchens required to use pre-rinse spray valves	Prohibits the use of non-water conserving dishwasher spray valves in food preparation establishments, such as restaurants or cafes.	Yes

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Level 0 (Year-Round)	Landscape - Limit landscape irrigation to specific days	Limits watering or irrigating of lawn, landscape or other vegetated area to three days per week during the months of March through October. Watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to no more than one day per week during the months of November through February. This provision does not apply to landscape irrigation zones that exclusively use very low flow drip type irrigation systems when no emitter produces more than two (2) gallons of water per hour. This provision also does not apply to watering or irrigating by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off nozzle or device, or for very short periods of time for the express purpose of adjusting or repairing an irrigation system.	Yes
Level 1	Expand Public Information Campaign	Communication campaign asking community to conserve water use.	Yes
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Level 5	Landscape - Limit landscape irrigation to specific days	No irrigation for turf, except turf utilized for active recreation at a school, park, or public facility may remain at 2 times per week during March to October.	Yes
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Note: Active enforcement means utility AMI data would be mined to find water users not abiding by published schedule + utility to allocate funds to contract or hire 1 FTE enforcement officer.			

Sustainable Water Supply



More About Climate Change, Biology, and Infrastructure Failures than Growth

- Recycled Water – ultimate resilient supply
- Drought Rate Schedule – new tool for water shortages
- Penalty Rate Schedule – new enforcement tool
- Water Offsets – “new” water for new growth

Recycled Water



Recycled Water Options



Past Planning Work with Valley Water/Gilroy

- Draft Countywide Reuse Master Plan (Core Plan)
- 2015 South County Recycled Water Master Plan

Table 6-9. Potential Future South County Reuse Opportunities

Reuse Type	Source Flow	Delivery Point	Summary	Capital Cost (\$2019)
NPR	SCRWA	New Morgan Hill NPR distribution system	Per the 2015 South County RWMP, extend pipeline parallel to existing joint sewer trunk line to convey recycled water from SCRWA in Gilroy to Morgan Hill	\$60M ^a
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Recycled Water Options



Future Work

- Continue to explore in more detail the current options identified to determine best path forward
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Questions?



CITY OF MORGAN HILL



CITY OF MORGAN HILL

Morgan Hill Water Council Workshop September 1, 2021



Workshop Components

Introduction & Background

Water System

Ground Water Supply

Water Conservation

Recycled Water Planning

Next Steps

Background



City of Morgan Hill

- Water Retailer
- Local Government – Enforcement Authority

Valley Water

- Water Wholesaler
- Groundwater Management Agency

Our Water Supply



Morgan Hill is 100% Groundwater

- Two Aquifers
 - **Llagas subbasin** of the Gilroy-Hollister Groundwater Basin
 - **Coyote Valley Subarea** of the Santa Clara Subbasin of Santa Clara Valley Groundwater Basin
- We rely on Valley Water to recharge the groundwater in both locations
- The City pays Valley Water to pump water out of the ground, “Pump Tax”

Our Water Supply

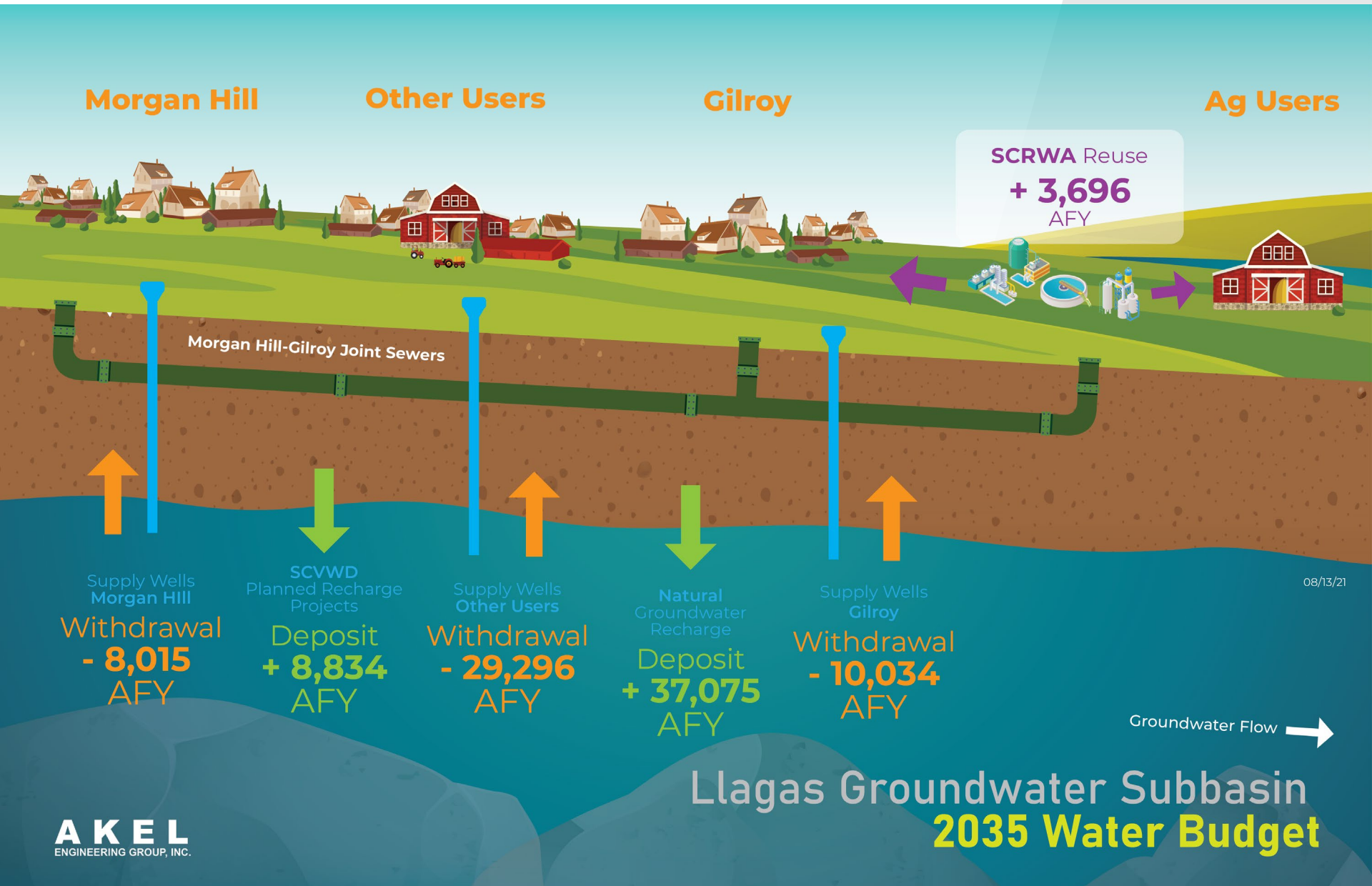
Water is a shared resource

- Communities across the State rely on imported water
- The City relies on Valley Water to recharge our aquifers
- Valley Water purchases imported water to support the region
- 55% of water used in Santa Clara County is imported



<https://www.valleywater.org/your-water/where-your-water-comes>

Our Water Supply



Water System Funding



Morgan Hill is 100% Groundwater

- Rates of approximately \$16.0M Annually
 - Rates Fund maintenance and operations of the City's supply system
 - The City pays Valley Water ~\$4M annually in ground water rates
- Impact Fees are collected to pay for any system expansions needed so that ratepayers are not forced to pay for development related costs

Water System Planning



Major Planning Components

- Urban Water Management Plan – Every 5 Years as required by the State
- Water Loss Contingency Plan – newly required as a separate document
- Water Supply Master Plan – Determines needs of the water system and is the base for user fees and impact fees
- Water Rate Study – Establishes user rates
- Impact Fee Study – Establishes impact fees

Morgan Hill's Water System





Morgan Hill Water System

Water System Setup

- Subbasins (Aquifers).
- Wells
- Storage Tanks
- Booster Stations
- Piping Network
- SCADA (Supervisory Control and Data Acquisition).

Water Supply Capacity and Aquifer Recharge Options

- Wells capacity
- Recharging the aquifers
- Staff work with Valley Water and Future Projects.
- Chart of wells levels (Current versus previous drought)

Current and Projected Water Demand

- Water projection table
- Summary

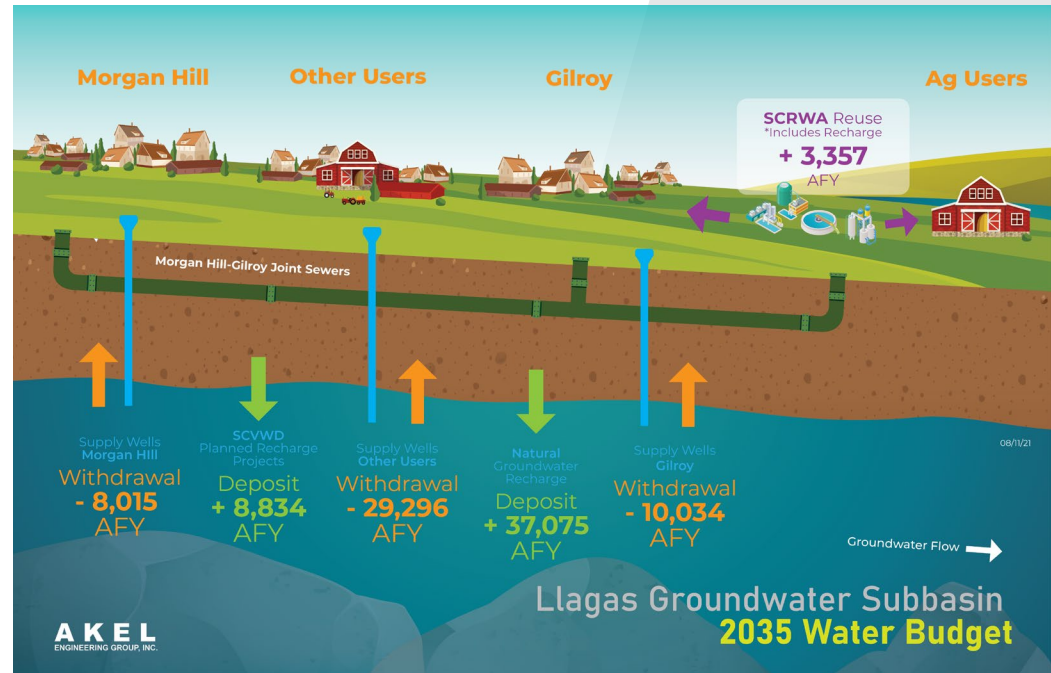
Morgan Hill Water System

MH gets water from one source: Groundwater

That groundwater comes from two subbasins or (aquifers):

Llagas and Coyote which are managed by the Valley Water District.

(What is an aquifer? An aquifer is an underground layer of water-bearing permeable rock.)



Morgan Hill Water System

16 Wells

The groundwater is pumped from the two aquifers using 16 municipal wells with a total pumping capacity of approximately 15mgd. Three (3) wells get their water from the Coyote subbasin while the thirteen (13) other wells get their water from the Llagas subbasin. The wells range from 10-16 inches in diameter and 300-380 feet in depth.



Morgan Hill Water System

12 Storage Tanks

The storage tanks have a total capacity of 10.23 million gallons and store the treated water that is distributed in the system.

They store enough water to serve the residents and allow staff enough time to respond and make repairs to water emergencies.



Morgan Hill Water System

10 Booster Stations

The booster stations play a crucial role; they help to pressurize the system so we can fill the storage tanks and move water through the transmission and distribution water lines.



Morgan Hill Water System

175 Miles of Pipe

175 miles of piping of different sizes and materials which form the transmission and distribution network for delivering treated water to homes and businesses throughout our service area.



Morgan Hill Water System

SCADA

The remote sub-systems mentioned earlier have associated electrical, communications, and instrumentation controls which allow us to monitor the sites continuously using our supervisory control and data acquisition (SCADA) system.



Supply Capacity and Aquifer Recharge Options



Wells capacity

- The combined supply capacity for the 16 wells is approximately 18,600 acre-feet per year with a firm capacity (minus largest unit) of approximately 16,700 acre-feet per year.

Recharge Options

- As we withdraw water from the aquifers, their water levels drop, and the levels will continue to drop until we either stop/reduce pumping or until they are recharged. The situation becomes more challenging when we have a drought as we are experiencing right now.

Recharging the aquifers is done:

- Naturally through rainwater, and
- Imported water as Valley Water District is doing, to replenish our lakes, creeks, ponds, and dams.
- Use reclaimed water from the SRWWTP to recharge the Aquifers.

Figure 2. Estimated Cumulative Managed Recharge in the Coyote Valley

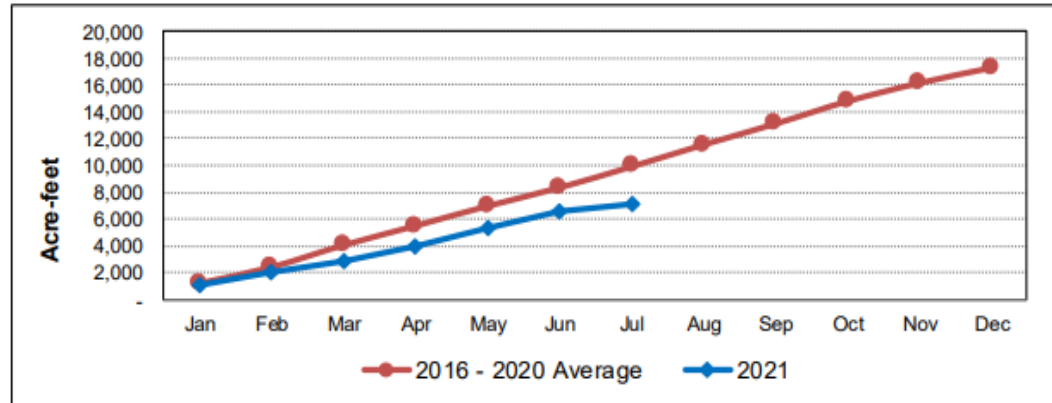
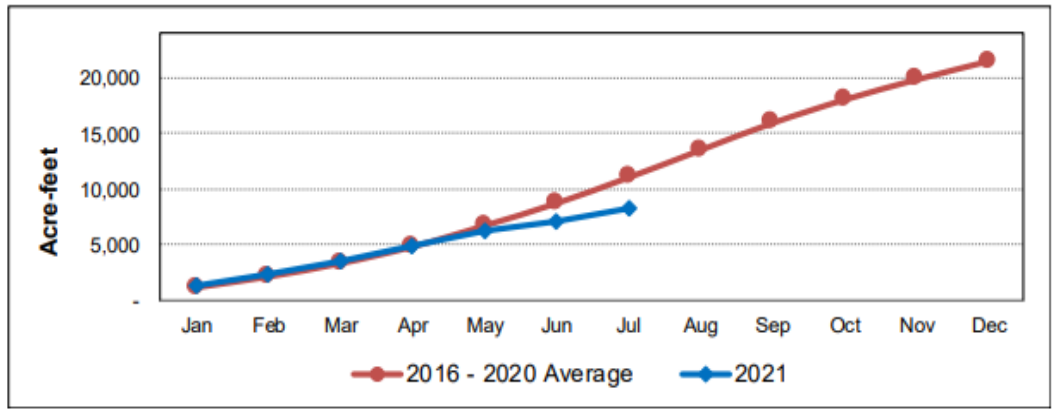


Figure 3. Estimated Cumulative Managed Recharge in the Llagas Subbasin



Morgan Hill Water System



Staff work with Valley Water

Staff continuously monitor our wells' water levels and have regular meetings with Valley Water every two months to ensure the recharge of the aquifers.

Future Projects

- City staff is looking at all options on recycled water as a means of securing additional/new water supply for our community.
- Our 2017 Water System Master Plan calls for the City to install two new groundwater wells (2,600 AFY total capacity) by 2030 for serving anticipated population growth, we are currently exploring sites to build the wells.
- Start study of pipeline improvement project(s) to link the different water zones for increased reliability and redundancy.
- Water supply facility improvements (reservoirs repairs and re-coating) and upsize two (2) existing ones from 0.1 to 0.25 million gallons.

Morgan Hill Water System

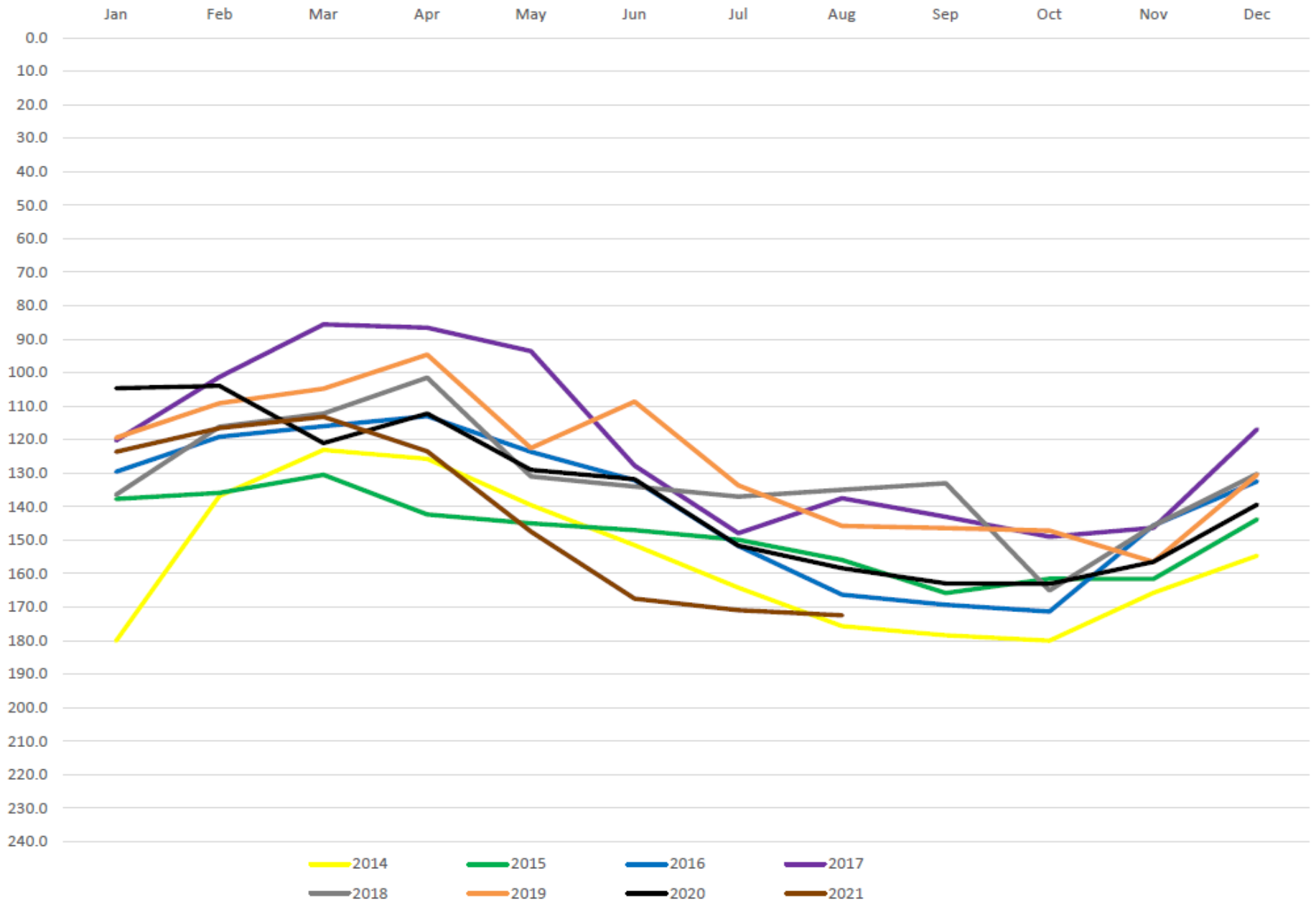
Chart of well levels (Current versus previous drought)

A graphical representation of the well levels for each subbasin for the past 8 years is shown below:

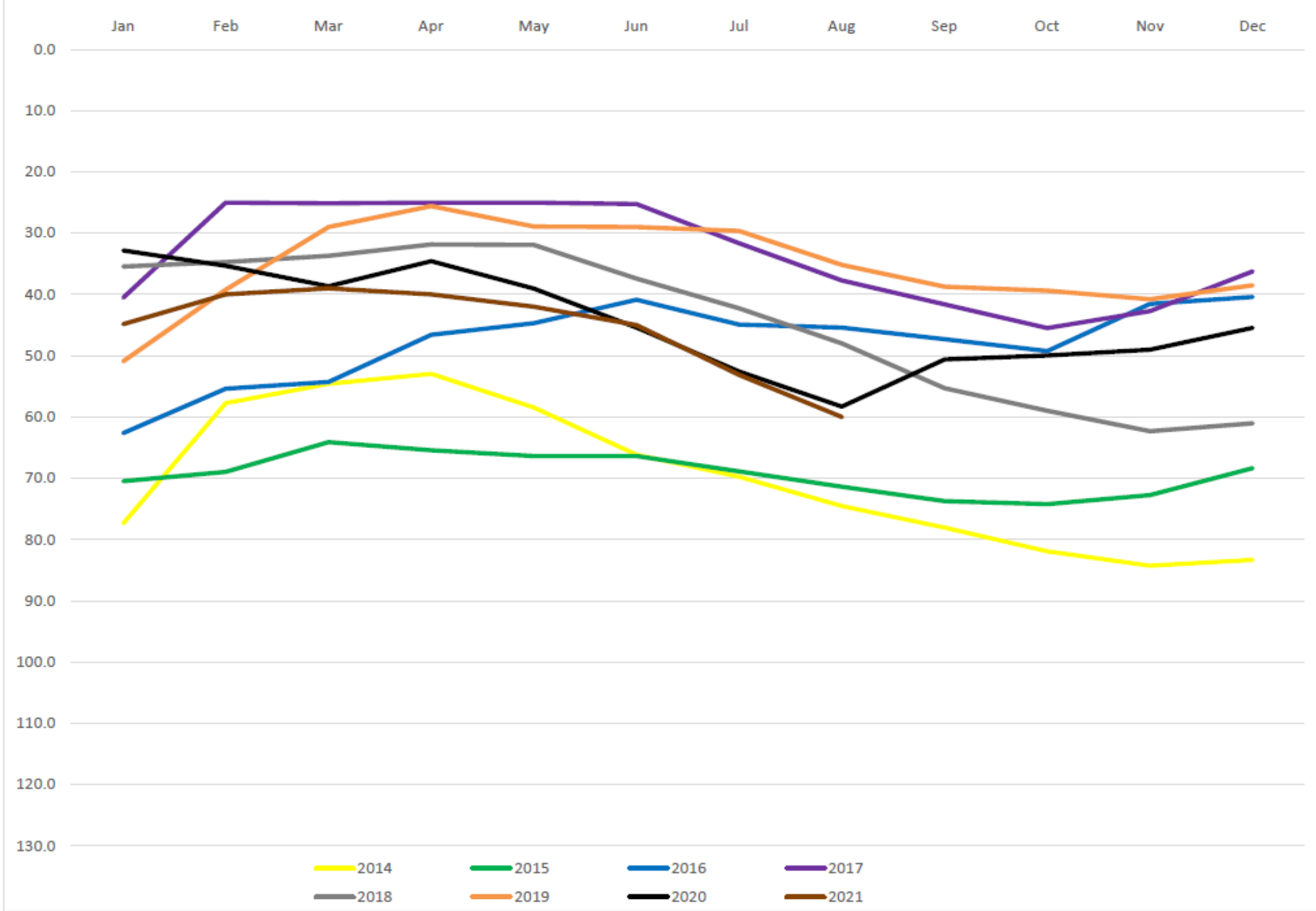
Coyote Subbasin: Boys Ranch
Well # 1

Llagas Subbasin: Diana Well # 1

Boys Ranch #1 Well Static Water Level



Diana #1 Well Static Water Level



Morgan Hill Water System



Projected Water Demand

Demand Type	Projected Demand					
	2020 (AF)	2025 (AF)	2030 (AF)	2035 (AF)	2040 (AF)	2045 (AF)
Potable and Raw Water	7,808	8,671	9,481	10,123	10,808	11,472
Recycled Water	0	0	700	1,500	2,200	2,900
Total	7,808	8,671	10,181	11,623	13,008	14,372

Morgan Hill Water Systemic



Our water supply for 2020 was 7,808 acre-feet which averages to about 7.0 mgd. Our target gallons per capita demand (gpcd) was 159 gpcd, and our actual was 150 gpcd.

The existing firm capacity (approximately 16,700 acre-feet per year) meets the City's current demands. As demands increase, additional groundwater wells and other infrastructure will be constructed as necessary.

Water Conservation & Sustainable Supply

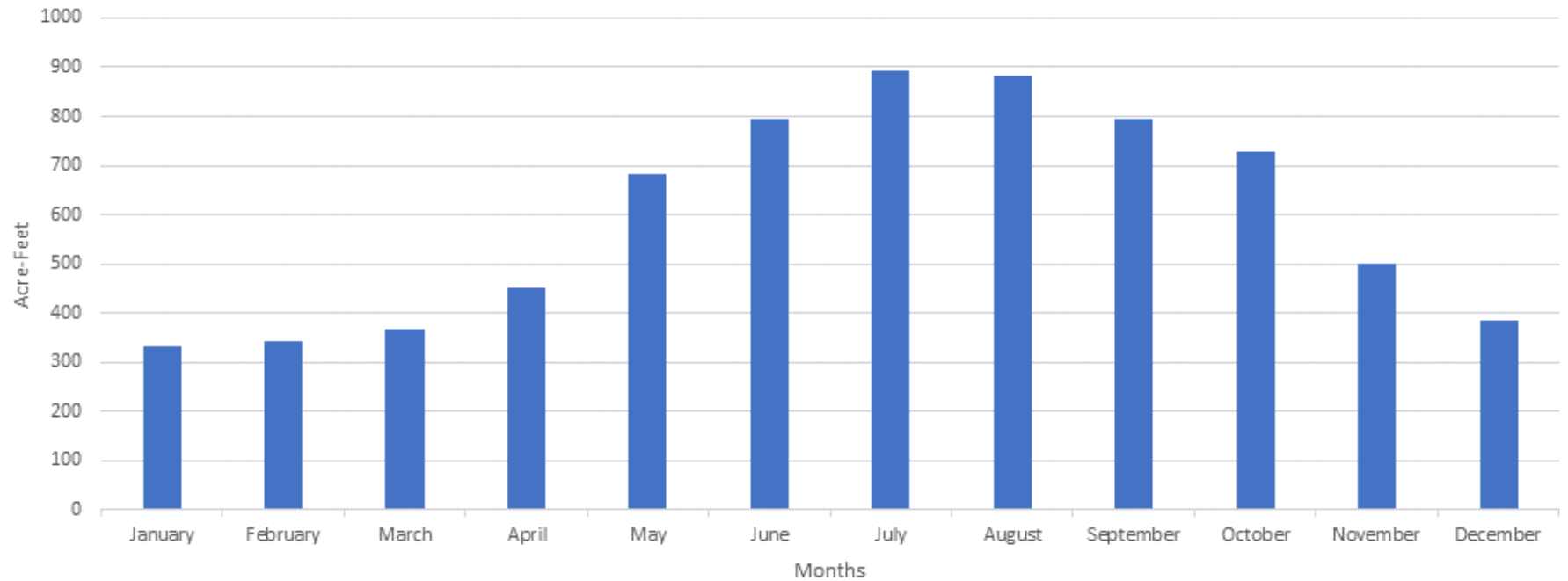


Conservation Outline

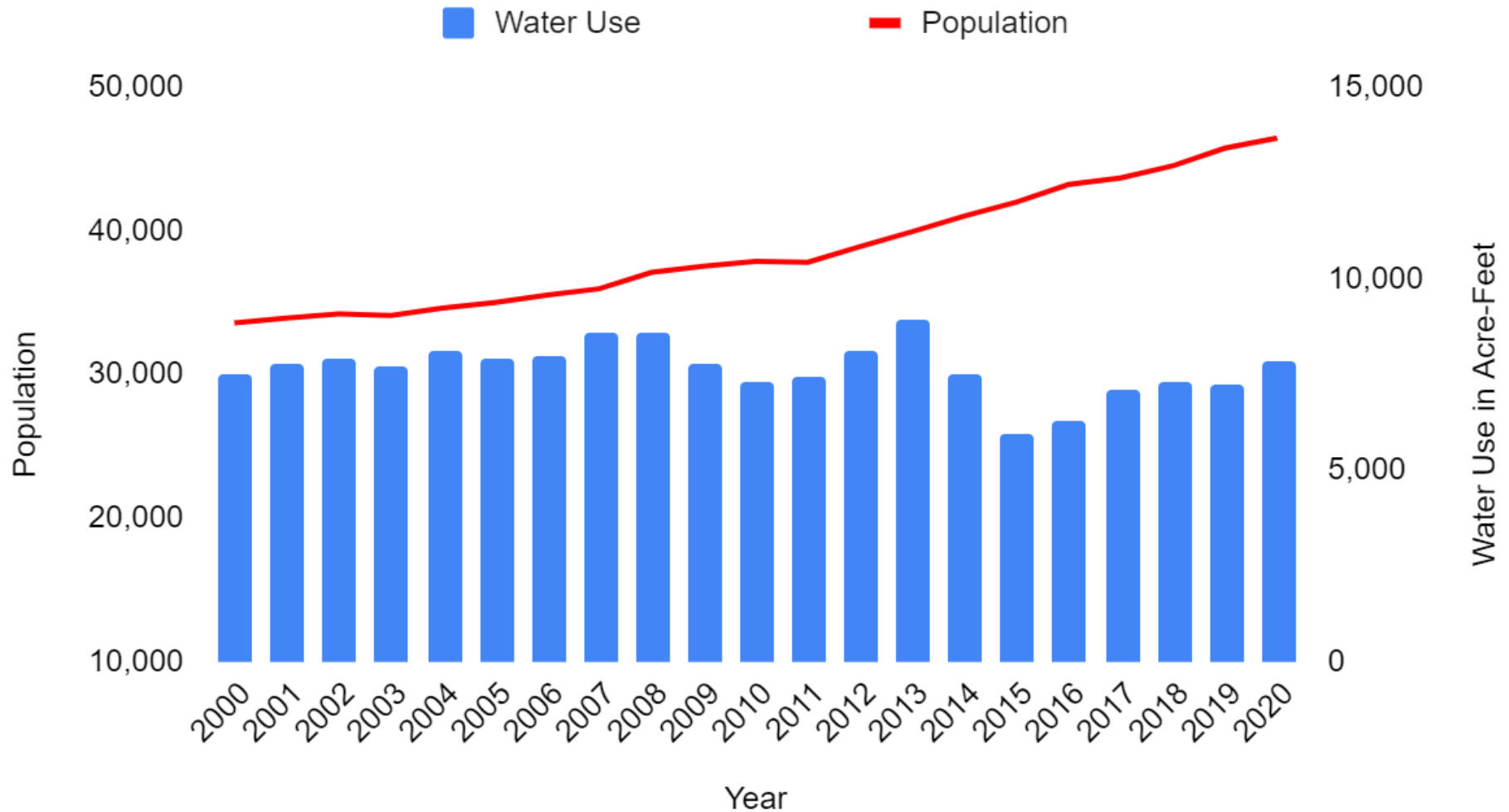


- How We Use Water
- Current Approach
- Recommended Approach
- Planning for a Sustainable Water Supply

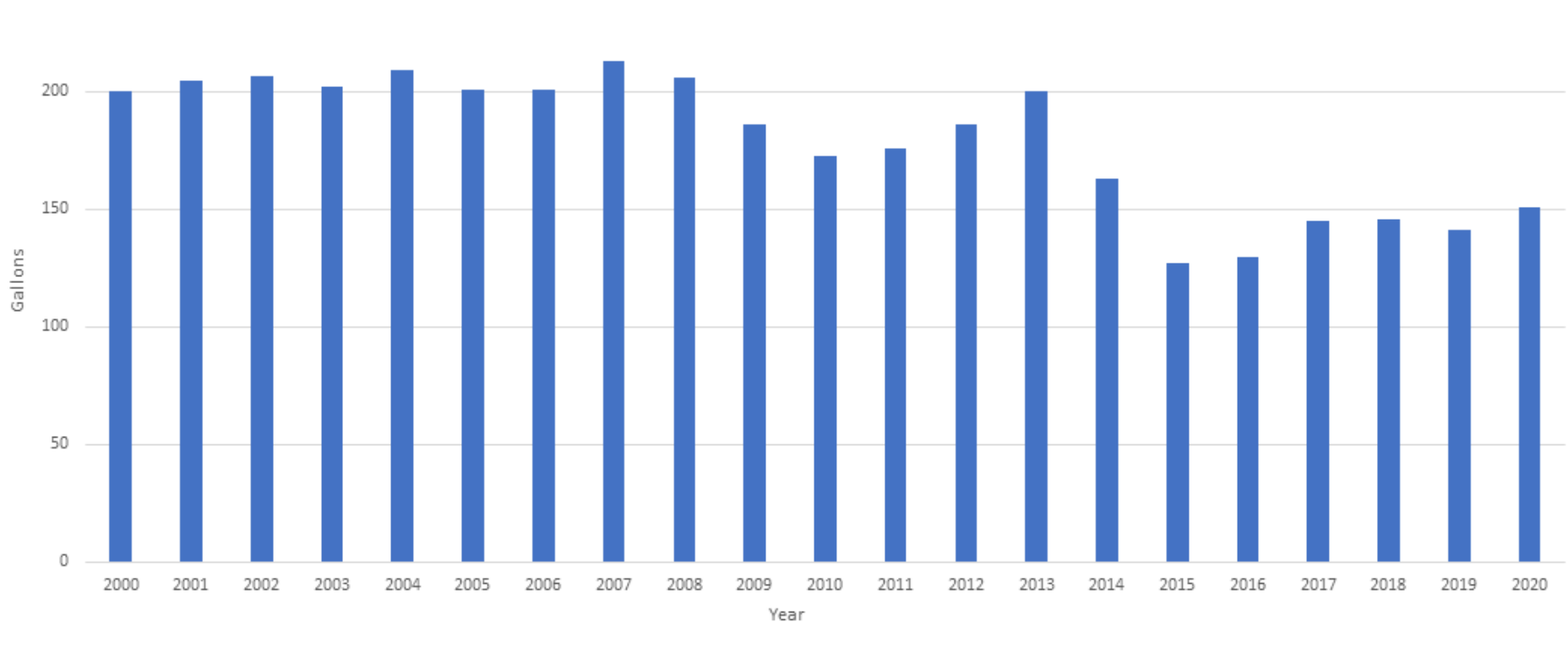
Average Monthly Water Use



Morgan Hill Population and Water Use 2000 - 2020



Water Use Daily Per Person



Morgan Hill Water Shortage Levels

Shortage Level	Shortage Level Condition	Percentage Range
Level 0	Normal	Up to 10%
Level 1	Alert	Up to 20%
Level 2	Severe	Up to 40%
Level 3	Crisis	>40%

Permanent Water Waste Rules

- Limits on Watering Hours, Days, and Duration
- No Excessive Water Flow or Runoff
- No Washing Down Hard or Paved Surfaces
- Obligation to Fix Leaks, Breaks or Malfunctions
- Recirculating Water Required for Water Fountains and Decorative Water Features
- Limits on Washing Vehicles
- Drinking Water Served Upon Request Only

Permanent Water Waste Rules

- Commercial Lodging Establishments Must Provide Guests Option to Decline Daily Linen Services
- No Installation of Single Pass Cooling Systems
- No Installation of Nonrecirculating in Commercial Car Wash and Laundry Systems
- Restaurants Required to Use Water Conserving Dish Wash Spray Valves.
- Commercial Car Wash Systems Must Recycle

Current Levels

- Level 1 – almost no change
- Level 2 – reduced two-day irrigation schedule in summer
- Level 3 – no irrigation + limits on serving new development (likely not enforceable on housing developments)
- No rationing or allocations
- No emphasis on enforcement effort
- Emphasis on faster leak repairs – unenforceable
- “Nuclear” approach to irrigation

Shortage Level	Percent Supply Shortage/Reduction	Morgan Hill Shortage Level	Valley Water Shortage Level Title	Water Supply Condition
Level 0	None	Normal	<i>Normal</i>	At Level 0, no Water Supply Shortage condition exists.
Level 1	Up to 10%	Alert	<i>Alert</i>	A Level 1 Water Supply Shortage condition exists when City Council determines and agrees that 1% - 10% consumer demand reduction is necessary to make more efficient use of water.
Level 2	11 to 20%	Significant	<i>Severe</i>	A Level 2 Water Supply Shortage condition exists when City Council determines and agrees that 11% - 20% consumer demand reduction is necessary to make more efficient use of water.
Level 3	21 to 30%	Severe	<i>Critical</i>	A Level 3 Water Supply Shortage condition exists when City Council determines and agrees that 21% - 30% consumer demand reduction is necessary to make more efficient use of water.
Level 4	31 to 40%	Critical	<i>Critical</i>	A Level 4 Water Supply Shortage condition exists when City Council determines and agrees that 31% - 40% consumer demand reduction is necessary to make more efficient use of water.
Level 5	41 to 50%	Crisis	<i>Emergency</i>	A Level 5 Water Supply Shortage condition exists when City Council determines and agrees that 41% - 50% consumer demand reduction is necessary to make more efficient use of water.
Level 6	> 50%	Emergency	<i>Emergency</i>	A Level 6 Water Supply Shortage condition exists when City Council determines and agrees that a consumer demand reduction of greater than 50% is necessary to maintain public water supplies.

Level	Restrictions and Prohibitions on End Users Category	Additional Explanation or Reference	Penalty, Charge, or Other Enforcement?
Level 0 (Year-Round)	Landscape - Limit landscape irrigation to specific times	Prohibits watering or irrigating lawn, landscape, or other vegetated area 9:00 a.m. and 5:00 p.m. with the following exceptions: - Using a hand-held bucket or similar container - Using a hand-held hose equipped with a positive self-closing water shut-off nozzle or device - For very short periods of time for the express purpose of adjusting or repairing an irrigation system	Yes
Level 0 (Year-Round)	Landscape - Limit landscape irrigation to specific times	Prohibits watering or irrigating of lawn, landscape, or other vegetated area using a system or device that is left unattended for more than fifteen (15) minutes per day per station. Exceptions include low-flow drip systems where no emitter produces flow more than two (2) gallons per hour, and weather based controllers or stream rotor sprinklers with 70% efficiency standard.	Yes
Level 0 (Year-Round)	Landscape - Restrict or prohibit runoff from landscape irrigation	Prohibits watering or irrigating of lawn, landscape, or other vegetated area that causes or allows excessive flow or runoff onto sidewalk, driveway, street, etc.	Yes
Level 0 (Year-Round)	Other - Prohibit use of potable water for washing hard surfaces	No washing down hard or paved surfaces except with the use of hand-held water container, hand-held hose with a positive self-closing water shut-off device, low-volume high-pressure cleaning machine equipped to recycle any water used, or low-volume high-pressure water broom.	Yes
Level 0 (Year-Round)	Other - Customers must repair leaks, breaks, and malfunctions in a timely manner	Requires repairs to be made to breaks, leaks, or other malfunctions no more than ten (10) days upon receiving written notice from the City.	Yes

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Level 0 (Year-Round)	CII - Restaurants may only serve water upon request		Yes
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CITY OF MORGAN HILL