



Regular Meeting Agenda
City Council

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

Wednesday, December 7, 2022 7:00 PM

Hybrid Meeting
17555 Peak Avenue, Morgan Hill, CA 95037 and Virtual (Link to join the meeting can be found below)

Morgan Hill City Council meetings will be held as “hybrid” meetings with the option to attend by teleconference/video conference or in-person. To maximize public safety while still maintaining transparency and public access, members of the public can choose to participate remotely or attend in-person. Information on how the public may observe and participate in the meeting is located below. Santa Clara County strongly encourages masks and social distancing if attending in person.

MEETING GUIDELINES AND PUBLIC COMMENT

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 who would like to participate in the meetings remotely may do so by joining the virtual meeting at: <https://bit.ly/MHCityCouncilMeeting> or by calling (669) 900-9128, then enter the webinar id: 873 3200 8380#. Public comment may be provided in the following ways:

- Provide public comment in-person
- 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 (YOU MUST BE RUNNING THE MOST CURRENT VERSION OF ZOOM TO BE UNMUTED)
- Join the virtual meeting by calling 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

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

RECOGNITIONS

PROCLAMATIONS

PRESENTATIONS

CITY COUNCIL REPORTS

Mayor Constantine

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PUBLIC COMMENT

This opportunity for public comment is for items that are not on the agenda. If you would like to make comments on an item that is on the agenda, please wait until we get to that item to offer your comments. 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. Public comment is intended for comments. Questions posed during public comment are not generally answered. If you have questions, please send them to the City Clerk at ccpubliccomment@morganhill.ca.gov to receive a response. (See additional noticing at the end of this agenda)

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. **ACCEPT THE CITY'S ANNUAL COMPREHENSIVE FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2022**

Recommendation:

Accept the City's Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2022.

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

Recommendation:

Accept and file the report.

3. **ADOPT RESOLUTION APPROVING AND MAKING FINDINGS RELATED TO THE ASSEMBLY BILL (AB) 1600 DEVELOPMENT IMPACT FEE ANNUAL REPORT FOR FISCAL YEAR 2021-22**

Recommendation:

1. Adopt resolution making findings for unexpended development impact fees; and
2. Accept the annual development impact fee report.

4. **ADOPT ORDINANCE NO. 2339, NEW SERIES, APPROVING A ZONING MAP AMENDMENT FOR A MIXED-USE DOWNTOWN PLANNED DEVELOPMENT COMBINING DISTRICT ON A 1.09-ACRE SITE LOCATED EAST OF MONTEREY ROAD BETWEEN 1ST STREET AND 2ND STREET (ZA2022-0004: MONTEREY – LEAL GRANADA HOTEL) APN: 726-14-074**

Recommendation:

Waive the reading, adopt Ordinance No. 2339, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

5. **ADOPT ORDINANCE NO. 2340, NEW SERIES, ADDING CHAPTER 15.62 (ELECTRIC VEHICLE INFRASTRUCTURE) TO TITLE 15 (BUILDINGS AND CONSTRUCTION) TO THE MORGAN HILL MUNICIPAL CODE REQUIRING THE ADDITION OF ELECTRIC VEHICLE INFRASTRUCTURE FOR PARKING THAT SERVES NEWLY CONSTRUCTED AND EXISTING BUILDINGS**

Recommendation:

Waive the reading, adopt Ordinance No. 2340, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

6. **ADOPT HAZARDOUS VEGETATION ABATEMENT RESOLUTION, EXEMPT FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) UNDER SECTION 15304(i)**

Recommendation:

Adopt resolution declaring weeds and brush to be a nuisance and setting the hazardous vegetation public hearing on February 15, 2023.

7. **APPROVE CITY OF MORGAN HILL'S SANITARY SEWER MANAGEMENT PLAN (SSMP) AS REQUIRED BY STATE WATER RESOURCES CONTROL BOARD, EXEMPT FROM CEQA UNDER SECTION 15302**

Recommendation:

Adopt resolution approving the Sanitary Sewer Management Plan (SSMP).

8. **APPROVE FIRST AMENDMENT TO THE SPECTRUM PACIFIC WEST, LLC OPEN TRANSPORT NETWORK (OTN) FACILITIES LICENSE AGREEMENT, EXEMPT FROM CEQA CLASS 1, EXISTING FACILITIES**

Recommendation:

Approve the First Amendment to the Spectrum Pacific West, LLC License Agreement.

9. **APPROVE FINAL MAP FOR ROSEWOOD - TRACT NO. 10599 (JUAN HERNANDEZ DRIVE AND BARRETT AVENUE) AND RELATED SUBDIVISION IMPROVEMENTS AGREEMENT**

Recommendation:

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with BFH CM LLC; and
3. Authorize the recordation of the Final Map and Subdivision Improvements

Agreement.

10. **APPROVE THE PURCHASE AND INSTALLATION OF THREE GENERATORS FOR UTILITIES, CATEGORICALLY EXEMPT FROM CEQA UNDER SECTION 15301**

Recommendation:

Approve and authorize the City Manager to execute an agreement with Edward R. Bacon in the amount of \$315,000 for the purchase and installation of three generators.

11. **APPROVE CONSULTANT AGREEMENT WITH HINDERLITER DE LLAMAS & ASSOCIATES (HDL) FOR SALES AND USE TAX AUDIT SERVICES AND BUSINESS LICENSE ADMINISTRATION AND COMPLIANCE SERVICES**

Recommendation:

1. Approve an agreement with Hinderliter De Llamas and Associates (HdL), for sales and use tax audit, and business license administration and compliance services; and
2. Authorize the City Manager to execute and administer that certain agreement.

12. **APPROVE FIRST AMENDMENT TO THE CAL-WEST LIGHTING AND SIGNAL MAINTENANCE, INC. MAINTENANCE SERVICE AGREEMENT, EXEMPT FROM CEQA UNDER SECTION 15301**

Recommendation:

1. Approve the first amendment to the maintenance service agreement with Cal-West Lighting and Signal Maintenance, Inc. for \$200,000 for a total contract amount of \$587,600; and
2. Authorize the City Manager to execute and administer the first amendment to the maintenance service agreement with Cal-West Lighting and Signal Maintenance, Inc.

13. **APPROVE CONSULTANT AGREEMENT WITH AKEL ENGINEERING FOR SEWER SYSTEM MASTER PLAN UPDATE**

Recommendation:

1. Authorize the City Manager to execute a consultant agreement with Akel Engineering Group, Inc. in the amount of \$180,827 to update the Wastewater System Master Plan; and
2. Adopt a resolution appropriating \$80,827 from Fund 641 amending the

Fiscal Year (FY) 2022-23 Capital Improvement Budget.

14. **APPROVE THE PART-TIME TEMPORARY AND SEASONAL EMPLOYEES SALARY SCHEDULE EFFECTIVE JANUARY 1, 2023**

Recommendation:

Approve the Part-Time Temporary and Seasonal Employees salary schedule effective January 1, 2023.

15. **APPROVE RESPONSE TO 2022 CIVIL GRAND JURY REPORT "IF YOU ONLY READ THE BALLOT TITLE, YOU'RE BEING DUPED"**

Recommendation:

1. Approve response to 2022 Civil Grand Jury Report "If You Only Read the Ballot Title, You're Being Duped," and
2. Authorize the Mayor to sign the response.

16. **APPROVE PACIFIC GAS AND ELECTRIC COMPANY AGREEMENT FOR UNDERGROUNDING OVERHEAD UTILITIES AS PART OF THE HALE AVENUE EXTENSION PROJECT**

Recommendation:

Approve and authorize the City Manager to execute and administer a Pacific Gas and Electric Company Agreement for undergrounding overhead utilities as part of the Hale Avenue Extension Project for a not to exceed amount of \$63,876.72

17. **APPROVE THE NOVEMBER 16, 2022 CITY COUNCIL MEETING MINUTES**

Recommendation:

Approve minutes.

18. **DELEGATE THE AUTHORITY TO CITY MANAGER TO ACCEPT DONATIONS FROM SHOE PALACE**

Recommendation:

Delegate the authority to City Manager to accept donations from Shoe Palace.

PUBLIC HEARINGS

19. **INTRODUCE ORDINANCE AMENDING THE ZONING CODE TO UPDATE ACCESSORY DWELLING UNIT PROVISIONS TO COMPLY WITH STATE LAW AND MAKING MINOR CORRECTIONS TO VARIOUS PROVISIONS, EXEMPT FROM CEQA UNDER SECTION 15061(b)(3)**

Recommendation:

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

OTHER BUSINESS

20. AUTHORIZE INITIATION OF NEGOTIATIONS WITH DUB BASEBALL AND USA BMX FOR DEVELOPMENT AT BUTTERFIELD PARK SITE

Recommendation:

Authorize staff to pursue lease/partnership agreements with Dub Baseball and USA BMX for development of portions of the Butterfield Park site.

21. INTRODUCE AN ORDINANCE UPDATING THE CITY WATER WASTE PROVISIONS CATEGORICALLY EXEMPT FROM CEQA UNDER SECTION 15307

Recommendation:

1. Waive the first and second reading of the ordinance; and
2. Introduce the ordinance updating the City's water waste provisions.

22. RECEIVE MONTHLY BUDGET UPDATE AND OCTOBER 2022 FINANCIAL AND INVESTMENT REPORTS

Recommendation:

Accept and file report.

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

SUSTAINABLE MORGAN HILL



Vision

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



Choose Morgan Hill

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



City Council Ongoing Priorities

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



2022-2023 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.

December 7, 2022

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CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

ACCEPT THE CITY'S ANNUAL COMPREHENSIVE FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2022

RECOMMENDATION(S)

Accept the City's Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2022.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Community Outreach, Engagement, and Messaging

REPORT NARRATIVE:

The [Fiscal Year 2021-22 Annual Comprehensive Financial Report \(ACFR\)](#) is presented for your review. Each year the City engages an independent firm to audit the books and accounts of the City's general ledger. Included in this audit are the review and verification of all finance processes. An annual audit is required by state law and by bond covenants.

The ACFR presents the operations and financial activity of all the City's various funds, including the General Fund. It includes an unmodified audit opinion from Maze & Associates, the City's external auditors, stating that the financial statements present fairly the results of operations for the year ended June 30, 2022, in conformance with Generally Accepted Accounting Principles (GAAP). An auditor gives an Unmodified Opinion (or clean opinion) when they do not have any significant reservation in respect of matters contained in the Financial Statements.

A summary of significant highlights follows:

General Fund: The fund balance increased by \$5.9 million compared to prior year mostly attributable to continued strength in certain revenue categories in addition to spending controls. Contrary to the increased revenue and conservative spending, the fair market value adjustment for the investments reduced noted increases by \$1.2 million.

Development Services Fund: At the end of FY 21-22, the fund had a negative balance of about \$0.5 million, a slight decrease of less than \$0.1 million from prior year. The fund was budgeted to end the fiscal year with an operating deficit of approximately \$0.4 million and require a General Fund loan. However, it ended up better than budgeted. Nonetheless, the fund had incurred multiple years of operating deficit which necessitates the comprehensive review of the fee structure to ensure the fund's fiscal sustainability. In 2021, staff engaged a consultant to conduct an updated fee study of Planning and Land Development Engineering to update the fees which were last updated in 2017. The updated fees were approved by the Council and went into effect in March 2022.

Enterprise Funds: Unrestricted net position at June 30, 2022, amounted to \$16.3 million for Sewer Operations and \$14.1 million for Water Operations. Water Operations' unrestricted net position increased by \$3.4 million compared to prior year. The operating revenues saw a decrease of \$1.4 million primarily due to reduced consumption resulting from the on-going drought. Sewer Operations' unrestricted net position increased by \$3.1 million from prior fiscal year with operating revenues increasing by \$1.2 million primarily due to rate adjustments. The Sewer Impact Fund had \$19.5 million in net position restricted for capital improvements and expansion, a decrease of \$2.6 million from prior year mainly due to investment in capital assets, while the Water Impact Fund had \$2.9 million for the same purpose, a decrease of \$0.5 million from prior year.

COMMUNITY ENGAGEMENT:

Inform

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

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

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

FISCAL AND RESOURCE IMPACT:

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

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.

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

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

RECOMMENDATION(S)

Accept and file the report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Fiscal Sustainability

Community Outreach, Engagement, and Messaging

REPORT NARRATIVE:

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

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

COMMUNITY ENGAGEMENT:

Inform

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

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

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

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Not a Project

Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

SENATE BILL 165

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

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

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

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

Purpose of Special Tax

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

Collections & Expenditures

Fund	7/1/2021 Balance	Total Amount Collected ⁽¹⁾	6/30/2022 Balance ⁽²⁾	Amount Expended	Service Status
Special Tax Fund	\$137,840.00	\$21,363.00	\$132,367.00	\$26,836.00	Ongoing

(1) Figure represents the total amount levied for Fiscal Year 2021/22, less County Collection Fees of 1.0% of the total levy amount and delinquencies.

(2) Includes interest earned.

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

ADOPT RESOLUTION APPROVING AND MAKING FINDINGS RELATED TO THE ASSEMBLY BILL (AB) 1600 DEVELOPMENT IMPACT FEE ANNUAL REPORT FOR FISCAL YEAR 2021-22

RECOMMENDATION(S)

1. Adopt resolution making findings for unexpended development impact fees; and
2. Accept the annual development impact fee report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Fiscal Sustainability

Community Outreach, Engagement, and Messaging

REPORT NARRATIVE:

Government Code Section 66000 et seq. requires that any city imposing development impact fees must report certain information each year. In accordance with this requirement, staff is presenting the Annual Development Impact Fee Report (Attachment 1) for the fiscal year ending June 30, 2022. The report includes a fee description, a schedule of impact fees for the reporting period as approved by City Council, and a report of the 2021-22 revenues and expenditures for each impact fee, along with the balance available for current and future projects. A description of the project that resources were used for is also included for each impact fee.

Section 66001(d) requires that for the fifth fiscal year following the collection of development fees, and every five years thereafter, the local agency shall make findings with respect to any portion of the fee collected remaining unexpended, whether committed or uncommitted. Staff identified \$5,236,461 from the Storm Drain Impact Fee (Fund 303); \$2,041,294 from the Public Safety Facilities Impact Fee (Fund 315); and \$102,214 from the Public Facilities Impact Fee (Fund 347) in unexpended fees that were collected over five years ago (Attachment 2). These unexpended fees have been or will be appropriated into existing and future capital improvement projects:

1) Storm Drain Impact Fee to fund Storm System Expansions and Llagas Flood Control Project. The Storm System Expansions will expand storm system capacity in alignment with the 2018 Storm Drain System Master Plan and the Llagas Flood Control Project is to address storm water conveyance that drains into the Upper Llagas Creek Flood Protection Project (ULCFPP) and the West Little Llagas watershed. A total of \$8,700,000 from Storm Drain Impact Fees has been allocated to these projects in the adopted Fiscal Year 2022-23 - 2027-28 Capital Improvement Program (CIP).

2) Public Safety Facilities Impact Fee to fund construction of the Fire Station on Butterfield Boulevard. A total of \$9,100,000 from Public Safety Facilities Impact Fees has been allocated to this project in the adopted Fiscal Year 2022-23 - 2027-28 CIP.

3) Public Facilities Impact Fee to fund construction of public facilities such as expansion of the City Hall and the Corporation Yard. Based on the recently completed Maintenance and Operations Space Needs Analysis, the total cost for the expansion of the City Hall and the Corporation Yard is estimated to be about \$43 million.

COMMUNITY ENGAGEMENT:

Inform

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

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

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

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Not a Project

Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

City of Morgan Hill
AB 1600 Development Impact Fee Report
Fiscal Year 2021-22

Impact Fee Fund Descriptions

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

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

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

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

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

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

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

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

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

City of Morgan Hill
Impact Fee Schedule Summary
Fiscal Year 2021-22

Description of Fee	Unit of Measure	Amount
Water Impact Fee	Single Family Dwelling Unit	4,264.00
	Multi Family Dwelling Unit	3,847.00
	Commercial/Industrial/Office per acre	12,104.00
Sewer Impact Fee	Single Family Dwelling Unit	16,687.00
	Multi Family Dwelling Unit	14,123.00
	Commercial/Industrial/Office per GPD	54.95
Storm Drain Impact Fee	Single Family Dwelling Unit	2,115.00
	Multi Family Dwelling Unit (>1200SF)	1,204.00
	Multi Family Dwelling Unit (<1200SF)	560.00
	Commercial/Office per acre	22,901.00
	Industrial per acre	16,861.00
	Auto Dealership per acre	22,901.00
	Hotel per room	339.00
Park Impact Fee	Single Family Dwelling Unit-Sub	6,327.00
	Single Family Dwelling Unit-No Sub	4,600.00
	Multi Family Dwelling Unit-Sub	6,096.00
	Multi Family Dwelling Unit-No Sub	4,437.00
Traffic Impact Fee	Single Family Dwelling Unit	3,675.00
	Multi Family Dwelling Unit (>1200SF)	2,277.00
	Multi Family Dwelling Unit (<1200SF)	1,434.00
	Commercial/Industrial/Office per PHT	3,675.00
Library Impact Fee	Single Family Dwelling Unit	2,324.00
	Multi Family Dwelling Unit	2,238.00
Public Safety Facilities Impact Fee	Single Family Dwelling Unit	2,115.00
	Multi Family Dwelling Unit (>1200SF)	1,870.00
	Multi Family Dwelling Unit (<1200SF)	1,400.00
	Commercial per acre	11,818.00
	Industrial per acre	14,184.00
	Office per acre	14,168.00
	Auto Dealership per acre	5,668.00
	Hotel per room	65.00
Public Facilities	Single Family Dwelling Unit	602.00
	Multi Family Dwelling Unit	580.00
	Commercial per acre	1,327.00
	Office per acre	1,577.00
	Industrial per acre	1,857.00
	Auto Dealership per acre	532.00
	Hotel per room	15.00
Community Recreation Centers	Single Family Dwelling Unit	4,309.00
	Multi Family Dwelling Unit	3,781.00

City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2021-22

FUND 301 - PARKS IMPACT FEE	Project Number	FY 21-22 AB 1600		
<u>Revenue</u>				
Interest		\$ 12,273		
Development Impact Fees		619,881		
Project Reimbursement/Others		4,675,231		
Total Revenue		\$ 5,307,385		
<u>Revenue Expended For</u>			% from this Fund	Total Project Expenditures
Parks Land	110097	\$ 3,029,621	100.00%	3,029,621
Inclusive Playground	137015	1,552,321	100.00%	1,552,321
Madrone Channel	117022	48,395	9.03%	535,866
Butterfield Blvd Connector Path Project	148017	831,490	100.00%	831,490
W. Little Llagas Creek Trail Phase	117001	734,546	100.00%	734,546
Sports Facility Development	148018	63,350	100.00%	63,350
General Plan Update		7,704	7.00%	110,000
RCSD Services - Infrastructure Planning		75,000	26.79%	280,000
Banking Fees and Other		15,629	100.00%	15,629
Administration		43,236	2.85%	1,516,873
Total Expenditures		\$ 6,401,292		
Revenue Less Expenditures		\$ (1,093,907)		
Balance as of July 1, 2021		270,918		
Balance as of June 30, 2022		\$ (822,989)		

City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2021-22

FUND 303 - STORM DRAIN IMPACT FEE	Project Number	FY 21-22 AB 1600		
Revenue				
Interest		\$ (489,240)		
Development Impact Fees		1,318,401		
Total Revenue		\$ 829,161		
Revenue Expended For			% from this Fund	Total Project Expenditures
Storm System Expansion	415020	\$ 56,662	100.00%	56,662
Llagas Flood Control	417099	93,496	100.00%	93,496
Banking Fees and Other		116	100.00%	116
General Plan Update		7,704	7.00%	110,000
RCSD Services - Infrastructure Planning		15,000	5.36%	280,000
Administration		7,344	0.48%	1,516,873
Total Expenditures		\$ 180,322		
Revenue Less Expenditures		\$ 648,839		
Balance as of July 1, 2021		10,947,520		
Balance as of June 30, 2022		\$ 11,596,359		

City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2021-22

FUND 309 - TRAFFIC IMPACT FEE	Project Number	FY 21-22 AB 1600		
<u>REVENUE</u>				
Interest		\$ (101,022)		
Traffic Impact Fees		908,645		
VTA Measure B		8,353,820		
TOTAL REVENUE		<u>\$ 9,161,443</u>		
<u>Revenue Expended For</u>			% from this Fund	Total Project Expenditures
Hale Avenue Extension	546007	\$ 10,072,094	100.00%	10,072,094
General Plan Update		31,896	29.00%	110,000
RCSD Services - Infrastructure Planning		75,000	26.79%	280,000
Administration		12,708	0.84%	1,516,873
Total Expenditures		<u>\$ 10,191,698</u>		
Revenue Less Expenditures		\$ (1,030,255)		
Balance as of July 1, 2021		<u>2,217,293</u>		
Balance as of June 30, 2022		<u><u>\$ 1,187,038</u></u>		

City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2021-22

FUND 315 - PUBLIC SAFETY FACILITIES	Project #	FY 21-22 AB 1600		
<u>REVENUE</u>				
Interest		\$ (162,116)		
Public Safety Facilities Impact Fees		230,500		
TOTAL REVENUE		<u>\$ 68,384</u>		
<u>Revenue Expended For</u>			% from this Fund	Total Project Expenditures
New Fire Station	231018	\$ 286,522	100.00%	286,522
Debt Service		203,629	30.35%	670,863
Banking Fees and Other		800	100.00%	800
Administration		6,552	0.43%	1,516,873
Total Expenditures		<u>\$ 497,503</u>		
Revenue Less Expenditures		\$ (429,119)		
Balance as of July 1, 2021		<u>3,650,943</u>		
Balance as of June 30, 2022		<u><u>\$ 3,221,824</u></u>		

City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2021-22

FUND 347 - PUBLIC FACILITIES IMPACT FEE	Project Number	FY 21-22 AB 1600		
REVENUE				
Interest/Other		\$ (42,738)		
Public Facilities Impact Fees		52,845		
TOTAL REVENUE		\$ 10,107		
			% from this Fund	Total Project Expenditures
Revenue Expended For				
RCSD Services - Infrastructure Planning		\$ 25,000	8.93%	280,000
Administration		2,328	0.15%	1,516,873
Total Expenditures		\$ 27,328		
Revenue Less Expenditures		\$ (17,221)		
Balance as of July 1, 2021		1,034,272		
Balance as of June 30, 2022		\$ 1,017,051		

City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2021-22

FUND 348 - LIBRARY IMPACT FEE	Project Number	FY 21-22 AB 1600		
<u>REVENUE</u>				
Interest		\$ (60,525)		
Library Impact Fees		149,191		
Library Lease		87,072		
TOTAL REVENUE		<u>\$ 175,738</u>		
<u>Revenue Expended For</u>			% from this Fund	Total Project Expenditures
Library Expansion	251015	\$ 1,722	100.00%	1,722
Civic Center Debt Service		211,008	31.45%	670,863
Administration		5,700	0.38%	1,516,873
Total Expenditures		<u>\$ 218,430</u>		
Revenue Less Expenditures		\$ (42,692)		
Balance as of July 1, 2021		<u>1,487,275</u>		
Balance as of June 30, 2022		<u><u>\$ 1,444,583</u></u>		

City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2021-22

FUND 360 - COMMUNITY/REC CENTERS IMPACT FEE	Project Number	FY 21-22 AB 1600		
REVENUE				
Interest/Others		\$ (54,384)		
Com/Rec Centers Impact Fees		277,049		
TOTAL REVENUE		\$ 222,665		
Revenue Expended For			% from this Fund	Total Project Expenditures
Centennial Recreation Center Expansion	138016	\$ 280,625	100.00%	280,625
Administration		516	0.03%	1,516,873
Total Expenditures		\$ 281,141		
Revenue Less Expenditures		\$ (58,476)		
Balance as of July 1, 2021		1,353,501		
Balance as of June 30, 2022		\$ 1,295,025		

City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2021-22

FUND 641 - SEWER IMPACT FEE	Project Number	FY 21-22 AB 1600		
<u>REVENUE</u>				
Interest		\$ 143,142		
Sewer Impact Fees		1,685,341		
Reimbursement of Expenses		6,231,577		
TOTAL REVENUE		<u>\$ 8,060,060</u>		
<u>Revenue Expended For</u>			% from this Fund	Total Project Expenditures
Sewer Plant Expansion	303093	\$ 7,547,560	1017.79%	741,565
Sewer Plant Improvements	303a11	1,216,415	100.00%	1,216,415
Sewer Main Upgrades	302t17	487,650	537.66%	90,698
General Plan Update		7,704	7.00%	110,000
RCSD Services - Infrastructure Planning		25,000	8.93%	280,000
Debt Service		232,980	9.15%	2,544,863
Administration		60,384	3.98%	1,516,873
Total Expenditures		<u>\$ 9,577,693</u>		
Revenue Less Expenditures		\$ (1,517,633)		
Balance as of July 1, 2021		<u>22,070,164</u>		
Balance as of June 30, 2022		<u><u>\$ 20,552,531</u></u>		

City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2021-22

FUND 651 - WATER IMPACT FEE	Project Number	FY 21-22 AB 1600		
REVENUE				
Interest		\$ 20,818		
Water Impact Fees		469,052		
TOTAL REVENUE		\$ 489,870		
Revenue Expended For			% from this Fund	Total Project Expenditures
New Water Mains	603000	\$ 3,320	100.000%	3,320
Holiday Lake Improvements	624018	48,012	100.000%	48,012
Rate Studies, Plans, and Assessments	624018	56,268	100.000%	56,268
General Plan Update		7,704	7.004%	110,000
RCSD Services - Infrastructure Planning		25,000	8.93%	280,000
Debt Service		680,136	41.016%	1,658,229
Banking Fees and Other		800	100.000%	800
Administration		19,128	1.261%	1,516,873
Total Expenditures		\$ 840,368		
Revenue Less Expenditures		\$ (350,498)		
Balance as of July 1, 2021		3,275,094		
Balance as of June 30, 2022		\$ 2,924,596		

RESOLUTION NO.

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

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

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

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

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

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

1. The City Council has considered the full record before it, which may include, but is not limited to, the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council finds that the Storm Drain Impact Fee Fund currently contains Five Million Two Hundred Thirty Six Thousand Four Hundred Sixty One Dollars (\$5,236,461); Public Safety Facilities Impact Fee Fund currently contains Two Million Forty One Thousand Two Hundred Ninety Four Dollars (\$2,041,294); and Public Facilities Impact Fee Fund currently contains One Hundred Two Thousand Two Hundred Fourteen Dollars (\$102,214) in unexpended fees that were collected over five (5) years ago.

3. In accordance with Government Code section 66001(d)(1), the City Council finds as follows:
 - a. The Unexpended Fees will be used to provide for the following projects:
 - (A) Storm Drain Impact Fee to fund Storm System Expansions and Llagas Flood Control Project. The Storm System Expansions will expand storm system capacity in alignment with the 2018 Storm Drain System Master Plan and the Llagas Flood Control Project is to address storm water conveyance that drains into the Upper Llagas Creek Flood Protection Project (ULCFPP) and the West Little Llagas watershed. The project would provide flood protection and mitigate the increased risk of flooding when the ULCFPP is completed;
 - (B) Public Safety Facilities Impact Fee to fund construction of the Fire Station on Butterfield Boulevard. The project will address the need for a new fire station as the community grows.
 - (C) Public Facilities Impact Fee to fund the expansion of the City Hall and the Corporation Yard. These projects will address the maintenance and operations space needs as the community grows.
 - b. There exists a reasonable relationship between the Unexpended Fees and the purpose for which they were charged as described above.
 - c. The current estimated costs that have been appropriated or will be appropriated for the Storm System Expansions and Llagas Flood Control Project are approximately Eight Million Seven Hundred Thousand Dollars (\$8,700,000); costs for the Fire Station on Butterfield Boulevard are approximately Nine Million One Hundred Thousand Dollars (\$9,100,000); and costs for the expansion of the City Hall and the Corporation Yard are estimated to be about Forty Three Million Dollars (\$43,000,000). The City's funding sources will include the Unexpended Fees described above and future impact fees to be collected for these projects.
 - d. The Unexpended Fees have been deposited in the respective Impact Fee Funds, which are the appropriate funds to finance the projects described above.
4. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 7th day of December 2022 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.22-XXX, adopted by the City Council at the meeting held on December 7, 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Kim Mancera, Deputy City Clerk

APPROVED BY: City Manager

ADOPT ORDINANCE NO. 2339, NEW SERIES, APPROVING A ZONING MAP AMENDMENT FOR A MIXED-USE DOWNTOWN PLANNED DEVELOPMENT COMBINING DISTRICT ON A 1.09-ACRE SITE LOCATED EAST OF MONTEREY ROAD BETWEEN 1ST STREET AND 2ND STREET (ZA2022-0004: MONTEREY – LEAL GRANADA HOTEL) APN: 726-14-074

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2339, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Economic Development

Guiding Documents

Economic Blueprint

Morgan Hill 2035 General Plan

Morgan Hill Downtown Specific Plan

REPORT NARRATIVE:

On November 16, 2022, the City Council introduced Ordinance No. 2339 New Series, by the following roll call vote: AYES: Constantine, Borgioli, McKay; NOES: Martinez Beltran, Spring; ABSTAIN: None; ABSENT: None.

The City Council held a public hearing and approved the Planned Development (PD) and Design Permit Amendment to allow for additional height that will allow the construction of a partial 5th floor to accommodate additional hotel rooms at the approved Granada Hotel on Monterey Road in Downtown. As part of that approval, the City Council directed the City Attorney and City Manager to enter into a Memorandum of Understanding (MOU) with the project developer to memorialize the listed penalties that

may be invoked if the performance standards are not achieved. The MOU is attached.

COMMUNITY ENGAGEMENT:

Inform

The proposed project was publicly noticed by mailing to property owners within 600-feet of the project and a 1/4 page ad in the newspaper for the minimum 10-day period.

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In 2014, the City of Morgan Hill, as Successor Agency to the former Morgan Hill Redevelopment Agency, began the process of disposing of former Redevelopment assets, including the former Downtown Mall located at 17490 Monterey Road (APN:726-14-074). The process included an extensive Request for Qualifications/Proposals (RFQ/P) process consistent with the Long Range Property Management Plan and with the guidance of a community-based group comprised of the Morgan Hill Economic Development Corporation, as well as representatives of the Morgan Hill Chamber of Commerce and the Morgan Hill Downtown Association. The RFQ/P process ultimately resulted in the Purchase, Sale and Grant Agreement by the Morgan Hill Oversight Board to Leal Vineyards Inc. on September 3, 2015, for a two-phased project: Phase 1, the rehabilitation of the Granada Theatre for use as an entertainment, special event and assembly venue with food and beverage service, and for Phase 2, for a Market Hall/Restaurant, Boutique Hotel.

In April 2016, the Planning Commission reviewed and approved a Design Permit and a Conditional Use Permit for a new Downtown Hotel. The approvals included a new 67,940 square foot, four-story building with restaurants, bars, retail, banquet hall(s), and hotel lobby with guest rooms, services including valet parking and amenities. The Conditional Use Permit allows for an outdoor green event space, conference/meeting rooms, banquet rooms, and ancillary prep kitchens with one main kitchen to serve the hotel. The hotel also included a pool with outdoor living/ lounge area. The project was approved by the City Council on May 18, 2016.

At the [October 11, 2022 Planning Commission meeting](#), the Commission held a duly noticed public hearing where they considered public testimony along with staff's report, exhibits, drawings, and other materials. The Planning Commission recommended approval of the PD and the Design Permit Amendment to City Council with no changes by the follow vote: 6 ayes, 0 noes, 0 abstain, and 1 absent.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

An Addendum to the DTSP Master Environmental Impact Report (MEIR) has been prepared pursuant to Title 14, Section 15164 of the California Code of Regulations and City of Morgan Hill environmental standards. The City of Morgan Hill, Development Services Department, has reviewed the proposed project and on the basis of the whole record before it, has determined that pursuant to CEQA Guidelines Section 15179, no substantial changes have occurred with respect to the circumstances under which the MEIR was certified, and there is no new available information, which was not known and could not have been known at the time that the MEIR was certified. The project, as identified in the Addendum, would not have a significant effect on the environment beyond that which was evaluated in the Downtown Specific Plan Master Environmental Impact Report. The document demonstrates that neither a subsequent EIR, nor a supplement to the MEIR is required given that the proposed modifications to the approved project would not trigger the applicable criteria set forth in the CEQA Guidelines Section 15162. The Addendum to the Downtown Specific Plan MEIR has been prepared pursuant to Title 14 Section 15164 of the California Code of Regulations and City of Morgan Hill environmental standards.

ORDINANCE NO. 2339, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL CITY COUNCIL APPROVING A ZONING MAP AMENDMENT FOR A MIXED-USE DOWNTOWN PLANNED DEVELOPMENT COMBINING DISTRICT ON A 1.09-ACRE SITE LOCATED EAST OF MONTEREY ROAD BETWEEN 1ST STREET AND 2ND STREET (ZA2022-0004: MONTEREY – LEAL GRANADA HOTEL) APN: 726-14-074

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

SECTION 1. The proposed amendment is consistent with the General Plan and any applicable specific plan as provided by Government Code Section 65860.

The planned development will yield a project that is consistent with the Downtown Specific Plan and General Plan City and Neighborhood Form Policies CNF-14.1, CNF-14.2, CNF-14.3, and CNF-14.7 and the Economic Development Element in that the Hotel supports the implementation of the Downtown Specific plan by providing a new use that includes specialty retail, event space, and other services on the first floor along Monterey street, and supports tourism downtown by adding short- term stay for visitors. The General Plan does not specify maximums for the floor area ratio or density on the project site. The proposed development for a hotel meets the floor area ratio as identified within the Downtown Specific Plan.

SECTION 2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

The planned development will yield a project that supports tourism by providing the convenience to stay and enjoy events within the Downtown. A hotel use will provide public interest and enhance general welfare by including ancillary uses that support Downtown as a focal point of the City. Projects will be built to comply with standard building code requirements and therefore will not be detrimental to public health, safety, and welfare.

SECTION 3. The affected site is physically suitable in terms of design, location, shape, size, and other characteristics to ensure that the permitted land uses and development will comply with the zoning code and general plan and contribute to the health, safety and welfare of the property, surrounding properties, and the community at large.

The property is an approximate 1.09-acre site that propose the development of a project that meet the design requirements and guidelines identified within the Downtown Specific Plan. This Planned Development allow for an increase in height up to five stories for a hotel use. Consistent with the Downtown Specific Plan, upper floor levels will be set back from the first and second floors which

reduces the massing of the building and maintain the characteristics within the Downtown. As mentioned in Sections 1 and 2 above, the planned development will yield a project that contributes to the Downtown and the community at large and will not be detrimental to the health, safety, and welfare of the property and surrounding properties.

SECTION 4. The proposed development is consistent with the general plan, zoning code and any applicable specific plan or area plan adopted by the City council.

The Downtown Specific Plan allows for Planned Developments for properties to deviate from standards. The proposed Planned Development supports the approved hotel use as permitted and deviates from the height standard by adding one additional level for hotels. The Planned Development will yield a project consistent with the policies established by the General Plan and Downtown Specific Plan in that a Hotel supports tourism downtown, provides new services and amenities, and meets the Design Guidelines within the Specific Plan.

SECTION 5. The proposed development is superior to the development that could occur under the standards applicable in the existing zoning districts.

The Planned Development will allow for a use and design that supports the viability of a hotel downtown, improving the operational functionality of the hotel. A hotel with ancillary services and amenities within downtown supports the Downtown Specific Plan and General Plan by promoting Downtown as a focal point and supports tourism that supports the economic growth of Downtown.

SECTION 6. The proposed project will provide a Substantial Public Benefit. The public benefit provided shall be of sufficient value as determined by the Planning Commission to justify deviation from the standards of the zoning district that currently applies to the property.

The Planning Commission recommended approval at a duly noticed public hearing on October 11, 2022 that included the review of the substantial public benefit. The project will incorporate a valet station for drop-off/pick-up in a location convenient for all downtown visitors in addition to the hotel guests. This will provide upfront access for all visitors/consumers downtown. In addition, the property owner/designee will have a mural displayed on the rear of the building. The artwork for the mural will be approved by the Arts Commission.

SECTION 7. The site for the proposed development is adequate in size and shape to accommodate proposed land uses.

The site is a 1.09-acre site and shape of the site can accommodate a five- story hotel that meets the floor area ratio identified within the Downtown Specific Plan.

SECTION 8. Adequate transportation facilities, infrastructure, and public services exist or will be provided to serve the proposed development.

The site is located within the downtown fronting on Monterey road and 1st Street with valet services for guest accessed from 2nd Street. There are wet and dry utilities and infrastructure in the surrounding area that support the development of

this site.

SECTION 9. The proposed development will not have a substantial adverse effect on surrounding property and will be compatible with the existing and planned land use character of the surrounding area.

The Planned Development will yield a project consistent with the Downtown Specific Plan and General Plan goals and policies. The increased height for a hotel will be compatible with existing and planned uses of the surrounding area in that the 5th level will be push back and central to the block which reduces massing and provides relief for future development of adjacent properties on the block.

SECTION 10. The City Council approves the Zoning Amendment application ZA2022-0004: Monterey – Leal Granada Hotel (Granada Hotel Expansion) for a Planned Development as described in the attached Exhibit “A” and Exhibit “B” to this Ordinance.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 16th DAY OF NOVEMBER 2022, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 7th DAY OF DECEMBER 2022, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATE OF THE CITY CLERK ∞

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2339, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 7th day of December 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

EXHIBIT A

PLANNED DEVELOPMENT STANDARDS AND USES

This Planned Development (PD) pertains to the 1.09-acre lot located mid-block east of Monterey Road, between 1st Street and 2nd Street. To proceed with the development of a Hotel that exceeds 4-stories, or 55-feet in height, the Performance Standards set forth in Section A of this Exhibit shall be met. A one-time, 2-year administrative time extension to each performance standard outlined in Section A of this Exhibit may be granted by the Development Services Director if:

- 1) The property owner/designee proceeded in good faith and has exercised due diligence in efforts to achieve each performance standard in a timely manner; and
- 2) The property owner/designee provides proof to demonstrate that the performance standard milestone(s) could not be achieved due to circumstances outside of their control.

If additional time is needed for any performance standard listed in Section A of this Exhibit after a 2-year time extension was approved, additional time extensions may be reviewed and approved by the City Manager. If the Performance Standards cannot be achieved within the timeline or approved extended timelines, the underlying Downtown Specific Plan height standard of maximum 4-stories or 55 feet in height shall be reinstated.

SECTION A: PERFORMANCE STANDARDS

- 1a. The property owner/designee shall enter into a Memorandum of Understanding (MOU) agreement to memorialize the understanding of listed penalties that may be invoked if these performance standards are not achieved. The MOU will be reviewed and approved by the City Attorney and City Manager.
- 2a. Property owner/designee is required to submit building permit application(s) and construction document(s) for the modifications and addition of the 5th floor by April 30, 2023.
- 3a. Property owner/designee shall secure building permit(s) for the fifth level by September 30, 2023.
- 4a. Construction to resume no later than August 31, 2023.
- 5a. Property owner/designee to complete exterior facade before interior improvements, 24 months after construction resumes.
- 6a. Parklets for the Granada Theater may continue operation only during non-construction hours. Parklet may resume to normal hours once construction of the exterior of the hotel has been completed and temporary fencing removed.

- 7a. Non-essential hotel amenities (restaurant, bar, meeting rooms, etc.) should not be completed prior to the completion of hotel rooms.
- 8a. Hotel rooms to be operational by December 31, 2025.
- 9a. As part of the substantial public benefit, the property owner/designee will incorporate a valet station for drop-off/pick-up in a location convenient for all downtown visitors in addition to the hotel guests. This will provide upfront access for all visitors/consumers downtown. In addition, the property owner/designee will have a mural displayed on the rear of the building. The artwork for the mural will be approved by the Library, Culture, and Arts Commission.

Penalties

- 10a. If the property owner/designee doesn't resume construction by August 31, 2023, the City may revoke the maximum building height for a hotel as described in Table B.1.
- 11.a MOU to identify agreed-upon liquidated damages for every day after December 31, 2025, or as amended by time extensions.

SECTION B. DEVELOPMENT STANDARDS AND USES

The Standards set herein supersede the Downtown Specific Plan and any Combining District or Overlay District. Where this Planned Development is silent on standards, the underlying mixed-use Commercial Business District (CBD) as amended shall apply.

Development Standards Table B.1

	Standard
Maximum Building Coverage	No Maximum
Floor Area Ratio	2.0 or 2.25 for sites over 22,000 square feet
Maximum Building Height	4 stories or 55-feet
Maximum Building Height for a Hotel	5 stories or 70 feet*
Maximum Building Height Exceptions	Add 15-feet to maximum height for required rooftop equipment, elevator shafts, or stairwells
Setbacks:	
Front	0-feet minimum 10-feet maximum
Side	0-feet minimum
Rear	0 feet minimum
Ground Floor "Floor-to-ceiling clear" height	14-feet for
Ground Floor building depth: retail depth minimums as specified within the Downtown Specific Plan	60-feet
Parking	Refer to the Downtown Specific Plan Parking Requirements as amended
Hotel Parking	No onsite parking required, drop-off and valet parking for guests is required on or off-site biased on demand

* Maximum Building Height reduced to 4 stories or 55-feet in height if Section A Performance Standards are not met.

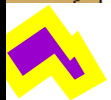
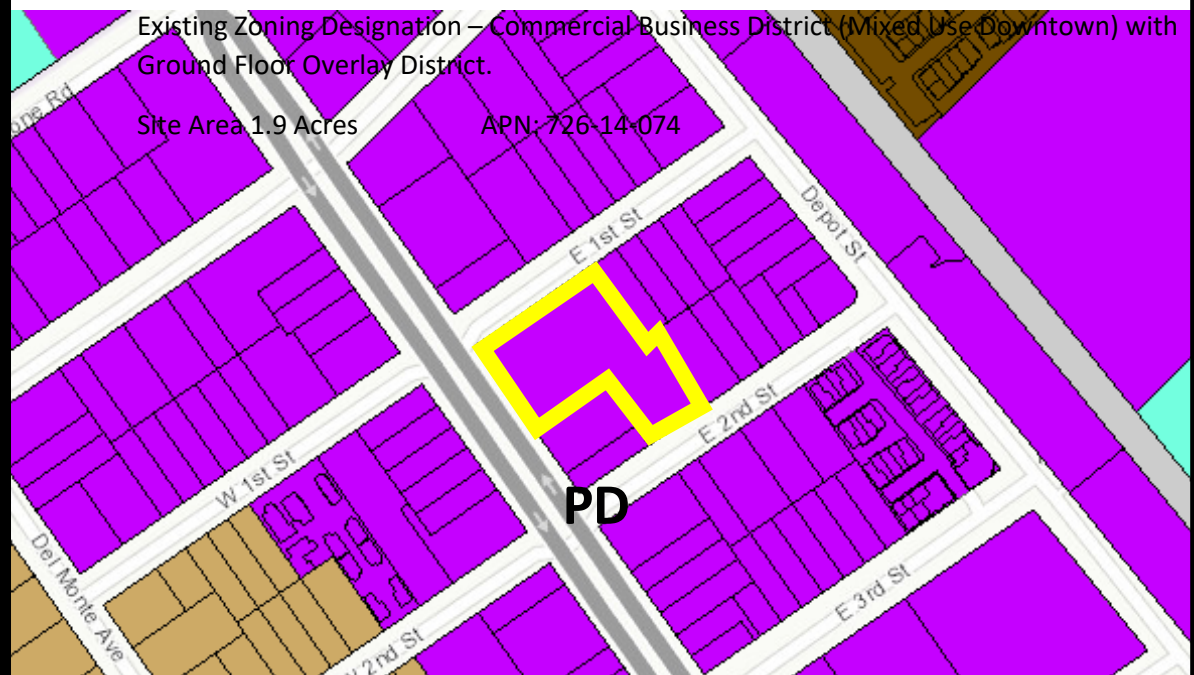
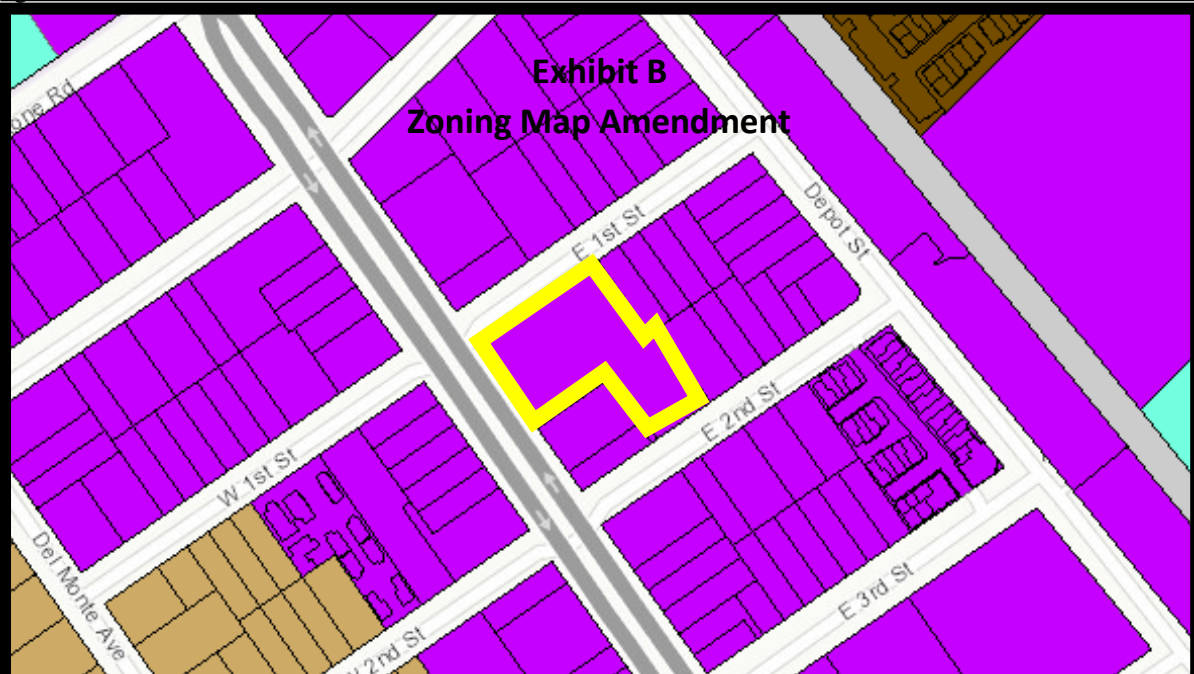
The following uses listed in Table B.2 are allowed within this PD by right. This PD defers to the Permitted Uses Table for the mixed-use Commercial Business District (CBD) and Ground Floor Overlay District within the Downtown Specific Plan as amended, where this PD table is silent. The Ground Floor Overlay district applies to the first floor within 60-feet from property line adjacent to Monterey Road and 80-feet at 1st and 2nd Street.

P = Permitted Use

Permitted Uses and Conditionally Permitted Uses Table B.2

Commercial /Service /Retail Uses	
Commercial Recreation (3,000 sq.ft. or less)	P
Commercial Service	P
Food Service, takeout	P
Hotel*	P
Bar (ancillary to a hotel or restaurant)	P
Convenience Market / Specialty Food Market (ancillary to a hotel)	P
Restaurant (beer & wine or full bar)	P
Retail Store	P
Personal Services	P

*Hotel as defined in this PD includes hotel lobby, restaurants with option for full service bar, bars, and retail stores. It also allows conference rooms, banquet hall rooms, and service areas including prep kitchens that support those uses.



PD

Proposed Zoning Designation – Commercial Business District (Mixed Use Downtown) with Ground Floor Overlay District and Planned Development

Site Area 1.9 Acres

APN: 726-14-074

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the "MOU") is made and entered into as of this 02 day of December, 2022, by and between the City of Morgan Hill, a municipal corporation (the "City"), and Leal Vineyards (the "Developer").

BACKGROUND

In April of 2016, the Developer received Design Permit and a Conditional Use Permit approval from the Planning Commission for a new 60-room Downtown Hotel. The approvals included a new 67,940 square foot, four-story building with restaurants, bars, retail, banquet halls(s), and hotel lobby with guest rooms, services including valet parking and amenities. The Conditional Use Permit allows for an outdoor green event space, banquet rooms, and ancillary prep kitchens with one main kitchen to serve the hotel. The hotel also included a pool with outdoor living/lounge area. The project was approved by the City Council on May 18, 2016. Construction commenced in March 2019.

In March 2020, the COVID 19 pandemic halted construction while also decimating the hospitality and lodging industry. The project, which had completed all underground and utility work and two floors of foundation work, became a pop-up restaurant over the last two years, while the Developer pursued new construction financing. To complete the project, the Developer requested an addition of a partial fifth story to gain eleven (11) guest rooms, plus the conversion of a gym to two (2) additional guest rooms, creating thirteen (13) new guest rooms in total.

On November 16, 2022, the City Council introduced Ordinance No. 2339, approving a Zoning Map Amendment for a Planned Development Combining District on the site, to allow for the additional 5th floor ("PD Ordinance").

As a condition of approval of the PD Ordinance, the City is requiring the Developer to enter into this MOU to further define the parties' expectations, parameters and timeline of the project moving forward.

PURPOSE

Developer is entering into this MOU as a condition of approval for the PD Ordinance. The purpose of this MOU is to memorialize the understanding of the Performance Standards and the Penalties that be invoked should the Performance Standards not be achieved.

PERFORMANCE STANDARDS

Under the terms of the PD Ordinance, the developer is required to meet the following performance standards:

1. The Developer is required to submit building permit application(s) and construction document(s) for the modifications and addition of the 5th floor by April 30, 2023.
2. The Developer shall secure building permit(s) for the 5th floor by September 30, 2023.
3. Construction to resume no later than August 31, 2023.
4. The Developer to complete exterior facade before interior improvements, 24-months after construction resumes.

5. Non-essential hotel amenities (restaurant, bar, meeting rooms, etc.) should not be completed prior to the completion of hotel rooms.
6. Hotel rooms to be operational by December 31, 2025.

EXCEPTIONS

Under the terms of the PD Ordinance, a one-time, 2-year administrative time extension to a Performance Standard may be granted by the Development Services Director if:

- 1) The property owner/designee proceeded in good faith and has exercised due diligence in efforts to achieve each performance standard in a timely manner; and
- 2) The property owner/designee provides proof to demonstrate that the performance standard milestone(s) could not be achieved due to circumstances outside of their control. If additional time is needed for any performance standard listed above after a 2-year time extension was approved.

LIQUIDATED DAMAGES

The Developer acknowledges that delayed performance will negatively impact the City. Damages, including the potential for blight, vandalism, and reduced economic activity are uncertain and impossible to determine at this time. Due to this uncertainty, the parties to this MOU agree that in addition to any other remedies, if the Performance Standards are not met within the timelines provided in the PD Ordinance (or approved extended timelines), the following liquidated damages may be assessed:

- a) If the Developer does not complete the exterior facade within 24-months after construction resumes, the Developer may be required to pay liquidated damages of one hundred dollars (\$100) per day until the exterior façade is complete.
- b) If the Developer does not achieve hotel room operations by the date required under the PD Ordinance, the Developer may be required to reimburse the City for fifty percent (50%) of the uncollected Transient Occupancy Tax (TOT)* after the required completion date until which time the hotel is operational and collecting TOT. Uncollected TOT will be collected from future hotel revenues.

*Uncollected TOT will be calculated by using the average of the City's top four (4) performing hotel's Average Daily Rate (ADR) and Occupancy Rate (OR).

Example	Formula	Example Calculation
Avg ADR = \$150 Avg OR = 70% City TOT Rate = 11% Hotel Rooms = 73	$\text{Rooms (73)} \times \text{Avg OR (70\%)} \times \text{Avg ADR (\$150)} \times \text{City TOT (11\%)} \times 50\% = \underline{\hspace{2cm}}$	$\$150 \times 73 \times .7 \times .11 = \$843.15 \text{ @ } 50\% = \$421.58 \text{ daily penalty}$

FORCE MAJEURE

Notwithstanding the above, the Developer will not be responsible for liquidated damages to the extent that the non-performance is caused by a condition (for example: natural disaster, act of war or

terrorism, riot, labor condition, or governmental action) that was beyond the Developer's reasonable control, provided the Developer provides timely and reasonable notice of the condition.

///

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IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be signed, sealed, and delivered by their duly authorized representatives the day and year first above written.

The City of Morgan Hill

By: _____

Christina Turner
City Manager

Approved as to Form

By: _____

Donald A. Larkin
City Attorney

Title: _____

Leal Vineyards

By: _____

Name: FRANK LEAL

Title: OWNER

By: _____

Name: ALFONSO CASTILLO

Title: VP OF HOSPITALITY

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Kim Mancera, Deputy City Clerk

APPROVED BY: City Manager

ADOPT ORDINANCE NO. 2340, NEW SERIES, ADDING CHAPTER 15.62 (ELECTRIC VEHICLE INFRASTRUCTURE) TO TITLE 15 (BUILDINGS AND CONSTRUCTION) TO THE MORGAN HILL MUNICIPAL CODE REQUIRING THE ADDITION OF ELECTRIC VEHICLE INFRASTRUCTURE FOR PARKING THAT SERVES NEWLY CONSTRUCTED AND EXISTING BUILDINGS

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2340, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment

Maintaining and Enhancing Infrastructure

Advancing Regional Initiatives

Guiding Documents

Climate Action Plan

REPORT NARRATIVE:

On November 16, 2022, the City Council introduced Ordinance No. 2340 New Series, by the following roll call vote: AYES: Constantine, Borgioli, Martinez Beltran, McKay, Spring; NOES: None; ABSTAIN: None; ABSENT: None. The purpose of the proposed ordinance is to require installation of electric vehicle (EV) charging infrastructure as part of all new development projects and retrofit projects in the City of Morgan Hill (see Attachment 1). The proposed EV Charging Infrastructure Ordinance is the first step toward meeting Climate Action Plan (CAP) goals and action items.

COMMUNITY ENGAGEMENT:

Consult

The proposed EV Charging Infrastructure Ordinance is consistent with goals and actions approved in the City's adopted CAP. Development of the CAP goals and action items involved community outreach and engagement. The City held a Community

Meeting on the CAP as a kick-off to the outreach effort. Community members were invited to participate in a Working Group. Once formed, the Working Group had substantial involvement in developing the CAP over several months. In addition, a Town Hall was dedicated to the CAP.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Climate Emergency Resolution, adopted by the City Council on May 26, 2021, stated the following: the City of Morgan Hill commits to initiate the creation of a Highly-Focused Climate Action Plan in 2021, with strong greenhouse gas reduction targets.

The Morgan Hill CAP was adopted in December 2021 and focused on greenhouse gas emission reductions through the building and transportation sectors.

FISCAL AND RESOURCE IMPACT:

Fiscal impacts will be felt by residents and businesses doing retrofit projects, and by developers proposing new projects. It is not anticipated that the proposed EV Charging Infrastructure Ordinance will result in direct costs to the City. Since affordable housing projects are often difficult to finance, SVCE has established a special grant program that subsidizes the installation of electric vehicle charging in new low and very-low income developments built through 2025.

From an operations perspective, the Development Services Department will need to ensure the required number and type of EV charging spaces are provided for each project, and Building Department staff will need to ensure proper installation of the required chargers. The Environmental Services Division will support the Development Services Department in implementation and on review of specific projects as needed. It is anticipated that current staff can incorporate these activities within their existing work plan.

By bringing this ordinance forth to a vote prior to the end of the calendar year, the City will be the recipient of a \$10,000 grant from Silicon Valley Clean Energy (SVCE).

CEQA (California Environmental Quality Act):

Categorical Exemption

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15308 of the CEQA Guidelines (Actions by Regulatory Agencies for Protection of the Environment). The ordinance being adopted will implement requirements for installation of EV charging infrastructure to protect the environment from the impacts of climate change.

ORDINANCE NO. 2340, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
ADDING CHAPTER 15.62 (ELECTRIC VEHICLE
INFRASTRUCTURE) TO TITLE 15 (BUILDINGS AND
CONSTRUCTION) TO THE MORGAN HILL MUNICIPAL
CODE REQUIRING THE ADDITION OF ELECTRIC
VEHICLE INFRASTRUCTURE FOR PARKING THAT
SERVES NEWLY CONSTRUCTED AND EXISTING
BUILDINGS**

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

Section 1: Chapter 15.62 of the Morgan Hill Municipal Code is hereby added to read as follows:

Chapter 15.62

ELECTRIC VEHICLE CHARGING INFRASTRUCTURE

Sections:

15.62.010 Findings and Purpose.

15.62.020 Applicability.

15.62.030 Exceptions.

15.62.040 Definitions.

15.62.050 Residential Mandatory Measures.

15.62.060 Other Mandatory Measures.

15.62.070 Direct Current Fast Charging Stations.

15.62.010 - Findings and Purpose.

The Council finds and expressly declares as follows:

- A. Scientific evidence has established that the burning of fossil fuels, including gasoline and diesel used for transportation, is the largest contributor to greenhouse gas emissions emitted. Burning fossil fuels like gasoline and diesel releases significant amounts of greenhouse gas emissions into the air which contributes to global warming and climate change.
- B. The following addition to the Morgan Hill Municipal Code is reasonably necessary because of local climatic, geologic and topographical conditions as listed below:

- (1) Morgan Hill is situated along a wildland-urban interface and is extremely vulnerable to wildfires and firestorms, and human activities releasing greenhouse gases into the atmosphere cause increases in worldwide average temperature, drought conditions, vegetative fuel, and length of fire seasons.
 - (2) Morgan Hill relies on water imported into the region for groundwater recharge and climate change is already causing changes in rainfall and snowfall which threaten to interrupt the supply of imported water.
- C. The following addition to the Morgan Hill Municipal Code is also reasonably necessary because of health and safety concerns as Morgan Hill residents suffer from asthma and other health conditions associated with poor air quality exacerbated by smog from cars.
- D. Electric vehicles are linked to lower greenhouse gas emissions and is cost competitive because of the cost savings associated with electric vehicle designs that avoid the use of gasoline.
- E. Use of electric vehicles benefit the health, welfare, and resiliency of Morgan Hill and its residents.
- F. The most cost-effective time to integrate electrical infrastructure for electric vehicle charging is in the design phase of a project because electrical systems can be designed to accommodate power needs.
- G. It is the intent of the council to create abundant and accessible charging opportunities as a way to encourage the use of electric vehicles over traditional gasoline driven vehicles.

15.62.020 - Applicability.

The requirements of this Chapter shall apply to all parking that will serve newly constructed buildings proposed to be located in whole or in part within the City, and also for parking that will serve existing buildings as described, except that the provisions of this Chapter will not apply to any project for which a complete development application has been submitted.

15.62.030 - Exceptions.

- A. It may be determined that the requirements of this Chapter do not apply on a case-by-case basis where the City of Morgan Hill has determined EV charging and infrastructure are not feasible based upon one or more of the following conditions:
- (1) Where there is no local utility power supply or the local utility is unable to supply adequate power.
 - (2) Where there is evidence suitable to the City of Morgan Hill substantiating that additional local utility infrastructure design requirements, directly related to the implementation of Chapter 15.62 may increase construction cost by an average of \$4,500 per parking space for market rate housing or for any non-residential development, or by \$400 per parking space for Affordable Housing. EV infrastructure shall be provided up to the level that would not exceed this cost for

utility service, after including all applicable subsidies, grants, or rebates.

- B. Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADU) without additional parking facilities and without electrical panel upgrade or new panel installation. Note that detached ADUs, attached ADUs, and JADUs without additional parking but with electrical panel upgrades or new panels do not qualify for an exception and must have reserved breakers and electrical capacity according to the requirements of 15.62.050(A).

15.62.040 - Definitions.

- A. “Affordable Housing” means residential buildings that entirely consist of units below market rate and whose rents or sales prices are governed by local agencies to be affordable based on area median income.
- B. “Automatic Load Management System (ALMS)” shall mean a control system designed to manage load across one or more electric vehicle supply equipment (EVSE), circuits, panels and to share electrical capacity and/or automatically manage power at each connection point. Unless otherwise noted, ALMS systems shall be designed to deliver no less than 3.3 kVa (208/240 volt, 16-ampere) to each EV Capable, EV Ready or EVCS space served by the ALMS, and meet the requirements of California Electrical Code.
- C. “Direct Current Fast Charging (DCFC)” shall mean a parking space provided with electrical infrastructure that meets the following conditions:
1. A minimum of 48 kVa (480 volt, 100-ampere) capacity wiring.
 2. Electric vehicle supply equipment (EVSE) located within three (3) feet of the parking space providing a minimum capacity of 80-ampere.
- D. “Electric Vehicle (EV) Capable Space” means a vehicle space with electrical panel space and load capacity to support a branch circuit and necessary raceways, to support EV charging.
- E. “Electric Vehicle Charging Station (EVCS)” means a parking space that includes installation of electric vehicle supply equipment (EVSE) at an EV Ready space. An EVCS space may be used to satisfy EV Ready space requirements. EVSE shall be installed in accordance with the California Electrical Code.
- F. “Electric Vehicle (EV) Ready Space” means a vehicle space which is provided with a branch circuit and any necessary raceways terminating in a receptacle or a charger.
- G. “Electric Vehicle Supply Equipment (EVSE)” shall mean the conductors, including the ungrounded, grounded and equipment grounding conductors and the electric vehicle connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of transferring energy between the premises wiring and the electric vehicle.
- H. “Level 2 EV Capable” means a parking space provided with electrical infrastructure that meets the following requirements:
1. Conduit that links a listed electrical panel with sufficient capacity to a junction box

or receptacle located within three (3) feet of the parking space.

2. The conduit shall be designed to accommodate at least 8.3 kVa (208/240 volt, 40-ampere) per parking space. Conduit shall have a minimum nominal trade size of 1 inch inside diameter and may be sized for multiple circuits as allowed by the California Electrical Code. Conduit shall be installed at a minimum in spaces that will be inaccessible after construction, either trenched underground or where penetrations to walls, floors, or other partitions would otherwise be required for future installation of branch circuits, and such additional elements deemed necessary by the Building Official. Construction documents shall indicate future completion of conduit from the panel to the parking space, via the installed inaccessible conduit.
 3. The electrical panel shall reserve a space for a 40-ampere overcurrent protective device space(s) for EV charging, labeled in the panel directory as “EV Capable.”
 4. Electrical load calculations shall demonstrate that the electrical panel service capacity and electrical system, including any on-site distribution transformer(s), have sufficient capacity to simultaneously charge all EVs at all required EV spaces at a minimum of 40 amperes.
 5. The parking space shall contain signage with at least a 12” font adjacent to the parking space indicating the space is EV Capable.
- I. “Level 1 EV Ready” shall mean a parking space that is served by a complete electric circuit with the following requirements:
1. A minimum of 2.2 kVa (110/120 volt, 20-ampere) capacity wiring.
 2. A receptacle labeled “Electric Vehicle Outlet” or electric vehicle supply equipment located within three (3) feet of the parking space. If EVSE is provided the minimum capacity of the EVSE shall be 16-ampere.
 3. Conduit oversized to accommodate future Level 2 EV Ready (208/240 volt, 40-ampere) at each parking space.
- J. “Level 2 EV Ready” shall mean a parking space that is served by a complete electric circuit with the following requirements:
1. A minimum of 8.3 kVa (208/240 volt, 40-ampere) capacity wiring.
 2. A receptacle labeled “Electric Vehicle Outlet” or electric vehicle supply equipment located within three (3) feet of the parking space. If EVSE is provided the minimum capacity of the EVSE shall be 30-ampere.
- K. “Low Power Level 2 EV Ready” shall mean a parking space that is served by a complete electric circuit with the following requirements:
1. A minimum of 4.1 kVA (208/240 Volt, 20-ampere) capacity wiring.
 2. A receptacle labeled “Electric Vehicle Outlet” or electric vehicle supply equipment located within three (3) feet of the parking space. If EVSE is provided the minimum capacity of the EVSE shall be 16-ampere.

3. Conduit oversized to accommodate future Level 2 EV Ready (208/240 volt, 40-ampere) at each parking space.
- L. “Multifamily Dwelling” or “Multifamily” means a building that contains three or more dwelling units, with each unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. Includes multi-family senior housing limited to occupancy by persons fifty-five years of age or older for residents who are independent and do not require assistance with everyday living (“independent living”).
- M. “Office Building” means a place of employment occupied by businesses providing professional, executive, management, or administrative services.

15.62.050 –Minimum Parking Spaces

All electric vehicle (EV) spaces shall count toward the minimum required parking spaces. Where two or more primary uses occupy a single site, the EV infrastructure required for each use shall be calculated separately. Calculations for the required minimum number spaces with EV infrastructure shall be rounded up to the nearest whole number. Requirements represent the minimum charging infrastructure required, and increases in installed infrastructure, such as EV Supply Equipment and delivered power, shall be permissible.

15.62.060 - Residential Mandatory Measures.

- A. **Parking Provided for Residential Occupancy – Units with Private Dedicated Garages.**
 1. **New Construction.** One parking space provided in the garages shall be a Level 2 EV Ready space. If a second parking space is provided, it shall be provided with a Level 1 EV Ready space.
 2. **Existing Buildings at Retrofit.** Parking additions to new or expanded garages or electrical panel upgrades must have reserved breaker spaces to accommodate parking per the requirements of 15.62.50(A)(1).
- B. **Parking Provided for Multifamily Residential Occupancy - Shared Parking Facilities.** These requirements apply to parking spaces that are assigned or leased to individual dwelling units, as well as unassigned residential parking. The total number of EV charging spaces shall be one-hundred percent (100%) of dwelling units or one-hundred percent (100%) of residential parking spaces, whichever is less. Visitor parking is not included.
 1. **New Construction.** Forty percent (40%) of parking spaces shall be EVCS with Level 2 EV Ready. Sixty percent (60%) of parking spaces shall be provided with at minimum a Level 1 EV Ready space. ALMS shall be permitted to reduce load when multiple vehicles are charging.
 2. **Existing Buildings at Retrofit.** When a Building Permit is required for a retrofit project at a multifamily complex and the construction valuation exceeds \$1,000,000 then either thirty percent (30%) of the total number of parking spaces shall be upgraded to EVCS or ten percent (10%) of the cost of the retrofit shall be spent toward meeting that goal, whichever costs less. When new parking facilities are

added and ALMS is installed, the ALMS system shall be designed to deliver no less than 2.2 kVa (110/120 volt, 20-ampere).

15.62.070 - Other Mandatory Measures.

- A. Parking Provided for Office Buildings – New Construction
 - 1. Twenty percent (20%) of parking spaces shall be EVCS with Level 2 EV Ready. ALMS shall be permitted to reduce load when multiple vehicles are charging.
 - 2. Thirty percent (30%) of parking spaces provided shall be Level 2 EV Capable.
- B. Parking Provided for Hotel and Motel Occupancies – New Construction
 - 1. Ten percent (10%) of parking spaces provided shall be EVCS with Level 2 EV Ready. ALMS shall be permitted to reduce load when multiple vehicles are charging.
 - 2. Twenty-five percent (25%) of parking spaces provided shall be Low Power Level 2 EV Ready space.
 - 3. Ten percent (10%) of parking spaces provided shall be Level 2 EV Capable.
- C. Parking Provided for All Other Nonresidential Occupancies – New Construction
 - 1. Ten percent (10%) of parking spaces provided shall be EVCS with Level 2 EV Ready. ALMS shall be permitted to reduce load when multiple vehicles are charging.
 - 2. Ten percent (10%) of parking spaces provided shall be Level 2 EV Capable.
- D. Parking Provided for Existing Office, Hotel and Motels, and all Other Nonresidential Occupancies – at Retrofit.
 - 1. When a Building Permit is required and the valuation exceeds \$1,000,000 then either ten percent (10%) of the total number of regular parking spaces shall be upgraded to EVCS or ten percent (10%) of the cost of the retrofit shall be spent toward meeting that goal, whichever costs less.

15.62.080 - Direct Current Fast Charging Stations.

One Direct Current Fast Charging Station (DCFC) may be substituted for up to five (5) EVCS to meet the requirements of sections 15.62.050 and 15.62.060. Where ALMS serve DCFC stations, the power demand from the DCFC shall be prioritized above Level 1 and Level 2 spaces.

Section 2. This Ordinance shall be submitted to the California Building Standards Commission following adoption as consistent with state law.

Section 3. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 4. This Ordinance shall take effect on July 1, 2023. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 16th DAY OF NOVEMBER 2022, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 7th DAY OF DECEMBER 2022, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATE OF THE CITY CLERK ∞

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2340, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 7th day of December 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Nichole Martin, Community Services Coordinator

APPROVED BY: City Manager

ADOPT HAZARDOUS VEGETATION ABATEMENT RESOLUTION, EXEMPT FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) UNDER SECTION 15304(I)

RECOMMENDATION(S)

Adopt resolution declaring weeds and brush to be a nuisance and setting the hazardous vegetation public hearing on February 15, 2023.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

REPORT NARRATIVE:

Under Government Code section 39561, cities may adopt a resolution declaring weeds and dry brush to be a public nuisance and order their abatement (Attachment 1). Weed and brush abatement services constitute the City's hazardous vegetation program and are key to reducing fire risk and protecting public safety. The City of Morgan Hill has contracted with Santa Clara County for weed and brush abatement services since 1996. In the last several years, City and County staff have successfully worked together to streamline program administration and improve communications with Morgan Hill property owners. The County's Consumer and Environmental Protection Agency - Weed Abatement Program manages the program.

As in prior years, staff has combined the initial resolution for both the weed and brush abatement programs. Staff proposes that the abatement program commencement hearing take place on February 15, 2023. Once the resolution is adopted, County staff will notify the affected property owners of the February 15th public hearing and of their obligations to abate hazardous vegetation before the deadline. In response to the City's past request for more notification to the property owners, the County will also be mailing a courtesy notice out to affected property owners in the early Spring to further remind them of their obligations.

The City's Fire Department and the County's Weed Abatement Division are continuing to integrate their efforts and communication methods to enhance customer service. The

improvements instituted have eliminated customer complaints about receiving conflicting information from the two programs.

COMMUNITY ENGAGEMENT:

Empower

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

ALTERNATIVE ACTIONS:

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

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

While this will be the first Council action addressing hazardous vegetation for the 2023 fire season, the recommended approach is consistent with the actions taken by the Council for over a decade.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Categorical Exemption

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

RESOLUTION NO. 22-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING CERTAIN HAZARDOUS VEGETATION GROWING IN THE CITY OF MORGAN HILL TO BE A PUBLIC NUISANCE, DESCRIBING PROPERTIES WHERE SUCH NUISANCE EXISTS; ORDERING ABATEMENT AND SETTING A PUBLIC HEARING THEREON

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

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

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

1. That the weeds, as described in the above recital, constitute and will continue to constitute a public nuisance, and it is ordered that this public nuisance be abated in the manner provided in Title 8, Chapter 8.20 of the Morgan Hill Municipal Code.
2. That the nuisance exists upon all streets, alleys, sidewalks, and private property within said City as shown, described and delineated on the several maps of the property in the City, which are recorded in the Office of the County Recorder of the County of Santa Clara, reference in each instance for the description of any particular street, alley, or private property being hereby made to the several maps mentioned, and in the event of there being several subdivision maps on which lots are shown, reference is hereby made to the latest subdivision map.
3. That it is ordered that Wednesday, the 15th day of February 2023, at 7:00 p.m., in the Council Chambers of the City Council of the City of Morgan Hill is hereby fixed as the time and place when objections to the proposed destruction or removal of weeds shall be heard and be given due consideration.
4. That the City Clerk of the City of Morgan Hill is hereby ordered and directed to cause notice of the adoption of this Resolution and notice of hearing to be given to property owners pursuant to Section 39562.1 of the Government Code.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 7th day of December 2022 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.22-xxx, adopted by the City Council at the meeting held on December 7, 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Mario Jimenez, Associate Engineer

APPROVED BY: City Manager

APPROVE CITY OF MORGAN HILL'S SANITARY SEWER MANAGEMENT PLAN (SSMP) AS REQUIRED BY STATE WATER RESOURCES CONTROL BOARD, EXEMPT FROM CEQA UNDER SECTION 15302

RECOMMENDATION(S)

Adopt resolution approving the Sanitary Sewer Management Plan (SSMP).

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Protecting the Environment and Preserving Open Space and Agricultural Land

Maintaining and Enhancing Infrastructure

Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Morgan Hill 2035 General Plan

Wastewater System Master Plan

REPORT NARRATIVE:

Introduction

The purpose of this report is to present to the City Council the [2022 Sanitary Sewer Management Plan \(SSMP\)](#), Overflow Emergency Response Plan (OERP) and Water Quality Monitoring Plan (WQMP). The OERP and WQMP are elements of the SSMP and are located in the appendices of the document.

Sanitary Sewer Management Plan Overview

Agencies that operate a sanitary sewer collection system that exceed 1-mile in length must comply with the State Water Resource Control Board's (SWRCB) General Waste Discharge Order No. 2006-0003-DWQ . The City of Morgan Hill's sewer system consists of 163 miles of sewer mains. The SSMP must be approved by the City Council as the governing body responsible for the sanitary sewer collection system. The Plan

documents what the City has been doing to minimize sanitary sewer overflows; it does not create additional work and therefore has no additional cost impacts.

COMMUNITY ENGAGEMENT:

Inform

This report serves to inform the community of Morgan Hill's SSMP as required by the State Water Resources Control Board.

ALTERNATIVE ACTIONS:

There is no alternative to adopting a Sanitary Sewer Management Plan as it is a requirement under State Law. The City is bound to this requirement because the City owns and operates a sanitary sewer collection system.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

City Council approved the previous Sanitary Sewer Management Plan on February 21, 2018, Resolution #18-015.

FISCAL AND RESOURCE IMPACT:

There is sufficient funding in the Fiscal Year 2022-23 Utilities Division operating budget to prepare the Sanitary Sewer Management Plan. Supporting an update to the Plan was an anticipated work item for the Utilities Division.

CEQA (California Environmental Quality Act):

Categorical Exemption

The SSMP implements portions of the City's 2035 General Plan. Replacement or reconstruction of existing utility systems and/or facilities that do not expand capacity is exempt from CEQA under guideline 15302.

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MORGAN HILL APPROVING THE 2022 SANITARY SEWER
MANAGEMENT PLAN**

WHEREAS, the State Water Resources Control Board Order No. 2006-0003- Statewide General Waste Discharge Requirements (WDR) for Sanitary Sewer Systems requires the preparation of a Sanitary Sewer Management Plan (SSMP); and

WHEREAS, the City of Morgan Hill Owns and operates a sanitary sewer collection system subject to the WDR requirements of the State; and

WHEREAS, the City has revised and updated its SSMP; and

WHEREAS, the revised SSMP was presented to the City Council at a regularly scheduled Council Meeting on, December 7, 2022 allowing for public input prior to consideration and adoption; 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. Approve the SSMP as required by the State Water Resources Control Board Order No. 2006-0003-Statewide General Waste Discharge Requirements for Sanitary Sewer Systems.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 7th day of December, 2022 by the following vote:

AYES:
NOES:
ABSTAIN:
APPROVED:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
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.XXXX , adopted by the City Council at the meeting held on December 7, 2022.

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

DATE: _____

Michelle Bigelow, CITY CLERK

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Mariah Dabel, Public Services Administrative Manager

APPROVED BY: City Manager

APPROVE FIRST AMENDMENT TO THE SPECTRUM PACIFIC WEST, LLC OPEN TRANSPORT NETWORK (OTN) FACILITIES LICENSE AGREEMENT, EXEMPT FROM CEQA CLASS 1, EXISTING FACILITIES

RECOMMENDATION(S)

Approve the First Amendment to the Spectrum Pacific West, LLC License Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2022-2023 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

This item recommends approval of a First Amendment with Spectrum Pacific West, LLC, formerly SSO SoCal I, LLC (dba Charter). The City of Morgan Hill has a License Agreement with Charter for use of a City-owned site on which Charter operates and maintains its Open Transport Network Facilities (OTN Facilities). The OTN Facilities support connectivity for the delivery of cable services by Charter in Morgan Hill. The current agreement term began January 1, 2013 and ends December 31, 2022.

In early 2022, Spectrum approached the City to request an amendment to extend the agreement. Based on a review of the City's property use agreement terms with other communications providers, staff is recommending an extension of the agreement term for an additional five years plus the option to extend for one additional five-year term. Under the amendment, the annual rent payment for use of the site would increase from \$18,000 to \$40,000, with a 3.5% annual increase during each year of the initial and extended terms.

The proposed First Amendment to the OTN Facilities License Agreement would authorize Charter's continued use of the site for OTN Facilities and related cabling and utilities. The First Amendment would generate cumulative revenue of \$469,255 to the City from Charter for the term of the agreement from January 1, 2023 through December 31, 2032. The site is located on a portion of City used property which has no conflicts with City use.

Charter's use of the location will help maintain cable and internet services in the

community. As the proposed amendment will increase City revenues and maintain services, staff recommends approval of the First Amendment to the Agreement.

COMMUNITY ENGAGEMENT:

Inform: This report serves to inform the community of the recommended contract amendment.

ALTERNATIVE ACTIONS:

The Council could decline to approve the First Amendment and provide direction to staff on alternative negotiation terms. The City would forego the additional revenue if the amendment is not authorized.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City's current License Agreement for property use by Charter to support OTN Facilities expires on December 31, 2022. This License Agreement was approved by the City Council on December 19, 2012.

FISCAL AND RESOURCE IMPACT:

The revenue from the First Amendment to the OTN Facilities License Agreement would be credited to the General Fund (010) to support City services. With execution of the First Amendment, the City's Fiscal Year 2022-2023 revenue for this item would increase by \$11,000, from \$18,000 to \$29,000. Under the agreement terms, the lease payment increases by 3.5% annually. The resources to negotiate and administer property use agreements are included in the work program of the Public Services Department.

CEQA (California Environmental Quality Act):

Categorical Exemption

The licensing and minor alterations to existing facilities falls within the CEQA categorical exemption of Class 1, Existing Facilities.

**FIRST AMENDMENT TO LICENSE AGREEMENT
BETWEEN THE CITY OF MORGAN HILL AND
SPECTRUM PACIFIC WEST, LLC (SUCCESSOR TO CCO SoCal I, LLC)**

This FIRST AMENDMENT TO LICENSE AGREEMENT ("**First Amendment**") between the City of Morgan Hill, a municipal corporation, or its successor, ("**City**" or "**Licensor**"), and Spectrum Pacific West, LLC, a Delaware limited liability Company, successor to CCO SoCal I, LLC ("**Charter**" or "**Licensee**"), duly authorized to do business in California and will remain so during the Term of the Agreement, amends the respective agreement of City and Licensee in regard to the Agreement granting Charter a License for the continued use and occupancy of the City owned Parcel, located at [REDACTED], in the City of Morgan Hill, County of Santa Clara, State of California, commonly known as [REDACTED] (the "**Parcel**"). This First Amendment is made and entered into as of _____, 2022 ("**First Amendment Effective Date**"). Throughout this First Amendment, City and Licensee are referred to collectively as the "**Parties**" and individually as a "**Party**."

RECITALS

The following recitals are a substantive part of this First Amendment:

1. This First Amendment is entered into pursuant to the action of City Council taken on _____, 2022.
2. Parties entered into that License Agreement made as of January 1, 2013 ("**License Agreement**" or "**Agreement**"), for the use of the City facilities described in that License Agreement.
3. In December 2018, CCO SoCal I, LLC merged with and into Spectrum Pacific West, LLC, whereby Licensee is now operating under the name of Spectrum Pacific West, LLC.
4. The License Agreement is attached as **Exhibit "1"** to this First Amendment and made part of and incorporated herein, as amended by this First Amendment.
5. Any capitalized term used in this First Amendment but not defined in this First Amendment has the meaning given for such term in the License Agreement.

AMENDMENT

Now, therefore, for mutual consideration the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, the Parties hereby agree that all terms and conditions of the License Agreement shall remain in full force and effect, except that the following amendment shall be made as set forth below:

- A. Paragraph 3 shall be amended and replaced in its entirety by the following:

"3. TERM. The term of this Agreement is effective from January 1, 2013 through December 31, 2027 ("Term"). The term of the Agreement may be extended for up to five years by mutual consent of the Parties. The City's consent shall not be unreasonably withheld. The City Manager is authorized on behalf of the City to renew for one additional five-year term through December 31, 2032 upon the same other terms and conditions contained herein on the First Amendment Effective Date. Notwithstanding anything to the contrary contained in this Agreement, Licensee shall have the right to terminate this Agreement at any time for any reason whatsoever upon 30 days prior written notice to Licensor ("**Licensee's Termination Notice**").

Upon Licensee's compliance with the terms of this section, this Agreement will terminate as of the date of termination set forth in Licensee's Termination Notice (the "**Early Termination Date**"), and neither Licenser nor Licensee will have any further rights or obligations under this Agreement, except with respect to those matters in this Agreement that expressly survive the termination of this Agreement. On or before the Early Termination Date, Licensee shall surrender the License Area in accordance with Section 14 of this Agreement and Licensee shall pay to Licenser an early termination fee equal to three times the then - applicable monthly license fee."

B. Paragraph 4.2 shall be amended by adding the following:

"4.2 License Fee Payments Due.

Period	Monthly Fees
1/1/2023 to 12/31/2023	\$3,333.33
1/1/2024 to 12/31/2027 and any renewal period	3.5% annual increase during the primary and renewal periods, with the first increase 1/1/2024"

C. Paragraph 9, including all subsections, shall be amended and replaced in its entirety by the following

"9. Insurance Requirements. LICENSEE 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 LICENSEE, including its subcontractors, employees, agents, and invitees, or any other person entering upon or using the Premises, or any structure thereon, or any part thereof, or arising from LICENSEE's use thereof, and must remain in full force and effect at all times during the period covered by this Agreement. Any self-insured retentions must be declared to and approved by City. **The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. LICENSEE further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to LICENSEE, at any time as deemed necessary to protect the interests of the CITY.**

9.1 Insurance Types and Amounts.

9.1.1. Commercial General Liability (CGL). LICENSEE shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of one million dollars (\$1,000,000.00) combined single limit under LICENSEE's combined insurance policies (including any excess or "umbrella" policies).

9.1.2. Automobile Liability. LICENSEE shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if LICENSEE does not own automobiles, then LICENSEE 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 one

million dollars (\$1,000,000.00) combined single limit under LICENSEE's combined insurance policies (including any excess or "umbrella" policies).

9.1.3. Workers' Compensation Insurance and Employer's Liability. LICENSEE shall maintain Workers Compensation coverage, as required by law, in the minimum amount of one million dollars (\$1,000,000.00) for any one accident or occurrence available to LICENSEE under LICENSEE's combined insurance policies (including any excess or "umbrella" policies). If LICENSEE is self-insured, LICENSEE shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

9.2.1 General Liability.

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

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

9.2.1.3 insurance shall be primary non-contributing.

9.2.2 Workers Compensation. If the performance of LICENSEE'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, LICENSEE'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.

9.3 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.

9.4 Absence of Insurance Coverage. City may direct LICENSEE to immediately cease all activities with respect to this License if it determines that LICENSEE fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this License. Any delays or expense caused due to stopping of work and change of insurance shall be considered LICENSEE's delay and expense. At the City's discretion, under conditions of lapse, City may purchase appropriate insurance and charge all costs related to such policy to LICENSEE.

9.5 Certificates. LICENSEE shall furnish City of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In

the event of a claim or legal action, LICENSEE shall promptly allow City of Morgan Hill to inspect copies of the Declaration pages with the premiums and deductibles redacted of all policies outlined herein. No policy subject to the LICENSEE's agreement with the CITY shall be canceled or materially changed such that the coverage for the City is decreased below the requirements of the license except after thirty (30) days' notice by the insurer to CITY (other than due to nonpayment of premium, in which case the notice shall be 10 days). 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

- D. Address for service on the Licensee as set forth in paragraph 16 is changed to the following:

Spectrum Pacific West, LLC
c/o Charter Communications
6360 S. Fiddler's Green Circle
Suite 100
Greenwood Village, Colorado 80111-4951
Attn: Corporate Real Estate
File No.: CA0246

With a copy to:
leaseadmin@charter.com

- E. **Signatures.** The individuals executing this First Amendment represent and warrant that they have the legal capacity and authority to do so on behalf of their respective entities.
- F. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment and the terms and provisions of the Agreement or any earlier amendment, the terms of this First Amendment shall govern and control.
- G. **Electronic Signatures.** Unless otherwise prohibited by law or City policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City.
- H. **Counterparts.** This First Amendment may be executed in counterparts, each of which (once executed) will constitute an original and all of which together (once executed) will constitute one and the same document.
- I. **Lender's Consent.** Licensors hereby represents and warrants that no lender consent is

required for this First Amendment. The effectiveness of this First Amendment is not conditioned upon Licensor receiving any lender's consent.

- J. **Drafting.** The Parties acknowledge that this First Amendment was fully negotiated by the Parties and that no provision of this First Amendment will be interpreted in favor of either Party, or against either Party, merely because such party or its legal representative or advisor drafted such provision.
- K. **Confirmation of License.** The Parties confirm and ratify in all respects, the terms and conditions of the License Agreement, as amended by this First Amendment.

Signatures on the Next Page

IN WITNESS WHEREOF, the parties have executed this First Amendment to License Agreement as of the date first set forth above.

LICENSEE

Spectrum Pacific West, LLC

A Delaware limited liability company

By: Charter Communications, Inc.
Its Manager

By: 

Name: Michael D. Reld
Senior Vice President, Corporate Services

Date: 11/28/2022

By: 

Name: Brandon Morris
VP Corp. Acct. & Travel

Date: 11/29/2022

LICENSOR

CITY OF MORGAN HILL

By: _____

Name: Christina J. Turner

Its: City Manager

Date: _____

Approval as to form:

By: Donald A. Larkin, City Attorney

Date: _____

EXHIBIT "1"

Copy of executed License Agreement date January 1, 2013

EXHIBIT 1**LICENSE AGREEMENT**

This License Agreement ("**Agreement**") is made and entered into effective as of this first day of January, 2013 ("**Effective Date**"), by and between the **CITY OF MORGAN HILL**, a California municipal corporation, or its successor ("**City**" or "**Licensor**"), and **CCO SoCal I, LLC**, a Delaware limited liability company ("**Charter**" or "**Licensee**").

RECITALS

WHEREAS, Charter has constructed and presently operates and maintains its Open Transport Network Facilities ("**OTN Facilities**"), used in connection with its cable television systems on that certain parcel of unimproved real property owned formerly by the Morgan Hill Redevelopment Agency ("**Agency**"), and now owned by the City, located at [REDACTED] in the City of Morgan Hill, County of Santa Clara, State of California, commonly known as APN: [REDACTED] (the "**Parcel**");

WHEREAS, disputes arose between City and Charter over whether (i) Charter obtained, or was required to obtain, an encroachment permit, lease or license from Agency or City for the use of the Parcel, (ii) Charter owed payment to Agency or City for its use and occupancy of the Parcel for any time prior to the Effective Date of this Agreement and (iii) Agency or City owed payment to Charter for its prior use of optical fibers in the number and of the type for any time prior to the Effective Date of this Agreement (the disputes set forth in subsection (i), (ii) and (iii) above are collectively referred to herein as the "**Facilities' Disputes**");

WHEREAS, the parties have agreed to the terms and conditions of this Agreement (including the pricing terms) based in substantial part upon the parties' resolution of the Facilities Disputes, including (a) the City's agreement to grant Charter a license for the continued use and occupancy of the Parcel, (b) Charter's agreement to grant City a license right to exclusively use certain dark fibers along the route of Charter as more particularly described in the Dark Fiber Agreement of even date (the "**Dark Fiber Agreement**") and (c) the parties agreement to a mutual release of any and all claims arising out of or relating to the Facilities' Disputes as evidenced by this Agreement, the Dark Fiber Agreement and the Mutual Waiver and Release of even date agreed upon between City and Charter;

NOW THEREFORE, in partial consideration of the terms and conditions of this Agreement and the Dark Fiber Agreement, and for such other consideration of the mutual covenants and promises of the parties set forth herein, the parties hereto agree as follow:

1. **Grant of License.** In consideration of the agreements and covenants contained in this Agreement to be kept and performed by both Licensor and Licensee, Licensor grants to Licensee the following license rights (collectively the "**License**"): (a) an exclusive license to install, construct, maintain, operate, repair, replace, upgrade, modify or remove all or a portion of its Facilities (as defined in Section 2 below) on that portion of the Parcel, measuring approximately 500 square feet in size, as more particularly described and depicted in **Exhibit A** attached hereto

and incorporated herein by this reference (the **“Exclusive License Area”**); and (b) a right to run associated cables, conduit, coax and fiber and to install utilities, to and from a public right of way across the Parcel to the OTN Facilities in locations and routes as shown in drawings and maps submitted to and approved by Licensor (the **“Non-Exclusive License Area”**), which approval shall not be unreasonably withheld, conditioned or delayed. The Exclusive License Area and the Non-Exclusive License Area referenced in subsections (a), and (b) above are collectively referred to as the **“License Area”**. Notwithstanding anything to the contrary contained in this Agreement, any OTN Facilities, cables, conduit, coax, fibers and utilities previously installed by or on behalf of Licensee on the Parcel and existing as of the date of this Agreement (collectively the **“Existing Facilities”**) are deemed approved by Licensor pursuant to this Section 1. Except for a Like-Kind Exchange, any other modification or alteration to the OTN Facilities shall require the prior written consent of City, which consent shall not be unreasonably withheld conditioned or delayed. If City fails to consent to or object to any proposed modification or alteration within 10 days after receipt of written notice thereof, the same shall be deemed approved. As used herein, **“Like-Kind Exchange”** shall mean a piece of equipment, system or a unit that: (i) has a substantially similar technological purpose or use, (ii) fits within the same or less space as the item being replaced and (iii) is mounted or connected in substantially the same manner as the equipment, system or unit being replaced. Upon installation, the Like-Kind Exchange shall be considered a part of the “Facilities” for purposes of this Agreement.

2. **Permitted Activities.** Licensee shall use the License Area solely for the installation, construction, operation, repair, replacement, maintenance, upgrade, modify and removal of: (a) all or a portion of the OTN Facilities (including any cabling or utilities related thereto) or any other network or communications system (including any cabling or utilities related thereto) used in connection with Licensee’s business operations (collectively **“Facilities”**); (b) any fence, gate or other security system in or on the Licensed Area (subject to all permitting requirements of the City for any such fence, gate or security system); and (c) landscaping or weed control in or on the License Area (subsections (a), (b) and (c) are collectively the **“Permitted Activities”**). The aforementioned License includes access 24 hours a day, 7 days a week to the License Area from public rights of way and public easements around the License Area for the purpose of the Permitted Activities. All work performed by Licensee shall be in accordance with applicable laws and permitting requirements of the City. Subject to permitting requirements of the City, Charter shall be permitted to use a temporary backup generator in the License Area or to install a permanent backup generator or other permanent power management device. Notwithstanding the foregoing, Licensor represents and warrants that the Existing Facilities have been constructed in accordance with the permitting requirements of the City (the **“Existing City Approval”**).

3. **Term.** This Agreement shall be binding upon execution by both Licensor and Licensee and shall become effective as of the Effective Date set forth above. This Agreement shall expire on December 31, 2022 (**“Term”**). Notwithstanding anything to the contrary contained in this Agreement, Licensee shall have the right to terminate this Agreement at any time for any reason whatsoever upon 30 days prior written notice to Licensor (**“Licensee’s Termination Notice”**). Upon Licensee’s compliance with the terms of this section, this Agreement will terminate as of the date of termination set forth in Licensee’s Termination Notice (the **“Early Termination Date”**), and neither Licensor nor Licensee will have any further rights or obligations under this Agreement, except with respect to those matters in this Agreement that expressly survive the

termination of this Agreement. On or before the Early Termination Date, Licensee shall surrender the License Area in accordance with Section 14 of this Agreement and Licensee shall pay to Licensors an early termination fee equal to three times the then-applicable monthly license fee.

4. Consideration; License Fees

4.1. Consideration. As partial consideration for the terms and conditions set forth in this Agreement, the parties agree to enter into that "Mutual Waiver and Release" dated even date herewith ("**Waiver and Release**") and set forth on **Exhibit B** attached hereto.

4.2. License Fee Payments Due. Commencing as of the Effective Date, Licensee shall pay to Licensors, as monetary consideration for its use and occupancy of the License Area, the amounts shown below. Said fees shall be payable in monthly installments in advance on the first day of each month, without demand or offset except as expressly set forth herein, in the following amounts set forth below. If the Term commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, then the fees will be appropriately prorated.

Period	Monthly Fees
Effective Date – 12/31/15	\$500
1/1/16-12/31/19	\$1,000
1/1/20-12/31/22	\$1,500

4.3. Late Payment. Late payments shall accrue interest, from the date such payment is due, until paid, including accrued interest, at a non-compounding, annual rate of ten (10) percent. A late payment shall be (a) any payment received later than three days after the date specified herein for such payment, and /or (b) any payment of disputed amounts that is received more than forty-five (45) days after the date such payment is determined to have been due in a final resolution of such dispute.

5. Services and Utilities. Licensees shall contract directly with appropriate providers for utility services, if necessary, for the operation of its Facilities. Notwithstanding the foregoing and subject to any permitting requirements of the City, the City shall cooperate with Licensee, at no additional cost to Licensee, in the event any utility provider requires the written consent or other agreement of the City to provide such utility services.

6. Compliance with Laws. Licensee shall not use the License Area or knowingly allow anything to be done in the License Area, which will in any way conflict with any law, statute, ordinance or government rule or regulation now in force or which may hereafter to be enacted or promulgated. Licensee shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances, government rules, regulations, or requirements relating to or affecting the condition, use or occupancy of the License Area, but only to the extent directly caused by the

Permitted Activities. Licensee acknowledges that City has not, except as set forth herein, made any representations or warranties concerning the License Area, and Licensee shall be deemed to have inspected the License Area and accepted in its "as is" condition, subject to the express representations and warranties set forth herein. Licensee understands that certain of the Permitted Activities may require permitting or regulatory approvals from the City, or other federal, state or local regulatory or governmental entities. Licensee shall be solely responsible for obtaining any such regulatory permits or approvals. Licensee understands that to the extent such regulatory approvals are sought from the City, there is no guarantee or presumption that any such regulatory approval(s) will be issued and the City's status as an agency of the City shall in no way limit the obligation of Licensee to obtain approvals from the City or other regulatory agencies with jurisdiction over the License Area. The foregoing shall not negate the Existing City Approval of the Existing Facilities.

7. **Assignment.** Neither Licensee nor Licensor will assign this Agreement or any interest in this Agreement, without the prior written consent of the other party, which consent will not be unreasonably withheld, conditioned, or delayed. If the other party does not consent or object in writing to such proposed assignment within 10 days after its receipt of the request for consent, the consent will be deemed given. Notwithstanding anything to the contrary contained in this Agreement, each Licensee or Licensor shall have the right to assign this Agreement, without other party's consent, to any of its Affiliates (as defined below) or to any Successor (as defined below). Any such assignee shall have a similar right to assign this Agreement, without the other party's consent, to any of its Affiliates or Successor. As used herein, "**Affiliates**" means any corporation, public agency or other entity that controls, is controlled by, or is under common control with, assigning party, or any corporation, public agency or other entity that results from a merger or consolidation with assigning party. As used herein, "**Successor**" means, in the case of Licensee, any purchaser of all or a portion of the communications systems, equipment or business operations of Licensee or Licensee's Affiliates located on or related to the License Area, and, in the case of Licensor, any purchaser of all or a portion of the fee or property interest in the License Area. Upon any assignment of this Agreement as permitted by this section, the assigning party shall be relieved of all obligations and liabilities arising hereunder after the date of the assignment. No transfer or assignment of the stock of Licensee, or any ownership interest in Licensee, whether by sale, merger, exchange or other means, shall constitute an assignment of this Agreement. Notwithstanding the foregoing, in the event of a sale, conveyance or other transfer by Licensor of the real property upon which the License Area is situated, this Agreement shall remain in full force and effect subject to its terms and conditions set forth herein.

8. **Taxes and Assessments.** Licensor will pay when due all real property taxes and assessments assessed, levied, or imposed during the Term on the License Area; except that the Licensee shall pay any real property taxes and assessments assessed, levied or imposed by reason of Licensee's license or leasehold interest in the License Area (i.e. possessory interest tax), if applicable). Licensee will pay when due all personal property taxes on Licensee's personal property on the License Area.

9. Insurance.

9.1 Required Insurance. Licensee shall maintain throughout the Term, at Licensee's expense, insurance as follows:

- (a) Comprehensive or commercial general liability insurance with limits not less than one million dollars (\$1,000,000) for each occurrence combined single limit for bodily injury and property damage, personal injury, products and completed operations, fire damage and liability with limits of not less than two million dollars (\$2,000,000) in the aggregate;
- (b) Workers Compensation insurance as required under the California Labor Code and Employer's Liability Insurance with limits of not less than one million dollars (\$1,000,000) for each accident.
- (c) Comprehensive or Business Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence, combine Single Limit for Bodily Injury and Property Damage, including coverage for owned, non-owned and hired automobile as applicable, which insurance shall be required if any automobiles or any other motor vehicle are operated in connection with Licensee activity on, in or around the License Area.

9.2 Claims Made Policy. Should any of the required insurance be provided under a claims-made form, Licensee shall maintain such coverage continuously throughout the Term and without lapse, for two (2) years beyond the expiration of this Agreement, to the effect that, should occurrences during the Term give rise to claims after expiration of this Agreement, such claims shall be covered by such claims-made policy.

9.3 Annual Aggregate Limit. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense cost be included in such annual aggregate limit, such annual aggregate limit shall be not less than double the occurrence limit specified above.

9.4 Additional Insureds. Liability policies shall name the following as additional insureds: "the City of Morgan Hill and their officers, directors, employees and agents."

9.5 Primary Insurance; Waiver of Subrogation Rights. Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the City, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Additionally, such insurance shall include an insurer's waiver of subrogation in favor of the City.

9.6 General Insurance Matters. All insurance policies shall endeavor to provide thirty (30) days prior written notice of cancellation or non-renewal to Licensor at the address for Notices specified herein below. All insurance policies shall be endorsed to provide that such insurance is primary to any other insurance available to the additional insureds with respect to claims covered

under the policy. All insurance policies required to be maintained by Licensee hereunder shall be issued by an insurance company or companies authorized to do business in the State of California.

10. Default; Remedies.

10.1 Event of Default by Licensee. The occurrence of any one or more of the following events shall constitute a default by Licensee: (a) Failure by Licensee to pay when due any fees and/or all other charges due hereunder, and such failure continues for more than ten (10) business days after receipt of written notice thereof from Licensor ("**Monetary Default**"); (b) Failure by Licensee to perform its obligations under this Agreement, and such failure materially disrupts Licensor's ability to conduct normal City operations from the Parcel ("**City Emergency Default**"); or (c) any other failure by Licensee under this Agreement that is not otherwise a Monetary Default or a City Emergency Default ("**City Non-Emergency Default**"). If Licensee fails to commence a cure for a City Emergency Default within one business day after written notice regarding the same, or if Licensee fails to diligently pursue such cure to completion, then Licensor shall have the right, in its sole discretion, to exercise such self-help measures as may be reasonably necessary to cure the City Emergency Default; provided, however, in no event shall the same include cutting any power, cable or connections to the OTN Facilities unless the same is necessary to avert imminent harm to the health or safety of persons on or near the Parcel. If Licensee fails to commence a cure for a City Non-Emergency Default within thirty (30) days after receipt of written notice thereof from Licensor, or if Licensee fails to diligently pursue such cure to completion, then Licensor shall have the right, in its sole discretion, to exercise such self-help measures as may be reasonably necessary to cure the City Non-Emergency Default; provided, however, in no event shall the same include cutting any power, cable or connections to the OTN Facilities unless the same is necessary to avert imminent harm to the health or safety of persons on or near the Parcel.

10.2 Licensor Remedies. Upon a Monetary Default or a City Non-Emergency Default by Licensee and after the expiration of applicable notice and cure periods, Licensor shall, without further notice or demand of any kind to Licensee or to any other person, and in addition to any other remedy Licensor may have under this Agreement and at law or equity, have the ability to immediately terminate this Agreement and Licensee's right to use the License Area. Upon notice of any such termination, Licensee shall immediately discontinue its use of the License Area and vacate the License Area within 30 days, and Licensor may take any and all action to enforce Licensee's obligations hereunder. Any costs and expenses incurred by Licensor to cure a City Emergency Default or a City Non-Emergency Default, as the case may be, shall be reimbursed by Licensee upon demand.

10.3 Event of Default by Licensor and Licensee Remedies. In the event of any default by Licensor in the performance of its obligations under this Agreement, Licensee will have the rights set forth herein. The occurrence of any one or more of the following events shall constitute a default by Licensor: (a) Failure by Licensor to perform its obligations under this License, and such failure materially disrupts Licensee's ability to conduct normal business operations from the License Area (an "**Emergency Default**"); or (b) any other failure by Licensor under this License that is not otherwise an Emergency Default ("**Non-Emergency**").

Default”). If Licenser fails to commence a cure for such Emergency Default within one business day after written notice regarding the same, or if Licenser fails to diligently pursue such cure to completion, then Licensee shall have the right, in its sole discretion, to exercise such self-help measures as may be reasonably necessary to cure the Emergency Default; provided, however, in no event shall the same include cutting any water, sewer or utility lines unless the same is necessary to avert imminent harm to the health or safety of persons on or near the Parcel. If Licenser fails to commence a cure for such Non-Emergency Default within thirty (30) days after receipt of written notice thereof from Licensee, or if Licenser fails to diligently pursue such cure to completion, then Licensee shall have the right, in its sole discretion, to exercise such self-help measures as may be reasonably necessary to cure the Non-Emergency Default; provided, however, in no event shall the same include cutting any water, sewer or utility lines unless the same is necessary to avert imminent harm to the health or safety of persons on or near the Parcel. Any costs and expenses incurred by Licensee to cure an Emergency Default or a Non-Emergency Default, as the case may be, shall be reimbursed by Licenser upon demand. Whether or not Licensee exercises its self-help right, the fees hereunder shall be abated from the date following expiration of the applicable cure period until the date the specified default is cured. Without limiting the foregoing, if Licenser fails to cure any default after the expiration of the applicable notice and the applicable cure period, Licensee shall also have the right to terminate this Agreement, without penalty, upon notice to Licenser, such termination to be effective as of the termination date designated on Licensee’s termination notice.

11. Indemnity.

A. Except as waived and released herein, Licensee shall indemnify Licenser, its elected or appointed officials, boards, agencies, officers, and agents (collectively, the **“City Indemnified Parties”**) from, and if requested, shall defend them against any and all liability, injuries, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitations, direct and vicarious liability of any kind (collectively **“Claims”**) arising directly out of: (1) any injury to or death of any person including, but not limited to, agents and invitees of Licensee, or damage to destruction of any property, caused by Licensee’s use of the License Area under this Agreement or any part thereof; (2) any failure to Licensee to observe or perform any of the terms, covenants or condition of this Agreement; (3) the use, occupancy or condition of the License Area by Licensee, its agents or invitees, or the activities therein by Licensee or its agents or invitees; (4) the use of the License Area or Parcel for uses not permitted under this Agreement; (5) the actions or omissions of Licensee, its agents, employees, contractors, licensees and invitees; or (6) the discharge, removal, CERCLA or other cleanup, or restoration of the Parcel caused by Licensee’s introduction of Hazardous Substances (as defined in Section 13 below) to the Parcel. This indemnity shall exclude Claims relating solely and exclusively to the gross negligence or willful misconduct of the City or the City Indemnified Parties which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Licensee or its agent or invitees.

In addition to Licensee’s obligation to indemnify the City Indemnified Parties, Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City Indemnified Parties from any claims that actually fall within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent.

The foregoing indemnity obligation of Licensee include indemnification from all loss and liability, including attorneys and consultants fees, court cost, investigation and remediation cost, and all other reasonable cost and expenses incurred by the City Indemnified Parties. Licensee's obligations under this section will survive the expiration or other termination of this Agreement.

B. Except as waived and released herein, and to the extent permissible by applicable laws, Licensors shall indemnify Licensee, its members, officers, employees, agents, parent or affiliates (collectively, the "**Charter Indemnified Parties**") from, and if requested, shall defend them against, and hold them harmless from, any and all Claims arising directly out of (1) the use of the Parcel by Licensors, its agents, employees, contractors, licensees and invitees; (2) Licensors' interference with Licensee's use and enjoyment of the License Area; (3) the actions or omissions of Licensors, its agents, employees, contractors, licensees and invitees; (4) a breach of any representations and warranties by Licensors set forth in this Agreement; (5) the removal, CERCLA or other cleanup, or restoration of the Parcel, except for any cleanup caused by Licensee's introduction of Hazardous Substances to the Parcel or (6) the failure of Licensors to comply with the terms of this Agreement. This indemnity shall exclude Claims relating solely and exclusively to the gross negligence or willful misconduct of the Charter Indemnified Parties which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Licensee or its agent or invitees.

In addition to Licensors' obligation to indemnify the Charter Indemnified Parties, Licensors specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Charter Indemnified Parties from any claims that actually fall within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent.

The foregoing indemnity obligation of Licensors include indemnification from all loss and liability, including attorneys and consultants fees, court costs, investigation and remediation costs, and all other reasonable costs and expenses incurred by the Charter Indemnified Parties. Licensors' obligations under this section will survive the expiration or other termination of this Agreement.

C. Notwithstanding anything to the contrary contained in this Agreement, in no event shall either party be liable to the other party for any consequential, punitive, special or indirect damages.

12. Intentionally Omitted.

13. **Hazardous Substances.** As used herein, the term "**Hazardous Substances**" shall mean any chemical, substance, medical or other waste, living organism or combination thereof which is or may be hazardous to the environment or human or animal health or safety due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness or other harmful or potentially harmful properties or effects. Hazardous Substances shall include, without limitation, petroleum hydrocarbons, including crude oil or any fraction thereof, asbestos, radon, polychlorinated biphenyls (PCBs), methane and all substances which now or in the future may be defined as "hazardous substances," "hazardous wastes," "extremely hazardous wastes," "hazardous materials," "toxic

substances,” “infectious wastes,” “biohazardous wastes,” “medical wastes,” “radioactive wastes” or which are otherwise listed, defined or regulated in any manner pursuant to any Environmental Laws. As used herein, “Environmental Laws” means all present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, directives, interpretations and conditions of approval, all administrative or judicial orders or decrees and all guidelines, permits, licenses, approvals and other entitlements, and rules of common law, pertaining to Hazardous Substances, the protection of the environment or human or animal health or safety.

Licensors represents and warrants that, to the best knowledge and belief of Licensors, the Parcel contains no Hazardous Substances. Licensors will not use or conduct operations on or at the Parcel, or manufacture, store, sell, use, dispose of, release, or discharge Hazardous Substances on or at the Parcel.

Licensee shall not cause or knowingly allow any Hazardous Substance to be used, manufactured, stored, discharged, released or disposed of in, from, under or about the License Area in violation of Environmental Laws. Without limiting the generality of the foregoing, Licensee, at its sole cost, shall comply with all Environmental Laws as the same relate to the Permitted Activities. If the presence of Hazardous Substances in, on or under the License Area, is caused, or knowingly allowed, by Licensee and results in contamination of the License Area or any soil or groundwater in, on or under the Parcel, then Licensee, at its sole cost and expense, shall promptly take all actions necessary to remediate such contamination. The termination of this Agreement shall not terminate or reduce the liability or obligations of Licensee under this Section 13, or as may be required by law, to clean up, monitor or remove any Hazardous Substances. Should Licensee cause or gain actual knowledge of the presence, discharge or release or any Hazardous Substances on the License Area or the Parcel, Licensee shall promptly notify Licensors of such presence, discharge or release; provided, however, that Licensee’s mere discovery or notice of any presence, discharge or release shall not, in and of itself, trigger Licensee’s indemnification obligations hereunder.

14. Surrender. Upon the expiration or earlier termination of this Agreement, Licensee shall surrender to Licensors the License Area in good condition (except for ordinary wear and tear and casualty). License Area shall be surrendered clean, free of debris, waste, Hazardous Substances introduced by Licensee, alterations made by Licensee and free and clear of all liens and encumbrances caused by Licensee. Within 30 days after the expiration or earlier termination of this Agreement, Licensee shall remove all of its Facilities, cables, conduit, coax and fiber and all utilities from the License Area and Parcel. If Licensee fails to surrender the License Area and to complete all removals as required by this section, Licensee shall indemnify Licensors from all actual, out-of-pocket damages resulting from Licensee’s failure to so surrender the License Area including Licensors’ cost to remove the Facilities, cables, conduits, coax, fibers and utilities from the License Area or the Parcel. Licensee obligations under this section will survive the expiration or other termination of this Agreement.

15. Attorney Fees.

15.1 Litigation Expenses. The prevailing party in any action or proceeding against the other party by reason of a claimed default, or otherwise arising out of a party’s performance or alleged

non-performance under this Agreement, shall be entitled to recover from the other party its costs and expenses of suit, including, but not limited to, reasonable attorney's fees, which fees shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. Attorneys' fees under this section shall include attorneys' fees and all other reasonable cost and expense incurred in connection with any appeal.

15.2 City Attorney. For purposes of this Agreement, reasonable fees of attorneys of the Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the bar of any state) who practice in law firms located in the County of Santa Clara with approximately the same number of attorneys as employed by the Office City Attorney.

16. Notices. All notices, requests or other communications required or permitted to be given in connection with this Agreement shall be in writing and shall be personally delivered (with prompt confirmation by registered or certified mail, postage prepaid), or by commercial courier service, or by registered or certified mail, postage pre-paid, return receipt requested, addressed to the party whom it is directed at the following addresses, or at such other addresses as may be designated by notice from such party in the manner provided herein:

To Licensee: CCO SoCal I, LLC
c/o Charter Communications
6399 S. Fiddlers Green Circle, Suite 600
Greenwood Village, Colorado 80111
Attn: UGL Equis/Charter Lease Administration
Charter File No.: CA 0246

With a copy to:

CCO SoCal I, LLC
c/o Charter Communications
6399 S. Fiddlers Green Circle, Suite 600
Greenwood Village, Colorado 80111
Attn: Kathy Carrington,
VP-Corporate Services
Charter File No.: CA 0246

To Licensor: City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attn: City Attorney
Telephone: (408) 779-7271
Facsimile: (408) 779-1592

All notices shall be deemed to have been served when actually received, or upon refusal of delivery; any such notice that remains unclaimed 10 days after delivery shall be deemed served when delivered. Either party may change its address by giving notice to the other in accordance with this section.

17. Miscellaneous Provisions.

17.1 Non-Liability. No elected or appointed board member, commissioner, officer, employee or other agent of the City and/or City shall be personally liable to Licensee, its successors and assigns, in the event of any default or breach by Licensor or for any amount which may become due to Licensee or for any obligation of Licensor under this Agreement. Under no circumstances shall the City or their respective agents be liable for any consequential, incidental or punitive damages. Licensor's members, parent or affiliates and their members, affiliates and partners and all of their officers, directors and employees will not be personally liable to Licensor, its successors or assigns in the event of any default or breach by Licensee, or for any amounts which may become due to Licensor or for any obligation of Licensee under this Agreement.

17.2 Entire Agreement. This Agreement contains all the representations and the entire agreement between the parties with respect to the subject matter hereof.

17.3 Amendment. No amendment of this Agreement or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto. The waiver by either party of any right or agreement contained in this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other right or agreement contained in this Agreement.

17.4 Severability. If any provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be effected thereby, and each of the other provisions of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.

17.5 Successors. The terms, covenants, agreements and conditions set forth in this Agreement shall bind and inure to the benefit of Licensor and Licensee and, except as otherwise provided herein, their personal representatives, successors and assigns.

17.6 Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

17.7 Authority. Each party covenants and warrants to the other that each person executing this Agreement on its behalf is duly authorized to do so. Without limiting the foregoing, Licensee covenants and warrants that it is qualified to do business in California, and that Licensee has full rights and authority to enter into this Agreement.

17.8 Time of Essence. Time is of the essence with respect to all provision of this Agreement.

17.9 Relationship of the Parties. Licensor is not, and none of the provisions of this Agreement shall be deemed to render Licensor a partner in Licensee's business, or joint venture

or member of any joint enterprise with Licensee. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

17.10 Cumulative Remedy. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

17.11 Choice of Law. This Agreement shall be governed by the law of the State of California without reference to its conflict of laws principles. Licensor and Licensee hereby irrevocably consent to jurisdiction of and proper venue in the Superior Court for the County of Santa Clara.

17.12 Entry for Inspection. Licensor and its authorized agents shall have the right to enter the License Area (but not any building or structure located thereon) without notice at any time for the purpose of inspecting the License Area and to determine whether the License Area is in good condition and whether Licensee is complying with its obligations under this Agreement.

17.13 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, neither party shall have liability to the other, nor will either party have any right to terminate this Agreement because of the other party's failure to perform any of its obligations in this Agreement if the failure is due in part or in full to reasons beyond that party's reasonable control, including, without limitation, strikes or other labor difficulties, war, riot, civil insurrection, accidents, acts of God and governmental preemption in connection with a national emergency.

17.14 Drafting. This Agreement has been prepared by Licensor and its professional advisors and reviewed by Licensee and its professional advisors. Licensor, Licensee and their separate advisors believe this Agreement is the product of all of their efforts, that it expresses their agreement and that it should not be interpreted in favor of either Licensor or Licensee or against either Licensor or Licensee merely because of their efforts in preparing it.

17.15 Further Assurance. Each party agrees to cooperate with the other and its authorized representatives with regard to any reasonable requests made subsequent to execution of this Agreement to correct any clerical errors contained in this Agreement and to provide any and all additional documentation deemed necessary to effectuate the transaction contemplated by this Agreement. Each party further agrees that the term "cooperate," as used in this Agreement, includes agreeing to execute or re-execute any documents that the parties reasonably deem necessary or desirable to carry out the intent of this Agreement. Without limiting the foregoing, Licensor acknowledges that Licensee, as a licensee under the rules and regulations of the State of California and the Federal Communications Commission, is subject to certain local, state and federal requirements. Licensor shall, cooperate in good faith with Licensee in its efforts to comply with all such rules and regulations of the State of California and the Federal Communications Commission. Licensor will cooperate by providing any written verifications, reasonable consent or agreement at no additional cost to Licensee; provided however, that Licensee shall reimburse Licensor for any significant out-of-pocket cost incurred in compliance with rules and regulation of the State of California or the Federal Communications Commission.

17.16 Exclusive Use; Quiet Enjoyment. Provided Licensee pays the fees and performs all of the other material covenants and conditions of this Agreement to be performed by Licensee hereunder, Licensee shall be entitled to (a) the quiet enjoyment and exclusive use of the Exclusive License Area without hindrance, disturbance, or molestation by Licensor, its agents, or other licensees, and (b) the non-exclusive use of the Non-Exclusive Use License Area for the right to run associated cables, conduit, coax and fiber and to install utilities, to and from a public right of way across the Parcel to the License Area, subject to the City's use of such area so long as the City's use does not unreasonably disrupt the use of or unreasonably block access to such cables, conduit, coax, fiber and utilities for maintenance, repair or replacement.

17.17 Measurable Interference. Licensor acknowledges that Licensee's use of the License Area for the Facilities requires no measurable electronic interference ("**Measurable Interference**"). Accordingly, from and after the date of this Agreement, Licensor will not construct or install, nor permit the construction or installation of improvements or equipment, on the Parcel that causes a Measurable Interference with the operation of the Facilities, unless such improvement or equipment is needed primarily for the public health, safety and welfare (a "**HSW Exception**"). Licensor will notify Licensee in writing at least 30 days in advance of the construction or installation of any improvements or equipment on the Parcel located in the vicinity of the License Area required as a HSW Exception, and if Licensee reasonably believes that the same will cause a Measurable Interference with the OTN Facilities, then Licensor shall, in good faith, work with Licensee regarding reasonable alternatives for the same.

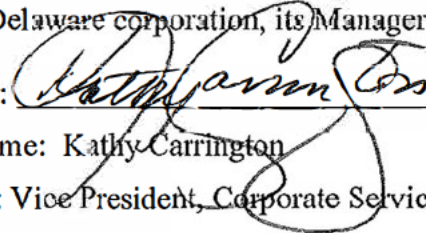
17.18 Estoppel. Licensor hereby represents and warrants that as of the date of execution of this Agreement, (a) Licensee is not in default or breach of this Agreement and (b) no event has occurred which with the passage of time or the giving of notice would constitute such a breach or default. Licensee hereby represents and warrants that as of the date of execution of this Agreement, (i) Licensor is not in default or breach of this Agreement and (ii) no event has occurred which with the passage of time or the giving of notice would constitute such a breach or default.

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

LICENSEE

CCO SoCal I, LLC,
a Delaware limited liability company

By: Charter Communications, Inc.,
a Delaware corporation, its Manager

By: 
Name: Kathy Carrington
Its: Vice President, Corporate Services

LICENSOR

CITY OF MORGAN HILL

By: 
Name: STEVE RYMER
Its: CITY MANAGER
4/10/13

Approval as to form:

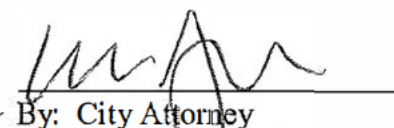
for 
By: City Attorney
04/02/13
Council Approval:
12/19/12

EXHIBIT A

LICENSE AREA DESCRIPTION AND DEPICTION

EXHIBIT B

MUTUAL WAIVER AND RELEASE

MUTUAL WAIVER AND RELEASE

This Mutual Waiver and Release (this "Release") is entered into this first day of January, 2013 (the "Effective Date"), by and between **City of Morgan Hill**, a California municipal corporation ("City"), and CCO SoCal I, LLC, a Delaware limited liability company ("CCO").

Recitals

WHEREAS, CCO constructed and presently operates and maintains its Open Transport Network Facilities (the "OTN Facilities"), used in connection with its cable television systems on that certain parcel of unimproved real property owned formerly by the Morgan Hill Redevelopment Agency ("Agency"), and now owned by City, located at [REDACTED] in the City of Morgan Hill, County of Santa Clara, State of California, commonly known as [REDACTED] (the "Parcel");

WHEREAS, Recipient and its predecessor Morgan Hill Redevelopment Agency has used and continues to make use of dark fibers for Recipient's purposes along such route of the Provider.

WHEREAS, disputes arose between City and CCO over whether (i) CCO obtained, or was required to obtain, an encroachment permit, lease or license from Agency or City for the use of the Parcel, (ii) CCO owed payment to Agency or City for its use and occupancy of the Parcel for any time prior to the Effective Date of this Release and (iii) Agency or City owed payment to CCO for its prior use of optical fibers in the number and of the type specified in Exhibit A attached hereto (the "Licensed Fibers") for any time prior to the Effective Date of this Release (the disputes set forth in subsection (i), (ii) and (iii) above are collectively referred to herein as the "Facilities' Disputes");

WHEREAS, the Facilities' Disputes shall not include any use of the OTN Facilities by CCO from and after the date of this Release, nor any use of the Licensed Fibers by City from and after the date of this Release;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CCO and City agree as follows:

1. Release by CCO. CCO hereby knowingly and intentionally waives, releases, and discharges City, its officers, directors, City Council Members, employees, agents, predecessors, successors and assigns (collectively the "City Released Parties"), of and from any and all liabilities, claims, actions, causes of action, proceedings, damages, demands, suits, controversies, liabilities, costs and expenses, including, without limitation, attorneys' fees and costs, of any kind or description, of any nature whatsoever, whether at law or in equity, by statute, common law or otherwise and whether known or unknown, which CCO ever had, now has, or which its successors and assigns may have in the future against the City Released Parties, arising out of or relating to the Facilities' Disputes.

2. Release by City. City hereby knowingly and intentionally waives, releases, and discharges CCO, its directors, officers, directors, employees, agents, subsidiaries, affiliated entities, predecessors, successors and assigns (collectively the "CCO Released Parties"), of and from any and all liabilities, claims, actions, causes of action, proceedings, damages, demands, suits, controversies, liabilities, costs and expenses, including, without limitation, attorneys' fees and costs, of any kind or description, of any nature whatsoever, whether at law or in equity, by statute, common law or otherwise and whether known or unknown, which City ever had, now has, or which its successors and assigns may have in the future against the CCO Released Parties, arising out of or relating to the Facilities' Disputes. City shall indemnify, defend and hold the CCO Released Parties harmless from and against any and all liabilities, claims, actions, causes of action, proceedings, damages, demands, suits, controversies,

liabilities, costs and expenses, including, without limitation, attorneys' fees and costs, that may arise by Agency against CCO in connection with the Facilities' Disputes or this Release, or both.

3. General. The respective releases by the respective parties in Paragraphs 1 and 2 shall include the release, waiver and discharge of any and all claims that City may have for any payment whatsoever for Charter's use and occupancy of the Licensed Area (as such terms are described in that License Agreement between the parties dated even date herewith) prior to the Effective Date of this Release and any and any and all claims that CCO may have for any payment whatsoever for City's licensing or use of Licensed Fibers (as such term is defined in that Master Dark Fiber Agreement dated even date herewith).

4. Miscellaneous. This Release will bind and inure to the benefit of CCO and City and their respective successors and assigns. If there is any legal action or proceeding arising from or based on this Release, the unsuccessful party to such action or proceeding will pay to the prevailing party all costs and expenses, including reasonable attorneys, fees and disbursements, incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys, fees and disbursements will be included in and as a part of such judgment. If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired, unless the provisions held invalid, illegal or unenforceable shall substantially impair the benefits of the remaining provisions hereof. This Release shall be governed by the laws of the State of California, without reference to its conflict of laws principles.

5. Cal. Civil Code Section 1542. The parties expressly waive and relinquish all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and the parties do so understand and acknowledge the significance and consequence of such specific waiver of Section 1542. Section 1542 of the Civil Code of the State of California states as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HER OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

The undersigned, being aware of said code section, hereby expressly waive any rights they may have thereunder, as well as under any other statutes of common law principles of similar affect.

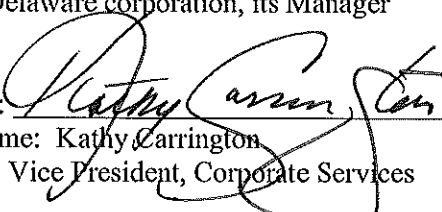
6. Counterparts. This Release may be signed and delivered by facsimile or electronically and the same facsimile or "pdf" signatures shall constitute original signatures hereof with all force and effect of law. This Release may be executed in counterparts, each of which will constitute an original and all of which together shall constitute one and the same document.

CCO and City have executed this Release as of the Effective Date.

CCO:

CCO SoCal I, LLC,
a Delaware limited liability company

By: Charter Communications, Inc.,
a Delaware corporation, its Manager

By: 
Name: Kathy Carrington
Its: Vice President, Corporate Services

CITY:

City of Morgan Hill

By: 
Name: STEVE Rymer
Its: CITY MANAGER
4/10/13

APPROVED AS TO FORM:

for 
City Attorney
Date: 04/02/13

Council Approval!
12/19/12

EXHIBIT A

EXHIBIT A

1. Licensed Fiber - Institutional Network Locations:
 - Civic Center/City Hall 17555 Peak Rd (Hub or core site)
 - Police Department 16200 Vineyard Blvd (2 strands to hub)
 - Corporation Yard 100 Edes Court (2 strands to hub)
 - Recreation Center 171 W Edmundson Ave (2 strands to hub)
 - Aquatic Center 16200 Condit Rd (2 strands to hub)
 - Comm. Cultural Center 17000 Monterey (2 strands to hub)
2. Dark Fiber Institutional Network, not managed service network

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Charlie Ha, Supervising Civil Engineer

APPROVED BY: City Manager

APPROVE FINAL MAP FOR ROSEWOOD - TRACT NO. 10599 (JUAN HERNANDEZ DRIVE AND BARRETT AVENUE) AND RELATED SUBDIVISION IMPROVEMENTS AGREEMENT

RECOMMENDATION(S)

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with BFH CM LLC; and
3. Authorize the recordation of the Final Map and Subdivision Improvements Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2022-2023 Strategic Priorities

Economic Development

Guiding Documents

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

Rosewood -Tract No. 10599 is a 35-lot subdivision on a 10.04-acre site that consists of 34 single-family attached duet homes, 86 townhome-style condominiums, and approximately 1.98 acres of open space located on the southeast corner of Juan Hernandez Drive and Barrett Avenue (see attached Site Map – Attachment 1). The proposed residential subdivision is part of the Lillian Commons mixed-used project which also includes a future medical campus.

The developer, BFH CM LLC, has completed all the conditions specified by the Planning Commission in the approval of the project's Vesting Tentative Map (SD2021-0005) and Design Review Permit (SR2022-0002) on June 28, 2022. The City Council is required to approve the map if it conforms to all the requirements of the Subdivision Map Act, and any conditions of approval for the Vesting Tentative Map.

The developer has also furnished the City with the necessary documents to complete the processing of the Final Map (Attachment 2) and has made provisions to provide the

City with the required fees, security, and insurance prior to recordation of the Final Map. The Final Map conforms to the requirements of the Subdivision Map Act, and conditions of approval have been met.

As required by the conditions of approval in the project's Vesting Tentative Map and Design Review Permit, the developer is required to enter into a Subdivision Improvements Agreement (Attachment 3) with the City of Morgan Hill and provide a financial guarantee covering the project's public improvements.

Staff recommends that City Council approve the Final Map and authorize the City Manager to sign a Subdivision Improvements Agreement pending review and approval by the City Attorney.

COMMUNITY ENGAGEMENT:

Inform

On June 28, 2022, the Planning Commission approved the project's Vesting Tentative Map and Design Review Permit. Residents within a 600-foot radius were informed of the Planning Commission's hearing on the Vesting Tentative Map and Design Review Permit for the project which allowed the public to be involved and voice their concerns over the Vesting Tentative Map and Design Review requirements.

ALTERNATIVE ACTIONS:

There is no feasible alternative action as the developer has met the requirements of the Vesting Tentative Map conditions approved by the Planning Commission to file for a Final Map approval.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 28, 2022, the Planning Commission approved the project's Vesting Tentative Map and Design Review Permit.

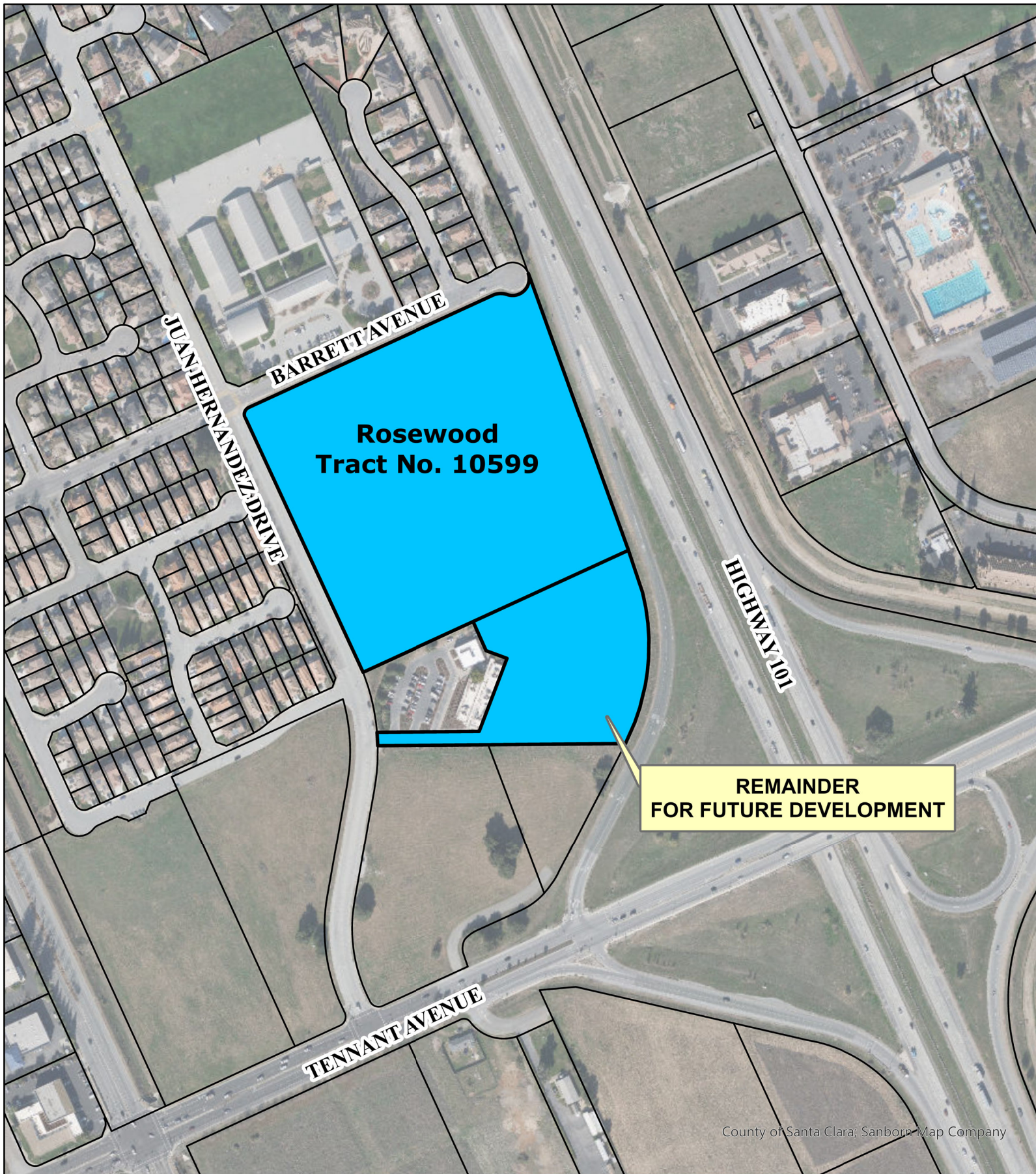
FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Project

A Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program was adopted by City Council on November 4, 2020 (Resolution 20-058).



County of Santa Clara: Sanborn Map Company



Engineering and Utilities Department
Land Development Engineering Division

Site Map Rosewood - Tract No. 10599

0 90 180 360 540 720
US Feet



OWNERS' STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY SHOWN ON THE SUBDIVISION WITHIN THE DISTINCTIVE SYMBOL LINE OF THIS MAP ENTITLED "TRACT 10599, ROSEWOOD", CONSISTING OF TWELVE (12) SHEETS, THIS STATEMENT BEING ON SHEET ONE (1) THEREOF; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE HAVE CAUSED SAID MAP TO BE PREPARED FOR RECORD, AND DO CONSENT TO THE MAKING AND FILING OF SAID MAP.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED IN FEE FOR PUBLIC PURPOSES: TO THE CITY OF MORGAN HILL, THE PORTIONS OF "JUAN HERNANDEZ DRIVE" AND "BARRETT AVENUE", NOT HERETOFORE EXISTING, AND DESIGNATED AS "PARCEL M", FOR PUBLIC STREET PURPOSES, ALONG WITH ANY AND ALL PUBLIC USES UNDER, UPON, OR OVER SAID STREETS.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: EASEMENTS FOR ANY AND ALL PUBLIC SERVICE FACILITIES INCLUDING, BUT NOT LIMITED TO SIDEWALKS, POLES, WIRES AND CONDUITS FOR ELECTRICAL, TELEPHONE, TELEVISION, GAS, STORM, SANITARY AND WATER SERVICES, AND ALL APPURTENANCES THERETO UNDER, UPON, OR OVER THE LAND DESIGNATED AS "PUBLIC SERVICE EASEMENT" (PSE).

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: EASEMENTS FOR ACCESS OF EMERGENCY VEHICLES, OVER, ON AND ACROSS THOSE CERTAIN AREAS DESIGNATED AS "EMERGENCY VEHICLE ACCESS EASEMENT" (EVAE).

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES, AND SUBJECT TO LIMITATIONS SET FORTH ON SHEET 12: EASEMENTS FOR PUBLIC ACCESS OVER THOSE CERTAIN AREAS DESIGNATED AS "PUBLIC ACCESS EASEMENT" (PAE). SAID EASEMENT SHALL BE MAINTAINED BY THE HOMEOWNERS ASSOCIATION CREATED FOR THE "ROSEWOOD" SUBDIVISIONS, AS STATED IN THE COVENANTS, CONDITIONS, AND RESTRICTIONS.

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE LOTS AND PARCELS WITHIN THE "ROSEWOOD" SUBDIVISIONS, EASEMENTS OVER, UNDER, OR UPON THOSE CERTAIN AREAS DESIGNATED AS "PRIVATE STORM DRAIN EASEMENT" (PSDE) FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE STORM DRAIN FACILITIES, SAID EASEMENTS SHALL BE CONVEYED TO, AND MAINTAINED BY, THE HOMEOWNERS ASSOCIATION CREATED FOR THE "ROSEWOOD" SUBDIVISIONS, AS STATED IN THE COVENANTS, CONDITIONS, AND RESTRICTIONS.

WE HEREBY RESERVE FOR THE BENEFIT OF THE "REMAINDER", EASEMENTS OVER THOSE CERTAIN AREAS DESIGNATED AS "INGRESS AND EGRESS EASEMENT" (IEE), FOR RIGHTS OF INGRESS AND EGRESS, SAID EASEMENTS SHALL BE CONVEYED TO, AND MAINTAINED BY, THE HOMEOWNERS ASSOCIATION CREATED FOR THE "ROSEWOOD" SUBDIVISIONS, AS STATED IN THE COVENANTS, CONDITIONS, AND RESTRICTIONS.

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF LOTS 1 THROUGH 35 WITHIN THE "ROSEWOOD" SUBDIVISIONS, THEIR LICENSEES, VISITORS, AND TENANTS, EASEMENTS OVER "LOT 35", FOR THE PURPOSES OF INGRESS, EGRESS, PARKING (WHERE DESIGNATED) AND EASEMENTS FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE UTILITIES UNDER, UPON AND OVER THE STREET EASEMENTS DESIGNATED AS (PRIVATE), AND SHOWN AS "STREET A", "STREET B", "STREET D", AND THE ALLEY EASEMENTS SHOWN AS "ALLEY M", "ALLEY N", "ALLEY O", "ALLEY P", AND "ALLEY Q", SAID EASEMENTS SHALL BE CONVEYED TO, AND MAINTAINED BY, THE HOMEOWNERS ASSOCIATION CREATED FOR THE "ROSEWOOD" SUBDIVISIONS, AS STATED IN THE COVENANTS, CONDITIONS, AND RESTRICTIONS.

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF LOTS 1 THROUGH 35 WITHIN THE "ROSEWOOD" SUBDIVISIONS, THEIR LICENSEES, VISITORS, AND TENANTS, FOR THE PURPOSES OF INGRESS, EGRESS, PARKING (WHERE DESIGNATED) AND FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE UTILITIES UNDER, UPON AND OVER "PARCEL D". SAID PARCEL SHALL BE CONVEYED TO, AND MAINTAINED BY, THE HOMEOWNERS ASSOCIATION CREATED FOR THE "ROSEWOOD" SUBDIVISIONS, AS STATED IN THE COVENANTS, CONDITIONS, AND RESTRICTIONS.

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF LOTS 1 THROUGH 35 WITHIN THE "ROSEWOOD" SUBDIVISIONS, THEIR LICENSEES, VISITORS, AND TENANTS, FOR THE PURPOSES OF INGRESS, EGRESS, PARKING (WHERE DESIGNATED) AND FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE UTILITIES UNDER, UPON AND OVER THE STREETS DESIGNATED AS (PRIVATE), AND SHOWN AS "STREET A" ("PARCEL A"), "STREET B" ("PARCEL B"), "STREET C" ("PARCEL C"), AND THE ALLEYS SHOWN AS "ALLEY E" ("PARCEL E"), "ALLEY F" ("PARCEL F"), "ALLEY G" ("PARCEL G"), "ALLEY H" ("PARCEL H"), "ALLEY I" ("PARCEL I"), "ALLEY J" ("PARCEL J"), "ALLEY K" ("PARCEL K") AND "ALLEY L" ("PARCEL L"). SAID PARCELS SHALL BE CONVEYED TO, AND MAINTAINED BY, THE HOMEOWNERS ASSOCIATION CREATED FOR THE "ROSEWOOD" SUBDIVISIONS, AS STATED IN THE COVENANTS, CONDITIONS, AND RESTRICTIONS.

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF LOTS 1 THROUGH 35 WITHIN THE "ROSEWOOD" SUBDIVISIONS, THEIR LICENSEES, VISITORS, AND TENANTS, "PARCEL N" AS "OPEN SPACE", FOR THE PURPOSES OF LANDSCAPING, RECREATIONAL AMENITIES, STORM WATER MANAGEMENT AND ALL OTHER APPURTENANCES THERETO. SAID PARCEL SHALL BE CONVEYED TO, AND MAINTAINED BY, THE HOMEOWNERS ASSOCIATION CREATED FOR THE "ROSEWOOD" SUBDIVISIONS, AS STATED IN THE COVENANTS, CONDITIONS, AND RESTRICTIONS.

WE HEREBY STATE THAT "LOT 35" IS FOR CONDOMINIUM PURPOSES.

WE HEREBY STATE THAT THE "REMAINDER", MAY BE FURTHER SUBDIVIDED INTO BUILDABLE LOTS, SUBJECT TO THE FUTURE REVIEW AND APPROVAL OF THE CITY OF MORGAN HILL. NO FURTHER DEVELOPMENT OR SUBDIVISION SHALL OCCUR UNTIL FUTURE REVIEW APPROVAL BY CITY PLANNING DIVISION BY TENTATIVE MAP.

ALL OF THE STREETS AND EASEMENTS DESCRIBED HEREIN SHALL BE KEPT FREE OF BUILDINGS, EXCEPT LAWFUL UNSUPPORTED ROOF OVERHANGS, AND OBSTRUCTIONS THAT DO NOT IMPAIR THE USE OF, OR ARE CONSISTENT WITH THE PURPOSE OF THE STREET OR EASEMENT.

THE OFFERS OF DEDICATION DESCRIBED HEREIN TO THE CITY OF MORGAN HILL ARE TO BE ACCEPTED ONLY WHEN THE CITY COUNCIL OF THE CITY OF MORGAN HILL OR ITS SUCCESSOR AGENCY ADOPTS AND RECORDS IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY A RESOLUTION ACCEPTING SAID STREETS OR EASEMENTS. UNTIL SAID RESOLUTION(S) ARE RECORDED, ALL STREETS AND EASEMENTS ENCOMPASSED WITHIN SUCH OFFERS OF DEDICATION SHALL BE MAINTAINED BY THE OWNER DURING ANY REQUIRED WARRANTY PERIOD AND THEREAFTER BY THE OWNER(S) OF THE LOTS OR PARCELS IN THE SUBDIVISION. THE CITY OF MORGAN HILL SHALL NOT BE RESPONSIBLE FOR MAINTENANCE AND SHALL INCUR NO LIABILITY WITH RESPECT TO SUCH OFFERED STREETS AND EASEMENTS OR ANY IMPROVEMENT THEREON. ALL DEDICATED RIGHTS-OF-WAY AND EASEMENTS NOT ACCEPTED FOR MAINTENANCE BY THE CITY OR OTHER PUBLIC AGENCY SHALL BE MAINTAINED BY THE OWNER(S) OF THE LOTS OR PARCELS IN THE SUBDIVISION.

OWNER: BFH CM LLC, A DELAWARE LIMITED LIABILITY COMPANY

NAME: Josh Roden

ITS: Authorized Representative

NAME: Gonzalo Rodriguez

ITS: Vice President

OWNER ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA }
COUNTY OF Contra Costa }ss.

ON November 11, 2022, BEFORE ME, Tiffany Grubbs, A NOTARY PUBLIC

PERSONALLY APPEARED Josh Roden
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.
NOTARY'S SIGNATURE: TGG
NAME OF NOTARY (PLEASE PRINT): Tiffany Grubbs
PRINCIPAL COUNTY OF BUSINESS: Contra Costa
MY COMMISSION NUMBER: 2415110
MY COMMISSION EXPIRES: Sep 6, 2024

OWNER ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA }
COUNTY OF Contra Costa }ss.

ON November 11, 2022, BEFORE ME, Tiffany Grubbs, A NOTARY PUBLIC

PERSONALLY APPEARED Gonzalo Rodriguez
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.
NOTARY'S SIGNATURE: TGG
NAME OF NOTARY (PLEASE PRINT): Tiffany Grubbs
PRINCIPAL COUNTY OF BUSINESS: Contra Costa
MY COMMISSION NUMBER: 2415110
MY COMMISSION EXPIRES: Sep 6, 2024

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY, THAT IS TRUE AND COMPLETE AS SHOWN, IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF BFH CM LLC, A DELAWARE LIMITED LIABILITY COMPANY, COMPLETED APRIL 2022. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS BEFORE NOVEMBER 2024, AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED FINAL MAP.

DATE: 11-15-2022



Bryan Pierce
BRYAN PIERCE, PLS 8859

CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP, AND THAT I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

DATE:



JOHN K. KING
ACTING CITY SURVEYOR - HANNA-BRUNETTI
P.L.S. NO. 6809

NOTES:

- 1.) THE DISTINCTIVE SYMBOL LINE INDICATES THE BOUNDARIES OF THE LAND SUBDIVIDED BY THIS FINAL MAP.
- 2.) THE AREA WITHIN THE DISTINCTIVE SYMBOL LINE IS 17.98 ACRES, MORE OR LESS.
- 3.) A GEOTECHNICAL INVESTIGATION REPORT WAS PREPARED BY ENGEO INCORPORATED JOB NO. 18689.000.002, DATED JULY 6, 2022 AND IS ON FILE WITH THE CITY OF MORGAN HILL

CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP AND THAT THE SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF; THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT, AS AMENDED, AND OF ANY LOCAL ORDINANCE APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH.

DATE:



SCOTT C. CREER
CITY ENGINEER
CITY OF MORGAN HILL, CALIFORNIA
R.C.E. NO. 58879

STATEMENT OF THE PLANNING COMMISSION

I HEREBY STATE THAT THE TENTATIVE MAP FOR THE WITHIN FINAL MAP SHOWN HEREON WAS APPROVED BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL ON JUNE 28, 2022, BY RESOLUTION NUMBER 22-13, APPLICATION NUMBER SD2021-0005.

DATE:

JENNIFER CARMAN
SECRETARY
CITY OF MORGAN HILL, CALIFORNIA

STATEMENT OF THE CITY CLERK

I HEREBY STATE THAT THIS FINAL MAP, CONSISTING OF TWELVE (12) SHEETS, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL AT A MEETING OF SAID COUNCIL HELD ON THE DAY OF 2022; AND THAT SAID COUNCIL DID ACCEPT, SUBJECT TO THEIR IMPROVEMENT IN ACCORDANCE WITH CITY STANDARDS, ON BEHALF OF THE PUBLIC, THE DEDICATION OF "PARCEL M", THE "PUBLIC SERVICE EASEMENT" (PSE), THE "EMERGENCY VEHICLE ACCESS EASEMENT" (EVAE), AND THE "PUBLIC ACCESS EASEMENT" (PAE), FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE DEDICATION, AS SHOWN ON THIS MAP.

I HEARBY CERTIFY THAT SAID CITY COUNCIL, PURSUANT TO SECTION 66434(g) AND 66499.20.2 OF THE SUBDIVISION MAP ACT, APPROVES THE ABANDONMENT OF THE FOLLOWING EASEMENTS:

THE "6-FOOT TO BE RESERVED FOR FUTURE RIGHT-OF-WAY" ADJACENT TO BARRETT AVENUE, AS SHOWN ON THE PARCEL MAP FILED MAY 24, 1983 IN BOOK 513 OF MAP, AT PAGES 14 THROUGH 16, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

THE "16-FOOT PUBLIC SERVICE EASEMENT" ADJACENT TO BARRETT AVENUE, AS SHOWN ON THE PARCEL MAP FILED MAY 24, 1983 IN BOOK 513 OF MAP, AT PAGES 14 THROUGH 16, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

AND THE "TEMPORARY STORM DRAINAGE EASEMENT", AS SHOWN ON THE PARCEL MAP FILED MAY 24, 1983 IN BOOK 513 OF MAP, AT PAGES 14 THROUGH 16, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

DATE:

MICHELLE BIGELOW - CITY CLERK
OF THE CITY OF MORGAN HILL, CALIFORNIA

RECORDER'S STATEMENT

FILE NO. PAID. ACCEPTED FOR RECORD
AND FILED IN BOOK OF MAPS AT PAGES, SANTA CLARA
COUNTY RECORDS, THIS DAY OF 20 AT M.,
AT THE REQUEST OF FIRST AMERICAN TITLE COMPANY.

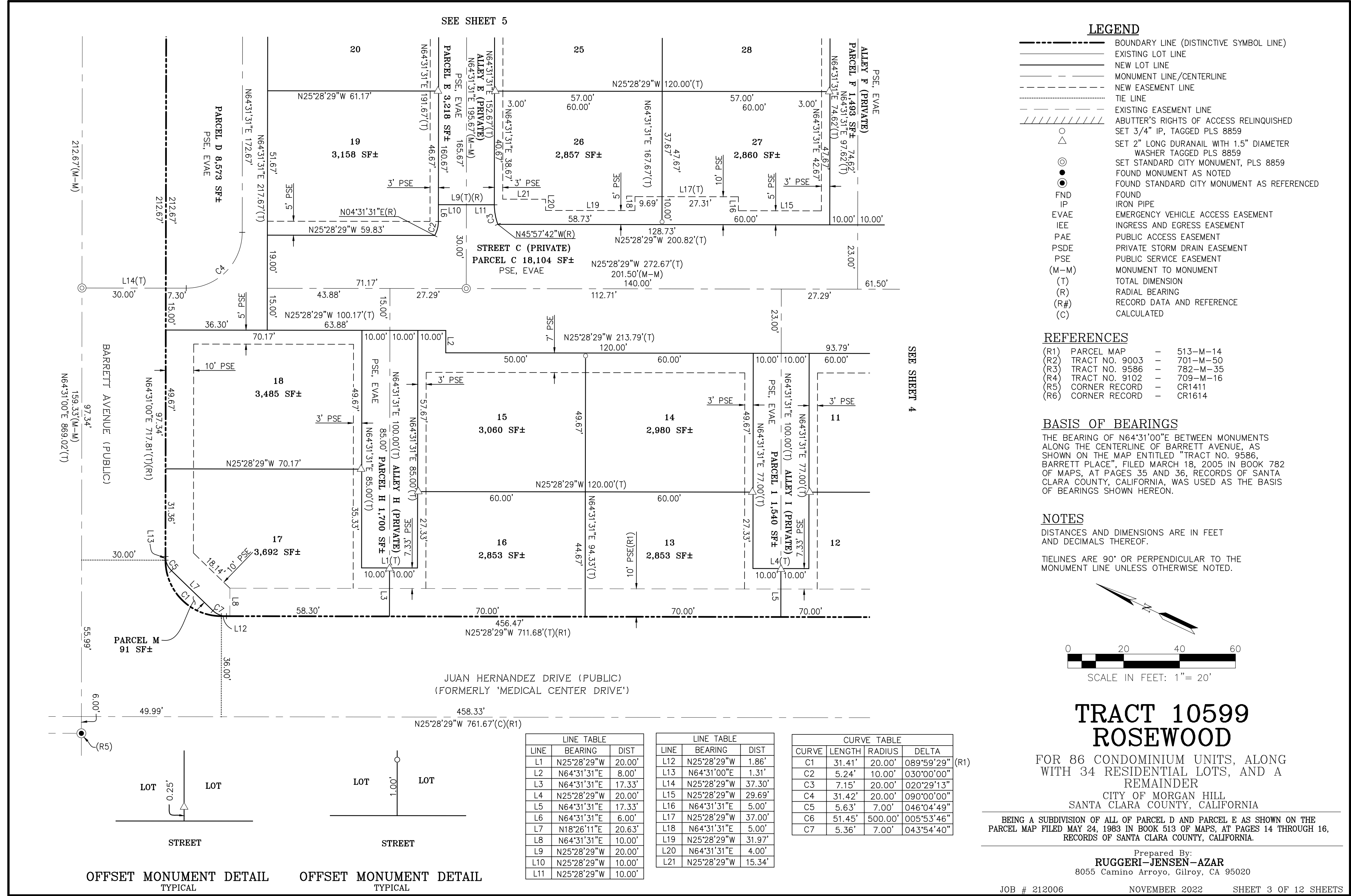
REGINA ALCOMENDRAS, RECORDER
SANTA CLARA COUNTY, CALIFORNIA BY DEPUTY

TRACT 10599
ROSEWOOD

FOR 86 CONDOMINIUM UNITS, ALONG
WITH 34 RESIDENTIAL LOTS, AND A
REMAINDER
CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

BEING A SUBDIVISION OF ALL OF PARCEL D AND PARCEL E AS SHOWN ON THE
PARCEL MAP FILED MAY 24, 1983 IN BOOK 513 OF MAPS, AT PAGES 14 THROUGH 16,
RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020



SEE SHEET 6

LEGEND

- BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
--- EXISTING LOT LINE
--- NEW LOT LINE
--- MONUMENT LINE/CENTERLINE
--- NEW EASEMENT LINE
--- TIE LINE
--- EXISTING EASEMENT LINE
/// ABUTTER'S RIGHTS OF ACCESS RELINQUISHED
○ SET 3/4" IP, TAGGED PLS 8859
△ SET 2" LONG DURANAIL WITH 1.5" DIAMETER WASHER TAGGED PLS 8859
⊙ SET STANDARD CITY MONUMENT, PLS 8859
● FOUND MONUMENT AS NOTED
⊙ FOUND STANDARD CITY MONUMENT AS REFERENCED
FND FOUND
IP IRON PIPE
EVAE EMERGENCY VEHICLE ACCESS EASEMENT
IEE INGRESS AND EGRESS EASEMENT
PAE PUBLIC ACCESS EASEMENT
PSDE PRIVATE STORM DRAIN EASEMENT
PSE PUBLIC SERVICE EASEMENT
(M-M) MONUMENT TO MONUMENT
(T) TOTAL DIMENSION
(R) RADIAL BEARING
(R#) RECORD DATA AND REFERENCE
(C) CALCULATED

REFERENCES

- (R1) PARCEL MAP - 513-M-14
(R2) TRACT NO. 9003 - 701-M-50
(R3) TRACT NO. 9586 - 782-M-35
(R4) TRACT NO. 9102 - 709-M-16
(R5) CORNER RECORD - CR1411
(R6) CORNER RECORD - CR1614

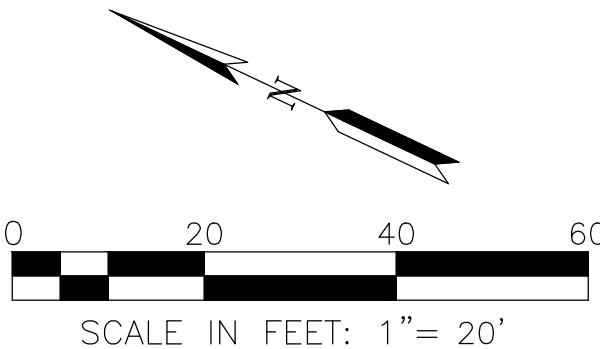
BASIS OF BEARINGS

THE BEARING OF N64°31'00"E BETWEEN MONUMENTS ALONG THE CENTERLINE OF BARRETT AVENUE, AS SHOWN ON THE MAP ENTITLED "TRACT NO. 9586, BARRETT PLACE", FILED MARCH 18, 2005 IN BOOK 782 OF MAPS, AT PAGES 35 AND 36, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, WAS USED AS THE BASIS OF BEARINGS SHOWN HEREON.

NOTES

DISTANCES AND DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

TIELINES ARE 90° OR PERPENDICULAR TO THE MONUMENT LINE UNLESS OTHERWISE NOTED.



TRACT 10599
ROSEWOOD

FOR 86 CONDOMINIUM UNITS, ALONG
WITH 34 RESIDENTIAL LOTS, AND A
REMAINDER

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

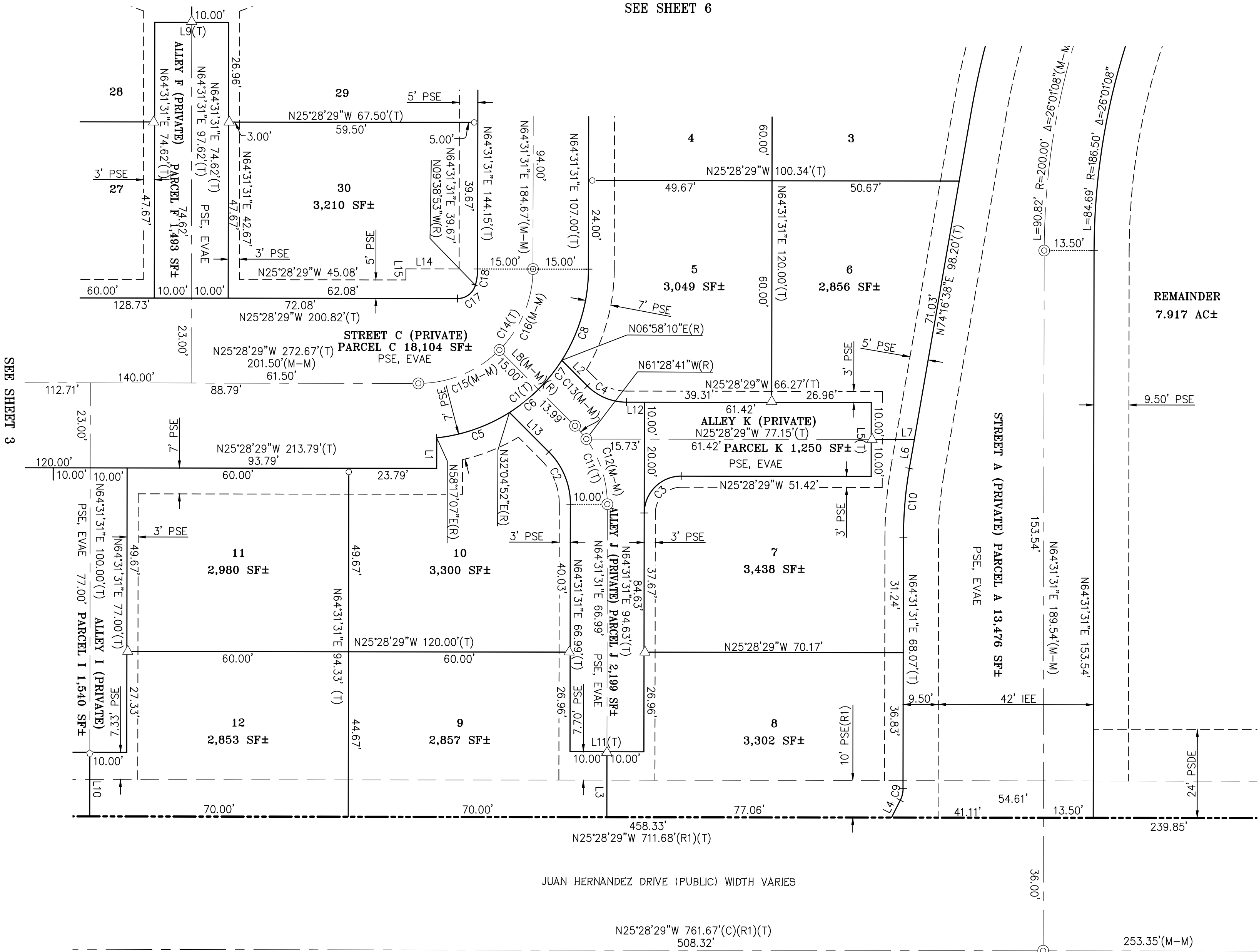
BEING A SUBDIVISION OF ALL OF PARCEL D AND PARCEL E AS SHOWN ON THE
PARCEL MAP FILED MAY 24, 1983 IN BOOK 513 OF MAPS, AT PAGES 14 THROUGH 16,
RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020

JOB # 212006

NOVEMBER 2022

SHEET 4 OF 12 SHEETS



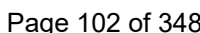
LINE TABLE		
LINE	BEARING	DIST
L1	N64°31'31"E	8.27'
L2	N19°31'31"E	9.80'
L3	N64°31'31"E	17.70'
L4	N88°46'47"W	5.25'
L5	N64°31'31"E	20.00'
L6	N74°16'38"E	7.91'
L7	N25°28'29"W	11.68'

LINE TABLE		
LINE	BEARING	DIST
L8	N19°31'31"E	28.99'
L9	N25°28'29"W	20.00'
L10	N64°31'31"E	17.33'
L11	N25°28'29"W	20.00'
L12	N25°28'29"W	4.85'
L13	N19°31'31"E	15.09'
L14	N25°28'29"W	14.42'
L15	N64°31'31"E	3.00'

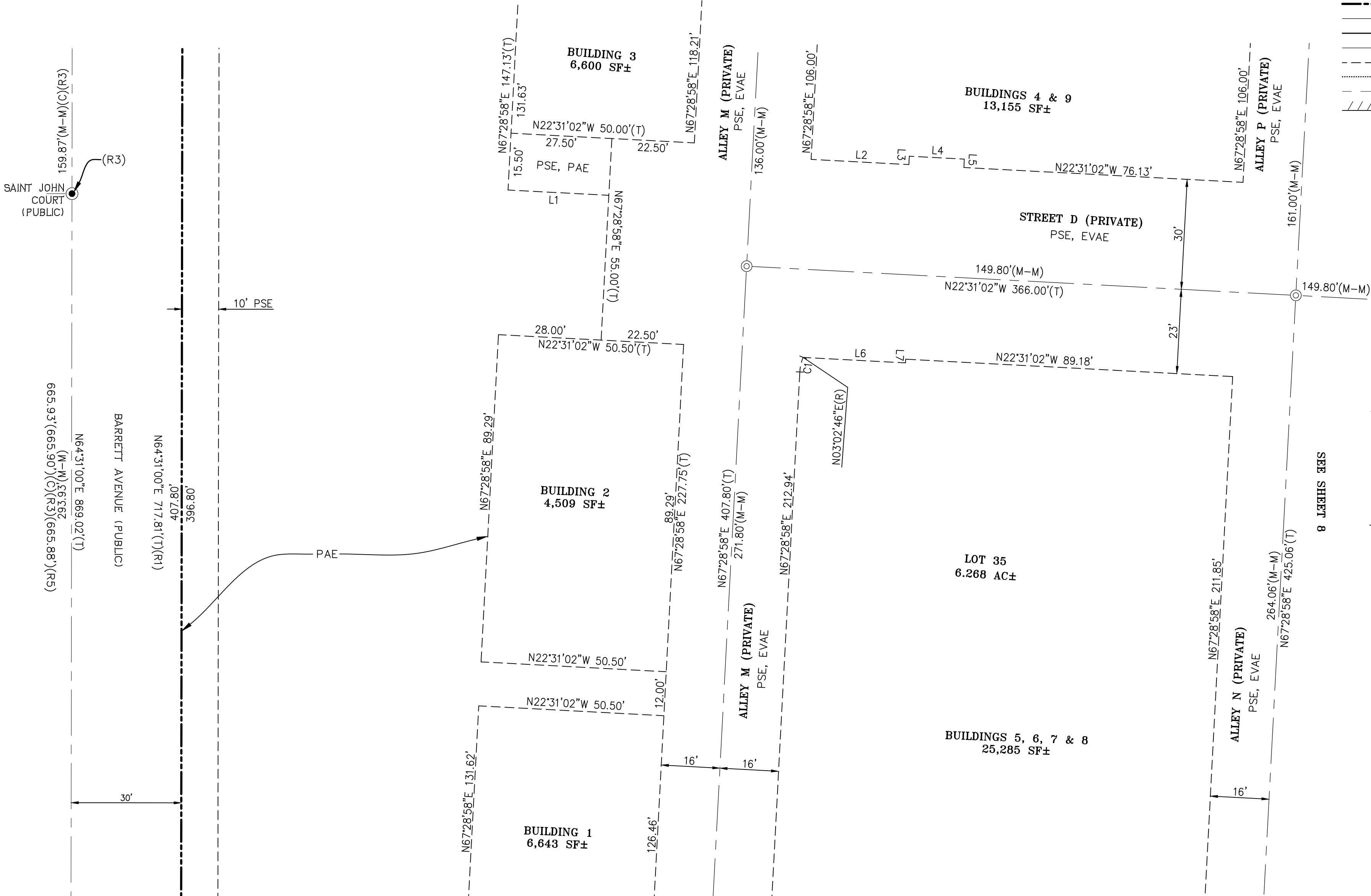
CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	67.25'	46.00'	083°45'36"
C2	15.71'	20.00'	045°00'00"
C3	15.71'	10.00'	090°00'00"
C4	11.78'	15.00'	045°00'00"
C5	21.04'	46.00'	026°12'15"
C6	10.08'	46.00'	012°33'21"

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C7	10.08'	46.00'	012°33'21"
C8	26.05'	46.00'	032°26'39"
C9	3.26'	7.00'	026°41'42"
C10	18.72'	110.00'	009°45'07"
C11	23.56'	30.00'	045°00'00"
C12	18.85'	30.00'	036°00'12"
C13	4.71'	30.00'	008°59'48"

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C14	48.69'	31.00'	090°00'00"
C15	24.35'	31.00'	045°00'00"
C16	24.35'	31.00'	045°00'00"
C17	6.47'	5.00'	074°10'24"
C18	4.42'	16.00'	015°49'36"



SEE SHEET 9



LEGEND

- BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
- EXISTING LOT LINE
- NEW LOT LINE
- MONUMENT LINE/CENTERLINE
- NEW EASEMENT LINE
- TIE LINE
- EXISTING EASEMENT LINE
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- SET 3/4" IP, TAGGED PLS 8859
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- SET STANDARD CITY MONUMENT, PLS 8859
- FOUND MONUMENT AS NOTED
- FOUND STANDARD CITY MONUMENT AS REFERENCED
- FOUND
- IRON PIPE
- EMERGENCY VEHICLE ACCESS EASEMENT
- INGRESS AND EGRESS EASEMENT
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- PUBLIC SERVICE EASEMENT
- MONUMENT TO MONUMENT
- TOTAL DIMENSION
- RADIAL BEARING
- RECORD DATA AND REFERENCE
- CALCULATED

REFERENCES

- (R1) PARCEL MAP - 513-M-14
- (R2) TRACT NO. 9003 - 701-M-50
- (R3) TRACT NO. 9586 - 782-M-35
- (R4) TRACT NO. 9102 - 709-M-16
- (R5) CORNER RECORD - CR1411
- (R6) CORNER RECORD - CR1614

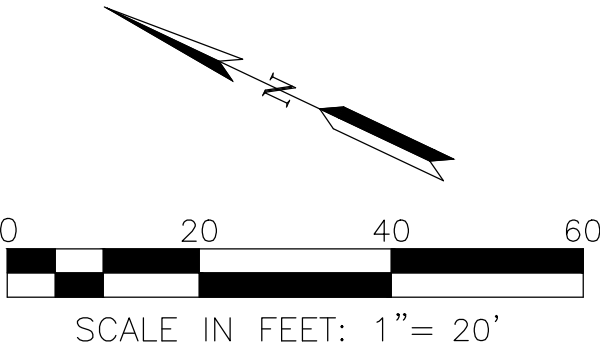
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NOTES

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TRACT 10599 ROSEWOOD

FOR 86 CONDOMINIUM UNITS, ALONG WITH 34 RESIDENTIAL LOTS, AND A REMAINDER

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

BEING A SUBDIVISION OF ALL OF PARCEL D AND PARCEL E AS SHOWN ON THE PARCEL MAP FILED MAY 24, 1983 IN BOOK 513 OF MAPS, AT PAGES 14 THROUGH 16, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020

LINE TABLE		
LINE	BEARING	DIST
L1	N22°31'02"W	27.50'
L2	N22°31'02"W	26.67'
L3	N67°28'58"E	2.29'
L4	N22°31'02"W	15.00'
L5	N67°28'58"E	2.29'
L6	N22°31'02"W	27.94'
L7	N67°28'58"E	1.00'

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	4.08'	12.00'	019°28'16"



LINE TABLE		
LINE	BEARING	DIST
L1	N22°31'02"W	9.50'
L2	N45°01'43"W	11.56'
L3	N22°31'02"W	16.83'
L4	N67°28'58"E	2.29'
L5	N22°31'02"W	20.00'
L6	N67°28'58"E	2.29'
L7	N67°28'58"E	2.29'
L8	N22°31'02"W	15.00'
L9	N67°28'58"E	2.29'
L10	N22°31'02"W	16.83'

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FND	FOUND
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EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
IEE	INGRESS AND EGRESS EASEMENT
PAE	PUBLIC ACCESS EASEMENT
PSDE	PRIVATE STORM DRAIN EASEMENT
PSE	PUBLIC SERVICE EASEMENT
(M-M)	MONUMENT TO MONUMENT
(T)	TOTAL DIMENSION
(R)	RADIAL BEARING
(R#)	RECORD DATA AND REFERENCE
(C)	CALCULATED

(R1)	PARCEL MAP	-	513-M-14
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(R3)	TRACT NO. 9586	-	782-M-35
(R4)	TRACT NO. 9102	-	709-M-16
(R5)	CORNER RECORD	-	CR1411
(R6)	CORNER RECORD	-	CR1614

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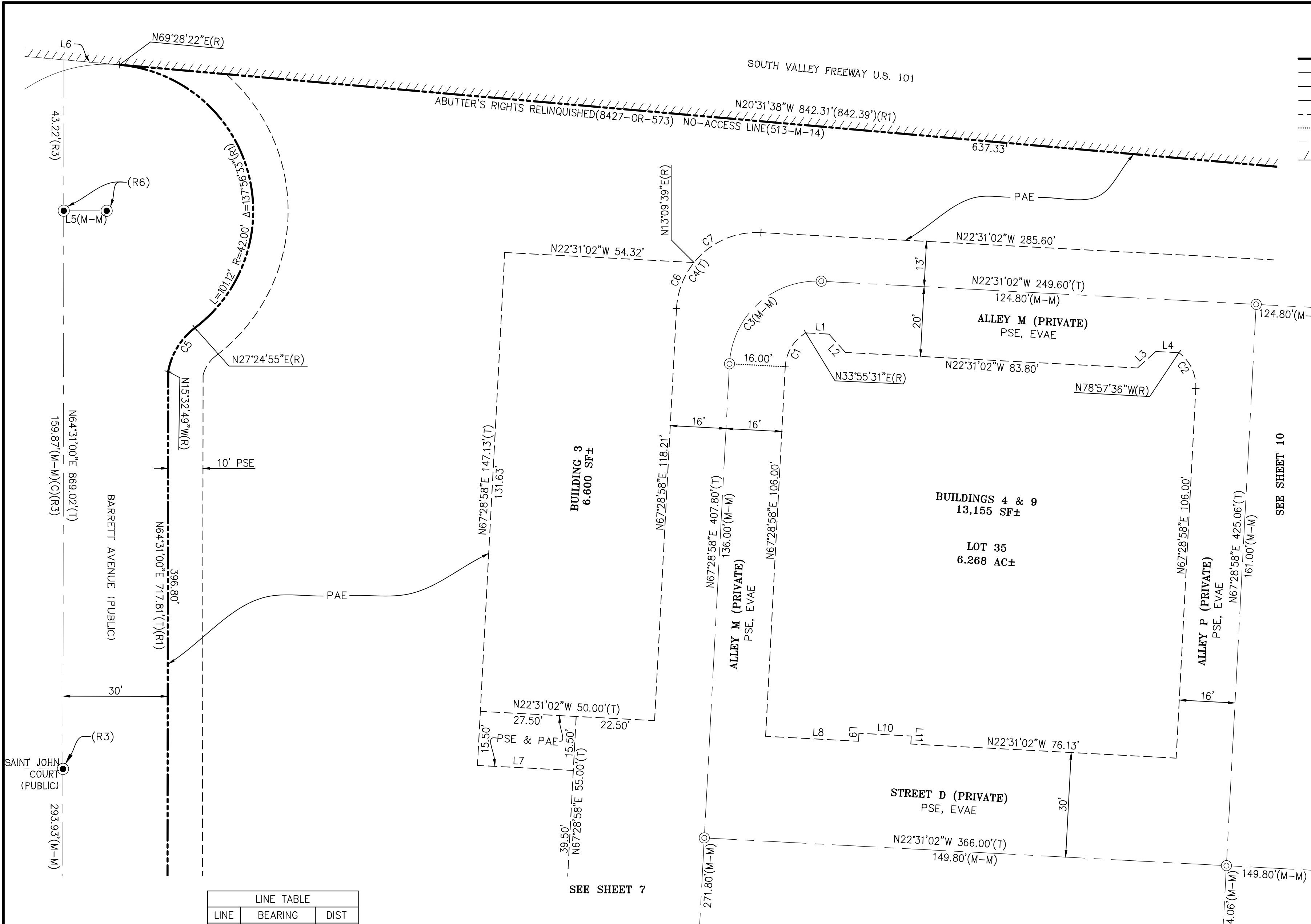


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RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020

JOB # 212006 NOVEMBER 2022 SHEET 8 OF 12 SHEETS



LEGEND

- BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
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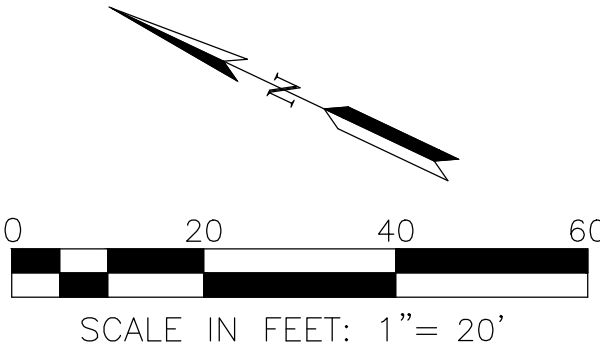
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TRACT 10599
ROSEWOOD

FOR 86 CONDOMINIUM UNITS, ALONG
WITH 34 RESIDENTIAL LOTS, AND A
REMAINDER

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

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RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020

JOB # 212006 NOVEMBER 2022 SHEET 9 OF 12 SHEETS

LINE TABLE		
LINE	BEARING	DIST
L1	N22°31'02"W	6.63'
L2	N22°28'58"E	7.07'
L3	N67°31'02"W	7.07'
L4	N22°31'02"W	6.63'
L5	N25°29'00"W	12.30'
L6	N20°31'38"W	15.99'
L7	N22°31'02"W	27.50'
L8	N22°31'02"W	26.67'
L9	N67°28'58"E	2.29'
L10	N22°31'02"W	15.00'
L11	N67°28'58"E	2.29'

(R3)
(N20°31'38"W)(R1)

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	11.82'	12.00'	056°26'33"
C2	11.82'	12.00'	056°26'34"
C3	39.27'	25.00'	090°00'00"
C4	36.13'	23.00'	090°00'00"
C5	15.00'	20.00'	042°57'44"
C6	14.32'	23.00'	035°40'41"
C7	21.81'	23.00'	054°19'19"

(R1)

SOUTH VALLEY FREEWAY U.S. 101

LEGEND

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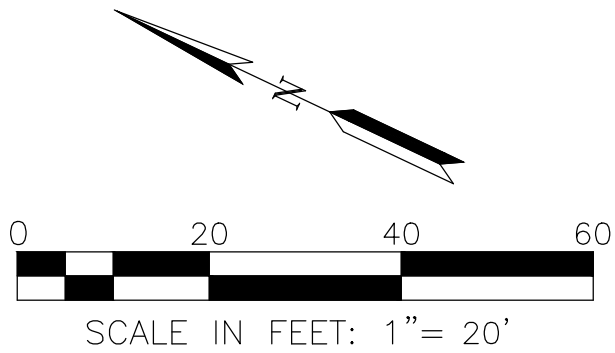
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TRACT 10599
ROSEWOOD

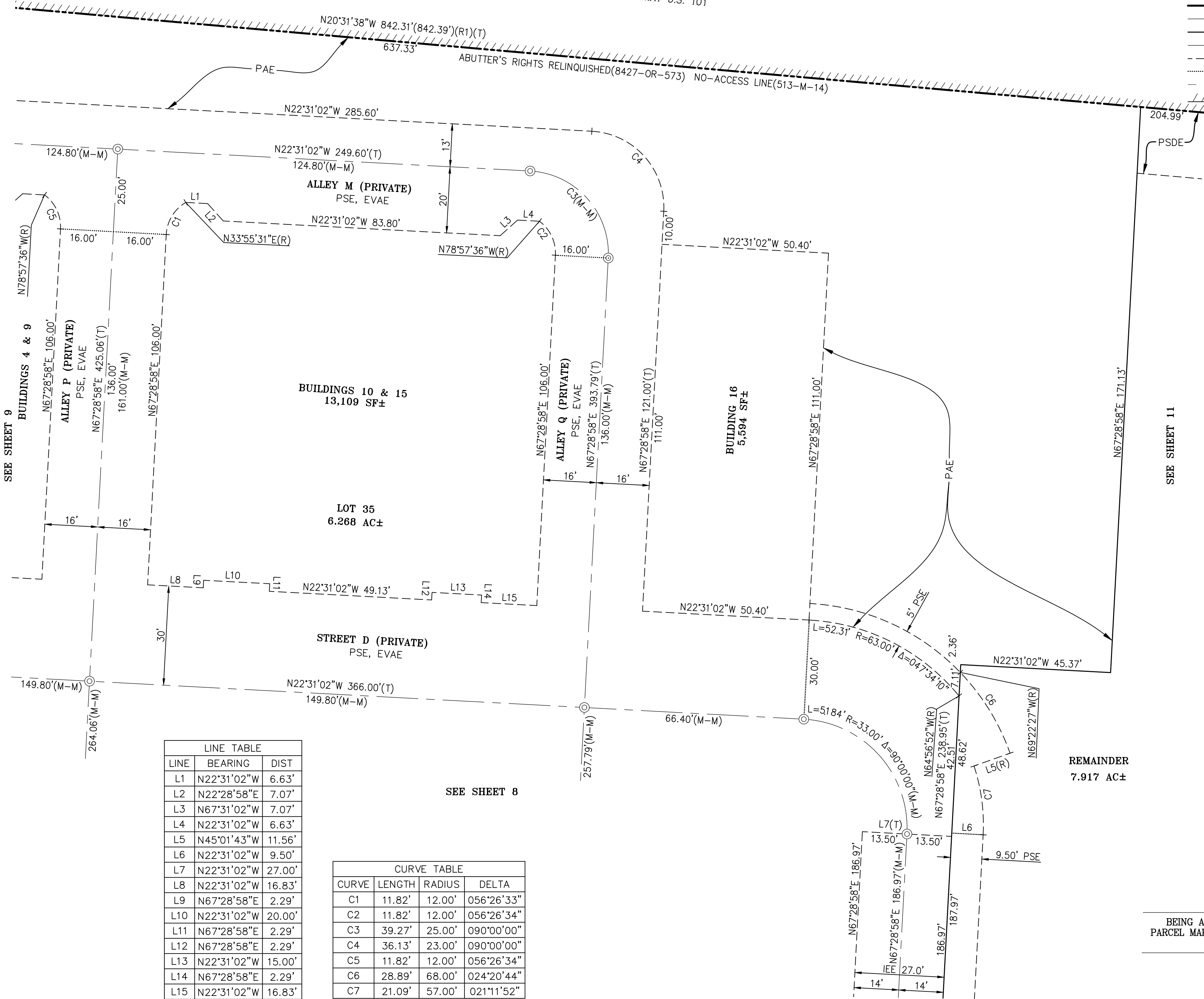
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CITY OF MORGAN HILL
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RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020

JOB # 212006 NOVEMBER 2022 SHEET 10 OF 12 SHEETS



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L6	N22°31'02"W	9.50'
L7	N22°31'02"W	27.00'
L8	N22°31'02"W	16.83'
L9	N67°28'58"E	2.29'
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C5	11.82'	12.00'	056°26'34"
C6	28.89'	68.00'	024°20'44"
C7	21.09'	57.00'	021°11'52"

SEE SHEET 8

SEE SHEET 11

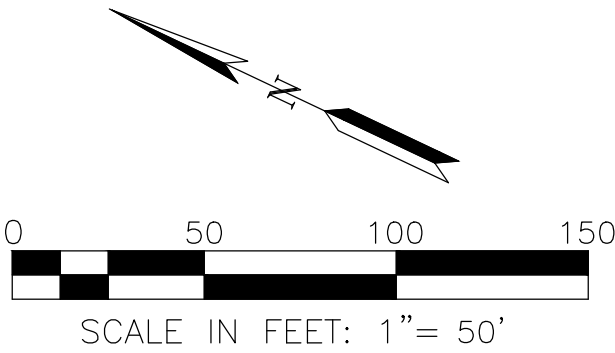
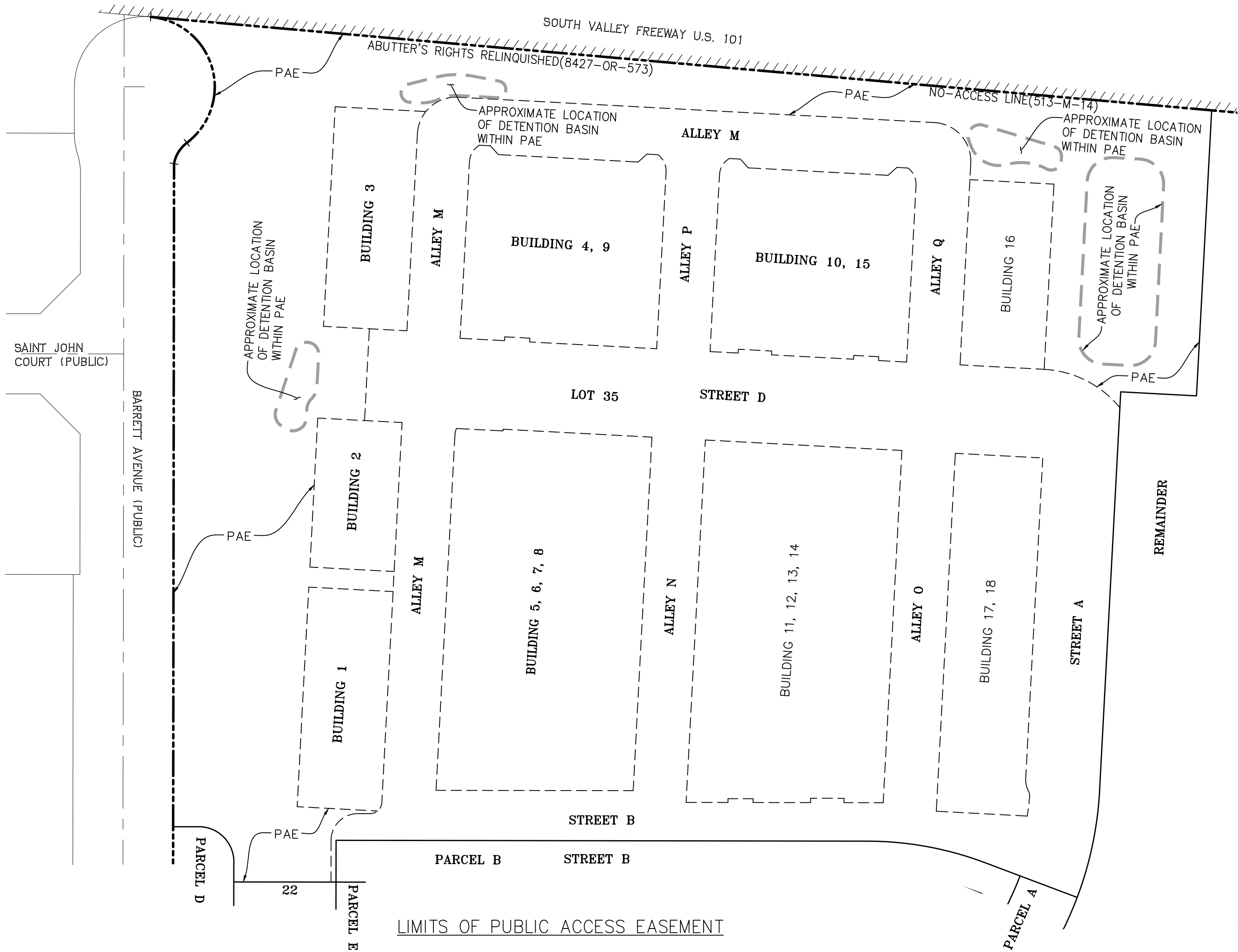
SEE SHEET 9

NON-TITLE ITEMS REQUIRED BY THE CONDITIONS OF APPROVAL

USE OF THE PUBLIC ACCESS EASEMENT BY THE PUBLIC SHALL ONLY BE PERMITTED FROM DAWN TO DUSK. THE PROPERTY ON WHICH THE PUBLIC ACCESS EASEMENT IS SITUATED IS INTENDED TO BE OPERATED AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION CREATED FOR THIS SUBDIVISION ("HOMEOWNERS ASSOCIATION"). ALL USE SHALL BE SUBJECT TO THE "OPERATING RULES" AS DEFINED IN SECTION 4340 OF THE CALIFORNIA CIVIL CODE ESTABLISHED FROM TIME-TO-TIME BY THE HOMEOWNERS ASSOCIATION, PROVIDED THOSE OPERATING RULES ARE EQUALLY APPLICABLE TO RESIDENTS WITHIN THIS SUBDIVISION AND THE PUBLIC. ACCESS AND USE OF THE PUBLIC ACCESS EASEMENT MAY BE TEMPORARILY CLOSED BY THE HOMEOWNERS ASSOCIATION FOR MAINTENANCE, SECURITY OR OTHER PURPOSES, PROVIDED, HOWEVER, THE PUBLIC ACCESS EASEMENT MUST REMAIN OPEN FOR USE FOR A MINIMUM OF THREE HUNDRED FIFTY (350) DAYS A YEAR.

THE "DETENTION BASINS" SITUATED WITHIN THE "PUBLIC ACCESS EASEMENT" (PAE), AS SHOWN ON THIS SHEET, ARE "RESTRICTED OPEN SPACE AREAS" AND ACCESS TO SAID "DETENTION BASINS" AND "RESTRICTED OPEN SPACE AREAS", IS LIMITED SOLELY FOR MAINTENANCE PURPOSES BY THE HOMEOWNERS ASSOCIATION'S AGENTS, OFFICERS AND CONTRACTORS, NO PUBLIC ACCESS WITHIN THE DETENTION BASINS IS PERMITTED AT ANY TIME.

THIS ADDITIONAL INFORMATION IS FOR INFORMATIONAL PURPOSES, DESCRIBING CONDITIONS AT THE DATE OF FILING, IT IS NOT INTENDED TO AFFECT RECORD TITLE INTEREST, AND DOES NOT IMPLY THE CORRECTNESS OR SUFFICIENCY THEREOF.



NON-TITLE INFORMATION
TRACT 10599
ROSEWOOD

FOR 86 CONDOMINIUM UNITS, ALONG
WITH 34 RESIDENTIAL LOTS, AND A
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Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020

RECORDING REQUESTED BY
WHEN RECORDED RETURN TO

CITY OF MORGAN HILL
City Clerk's Office
17575 PEAK AVENUE
MORGAN HILL, CA 95037

(RECORD AT NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 27383)

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

SUBDIVISION IMPROVEMENTS AGREEMENT

BFH CM LLC

ROSEWOOD – TRACT NO.10599

This Subdivision Improvements Agreement ("Agreement") between the City of Morgan Hill, a municipal corporation ("City"), and **BFH CM LLC**, a DELAWARE LIMITED LIABILITY COMPANY ("Subdivider"), is entered into this _____ day of _____, 20___. City and Subdivider hereby acknowledge the following:

1. Subdivider has filed a Tentative Subdivision Map and supporting documents for **Tract No.10599**, the subdivision known as **Rosewood** ("Map").
2. City desires, as part of the conditions of approval ("Conditions") of the Final Tract Map or Parcel Map ("Final Map"), that certain improvements be installed by Subdivider ("Improvements") as shown on the City Engineer approved and signed Subdivision Improvement Plans entitled "**Improvement Plans for Rosewood, Tract No.10599**" ("Plans").
3. Subdivider has been unable to complete, prior to filing of the Final Map, all of the improvements required by City to the satisfaction of the City Engineer.
4. Subdivider is required by the terms of the Morgan Hill Municipal Code ("Municipal Code"), to improve all streets, highways, or public areas which are part of the development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer and to post certain securities to secure the completion of the Improvements.
5. To assure City that Subdivider will construct, install and complete all Improvements required for the Subdivision, the parties have entered into this Agreement.

6. This Agreement is executed pursuant to California Government Code Section 66410 et seq., and Chapter 17.32 of the Municipal Code in order to provide for the manner in which Improvements shall be constructed and completed.

NOW, THEREFORE, and in consideration of the approval of the Final Map, and in order to ensure satisfactory performance by Subdivider of Subdivider's obligations under the Conditions, the Subdivision Map Act, and applicable ordinances of City, the parties hereto, for themselves, their successors, and assigns, hereby agree as follows:

Section 1. Incorporation by Reference

The Development Agreement between Subdivider and City, if applicable, Subdivider's Map application, the Conditions, the Map, all Plans as referenced in Section 2 below and all items submitted to the Planning Department, Planning Commission and City Council, all are incorporated herein by reference. In the event of any inconsistency between their representations in any incorporated documents and this Agreement, this Agreement shall govern.

Section 2. Construction of Improvements

(a) Subdivider shall construct, as provided for in the Conditions, the Improvements as shown fully executed in the Plans entitled "Improvement Plans for Rosewood" subject to the approval of City.

(b) Subdivider shall acquire and dedicate, or pay the cost of acquisition by City, of all rights-of-way, easements, and other interests in real property for the construction or installation of the Improvements, free and clear of all liens and encumbrances.

(c) Survey Monumentation:

(1) Subdivider shall place survey monumentation as described on the Map.

(2) Subdivider shall replace or repair all survey monumentation that is destroyed or damaged as a result of Subdivider's activities. Any such repair or replacement shall be to the satisfaction and subject to the approval of City.

(d) Injury to Improvements, Public Property or Public Utilities Facilities.

(1) Subdivider shall replace or have replaced, or repair or have repaired, as the case may be, all Improvements, public utilities facilities and surveying or subdivision monuments which are destroyed or damaged as a result of any work under this Agreement.

(2) Subdivider shall bear the entire cost of replacement or repairs of any and all public or public utility property damaged or destroyed by reason of any work done under this Agreement, whether such property is owned by the State of California, or any agency or political subdivision thereof, or by City, or any public or private utility corporation, or by any combination of such owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

Section 3. Modification of Plans

Subdivider agrees that, if during the construction of the Improvements, it is determined by City that revisions to the Plans are necessary in the interest of the public, Subdivider will undertake such design and construction changes required by City.

Section 4. Security

(a) Pursuant to California Government Code Section 66499.3(a), and the Municipal Code, Subdivider shall, concurrently with the execution hereof, furnish a surety bond in an amount equal to at least one hundred percent (100%) of the estimated construction cost of the Improvements as security guaranteeing the faithful performance of the Improvements and this Agreement ("Performance Bond").

Improvements and the City Engineer's Estimated Costs of Improvements as of **June 2022** are attached hereto as Exhibit "A".

The Performance Bond shall be in a form substantially the same as Exhibit "B".

(b) Pursuant to California Government Code Section 66499.3(b), Subdivider shall, concurrently with the execution hereof, furnish a surety bond in an amount equal to one hundred percent (100%) of the estimated construction cost of the Improvements (as listed in Section 4(a) above) as security guaranteeing the payment to the contractors, subcontractors and persons furnishing labor, materials, or equipment in connection with this Agreement ("Labor and Materials Bond"). The Labor and Materials Bond shall be in a form substantially the same as Exhibit "C".

(c) Subdivider shall, upon completion of the Improvements, furnish a surety bond in an amount equal to fifty percent (50%) of the construction cost of the Improvements to secure the guarantee and warranty of the work for a period of one year following the completion and acceptance thereof by the City Council ("Warranty Period") against any defective work or labor performed, or defective materials furnished by Subdivider in connection with this Agreement ("Warranty Bond"). The Warranty Bond shall be in a form substantially the same as Exhibit "D".

(d) Pursuant to Government Code Section 66499.9, any liability upon the security given for faithful performance of any act or agreement shall be limited to:

(1) The performance of the work covered by the Agreement or the performance of the required act.

(2) The performance of any changes or alterations in such work; provided that all changes or alterations do not exceed ten percent of the original estimated cost of the Improvements.

(3) The guarantee and warranty of the work for a period of one year following completion and acceptance thereof, against any defective work or labor done or defective materials furnished in the performance of the Agreement or the performance of the act.

(4) Costs and reasonable expenses and fees, including reasonable attorneys' fees.

(e) The surety on each bond and the form thereof shall be satisfactory to City. The surety shall be furnished by a surety company authorized to write the same in the State of California and that is approved and accepted by the City's risk manager.

(f) Subdivider agrees to furnish any bonds required by the State or County for Improvements outside the City's jurisdiction.

(g) The release of any securities shall be governed by the provisions of Government Code Section 66499.7.

Section 5. Inspections

At least fifteen (15) calendar days prior to the commencement of any work hereunder, Subdivider shall notify City in writing of the fixed start date of construction so that City shall be able to provide inspection services. Subdivider shall at all times maintain proper facilities and provide safe access to all parts of the work site(s) for City inspections, including any workshops or plants where work related to the Improvements is being conducted.

Subdivider shall pay and reimburse City for all expenses incurred by City for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. City Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.

Upon completion of the work, the Subdivider's Engineer shall file original sealed "as-built" plans with City Engineer and shall submit a sealed letter to City Engineer certifying that Subdivider's Engineer has inspected the Improvements throughout construction and that said Improvements are completed in conformance with the Improvement Plans and in accordance with this Agreement.

Section 6. Timing of Performance

Subdivider agrees to perform and complete all Improvements within eighteen (18) months from the date of the recording of the Final Map; provided however, the City Manager may extend the deadline for completion by not more than six (6) months at his or her reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. No extension of this deadline for completion shall be made except upon the basis of a written application made by Subdivider stating fully the ground for the application and the facts relied upon for an extension.

It is further agreed by and between Subdivider and City that any extension granted shall in no way affect the validity of this Agreement or release the surety(ies) on any bond attached hereto or the financial institution guaranteeing the same. Subdivider further agrees to maintain the securities described in Section 4 above in full force and effect during the terms of this Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by City.

Section 7. Work Performance and Warranty

(a) Subdivider shall construct, at Subdivider's own expense, all of the Improvements in a good and workmanlike manner, and furnish all required materials incident thereto, in accordance with the Plans

and to the satisfaction of City, including any changes required by City which in City's opinion are necessary to complete the Improvements.

(b) All work shall be conducted and completed in accordance with the Plans and federal, state, Municipal Code, laws, ordinances, and regulations. For any Improvements partially completed prior to this Agreement, Subdivider agrees to complete the Improvements in accordance with this Agreement.

(c) Neither Subdivider, nor any of Subdivider's agents or contractors in connection with Subdivider's obligations under this Agreement are, or shall be considered to be, employees or agents of City.

(d) The work performance for the Improvements shall not be deemed complete until such time as such Improvements have been accepted for maintenance by the City Council.

(e) Subdivider warrants that: (1) it has investigated the work to be performed under this agreement, (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 Subdivider discover any conditions materially differing from those inherent in the Improvements or work or as represented by City, it shall immediately inform City and shall not proceed, except at Subdivider's risk, until written instructions are received from City.

(f) Subdivider guarantees and warrants the work required by this Agreement and agrees to remedy any defects in the Improvements or work arising from faulty or defective materials or construction occurring within one year after its acceptance. Following notice, Subdivider shall, without delay or cost to City, repair, replace, or construct any defective or unsatisfactory portion of the Improvements. City may, at its sole option, perform the repair or replacement itself if Subdivider or its surety has failed to commence repair within twenty (20) days after City has mailed written notice to Subdivider. In such event, Subdivider or its surety agrees to pay the cost of repair and replacement to City, plus fifteen percent (15%); and City may recover such costs as a lien against the Subdivision. City may proceed immediately to make repairs should an emergency arises.

Section 8. Acquisition and Dedication of Easements or Rights-of-Way

(a) No construction or installation of the Improvements shall be commenced before:

(1) The offer of dedication to City of appropriate rights-of-way, easements, or other interests in real property for the Improvements, which offer of dedication shall be irrevocable and remain open pursuant to California Government Code Section 66477.2, and authorization from the property owner to allow construction or installation of Improvements, or

(2) The dedication to, and acceptance by, City of appropriate rights-of-way, easements, or other interests in real property, as determined by the City Engineer, or

(3) The issuance by a court of competent jurisdiction pursuant to state Eminent Domain Law of an order of possession.

(b) Except as otherwise provided by this Agreement, City rejects all lands, rights-of-way, and easements offered for dedication on the Final Map of the Subdivision. All such offers shall, however,

remain open, and shall constitute irrevocable offers of dedication in accordance with Government Code Section 66477.2. All such offers may be accepted by City in its sole discretion at any later date without further notice to Subdivider as provided by law. By way of explanation only, it is the current intention of City to accept all or part of the irrevocable offers to dedicate upon acceptance of the Improvements called for in this Agreement.

(c) Nothing in this Section 8 shall be construed as authorizing or granting an extension of time to Subdivider.

Section 9. Indemnity

Subdivider hereby agrees to save harmless and indemnify, including, without limitation, City's defense costs (including reasonable attorney's fees), from and against any and all suits, actions, or claims, of any character whatever, brought for, or on account of any injuries or damages sustained by any person or property resulting or arising, or alleged to have resulted or arisen, from Subdivider or Subdivider's contractors, subcontractors, agents, or employees activities, omissions or operations pursuant to this Agreement. Should City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, Subdivider will defend City, (at City's request and with counsel satisfactory to City) and will indemnify City for any judgment rendered against it or any sums paid out in settlement or otherwise.

Subdivider shall defend, indemnify, and hold harmless the City and its elective and appointive boards, officials, officers, agents, employees and volunteers from any claim, action, or proceeding to review, set aside, void, or annul an approval of the City concerning the Map and acts made in respect thereof, provided any such action is brought within the time period provided for in California Government Code Section 66499.37.

City shall promptly notify Subdivider of any claim, action, or proceeding, and cooperate fully in the defense of any claim, action, or proceeding.

It is expressly understood and agreed that this Section 9 will survive termination of this Agreement.

Section 10. Insurance

Concurrent with the execution of this Agreement, Subdivider is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Subdivider and its Subcontractors relating to or arising from the performance of work associated with the Improvements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by the City. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by City. If the Subdivider will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then Subdivider may opt to have all coverages provided by Subdivider's General Contractor, provided that a written contract is executed between Subdivider and the General Contractor whereby the written contract specifically required General Contractor to fulfill all of the City insurance requirements as outlined in this Agreement, including all endorsements in favor of the

City. Verification of the written contract must be provided to City upon request. If Subdivider fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement City shall issue a stop work order, or terminate the Agreement for default. Subdivider further understands that the City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Subdivider, at any time as deemed necessary to protect the interests of the City.

(a) Policies and Limits. The following insurance policies and limits are required for this Agreement:

(1) Commercial General Liability Insurance ("CGL"): Subdivider shall maintain CGL and shall include coverage for liability arising from Subdivider's or its Subcontractor's acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) combined single limit each occurrence and either a general aggregate limit of ten million dollars (\$10,000,000.00) or a general aggregate limit of five million dollars (\$5,000,000) as applied on a "per project" or "per location" basis, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CGL coverage is being provided by Subdivider's General Contractor pursuant to Section 10, General Contractor may elect to insure the CGL exposures under an "Owners and Contractors Protective Liability Policy (OCP)" on which the City is included as an additional insured.

a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

b. CGL policy must include blanket contractual and completed operations.

c. CGL policy will apply as though separate policies have been issued to each insured ("separation of insureds").

(2) Workers' Compensation Insurance and Employer's Liability: Subdivider shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If Subdivider is self-insured, Subdivider must provide its Certificate of Permission to Self-Insure, duly authorized by the State of California Department of Industrial Relations.

(3) Automobile Liability: Subdivider shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Subdivider does not own automobiles, then Subdivider shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's

combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

(4) Pollution (Environmental) Liability: The performance of Subdivider’s work or service under this Agreement involves handling of hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials. Subdivider shall procure and maintain Pollution Liability covering the Subdivider'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 Subdivider under Subdivider’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

(b) Required Endorsements. Subdivider shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below. Further, if coverages are being provided by Subdivider’s General Contractor pursuant to Section 10, endorsements may not be restricted to work performed “under a written contract” (i.e. “blanket endorsements”)

(1) ALL Policies:

“Waiver of Subrogation” - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and the City’s elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) ALL Policies except Workers Compensation:

a. “Additionally Insured” - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds on a form at least as broad as ISO Form CG 20 10 for ongoing operations and at least as broad as ISO Form CG 20 37 for completed operations.

b. “Primary and Non-Contributing” - Insurance shall be endorsed to be primary and non-contributory and will not seek contribution from the City’s insurance or self-insurance and shall be at least as broad as ISO Form CG 20 01.

(c) Subcontractors. Subdivider must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 10 as appropriate based on each subcontractor’s scope of work, with respect to its performance of work associated with the Improvements, including those requirements related to the additional insureds and waiver of subrogation.

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

(e) Certificates. Subdivider 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, Subdivider shall promptly furnish City of Morgan Hill with copies of all policies outlined herein. No policy subject to the Subdivider's agreement with the City shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to City, unless due to non-payment of premiums, in which case ten (10) days written notice must be made to City. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

Section 11. Permits and Requisite Fees

(a) Subdivider shall pay all current fee obligations in the total amount of **\$6,145,192** due under City Resolution No. **5592**, as amended, in accordance with the Department of Public Work fee schedule, as follows:

(1) **\$2,068,072** payable at the time of recording of the Final Map, and

(2) **\$4,077,120** payable on a pro-rata basis for each individual lot in the Subdivision prior to final inspection of each and every residence.

(3) All fees payable pursuant to this Subsection (a) constitutes valid and due consideration for City's approval of the Final Map, and amounts set forth are estimates that are subject to change prior to the issuance of building permit(s), subject to resolution or ordinance of the City Council.

(b) Subdivider shall, at its expense, obtain all necessary permits and licenses for the construction of the Improvements, give all necessary notices, and pay all fees and taxes required by law.

(c) Subdivider shall obtain a City of Morgan Hill Business License.

(d) Subdivider agrees to procure, at its expense, any necessary permits for Improvements outside the City's jurisdiction.

Section 12. On-Site Supervision

Subdivider shall designate an on-site supervisor, satisfactory to City, who shall be on the work site(s) at all times during the construction of the Improvements, and who has the authority to act on behalf of Subdivider when communicating with City personnel.

Section 13. Waiver

Waiver by City or Subdivider of any breach of any of the provisions of the Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of the same or any other provision of this Agreement. Acceptance by City of any work by Subdivider shall not be a waiver of any of the provisions of this Agreement.

Section 14. Notices. All notices shall be personally delivered or mailed, via first class mail to the below listed addresses. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

- a. Address of Subdivider is as follows:

BFH CM LLC
12657 Alcosta Blvd, Ste. 250
San Ramon, CA 94583

- b. Address of City is as follows:

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

With a copy to:

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

Section 15. Noncompliance

If City determines that Subdivider is in violation of any federal, state, County or City laws, ordinances, rules, regulations, and requirements, and/or the terms and provisions of this Agreement, it may issue a cease and desist order, stop work order, or other action City deems necessary.

Section 16. Notice of Breach and/or Default

City may serve written notice upon Subdivider and surety of breach of this Agreement or of any portion thereof, and default of Subdivider for any of the following circumstances:

- (a) Subdivider refuses or fails to complete the Improvements as required in Section 6 above.
- (b) Subdivider refuses or fails to perform or cure any defects in the Improvements as required in Section 7.
- (c) Subdivider is insolvent, is subject to a receivership, or files any petition in bankruptcy, either voluntary or involuntary which Subdivider fails to discharge within thirty (30) days.
- (d) The commencement of a foreclosure action against the Subdivision or any portion thereof, or any conveyance in lieu of or in avoidance of foreclosure.

(e) Subdivider or any of Subdivider's contractors, subcontractors, agent, or employees materially violates any of the provisions of this Agreement and not cure the violation within a reasonable time.

Section 17. Performance by Surety or City

(a) In the event of a material breach and/or default by Subdivider, Subdivider's surety shall have the duty to take over and complete the Improvements.

(b) If the surety, within a reasonable time after receiving notice of Subdivider's default does not provide City written notice to take over the performance of this Agreement or if the surety does not commence performance thereof within the time specified in such notice to City, City may take over the construction of the Improvements and prosecute the same to completion, by contract or by any method City may deem advisable, on behalf and at the expense of Subdivider, and Subdivider's surety shall be liable to City for any excess cost or damages incurred by City thereby. In such event, City, without liability for so doing, may take possession of and utilize such materials, appliances, and other property belonging to Subdivider as may be on the work site(s) and necessary therefore to complete the Improvements.

(c) City shall have the right to draw upon or utilize the appropriate security provided for in Section 4 to recover costs and damages to City damages. The right of City to draw upon or utilize the security is additional and not in lieu of any other remedy available to City at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Improvements, and therefore, City damages for Subdivider's default shall be measured by the cost of completing the required Improvements.

(d) Failure of Subdivider to comply with terms of this Agreement shall constitute consent to filing by City of a notice of violation against all lots in the Subdivision, or to rescind the approval or otherwise revert the Subdivision to acreage. The remedies provided in this Subsection (d) are in addition to and not in lieu of other remedies available to City.

(e) In the event that Subdivider fails to perform any obligation under this Agreement, Subdivider agrees to pay all costs and expenses incurred by City in securing performance of such obligation, including the costs of suit and reasonable attorney's fees.

(f) The failure by City to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or subsequent default or breach.

Section 18. Successors in Interest

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the Final Map of the Subdivision and shall constitute a covenant running with the land and an equitable servitude upon the real property within the Subdivision. It shall be the responsibility of City to cause the executed Agreement to be recorded. Sale of all or part of the lands of the underlying Subdivision shall not serve to transfer the obligations of the Subdivider under this Agreement. All obligations under this Agreement attach to Subdivider until all obligations of Subdivider are fulfilled or transferred by substitution of replacement agreement and replacement securities acceptable to City.

Section 19. Effective Date

This Agreement shall be effective as of the date and year first above written.

Section 20. Amendment of Agreement

This Agreement may only be amended by mutual consent of the original parties or their successors in interest, provided that any such amendment is executed in writing by the parties to be bound thereby.

Section 21. Execution

By signing this Agreement, the person signing states that he or she is authorized to enter into contracts on behalf of Subdivider. The undersigned, on behalf of Subdivider, binds Subdivider, its partners, successors, executors, administrators, and assigns with respect to the terms and conditions of this Agreement.

Section 22. Non-Liability of Officials and Employees of the City.

No official or employee of City shall be personally liable for any default or liability under this Agreement.

Section 23. Law to Govern: Venue

The law of the State of California shall govern this Agreement. In the event of litigation between the parties, the action must be filed in the Santa Clara County Superior Court.

Section 24. Limitations Upon Subcontracting and Assignment.

Neither this Agreement or any portion shall be assigned by Subdivider without prior written consent of City. Subdivider shall provide City with written notice of any assignment or transfer of all or a portion of the Subdivision property no later than thirty calendar days prior to such action. The notice shall indicate the portion of the Subdivision to be assigned and describe, with supporting evidence, the proposed assignee's reputation, experience, financial resources and access to credit, and capability to successfully carry out the development of the Subdivision Improvements to completion.

Section 25. Miscellaneous

(a) Compliance with Law: Subdivider shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

(b) Non-Discrimination. Subdivider covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, ancestry, or sexual orientation in any activity pursuant to this Agreement.

(c) Conflict of Interest and Reporting. Subdivider shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

(d) Time of Essence. Time is of the essence in the performance of this Agreement.

(e) Interpretation. This Agreement shall be interpreted as though prepared by both parties.

(f) Preservation of Agreement. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

(g) Negotiated Document. It is agreed and understood by the parties hereto, that this Agreement has been arrived at through negotiations and that neither party is deemed to be the party which prepared the Agreement within the meaning of Civil Code Section 1654.

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

[TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS: (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND** (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.]

CITY OF MORGAN HILL

By: _____

Christina J. Turner, City Manager

Date: _____

ATTEST:

By: _____

Michelle Bigelow, City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____

Donald A. Larkin, City Attorney

Date: _____

"Subdivider"

BFH CM LLC

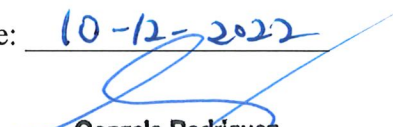
By: 

Josh Roden

Authorized Representative
Print Name and Title

(If Corporation, must be Chairperson of the Board, President, or Vice President)

Date: 10-12-2022

By: 

Gonzalo Rodriguez

Vice President, Land and Planning

Print Name and Title

(If Corporation, must be Secretary, Assistant Secretary, CFO, or Assistant Treasurer)

Date: 10-12-2022

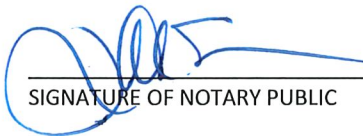
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of **California**
County of ~~Santa Clara~~ **CONTRA COSTA**

On October 12, 2022 20__, before me, LAURA MORENO STAKE a Notary Public in and for said County and State, personally appeared JOSH RORDEN + GONZALO RODRIGUEZ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

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

State of **California**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT "A"
IMPROVEMENTS AND
ESTIMATED COSTS OF IMPROVEMENTS
AS OF JUNE 2022

SUMMARY

A. DEMOLITION	\$12,400
B. PAVING & CONCRETE	\$36,865
C. STORM DRAIN	\$18,785
D. SANITARY SEWER	\$3,000
E. WATER	\$47,750
F. MISCELLANEOUS	\$7,000
Total Improvements:	<u>\$125,800</u>

10% CONTINGENCY = \$12,580.00

TOTAL = \$138,380.00

PERFORMANCE BOND
(100% of Engineer's Estimate)

Bond No.: TCS0172351
Premium: 554.00

Whereas, the City Council of the City of Morgan Hill, State of California, and **BFH CM LLC** (hereinafter designated as "principal") have entered into a Subdivision Improvement Agreement:

BFH CM LLC
ROSEWOOD – TRACT NO.10599

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20_____, and identified as project **ROSEWOOD – TRACT NO.10599** is hereby referred to and made a part hereof; and

Whereas, said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the principal and Trisura Insurance Company, as surety, are held and firmly bound unto the City of Morgan Hill hereinafter called ("City"), in the penal sum of **One Hundred Thirty Eight Thousand Three Hundred Eighty-----00/100 dollars (\$138,380.00)** lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The Surety's office is located at State of Oklahoma,

Telephone No. 203-545-0690; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number are as follows:

License No.: 0363334
Address: 707 Wilshire Blvd, Ste 2600, Los Angeles, CA 90017
Telephone No.: 1-213-630-3200

The non-resident agent for the Surety, if any, is a party to the transaction:

Name of non-resident
agent:

Susan A. Welsh

Non-resident agent's office
address: 200 E. Randolph Street
Chicago, IL 60601

Telephone
No.: 1-312-381-4589

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

Executed this 12th day of October 20 22 .

BFM CM LLC

Principal



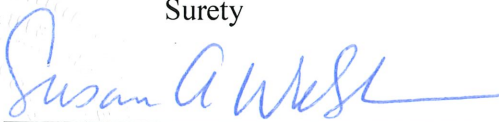
Principal

Gonzalo Rodriguez
Vice President, Land and Planning

By: Trisura Insurance Company

Surety

By:



Susan A. Welsh, Attorney-in-Fact

Performance Bond Page 2 of 4
Version July 2017

Attorney-in Fact

By:

N/A

California Resident Agent

By:

Susan A. Wells

Non-resident Agent - Attorney-in-Fact
Susan A. Welsh

APPROVED:

Scott Creer, City Engineer

Date:

APPROVED AS TO FORM:

By:

Donald A. Larkin, City Attorney

Date:

(Acknowledgment on following page.)

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.

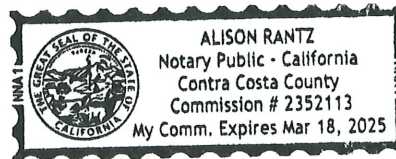
State of **California**
County of ~~Santa Clara~~ **Contra Costa**

On October 17 2022, before me, Alison Rantz a Notary Public in and for said County and State, personally appeared Gonzalo Rodriguez proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Alison Rantz
SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

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

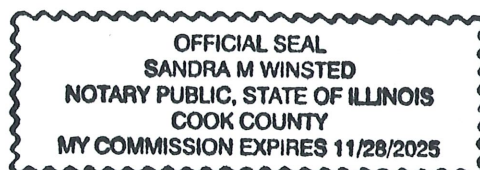
State of ~~California~~ **ILLINOIS**
County of ~~Santa Clara~~ **COOK**

On 12th October 2022, before me, Sandra M. Winsted a Notary Public in and for said County and State, personally appeared Susan A. Welsh proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Sandra M Winsted
SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

Performance Bond Page 4 of 4
Version July 2017



2 Stamford Plaza
Suite 1504, 281 Tresser Boulevard
Stamford, Connecticut 06901
us.surety@trisura.com

**POWER OF ATTORNEY
EXHIBIT A TO SCHEDULE 2**

Bond # TC50172351

KNOW ALL MEN BY THESE PRESENTS: That **TRISURA INSURANCE COMPANY**, a corporation organized and existing under the laws of the State of Oklahoma, authorized to conduct a surety business, and having its principal place of business at 2 Stamford Plaza, Suite 1504, Tresser Boulevard, Stamford, Connecticut 06901, does hereby constitute and appoint:

Susan A. Welsh, Sandra M. Winsted

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said **TRISURA INSURANCE COMPANY**, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of **TRISURA INSURANCE COMPANY** and is granted under and by authority of the following resolution adopted by the Board of Directors of **TRISURA INSURANCE COMPANY** at a meeting duly held on the 11th day of December, 2020.

"RESOLVED, that (1) the Chief Executive Officer, President, Executive Vice President, Senior Vice President, Vice President, or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, **TRISURA INSURANCE COMPANY** have each executed and attested these presents

on this 25 day of February, 2021.

STATE OF Connecticut
County of Fairfield

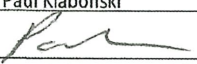

George James, Chief Underwriting Officer, Surety



On this 25 day of February, 2021, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of **TRISURA INSURANCE COMPANY**; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at Fairfield, Connecticut the day and year first above written.

PAUL KLABONSKI
NOTARY PUBLIC
MY COMMISSION EXPIRES AUG-31, 2023

Paul Klabonski seal

a Notary Public of Connecticut
My Commission Expires: 8/31/2023

CERTIFICATION

I, the undersigned officer of **TRISURA INSURANCE COMPANY** do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand on this day, October 12, 2022


Richard Grant, Vice President, U.S. Surety

TO CONFIRM AUTHENTICITY OF THIS BOND OR DOCUMENT EMAIL: us.surety@trisura.com

LABOR AND MATERIAL BOND
(100% of Engineer's Estimate)

Bond No.: TCS0172351
Premium: 554.00

Whereas, the City Council of the City of Morgan Hill, State of California, and **BFH CM LLC** (hereinafter designated as "the principal") have entered into a Subdivision Improvement Agreement:

BFH CM LLC
ROSEWOOD – TRACT NO.10599

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20_____, and identified as project **ROSEWOOD – TRACT NO.10599**, is hereby referred to and made a part hereof; and

Whereas, under the terms of the agreement, the principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Morgan Hill to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California.

Now, therefore, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto the City of Morgan Hill and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of **One Hundred Thirty Eight Thousand Three Hundred Eighty-----00/100 Dollars (\$138,380.00)**, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City of Morgan Hill in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The Surety's office is located at State of Oklahoma ,

Telephone No. 203-545-0690, the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number as follows:

License No.: 0363334
Address: 707 Wilshire Boulevard, Suite 2600, Los Angeles, CA 90017
Telephone No.: 213-630-3200

The following non-resident agent, if any, for the Surety is a party to the transaction:

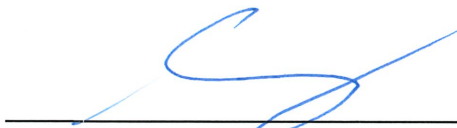
Name of non-resident agent: Susan A. Welsh
Non-resident agent's office address: 200 E. Randolph Street
Chicago, IL 60601
Telephone No.: 312-381-4589

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Executed this 12th day of October 20 22 .

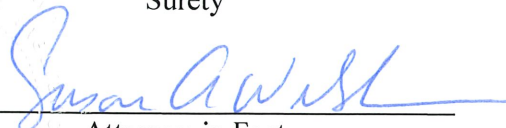
BFM CM LLC

Principal


Principal
Gonzalo Rodriguez
Vice President, Land and Planning

By: Trisura Insurance Company

Surety

By: 

Attorney-in Fact
Susan A. Welsh

Labor and Material Bond Page 2 of 4
Version 2017

By: Susan A. Welsh
Non-resident Agent - Attorney-in-Fact
Susan A. Welsh

Scott Creer, City Engineer

By: _____
Donald A. Larkin, City Attorney

(Acknowledgment on following page.)

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**

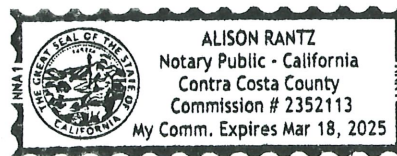
County of ~~Santa Clara~~ Contra Costa

On October 17 2022, before me, Alison Rantz
~~Sandra M. Winsted~~ a Notary Public in and for
said County and State, personally appeared Susan A. Welsh Gonzalo Rodriguez
proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to
the within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Alison Rantz
SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

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State of **California**

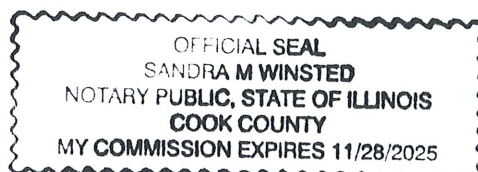
County of **Santa Clara**

On 12th October 2022, before me, Sandra M. Winsted a Notary Public in and for
said County and State, personally appeared Susan A. Welsh
proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to
the within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

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paragraph is true and correct.

WITNESS my hand and official seal.

Sandra M. Winsted
SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

Labor and Material Bond Page 4 of 4
Version 2017



2 Stamford Plaza
Suite 1504, 281 Tresser Boulevard
Stamford, Connecticut 06901
us.surety@trisura.com

**POWER OF ATTORNEY
EXHIBIT A TO SCHEDULE 2**

Bond # TCS0172351

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Susan A. Welsh, Sandra M. Winsted

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said **TRISURA INSURANCE COMPANY**, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of **TRISURA INSURANCE COMPANY** and is granted under and by authority of the following resolution adopted by the Board of Directors of **TRISURA INSURANCE COMPANY** at a meeting duly held on the **11th** day of **December, 2020**.

"RESOLVED, that (1) the Chief Executive Officer, President, Executive Vice President, Senior Vice President, Vice President, or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, **TRISURA INSURANCE COMPANY** have each executed and attested these presents

on this 25 day of February, 2021.

STATE OF Connecticut
County of Fairfield

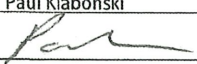

George James, Chief Underwriting Officer, Surety



On this 25 day of February, 2021, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of **TRISURA INSURANCE COMPANY**; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at Fairfield, Connecticut the day and year first above written.

PAUL KLABONSKI
NOTARY PUBLIC
MY COMMISSION EXPIRES AUG-31, 2023

Paul Klabonski seal

a Notary Public of Connecticut
My Commission Expires: **8/31/2023**

CERTIFICATION

I, the undersigned officer of **TRISURA INSURANCE COMPANY** do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand on this day, October 12, 2022.


Richard Grant, Vice President, U.S. Surety

TO CONFIRM AUTHENTICITY OF THIS BOND OR DOCUMENT EMAIL: us.surety@trisura.com

WARRANTY BOND
(50% of Cost of Construction)

Bond No.: TCS0172351

Premium: 554.00

Whereas, the City Council of the City of Morgan Hill, State of California (hereinafter designated as "City"), and **BFH CM LLC** (hereinafter designated as "Principal") have entered into a Subdivision Improvement Agreement (hereinafter "Agreement"):

BFH CM LLC
ROSEWOOD – TRACT NO.10599

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter "Improvements"), which said Agreement, dated _____, 20_____, and identified as project Rosewood - Tract No. 10599, is hereby referred to and made a part hereof; and

Whereas, under the terms of said Agreement, the Principal is required to furnish a bond to guarantee and warrant the work required by said Agreement for a period of one year following the completion and acceptance by the City of the Improvements, against any defective work or labor performed, or defective materials furnished by Principal.

Now, therefore, we, the Principal and Trisura Insurance Company as Surety, are held and firmly bound unto the City of Morgan Hill in the penal sum of **Sixty Nine Thousand One Hundred Ninety-----00/100 Dollars (\$69,190.00)** for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

If Principal faithfully carries out and performs its guarantee and warranty under the Agreement, and, on due notice from City, repairs and make good at its sole expense any and all defects in materials and workmanship in the Project which are discovered during the Warranty Period, or if Principal promptly reimburses City for all loss and damage that City sustains because of Principal's failure to makes such repairs in accordance with the Agreement requirements, then Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.

Surety waives the provisions of Civil Code Sections 2819 and 2845. Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Warranty Bond Page 1 of 4
Version July 2017

Any notice to Surety may be given in the manner specified in the Agreement and delivered or transmitted to Surety as follows:

Attn: George James

Address: 2 Stamford Plaza, Suite 1504, 281 Tresser Blvd.

City/State/Zip: Stamford, CT 06901

Phone: 203.545.0690

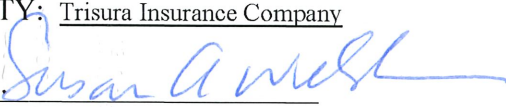
Fax: N/A

Email: George.james@trisura.com

This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued in the Superior Court of Santa Clara County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

In witness whereof, this instrument has been duly executed by the principal and surety above named.

SURETY: Trisura Insurance Company

Date: 

s/

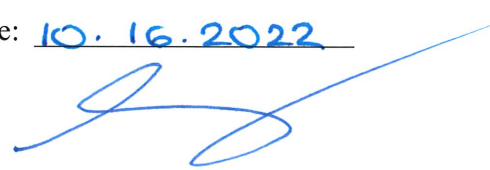
Name: Susan A. Welsh

Title: Attorney-in-Fact

Principal: BFH CM LLC

Date: 10.16.2022

s/

Name: 
Gonzalo Rodriguez
Vice President, Land and Planning

Title: _____

(Attach Acknowledgment with

Notary Seal and Power of Attorney)

APPROVED:

Warranty Bond Page 2 of 4
Version July 2017

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF WARRANTY BOND

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**

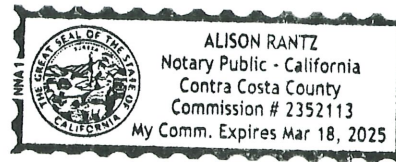
County of ~~Santa Clara~~ **Contra Costa**

On October 17, 2022, before me, Alison Rantz a Notary Public in and for said County and State, personally appeared Gonzalo Rodriguez proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Alison Rantz
SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

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State of **California**

County of **Santa Clara**

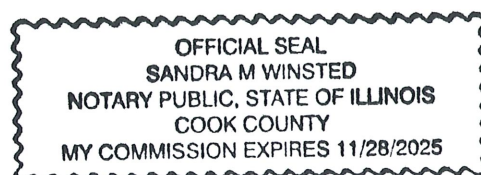
On 12th October, 2022, before me, Sandra M. Winsted a Notary Public in and for said County and State, personally appeared Susan A. Welsh proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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Sandra M. Winsted
SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)



Warranty Bond Page 4 of 4
Version July 2017



2 Stamford Plaza
Suite 1504, 281 Tresser Boulevard
Stamford, Connecticut 06901
us.surety@trisura.com

**POWER OF ATTORNEY
EXHIBIT A TO SCHEDULE 2**

Bond #

TC50172351

KNOW ALL MEN BY THESE PRESENTS: That **TRISURA INSURANCE COMPANY**, a corporation organized and existing under the laws of the State of Oklahoma, authorized to conduct a surety business, and having its principal place of business at 2 Stamford Plaza, Suite 1504, Tresser Boulevard, Stamford, Connecticut 06901, does hereby constitute and appoint:

Susan A. Welsh, Sandra M. Winsted

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said **TRISURA INSURANCE COMPANY**, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of **TRISURA INSURANCE COMPANY** and is granted under and by authority of the following resolution adopted by the Board of Directors of **TRISURA INSURANCE COMPANY** at a meeting duly held on the 11th day of December, 2020.

"RESOLVED, that (1) the Chief Executive Officer, President, Executive Vice President, Senior Vice President, Vice President, or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

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STATE OF Connecticut
County of Fairfield

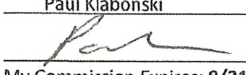

George James, Chief Underwriting Officer, Surety



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IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at Fairfield, Connecticut the day and year first above written.

PAUL KLABONSKI
NOTARY PUBLIC
MY COMMISSION EXPIRES 8/31, 2023

Paul Klabonski seal

a Notary Public of Connecticut
My Commission Expires: 8/31/2023

CERTIFICATION

I, the undersigned officer of **TRISURA INSURANCE COMPANY** do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand on this day, October 12, 2022


Richard Grant, Vice President, U.S. Surety

TO CONFIRM AUTHENTICITY OF THIS BOND OR DOCUMENT EMAIL: us.surety@trisura.com

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

James Sylvain, Deputy Director Utility Services

APPROVED BY: City Manager

APPROVE THE PURCHASE AND INSTALLATION OF THREE GENERATORS FOR UTILITIES, CATEGORICALLY EXEMPT FROM CEQA UNDER SECTION 15301

RECOMMENDATION(S)

Approve and authorize the City Manager to execute an agreement with Edward R. Bacon in the amount of \$315,000 for the purchase and installation of three generators.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Water System Master Plan

Wastewater System Master Plan

REPORT NARRATIVE:

The City water and wastewater utilities division has 28 fixed and portable generators that are used to provide back-up power to water pump stations, wells, and sewer lift stations as well as other City facilities in the event of a power outage. These generators have a service life of approximately 15 years and therefore need to be replaced periodically. Generators may also be replaced when they no longer meet state air quality requirements.

In April, staff issued a formal bid for the purchase of three new fixed location generators for C Lift Station, I Lift Station, and Jackson Booster Station. These generators have outlived their asset life cycle and no longer meet state air quality standards. The bid notice was posted to the City website and all documents were posted to Public Purchase and to the Builders Exchange of Santa Clara County. The bid was published in the Morgan Hill Times. Specifications for the generator were designed to comply with Air Resources Board (ARB) "Tier 4 Final" standards. Tier 4 refers to a set of emissions

requirements established by the Environmental Protection Agency (EPA) to reduce emissions of particulate matter and air toxics from new, non-road diesel engines. The Tier 4 Final rating ensures the longest possible air quality regulatory compliance window and therefore the longest service life of the generator. We received three bids that were far apart in pricing and found there was a flaw in the specifications for one of the generators. All bids were rejected, the specifications were updated, and the project went out for rebid in July. The rebid was posted and published through all the same websites and publications as the first bid. Only one contractor showed up to the first mandatory pre-bid meeting, so there was a second pre-bid added in the hopes of more participation. Ultimately, the City received [one bid for the project](#). The bid is reasonable and responsive and is within the budget for this project. Therefore, staff recommends awarding the agreement to Edward R. Bacon.

Bid Item No.	Description of Bid Item	Estimated Quantity/Unit of Measure	Unit Price	Extended Total Amount
1	C LIFT STATION (WASTEWATER)	LS	\$105,000	\$105,000
2	I LIFT STATION (WASTEWATER)	LS	\$ 79,000	\$ 79,000
3	JACKSON BOOSTER (WATER)	LS	\$131,000	\$131,000

Bid Schedule I Total	\$315,000
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COMMUNITY ENGAGEMENT:

Inform

This report serves to inform the community of the proposed purchase and installation of three generators for utilities.

ALTERNATIVE ACTIONS:

Staff recommends the Council award the generator replacement contract to Edward R. Bacon Company. However, the Council could reject the bid. This action will delay improvements to the water and wastewater infrastructure and, as such, may risk the ability to meet demand due to system failure. This action would also leave the City's backup generators in these locations non-compliant with current state emissions regulations.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has approved previous purchases of fixed and portable generators when needed in the past. The last generator purchase was for two 150kW portable generators in the amount of \$169,552. That purchase was approved by Council on

October 23, 2019.

FISCAL AND RESOURCE IMPACT:

Funding for this agreement is in the Council approved Capital Improvement Program Budget. The Jackson Oaks Booster generator is fully funded in Fiscal Year (FY) 2022-23 project 608020, Water Facility Improvements. C & I Lift stations are in project 308020, Wastewater Facility Improvements. The wastewater generators are funded for \$100K per fiscal year but the lead time to receive these generators is very significant due to supply chain issues. There are sufficient funds available for this purchase.

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, maintenance and/or minor alteration of existing lift and booster station facilities involving no expansion of existing use.

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

APPROVE CONSULTANT AGREEMENT WITH HINDERLITER DE LLAMAS & ASSOCIATES (HDL) FOR SALES AND USE TAX AUDIT SERVICES AND BUSINESS LICENSE ADMINISTRATION AND COMPLIANCE SERVICES

RECOMMENDATION(S)

1. Approve an agreement with Hinderliter De Llamas and Associates (HdL), for sales and use tax audit, and business license administration and compliance services; and
2. Authorize the City Manager to execute and administer that certain agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The City entered into an agreement with HdL in 2018 for sales and use tax audit, and business license administration and compliance services. The current agreement is set to expire soon and requires an amendment to extend the term or begin the process for a new request for proposal (RFP). HdL has offered to extend the contract for an additional five years at the current price for sales and use tax audit services, and a slight increase for business license administration and compliance services, from \$13 to \$14 per processed account. Staff believe this is a good offer as a new RFP would not likely result in any savings and staff have had positive experience working with HdL in the last four years. HdL has a solid reputation as a leader in auditing and revenue solutions for public agencies. It has over 700 municipal clients across the U.S. In addition, changing the new administrator for business licenses would potentially cause difficulty and require city businesses to once again learn and be familiar with a new system.

COMMUNITY ENGAGEMENT:

Inform

This report serves to inform the community of the proposed consultant agreement with HdL for sales and use tax audit, and business license administration and compliance services.

ALTERNATIVE ACTIONS:

City Council could direct staff to begin the process for a new RFP.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On December 19, 2018, the City Council approved an agreement with HdL for sales and use tax audit, and business license administration and compliance services.

FISCAL AND RESOURCE IMPACT:

The cost of these services will be sufficiently covered by the revenue generated by the activities.

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.

CONSULTANT AGREEMENT Hinderliter De Llamas & Associates (HdL)

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY" or "Client"), and Hinderliter De Llamas & Associates a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2025, at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of two one-year periods. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be sales and use tax auditing and business license administration as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. Compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed seven hundred thirty-seven and no/100 dollars (\$737.00) per month adjusted annually by CPI for preceding 12 months, plus sales and user tax auditing services and business license administration and compliance services and shall be billed based on the rate and basis set forth in **Exhibit B**, subject to budget appropriations. 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 CONSULTANT, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so, provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such

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

- 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 CONSULTANT of such occurrence, and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for CITY or are otherwise available for payments.

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

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

- 7.1. **Insurance Types and Amounts.**

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

(\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 7.1.3. Workers' Compensation Insurance and Employer's Liability. CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

7.1.4. Professional Liability.

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

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

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

- 7.1.6. Crime/Fidelity Bond. If the performance of CONSULTANT'S work or service under this Agreement relates to or involves handling of CITY monies, CONSULTANT shall procure and maintain Crime insurance, in the minimum amount of: (i) three hundred thousand dollars (\$300,000.00) per occurrence,

covering all CONSULTANT'S officers and employees, for loss of CITY monies caused by dishonesty and/or theft.

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

7.2.1. **General Liability.**

7.2.1.1. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds on a form at least as broad as ISO Form CG 20 10 for ongoing operations.

7.2.1.2. "Waiver of Rights of Subrogation" - 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

7.2.1.3. "Primary and Non-Contributing" - Insurance shall be endorsed to be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 01.

7.2.2. **Workers Compensation.**

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

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

- 7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to the CONSULTANT's agreement with the 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 7. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

9. **Compliance with Law.**

9.1. CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

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

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

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

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

City’s Right to Withhold Payment: Where CONSULTANT or any subcontractor it employs to perform work under this Agreement has been found in violation of any

applicable wage and hour law by a final judgment, decision or order of a court or government agency, the City reserves the right to withhold payment to CONSULTANT until such judgment, decision or order has been satisfied in full.

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

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

10. **Independent Contractor**. CONSULTANT is an independent contractor and not an agent or employee of CITY.

11. **Confidentiality**. All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.

Confidentiality; Software Use and Warranty; Records.

CONSULTANT will comply with the requirements of the applicable laws, ordinances and/or regulations of which it has been informed by Client concerning the confidentiality of tax records.

As used herein, the term "proprietary information" means all information, techniques, processes, services or material that has or could have commercial value or other utility in CONSULTANT'S Business, including without limitation: CONSULTANT'S (i) software, computer or data processing programs; (ii) data processing applications, routines, subroutines, techniques or systems; (iii) desktop or web-based software; (iv) audit, tax or fee collection/administration or business processes, methods or routines; (v) marketing plans, analyses and strategies; and (vi) materials, techniques and intellectual property used. Except as otherwise required by law, Client must hold in confidence and may not use (except as expressly authorized by this Agreement) or disclose to any other party any proprietary information provided, learned of, or obtained by Client in connection with this Agreement.

If access to any software which CONSULTANT owns is provided to Client as part of this Agreement (including, without limitation, if Client chooses to subscribe to such software and reports option as part of the Services) (such CONSULTANT-owned software is, collectively, the "Software"), CONSULTANT hereby provides a limited, non-exclusive, non-transferable license to Client for the use by such of Client's staff as may be designated from time to time by Client and approved by CONSULTANT in writing to use the Software pursuant to and during the Term of this Agreement. The Software must only be used by such authorized Client staff, and Client must not sublicense, sublet, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of the Software. The license granted hereunder does not imply ownership by Client or any of Client's staff of the Software nor any rights of Client or any of Client's staff to sublicense, transfer or sell the Software, or rights to use the Software for the benefit of others. Client may not create (or allow the creation of) any derivative work or product based on or derived from the Software or documentation, nor modify (or allow the modification of) the Software or documentation without the prior written consent of CONSULTANT. In the event of a breach of this provision (and without limiting CONSULTANT'S remedies), such

modification, derivative work or product based on the Software or documentation is hereby deemed assigned to CONSULTANT. Upon termination of this Agreement or this Software license, this Software license will be deemed to have expired, and Client must immediately deactivate, cease using and remove, delete, and destroy all the Software (including, without limitation, from Client's computers and network). CONSULTANT warrants that the Software will perform in accordance with the Software's documentation.

All documents, preliminary drafts, communications and any and all other work product related to the Services and provided by CONSULTANT to Client either in hard copy or electronically are the property of Client. This does not include any software, programs, methodologies, or systems used in the creation of such work product, nor does it include any drafts, notes or internal communications prepared by CONSULTANT in the course of performing the Services that were not otherwise provided to Client in either hardcopy or electronic form, all of which may be protected by CONSULTANT or others' copyrights or other intellectual property. It is possible that any documents, drafts, communications, or other work product provided to Client may be considered public records under applicable law and/or may be discoverable through litigation. CONSULTANT may publicly state that it performs the Services for Client.

Subject to applicable law, CONSULTANT is responsible for retaining all final documents and other final work product related to the Services for a period of not less than three (3) years from the date provided to Client. Retention of any other documents, preliminary drafts, communications and any and all other work product provided to Client by CONSULTANT is the responsibility of Client. CONSULTANT has no responsibility to retain any drafts, notes, communications, emails, or other writings created or received by Client in the course of performing the Services (other than the final documents and other final work product related to the Services and provided to Client for the term of years referenced above).

12. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

13. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

Hinderliter De Llamas & Associates (HdL)
120 S. State College Blvd, Suite 200
Brea, CA 92028
Attention: Andrew Nickerson
anickerson@hdlcompanies.com

Address of CITY is as follows:

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

14. **Licenses, Permits and Fees.** CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes, and regulations of the federal, state, and local government.

15. **CONSULTANT's Proposal.** If applicable, this Agreement shall include CONSULTANT'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

16. **Maintenance of Records.**

16.1. **Maintenance.** CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then CONSULTANT shall retain said records until such action is resolved.

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

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

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

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

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

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

21. **Defense and Indemnification.**

21.1. **Defense and Indemnification.** CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily

injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM"). In no event will CONSULTANT be liable for any lost revenues or lost profits, or any special, incidental, or consequential damages of any nature. CONSULTANT's duty to indemnify and hold harmless CITY shall not apply to claims for liability which arise from the issuance or non-issuance of any registration, license, or permit.

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

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

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

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

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

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

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

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

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

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

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

29. **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

 Michelle Bigelow
 Print Name

Date: _____

APPROVED AS TO FORM:

 City Attorney

 Donald A. Larkin
 Print Name

Date: _____

 City Manager

 Christina J. Turner
 Print Name

Date: _____

Hinderliter De Llamas & Associates (HdL)

DocuSigned by:

Andrew Nickerson
 By. 2A8393594812482...

Andrew Nickerson President/CEO

 Print Name and Title of Signer.

If Corporate: Chairman, President, or
 Vice President

Date: 11/29/2022 | 6:00:38 PM PST

DocuSigned by:

Richard Park
 By. 4DD130EE7C2A4A2...

Richard Park CFO

 Print Name and Title of Signer.

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

Date: 11/30/2022 | 10:34:57 AM PST

EXHIBIT A SCOPE OF SERVICES

CONSULTANT will provide the following Services relative to Client's sales and use tax auditing

1. Sales and Use Tax and Economic Analysis/Forecasting Services/Reports

- 1.1. Establish a special database identifying the name, address, and quarterly allocations of all sales tax producers within the CITY. This database will be utilized to generate special reports to CITY on major sales tax producers by rank and category, sales tax activity by categories, or business districts, identification of reporting aberrations, and per capita and outlet comparisons with regional and statewide sales.
- 1.2. Provide periodic updated reports to CITY identifying changes in sales by individual businesses, business groups and categories, and by geographic area. These reports may include, without limitation, quarterly aberrations due to State audits, fund transfers, and receivables, along with late or double payments, and quarterly reconciliation worksheets to assist with budget forecasting. CONSULTANT shall meet quarterly by in person or virtually with City.
- 1.3. Shall additionally provide following each calendar quarter a summary analysis for CITY to share with Council Members, Chamber of Commerce, other economic development interest groups and the public that analyze CITY's sales tax trends by major groups and geographic areas without disclosing confidential individual tax records.
- 1.4. Establish a special database with California Department of Tax and Fee Administration ("CDTFA") registration data for businesses within applicable district boundaries holding seller's permit accounts.
- 1.5. Periodically license for the limited, non-exclusive, non-transferable use by CITY's staff certain of CONSULTANT's web-based sales, use and/or transactions tax program(s) containing sellers permit, registration, allocation, and related information for business outlets within CITY's jurisdiction registered with the CDTFA.
- 1.6. Provide periodic updated reports endeavoring to identify and assist with budget forecasting (i) changes in allocation totals by individual businesses, business groups and categories, and (ii) aberrations due to State audits, fund transfers, and receivables, along with late or double payments.

2. Allocation and Audit Recovery Services

- 2.1. Conduct (when mutually agreed with CITY) initial and on-going sales and use tax audits of businesses to help identify and correct distribution and allocation errors, and to proactively affect favorable registration, reporting or formula changes thereby generating previously unrealized sales and use tax income for the CITY and/or recovering misallocated tax from registered taxpayers. Common errors that will be monitored and corrected include but are not limited to transposition errors resulting in misallocations; erroneous consolidation of multiple outlets; formula errors; misreporting of "point of sale" to the wrong location; delays in reporting new outlets; misallocating use tax payments to the allocation pools or wrong jurisdiction; and erroneous fund transfers and adjustments.

- 2.2. Initiate contacts with the CDTFA and sales management and accounting officials in companies that have businesses where a probability of error exists to endeavor to help verify whether current tax receipts accurately reflect the local sales activity. Such contacts will be conducted in a professional and courteous manner.
- 2.3. Prepare and submit to the CDTFA information for the purpose of correcting any identified allocation errors, and follow-up with individual businesses and the CDTFA to promote recovery by the CITY of back or prospective quarterly payments that may be owing.
- 2.4. If, during the course of its audit, CONSULTANT finds businesses located in the CITY's jurisdiction that are properly reporting sales and use tax but have the potential for modifying their operation to provide an even greater share to CITY, CONSULTANT may so advise CITY and collaborate with those businesses and CITY to encourage such changes.

3. Consulting and Other Optional Services

CONSULTANT may from time to time in its sole discretion, consult with CITY's staff, including without limitation, regarding (i) technical questions and other issues related to sales and use tax, (ii) utilization of reports to enhance business license collection efforts; (iii) sales tax projections for proposed annexations, economic development projects and budget planning, (iv) negotiating/review of tax sharing agreements, (v) establishing purchasing corporations, (vi) meeting with taxpayers to encourage self-assessment of tax obligations, and (vii) other sales and use tax revenue-related matters.

4. Confidentiality Information

Section 7056 of the State of California Revenue and Taxation Code ("R&T Code") specifically limits the disclosure of confidential taxpayer information contained in the records of the CDTFA. Section 7056 specifies the conditions under which a city, county or district may authorize persons other than such city, county or district's officers and employees to examine state sales and use tax records.

The following conditions specified in Section 7056-(b)(1) of the State of California R&T Code are hereby made part of this Agreement:

- 4.1. CONSULTANT is authorized by this Agreement to examine sales, use or transactions and use tax records of the CDTFA provided to CITY pursuant to contract under the Bradley-Burns Uniform Local Sales and Use Tax Law R&T Code Section 7200 et.seq.
- 4.2. CONSULTANT is required to disclose information contained in, or derived from, those sales or transactions and use tax records only to an officer or employee of CITY who is authorized by CITY resolution provided to the CDTFA to examine the information.
- 4.3. CONSULTANT is prohibited from performing consulting services for a retailer (as defined in R&T Code Section 6015), during the term of this agreement.
- 4.4. CONSULTANT is prohibited from retaining the information contained in or derived from those sales, use or transactions and use tax records after this agreement has expired.

Information obtained by examination of the CDTFA records shall be used only for purposes related to collection of local sales and use tax or for other governmental functions of the City as set forth by resolution adopted pursuant to Section 7056 (b) of the Revenue and Taxation Code. The resolution shall designate the CONSULTANT as a person authorized to examine sales and use tax records and certify that this agreement meets the requirements set forth above and in Section 7056 (b), (1) of the Revenue and Taxation Code. CONSULTANT will provide the following Services relative to Client's business license tax administration.

CONSULTANT will provide the following Services relative to Client's business license tax administration.

1. Operations Management Services

- 1.1. Establish and maintain database of Client businesses.
- 1.2. Receive and process applications, renewals, and payments in a timely fashion.
- 1.3. Send renewal notices to active businesses within 30 days of the renewal period end date or at another interval specified by Client.
- 1.4. Provide businesses multiple options for submitting applications, renewals, payments, or support requests (including via website, email, mail, phone, and fax. CONSULTANT license specialists will be available for live interactions Monday through Friday, 8:00am to 5:00pm Pacific).
- 1.5. Remit revenue to Client no less than monthly.
- 1.6. Provide Client staff access to website portal offering business registry inquiry, reporting, and electronic department approval capabilities.

2. Compliance Services: 1) Identify and register businesses which are subject to licensure or taxation, 2) collect known debt as pertains to business license or tax, and 3) identify under-reported tax liability.

2.1. Discovery Services

- 2.1.1. Develop a list of businesses subject to Client licensure or taxation.
- 2.1.2. Notify non-compliant businesses of their options to comply or dispute their non-compliant status. Notification and support to businesses will be facilitated through the website, mail, email, phone, and fax.
- 2.1.3. Review information and forms submitted by the business for completion and accuracy, inclusive of any additional required documentation (i.e., home occupation permit). All submissions are filed and stored electronically and made available to Client upon request.
- 2.1.4. Provide businesses with detailed invoicing and options to pay via website, mail, and phone.
- 2.1.5. Remit revenue to Client no less than monthly, along with all business applications and any additional documentation.

2.2. Collection Services

- 2.2.1. Identify businesses subject to Client licensure or taxation which have known debt to Client and have failed to pay within an appropriate time frame.
- 2.2.2. Notify businesses of their options to comply or dispute their non-compliant status.
- 2.2.3. Provide businesses with detailed invoicing and options to pay via website, mail, and phone.
- 2.2.4. Remit revenue to Client no less than monthly.

2.3. Audit Services

- 2.3.1. Identify potential under-reporting and/or misclassified businesses.

- 2.3.2. Audit businesses mutually agreed to by Client and CONSULTANT that are identified as potential under-reporting businesses.
- 2.3.3. Submit audit summaries to Client and discuss further actions.
- 2.3.4. Educate businesses on proper reporting practices.
- 2.3.5. Invoice and collect identified delinquencies.

3. Online Payment Processing – CONSULTANT's services include PCI compliant payment processing services powered by FIS Global, which supports both credit card and eCheck transactions.

3.1. Client Responsibilities

- 3.1.1. As a condition to its receipt of the Service, Client shall execute and deliver any and all applications, agreements, certifications, or other documents required by FIS Global, Networks or other third parties whose consent or approval is necessary for the processing of Transactions by FIS Global. "Network" is an entity or association that operates, under a common service mark, a system which permits participants to authorize, route, and settle Transactions among themselves, including, for example, networks operated by VISA USA and Mastercard, Inc., NYCE Corporation, American Express, and Discover.
- 3.1.2. Client hereby grants CONSULTANT the full right, power, and authority to request, receive and review any Data or records reflected in a Transaction report. Client represents and warrants that it has the full right and authority to grant these rights.

EXHIBIT B SCHEDULE OF COMPENSATION

Fees For Sales and Use Tax and Economic Analysis/Forecasting Services/Report

1. Sales and Use Tax and Economic Analysis/Forecasting Services/Reports

- 1.1. Fees for performing the sales tax and economic analysis/forecasting Services as described above shall initially be **\$737** per month, commencing with the month of the Effective Date (hereafter referred to as “monthly fee”). The monthly fee shall be invoiced quarterly in arrears and shall be paid by CITY no later than 30 days after the invoice date.
- 1.2. CONSULTANT may change the non-hourly Fees established above upon at least 30 days’ prior written notice to CITY (but not more than once a year). Any such change must be with reference to the 12- month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), as reported by the U.S. Bureau of Labor Statistics (the “CPI Change”).

2. Allocation and Audit Recovery Services

- 2.1. Fees for performing the allocation and audit recovery Services described above shall be **15%** of all new, increased and recovered sales and use tax revenue received by the CITY as a result, in whole or in part, of the allocation audit and recovery services (hereafter referred to as “audit fee”). The fee shall be paid notwithstanding any related CITY assistance, work in parallel, and/or incurrence of attorneys’ fees or other costs or expenses in connection, with the relevant Services.
- 2.2. The Fee described above include, without limitation, State fund transfers received for back quarter reallocations and monies received in the first eight (8) consecutive reporting quarters following completion of CONSULTANT’s allocation audit and confirmation of the corrections by the CDTFA.
- 2.3. These Fees shall be paid by CITY upon CONSULTANT’s submittal of evidence of CONSULTANT’s relevant Services in support thereof, including, without limitation, copies of relevant communications between CONSULTANT and the CDTFA and/or taxpayers.
- 2.4. CONSULTANT recognizes CITY’s authority to waive or reduce the tax/fee-related debt of a business. Should CITY decide to do so for a business whose deficiency was identified by CONSULTANT, CONSULTANT shall be entitled to compensation in the amount of one half (1/2) of the Fees CONSULTANT would have otherwise earned. Deficiencies which are uncollectable due to insolvency or dissolution of the business, or for deficiencies which are otherwise incapable of collection (i.e., statute of limitation or other legal defense) shall not be considered a CITY voluntary election to waive, and thus, CONSULTANT would not be entitled to compensation related thereto under this provision.

3. Consulting and Other Optional Services

- 3.1. Fees for performing the consulting and other optional Services described above shall be based on the following initial hourly rates: (i) Principal - \$325; (ii) Programmer - \$295; (iii)

Senior Analyst

3.2. - \$245; and (iv) Analyst - \$195.

3.3. CONSULTANT may change the rates for its hourly Fees from time to time. A 30 days' prior written notice to City will be given.

4. General Provisions Relating to Fees

4.1. Fees for travel and lodging expenses will be invoiced at cost and applied to all meetings (including implementation, training, operations, and support). Travel expenses only apply to out-of-scope travel and must therefore be pre-approved by CITY.

4.2. Fees will be invoiced monthly to CITY for Services performed during the prior month. To the extent that CONSULTANT has commercially reasonable means to do so, Fees will be netted out of CITY's monthly revenue disbursement.

Fees For Business License Tax Administration and Compliance Services

1. Operations Management Services

- 1.1. Fees for performing operations management services shall be \$14.00/per processed account + CPI which is any account for which an application or renewal/return was processed, or active account which was sent a renewal notice.
- 1.2. Fees will be increased as of January 1st of each calendar year with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI- U), West Region, as reported by the U.S. Bureau of Labor Statistics (the "CPI Change"). Each annual increase in the Fees will be equal to the greater of two percent (2%) or the actual CPI Change and the lesser of ten percent (10%) or the actual CPI Change. For example, if the actual CPI Change is 1.5%, then the annual increase will be 2%, if the actual CPI Change is 3.5%, then the annual increase will be 3.5%, and if the actual CPI Change is 12%, then the annual increase will be 10%.
- 1.3. Fees related to travel and lodging expenses are billed at cost and apply to all meetings (including implementation, training, operations, and support). Travel expenses only apply to out-of-scope travel and must therefore be pre-approved by Client.
- 1.4. Fees will be invoiced monthly to Client for Services performed during the prior month. Fees will be netted out of Client's monthly revenue disbursement. Client will submit payment for any balance due to CONSULTANT within 30 days of receiving the invoice.

2. Compliance Services

- 2.1. Fees for performing compliance Services apply to all monies received for the current tax/license period and any other prior period collected (including monies received for taxes, penalties, interest, and fees).
 - 2.1.1. Fees for performing discovery Services shall be a contingency Fee of 30% of the revenues received as a result of the Services.
 - 2.1.2. In the event that Client discovers a non-compliant business and reports the business to CONSULTANT (including a calculation of all taxes/fees due), CONSULTANT will categorize the business as a collection service effort and thus apply the lower collection Services contingency Fee rate.
 - 2.1.3. Fees for performing collection Services shall be a contingency Fee of 25% of the revenues received as a result of the Services.
 - 2.1.4. Fees for performing audit Services shall be a contingency Fee of 30% of the revenues received as a result of the Services.
- 2.2. CONSULTANT recognizes Client's authority to waive or reduce the tax/fee debt of a business. Should Client decide to do so for a business whose deficiency was identified by CONSULTANT, CONSULTANT shall be entitled to compensation in the amount of one half (1/2) of the Fees

CONSULTANT would have otherwise earned. Deficiencies which are uncollectable due to insolvency or dissolution of the business, or for deficiencies which are otherwise incapable of collection (i.e., statute of limitation or other legal defense) shall not be considered a Client voluntary election to waive, and thus, CONSULTANT would not be entitled to compensation related thereto under this provision.

2.3. Fees related to travel and lodging expenses are billed at cost and applied to all meetings (including implementation, training, operations, and support). Travel expenses only apply to out-of-scope travel and must therefore be pre-approved by Client.

2.4. Fees will be invoiced monthly to Client for Services performed during the prior month. Fees will be netted out of Client's monthly revenue disbursement. Client will submit payment for any balance due to CONSULTANT within 30 days of receiving the invoice.

3. Payment Processing – CONSULTANT will configure payment processing services to utilize either a taxpayer funded model (convenience fee), or Client funded model, as directed by Client. Client may switch between these models upon written request to CONSULTANT. Fees for each of these payment processing models are detailed here.

3.1. Taxpayer funded model – Client authorizes CONSULTANT to collect each convenience fee from the taxpayer at time of payment.

3.1.1. Credit and debit card processing – 2.9% of transaction amount, minimum of \$2.00

3.1.2. ACH/eCheck processing - \$1.25 per transaction

3.2. Client funded

3.2.1. Credit and debit card processing – 2.9% of transaction amount

3.2.2. ACH/eCheck processing - \$0.50 per transaction

3.3. Returned payments/NSF fee – Each occurrence of a card chargeback, returned payment or insufficient funds will incur a fee of \$25.00, to be applied to the taxpayer's account.

3.4. CONSULTANT reserves the right to review and adjust pricing related to payment processing services on an annual basis. CONSULTANT will communicate any such adjustment to Client in writing, with 60 days advance notice. Items that will be considered in the review of fees may include, but are not limited to regulatory changes, card association rate adjustments, card association category changes, bank/processor dues and assessments, average consumer payment amounts, card type utilization, and costs of service.

EXHIBIT C
SCHEDULE OF PERFORMANCE

As directed by City Staff.

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Cynthia Iwanaga, Management Analyst

APPROVED BY: City Manager

APPROVE FIRST AMENDMENT TO THE CAL-WEST LIGHTING AND SIGNAL MAINTENANCE, INC. MAINTENANCE SERVICE AGREEMENT, EXEMPT FROM CEQA UNDER SECTION 15301

RECOMMENDATION(S)

1. Approve the first amendment to the maintenance service agreement with Cal-West Lighting and Signal Maintenance, Inc. for \$200,000 for a total contract amount of \$587,600; and
2. Authorize the City Manager to execute and administer the first amendment to the maintenance service agreement with Cal-West Lighting and Signal Maintenance, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider a first amendment to the City's maintenance service agreement with Cal-West Lighting and Signal Maintenance, Inc. If approved the amendment will increase the amount of the agreement by \$200,000 to \$587,600.

Traffic signal and lighting services' costs have been higher than anticipated due to the large number of pole knockdowns, and the increased need for underground service alert (USA) locates due to the increase in communications encroachment permits. As a result, there is an inadequate remaining balance on the contract through June 2023, for scheduled preventative maintenance and unanticipated repairs. In Fiscal Year 2021-2022, \$100,314 was spent on repairs made to streetlights and other equipment damaged by vehicles, also referred to as "pole knockdowns". These costs will

eventually be reimbursed through the responsible parties' insurance to recover and reimburse the Streets Maintenance Program in the General Fund (Fund 010.6100).

Also, several communications companies are currently working on upgrading and installing new communication cables, and conduit throughout the City. As a result, there has been an increase in the number of communications encroachment permits, which requires the City to locate and mark buried existing utility facilities, so that they are not damaged or destroyed during construction. To date, the City has paid Cal-West Lighting and Signal Maintenance approximately \$42,608 to locate and mark buried utility facilities for the communications encroachment permits. It is anticipated that increased encroachment permit revenues will more than offset the amounts paid out of the Street Maintenance Program to fund the USA locates costs. By increasing the amount of the agreement by \$200,000, preventative maintenance and unanticipated repairs will be funded through June 30, 2023.

The City has released RFPs and contracted for traffic signal, and lighting services for many years, and does not have the staffing resources or the equipment to perform the work internally. Services provided include streetlight, parking lot light, and traffic signal bulb replacements, equipment troubleshooting, emergency response services, and consultation services. The City's current contract expires on June 30, 2023. The original amount of the agreement was \$387,600 for two years.

Staff has been satisfied with the services performed by Cal-West Lighting and Signal Maintenance, Inc., and recommends that the City Council authorize the City Manager to execute the attached first amendment to the agreement.

COMMUNITY ENGAGEMENT:

Inform

This staff report serves to inform the community of the proposed amendment to the Cal-West Lighting and Signal Maintenance, Inc. maintenance agreement.

ALTERNATIVE ACTIONS:

The City Council could decline to approve the amendment and instead direct staff to terminate the agreement and proceed with a request for proposals (RFP) for traffic signal and lighting services. This alternative is not recommended as it would delay critical repairs necessary for City infrastructure.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council has previously approved contracts for traffic signaling and streetlighting services for over a decade. The City Council previously awarded the current agreement to Cal-West Lighting and Signal Maintenance, Inc. on May 5, 2021.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this agreement will increase to \$587,600. Funding for the traffic signaling and streetlighting services are accounted for in the

Streets Maintenance Program (010.6100) and Downtown Maintenance Program (010.5460) within the General Fund (010) in the FY 2022-2023 budget. An additional budget appropriation of funding is not necessary at this time as the City has seen lower expenses in other areas of the Street Maintenance budget. As previously noted, much of the increased expenses will ultimately be reimbursed to the City.

CEQA (California Environmental Quality Act):

Categorical Exemption

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

**FIRST AMENDMENT TO AGREEMENT
CAL-WEST LIGHTING AND SIGNAL MAINTENANCE, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and CAL-WEST LIGHTING AND SIGNAL MAINTENANCE, INC., a California Corporation ("SERVICE PROVIDER"), hereinafter referred to collectively as the "Parties".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, 2022.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of June 3, 2021, for services for a maximum compensation of Three Hundred Eighty-Seven Thousand Six Hundred dollars (\$387,600.00) ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the MAINTENANCE SERVICE AGREEMENT, as amended, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

A. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. **Amount.** Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed FIVE HUNDRED EIGHTY-SEVEN THOUSAND SIX HUNDRED DOLLARS (\$587,600.00) 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."

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

///

Signatures on the Next Page

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Date: _____

APPROVED AS TO FORM:

Donald Larkin, City Attorney

Date: _____

Christina Turner, City Manager

Date: _____

**CAL-WEST LIGHTING AND SIGNAL
MAINTENANCE, INC.**

Craig H. Geis, Jr.

By: _____
Title: Craig H. Geis, Jr. - President

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: 11-21-22

Sherry A. Geis

By: _____
Title: Sherry A. Geis - Secretary

Print Name and Title of Signer.

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

Date: 11-21-22

EXHIBIT 1

MAINTENANCE SERVICE AGREEMENT
Cal-West Lighting and Signal Maintenance, Inc.

THIS AGREEMENT is entered into and becomes effective on 6/3/2021 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Cal-West Lighting and Signal Maintenance, 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 May, 5, 2021.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2023 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum 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 street lighting and signal maintenance as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$387,600.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Three Hundred Eighty Seven Thousand and Six Hundred 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:

Cal-West Lighting and Signal Maintenance, Inc.
P.O. Box 612035
San Jose, CA 95161-2035

Address of CITY is as follows:

Dale Dapp, Maint. Mgrn.	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:

DocuSigned by:
Michelle Bigelow
 City Clerk/Deputy City Clerk

Michelle Bigelow
 Print Name

Date: 6/3/2021

APPROVED AS TO FORM:

DocuSigned by:
Donald A. Larkin
 City Attorney

Donald A. Larkin
 Print Name

Date: 5/24/2021

CITY OF MORGAN HILL

DocuSigned by:
Christina Turner
 City Manager

Christina J. Turner
 Print Name

Date: 6/3/2021

CAL-WEST LIGHTING & SIGNAL
 MAINTENANCE, INC.

By:

Craig H. Geis, Jr. - President

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

Date: April 20, 2021

By:

Frank A. Garcia - Treasurer

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

Date: April 20, 2021

1000023113

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

Expiration Date(s) 06/30/2022

847901
 Contractor's License Number(s) (if applicable)

Expiration Date(s) 10/31/2022

Seal.

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EXHIBIT A SCOPE OF SERVICES

Street Lighting and Traffic Signal Scope of Work

Provide maintenance services for the City's traffic signals and lighting, streetlights, flashing beacons, lighted crosswalks, and other City equipment. The scope of work will include maintenance, emergency repair, non-emergency routine inspections and new equipment upgrade and installation work. The City operates and maintains 43 traffic signaled intersections with a variety of signal controllers, flashing beacons and lighted crosswalks.

Maintain EMTRAC Signal-Priority System on an annual basis.

Total amount of work available will be a function of routine traffic signal maintenance plus the amount of work that is required due to normal "wear and tear," collision damage, vandalism, and other factors that may result in the need for emergency response maintenance services. The City expects traffic signal technicians to be regularly assigned to the City as necessary to provide preventative maintenance and to respond to unscheduled/emergency work.

Scope of Work:

1-1 SCOPE OF SERVICE:

The Contractor will furnish all tools, equipment, apparatus, facilities, labor, service, and materials to perform all work necessary to maintain traffic signal facilities and streetlights in good and workmanlike manner. All labor, services, materials, and equipment shall be furnished and said work performed and completed by the Contractor as an independent contractor, subject to the inspection and approval of the Community Services Director of the City of Morgan Hill, or his representative.

Preventative Maintenance:

The Contractor shall provide a routine, comprehensive preventative maintenance program designed to minimize the incidence of outages and malfunction; reduce complaints; and extend the useful life of the traffic signal equipment. The Contractor will be required to furnish and use a preventative maintenance checklist form approved by the City. The Contractor shall provide one electronic copy of the maintenance checklist to the City following each inspection, to maintain a copy of the checklist in the traffic signal controller cabinet, and to maintain a copy of the maintenance checklist at the Contractor's office. The program shall include monthly inspections of each signalized intersection.

Each controller unit shall be inspected, cleaned, and adjusted during a routine inspection one time per month. This includes all accessory items such as the Emtrac system and signal interconnect systems. Each controller conflict monitor shall be tested once yearly during the month of July.

All traffic signal detection loops shall be maintained and repaired as needed.

All incandescent lamps in all signals shall be replaced based on an eighty percent (80%) depletion period. Contractor shall use only standard traffic signal lamps as manufactured by General Electric Company or Sylvania Company.

All light emitting diode (LED) modules in all signals shall be replaced when more than two percent (2%) of the LEDs have failed. Contractor shall only use standard LED traffic signal modules approved by the California Department of Transportation (Caltrans).

The Contractor shall replace or repair any and all defective parts of the controller mechanism as needed. All lenses and reflectors shall be cleaned and polished once a year. At this time, all broken parts shall be replaced.

Contractor shall maintain the appearance of all traffic signals monthly including graffiti removal, and removal of stickers, etc.

All fixed time, semi-actuated and fully actuated signal which are installed from time to time shall be added to those already maintained by the Contractor as City notifies the Contractor of the installation thereof. These signals shall be maintained at the same rate and in the same manner as those covered by the maintenance agreement. In the event notification is made at other than the beginning of the monthly contract period, payment for that month shall be prorated from the day the Contractor is notified. The Contractor is to be at all new installation turn-on to provide technical assistance and guidance.

Contractor is to maintain by quarterly testing all Emtrac systems throughout the city at locations.

School/PED flashing beacons are to be adjusted regarding Daylight Savings Time and Pacific Standard Time as needed twice a year.

Scheduled Repair:

The Contractor shall investigate and determine the corrective requirements for each reported malfunction, failure, or outage of the traffic signal system. The Contractor shall repair or replace equipment and components that have failed, deteriorated, or malfunctioned from the normal operation of the traffic signal system. Replacement of controllers and battery backup systems will require approval of City staff prior to replacement.

Based on a Street Light Repair list sent weekly, repairs would be made within fourteen (14) calendar days. The price is for the electrician, bucket truck, and lamp. Additional items are extra cost. Lights needing a quicker response will be billed based on labor and material.

No permanent change shall be done without prior approval of the City. Whenever equipment is removed, the City representative shall be notified by phone and e-mail within twenty-four (24) hours, except weekends and holidays (where the firm shall wait until the next calendar day to notify the City Representative).

The Contractor may be requested to input timing changes provided by the City.

Emergency Response Work:

The Contractor may be called upon from time to time by the City to repair, replace, or refurbish equipment which has been damaged by vehicle accidents, acts of God, malicious damage, natural causes, or need to install new appurtenances. In this case Contractor shall make emergency service calls when necessary to make temporary or permanent repairs or installation to signal equipment and appurtenances such as: safety lighting, traffic signs, pedestrian signals, flashing beacons, streetlights, detector devices external to the cabinet or failure of the controller.

The City's streetlights are maintained by the City. The Contractor shall, upon request, make emergency calls to remove streetlights that have been knocked down, and deliver same to the City

corporation yard. The Contractor may be requested to replace and install a new streetlight and possibly, depending upon extent of damage, repair or replace the street light pole pedestal. Contractor shall maintain a 24 hour per day emergency service for the replacement of burned-out lamps or controller malfunctions. A maximum response time of two (2) hours will be required of the Contractor. When traveling to and from the locations of the equipment to be serviced, Contractor's representative shall observe traffic signals at other designated intersections for possible malfunctions.

1-2. TERM OF SERVICE The term of the contract will be from July 1, 2021 through June 30, 2023. The contract may be canceled or any portion thereof at any time during the term of service and such cancellations shall be effective upon giving sixty (60) days written notice. The City, at its option, may renew this contract for up to one additional year beginning on July 1, 2023. This option will be exercised only if the contractor has demonstrated superior performance in provision of traffic signal and street light maintenance services to the City.

Pricing entries in Bid Schedule of Proposal Package applies to the period of July 1, 2021 to June 30, 2023. For services beginning on July 1, 2023, the Contractor may request a percentage adjustment to the pricing for all services equal to the Consumer Price Index (CPI) for the San Francisco Bay Area Counties. This request must be in writing ninety (90) days prior to the end of July 1, 2023.

1-3 WORK HOURS

The work hours for any, and all traffic signal and street light preventative maintenance and repairs will be scheduled with City Maintenance Staff during regular business hours (7:00 a.m. to 5:00 p.m. Monday through Friday). As authorized by the City, the Contractor may perform Unscheduled and Emergency Response Work on the traffic signal system not covered by preventative maintenance and scheduled repairs.

Deviation from the above will not be permitted except by written permission of the City Maintenance Coordinator or designated representative from the facility.

From time to time, the City may take on improvement projects or other construction. The Contractor shall cooperate with the City or its agents while said work is underway.

1-4 WORKMANSHIP AND QUALITY LEVEL

All work shall be performed by staff directly employed and supervised by the Contractor. The Contractor shall provide management and technical supervision through competent supervisors as required to provide the specified traffic signal and street light maintenance. The Contractor shall be responsible for the skills, methods and actions of all employees, subcontractors and for all work done.

The Contractor shall cooperate with the representative authorized by the City to enable them to determine the Contractor's conformity with these specifications and the adequacy of the work being performed. The Contractor shall give personal supervision to the work and will meet with the Maintenance Manager or designated City representative, a minimum of once per month, at a schedule mutually agreed upon.

1-5. LOCATIONS

A list of signalized intersections is included at the end of the Technical Specifications.

1-6. MONTHLY ACTIVITY REPORT

The Contractor shall provide a computerized monthly activity report to the City by the fifteenth (15) working day of each month for the previous month. A monthly report shall be sent via e-mail to the City with the monthly invoice. No payment will be made without submittal of the report: The report shall include:

- i. **Unscheduled and Emergency Response Work:** Time the service calls were received, names of City staff who made the service call, time arrived at intersection, response time, nature of problem, the number of hours spent for each repair, materials used, whether the activity related to accident or vandalism, and a special listing of intersections with three or more calls in one month.
- ii. **Scheduled Repairs:** A complete record of all work that was performed on the traffic signal equipment during the previous month including the date and time, make model, and serial number of any major components or other equipment that was newly installed at each intersection.
- iii. **Preventative Maintenance:** Time and date the preventative maintenance work was performed.
- iv. **Pending Repair List:** Provide a monthly report of all pending repair work needed at each intersection. The intersection name should be listed along with a description of the repair required, problem that created the repair and level of severity (high priority repair, medium priority repair, low priority repair).

1-8. SIGNAL SHUT DOWN AND SIGNAL ON FLASH

The Contractor shall immediately notify the City's Community Services Department and Police Department of any signal turn-offs or signal-on-flash necessitated by their operation. Signal shut down of any duration and sign-on-flash operation in excess of fifteen (15) minutes must be first authorized by the Community Services Dept.-Maintenance Division.

1-9. SPARE EQUIPMENT

The Contractor shall maintain adequate storage and shop facilities and sufficient stock of spare parts and signal equipment to effectively maintain the traffic signals. The Contractor shall maintain at least one fully tested standby controller that is compatible with the City's system. The Contractor will own and maintain all spare parts until installation in the City.

1-10. SALVAGED EQUIPMENT

The Contractor shall store any designated equipment, as designated by the City, at the Contractor's storage yard at no additional cost to the City. Components such as mast arms and luminaires that are undamaged may be re-used at the direction of the City. Any material or equipment declared as non-salvageable by the Community Services Department shall be taken from the City and disposed of properly by the Contractor at Contractor's cost.

1-11. SAFETY

The Contractor and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way.

1-12. EMERGENCY SITUATIONS

For medical or public safety emergencies call 9-1-1. For all emergencies contact the Maintenance Manager or designated staff to report the issue immediately (24-hours/day).

ATTACHMENT A:

Current as of 4/4/21

BID SCHEDULE-TRAFFIC SIGNAL AND STREET LIGHT MAINTENANCE

Items in Red are items that have been added to this schedule.

CITY OF MORGAN HILL SIGNALIZED INTERSECTIONS TO BE SERVICED BY THIS CONTRACT

- 1 Monterey/Tilton
- 2 Monterey/Burnett
- 3 Monterey/Peebles
- 4 Monterey/Madrone Parkway
- 5 Monterey/Cochrane
- 6 Cochrane/Cochrane Circle
- 7 Cochrane/Butterfield
- 8 Cochrane/Woodview (to be activated)
- 9 Cochrane/Sutter Boulevard
- 10 Cochrane/Cochrane Plaza/Madrone
- 11 Cochrane/DePaul
- 12 Cochrane/Mission View
- 13 Monterey/Old Monterey
- 14 Monterey/Wright
- 15 Monterey/Main
- 16 Main/Butterfield
- 17 Main/Calle Mazatan
- 18 Monterey / 2nd
- 19 Monterey/4th
- 20 Monterey/Dunne
- 21 Dunne/Church
- 22 Dunne/Butterfield
- 23 Dunne/Walnut Grove
- 24 Dunne/Condit
- 25 Dunne/Murphy
- 26 Dunne/Peppertree
- 27 Dunne/Hill
- 28 Monterey/Spring
- 29 Monterey/Cosmo
- 30 Monterey/Tennant-Edmundson
- 31 Tennant/Church
- 32 Tennant/Vineyard
- 33 Tennant/Butterfield
- 34 Tennant/Juan Hernandez
- 35 Monterey/Vineyard
- 36 Monterey/Watsonville-Butterfield
- 37 Monterey/John Wilson Way
- 38 Butterfield/Sutter
- 39 Butterfield/Digital
- 40 Butterfield/Central Ave
- 41 Butterfield/Diana
- 42 Butterfield/San Pedro
- 43 Butterfield/Barrett

RAPID FLASHING BEACONS:

- 1 East Main/Grand Prix
- 2 Monterey / Central
- 3 Main/Del Monte
- 4 W Dunne/Del Monte
- 5 W Edmundson/Trail Crossing
- 6 W Edmundson/Community Park Drive
- 7 Burnett Ave. at Sobrato High School

FLASHING BEACONS:

- 1 Tilton / Dougherty
- 2 17660 Monterey
- 3 17775 Monterey
- 4 Nordstrom on Dunne
- 5 Dunne / Saddleback
- 6 Edes Ct/Trail Crossing
- 7 Cosmo/Trail Crossing

ADVANCE SIGNAL FLASHING BEACONS:

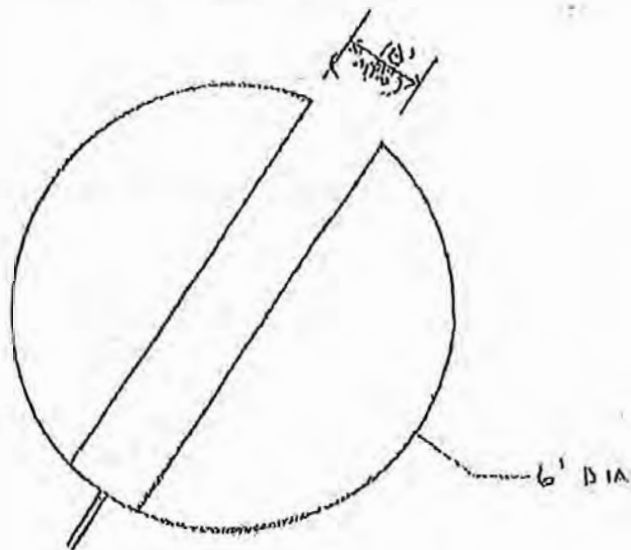
- 1 Monterey / Tilton
- 2 Monterey / Old Monterey
- 3 Monterey/John Wilson Way

LIGHTED CROSS WALKS:

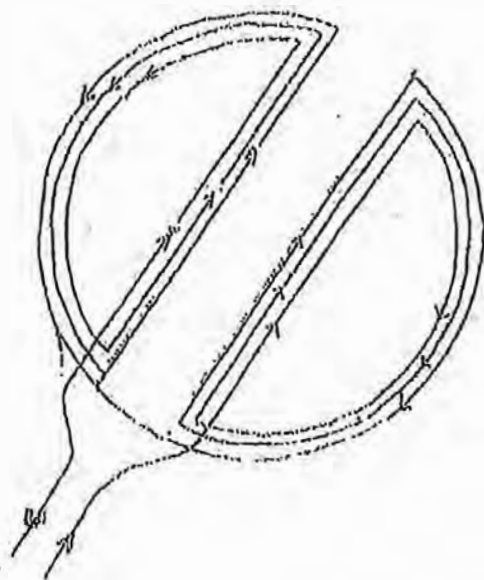
- 1 Monterey/Third Street
- 2 Monterey/First Street
- 3 Monterey/Fifth Street

ATTACHMENT B-FORWARD LOOP

ALL FRONT LOOP



Modified Type "E" Loop
(Sawcut Detail)



(Wiring Detail)

ATTACHMENT C-STANDARD PLAN ES-5B

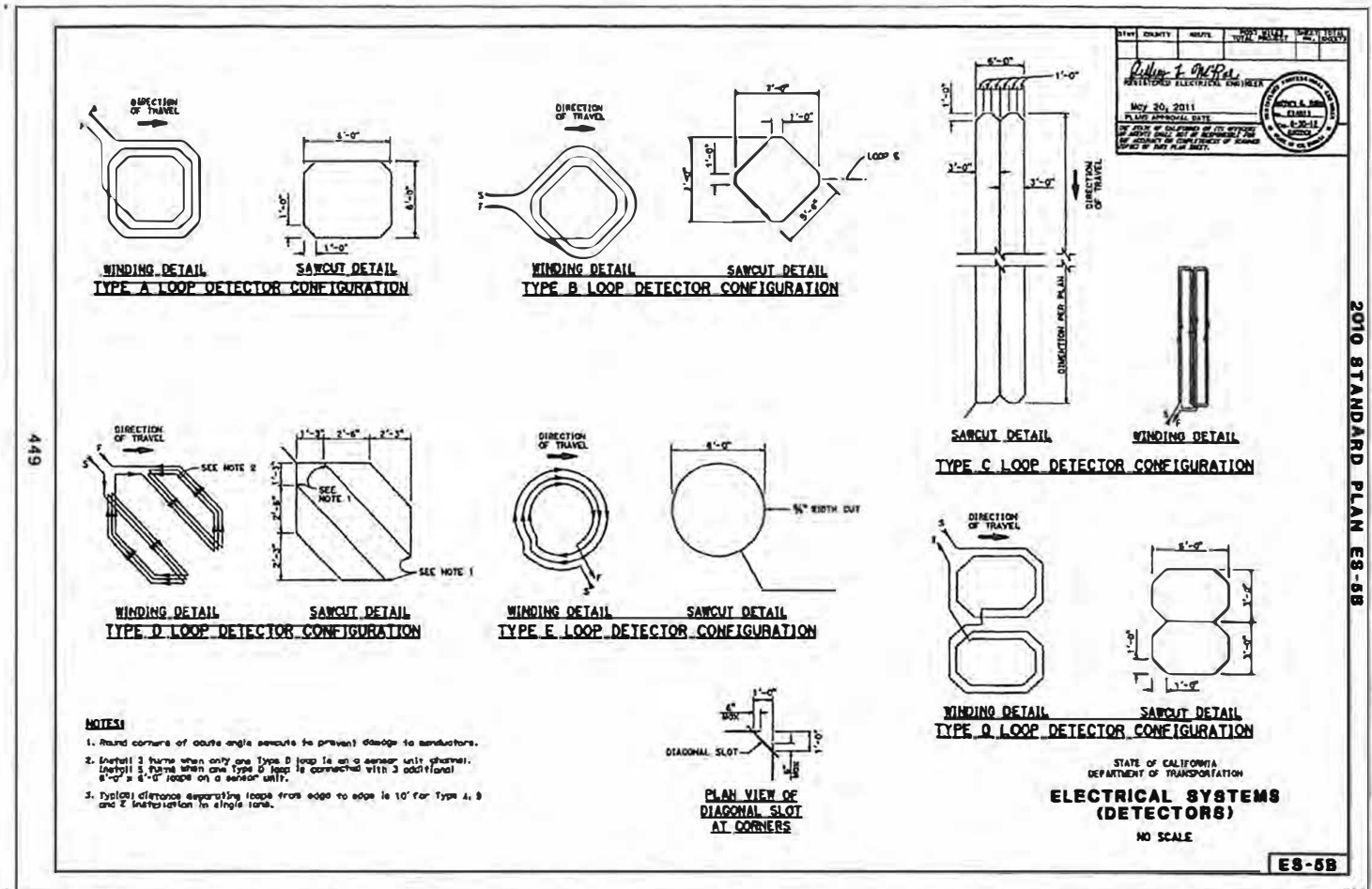


EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Please see attached Bid Schedule

Attachment 1 : Bid Schedule

City of Morgan Hill Traffic Signal and Street Lighting Maintenance
Annual Routine Maintenance
 (Task Rate Schedule A)

					Annual Amount
1	Monthly Maintenance Fee Per Intersection*				
	\$	<u>70.00</u>	/month x	12 months = x	43 intersections =
					\$ <u>36,120.00</u>
2	Emtrac System Maintenance Annually*				
	\$	<u>0.00</u>	/annual x	1 per annum =	
					\$ <u>included</u>
3	Rapid Flashing, Flashing Beacons, and Advance Signal Flashing Beacons*				
	\$	<u>32.00</u>	/ month x	12 months = x	7 rapid and 7 flashing beacons and 3 advance signal flashing beacons
					\$ <u>6,528.00</u>
4	Lighted Crosswalk				
		<u>32.00</u>	/month x	12 months = x	3 lighted crosswalks =
					\$ <u>1,152.00</u>
					TOTAL (annual)
					\$ <u>43,800.00</u>
	Based on attached Revised Intersection List (Attachment A)				

Time and Materials - Service Repairs
 (Task Rate Schedule B)

1	LABOR AND EQUIPMENT RATES FOR MAINTENANCE				
	LABOR SCHEDULE				
		STRAIGHT TIME		OVERTIME	
	Signal Maintenance Supervisor	\$	<u>125.00</u>	\$	<u>195.00</u>
	Signal Maintenance Technician	\$	<u>125.00</u>	\$	<u>195.00</u>
	Traffic Signal Staff	\$	<u>75.00</u>	\$	<u>105.00</u>
	Laborer	\$	<u>75.00</u>	\$	<u>105.00</u>
	EQUIPMENT				
		HOURLY RATE		DAY RATE	
	Utility Vehicle	\$	<u>0.00</u>	\$	<u>0.00</u>
	Service Vehicle	\$	<u>25.00</u>	\$	<u>100.00</u>
	Boom Truck	\$	<u>30.00</u>	\$	<u>120.00</u>
	Hydraulic Lift	\$	<u>30.00</u>	\$	<u>120.00</u>
	Air Compressor		<u>0.00</u>		<u>0.00</u>
				JOB TRIP RATE	
				\$	<u>0.00</u>
A	Total for 2 Hour Emergency Service Call for Pole Knockdown			\$	<u>310.00</u>
B	Timing Input Call			\$	<u>155.00</u>
2	LOOP REPAIR				
	As it is deemed necessary to replace damaged detection loops, contractor (Includes all labor, material, and equipment)				
					550.00
	Cost for 1 each forward loop (Attachment B)				
				\$	<u>550.00</u>
	All others (1 each) (CalTrans Standard Plan ES-5B / Attachment C)				
				\$	<u>550.00</u>
3	NEW SIGNAL TURN-ON				
	1 each occurrence				
				\$	<u>500.00</u>
4	STREET LIGHT MAINTENANCE				
	1 each occurrence				
				\$	<u>70.00</u>
5	MARK-UP ON PARTS AND MATERIALS (% PERCENTAGE MARK-UP)				
					10 %

Name of Company: Cal-West Lighting & Signal Maintenance, Inc.

Signature _____

April 5, 2021

Date _____

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

1-7. RESPONSE AND SERVICE

i. The Contractor shall provide response and service on a twenty-four (24) hour, seven (7) day per week basis. Immediate action shall be taken to safeguard the public any time a signal installation becomes partly or totally inoperative from any cause whatsoever. The maximum response times shall be as follows:

- a. Emergency and accident maintenance – one (1) hour
- b. Replacement of burnt-out signal faces
 - 1. Red faces on mast arms – two (2) hours
 - 2. Red faces on poles – two (2) hours
 - 3. Green and yellow faces – two (2) hours
- c. All other signal maintenance – twenty-four hours
- d. Safety Lighting – forty-eight (48) hours

ii. Signal on-flash, signal blackout not caused by a power outage, and any malfunction of pedestrian signals shall constitute an emergency. The City may extend the maximum response time for maintenance on a case-by-case basis if the signal remains operational in a satisfactory manner and the condition poses no immediate hazard to the public.

iii. Permanent work shall be completed as soon as possible and, in all cases, no less than fourteen (14) calendar days, unless extended in writing by the City and as agreed upon by City and Contractor.

iv. Failure to meet the response time requirements by the Contractor shall be sufficient cause for the City to authorize maintenance to be completed by others and deduct the costs of said maintenance from payments due the Contractor. Repetitive failure shall be deemed sufficient cause for the City to terminate the contract.

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Inga Alonzo, Management Analyst

APPROVED BY: City Manager

APPROVE CONSULTANT AGREEMENT WITH AKEL ENGINEERING FOR SEWER SYSTEM MASTER PLAN UPDATE

RECOMMENDATION(S)

1. Authorize the City Manager to execute a consultant agreement with Akel Engineering Group, Inc. in the amount of \$180,827 to update the Wastewater System Master Plan; and
2. Adopt a resolution appropriating \$80,827 from Fund 641 amending the Fiscal Year (FY) 2022-23 Capital Improvement Budget.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Protecting the Environment and Preserving Open Space and Agricultural Land

Maintaining and Enhancing Infrastructure

Guiding Documents

Wastewater System Master Plan

REPORT NARRATIVE:

Upon the completion of the 2035 General Plan in 2016, the City's utilities master plans were updated to reflect the infrastructure needs associated with the growth anticipated in the General Plan. The City's 2017 Sewer System Master Plan (SSMP) was developed by Akel Engineering and approved by City Council in October 2017. The 2017 SSMP included the development and updating of a hydraulic model, estimation of future demands based on land use and population planning assumptions, capacity evaluations of the sewer system, suggested improvements for mitigating existing deficiencies and servicing future growth, and the development of a five-year capital improvement plan and suggested expenditure budget.

The objective of this project is to update the 2017 SSMP to reflect current conditions and trends and to also include the following tasks:

- Update/Expand the hydraulic model to include significantly more pipes

- Update the flows
- Complete a Flow Monitoring System
- Recalibrate the hydraulic model
- Evaluate the capacity of the existing system
- Propose improvements to service growth
- Integrate the multiple supporting studies and assessments conducted over the last 5 years
- Develop a Capital Improvement Program, including projects for system expansion and renew/replace projects
- Update the Wastewater Master Plan report.

Staff is proposing the use of Akel Engineering for this update to the Sewer System Master Plan as Akel developed the existing hydraulic model and has extensive experience developing infrastructure plans under the existing general plan. Akel also has extensive knowledge of the City's infrastructure and is very familiar with the City's anticipated development due to recent past work on the Water System Master Plan update. Bringing on a new consultant for this update is likely to result in slower and more expensive work. City staff believe that the best time to go out for proposals on infrastructure master plans would be following the next update to the General Plan.

COMMUNITY ENGAGEMENT:

Inform

This project includes up to two public meetings via zoom to inform the public of the Wastewater System Master Plan updates and to address any questions.

ALTERNATIVE ACTIONS:

Council could decide to direct staff to formally request proposals for this work but that is not recommended because any new consultant coming in without prior background information is likely to require more compensation and will require significantly more City staff support to update the Sewer System Master Plan.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In 2013, Council approved an agreement with Placeworks to work on the City's General Plan. Akel worked as a subconsultant to develop the Sewer System Master Plan. The 2017 SSMP was adopted by City Council on October 18, 2017.

FISCAL AND RESOURCE IMPACT:

The adopted Capital Improvement Program budget has \$100,000 for this in project 110023 for FY 2022-23. Staff is recommending appropriating \$80,827 from Fund 641, the Sewer Impact Fund, to fully fund the \$180,827 project.

CEQA (California Environmental Quality Act):

Not a Project

Continuing administrative activities and feasibility or planning studies for possible future actions that the agency has not approved, adopted, or funded are not considered projects for environmental review under CEQA.

**CONSULTANT AGREEMENT
AKEL ENGINEERING GROUP, 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 Akel Engineering Group, Inc. a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2023 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be Sewer System Master Plan Update for 2023 as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$180,827.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One Hundred-Eighty Thousand Eight Hundred Twenty-Seven 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 CONSULTANT, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to

CONSULTANT. The City Manager of CITY is authorized to terminate this Agreement, in whole or in part, on behalf of CITY.

- 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 CONSULTANT of such occurrence, and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for CITY or are otherwise available for payments.

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

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

7.1. **Insurance Types and Amounts.**

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

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

of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.3. Workers' Compensation Insurance and Employer's Liability. CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

7.1.5. Professional Liability.

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

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

7.1.6. Sexual Abuse/Molestation Liability (SML): If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall

procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) two hundred thousand dollars (\$200,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.7. **Crime/Fidelity Bond.** If the performance of CONSULTANT'S work or service under this Agreement relates to or involves handling of CITY monies, CONSULTANT shall procure and maintain Crime insurance, in the minimum amount of: (i) three hundred thousand dollars (\$300,000.00) per occurrence, covering all CONSULTANT'S officers and employees, for loss of CITY monies caused by dishonesty and/or theft.

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

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

7.2.1.1. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds on a form at least as broad as ISO Form CG 20 10 for ongoing operations.

7.2.1.2. "Waiver of Rights of Subrogation" - 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

7.2.1.3. "Primary and Non-Contributing" - Insurance shall be endorsed to be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 01.

7.2.2. **Workers Compensation.**

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

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

7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to the CONSULTANT's agreement with the 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 7. Certificates, including renewal certificates, may be mailed

electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

9. **Compliance with Law.**

9.1. CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

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

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

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

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that CONSULTANT or an subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or CONSULTANT learns of such a judgment, decision, or order that was not previously disclosed, CONSULTANT shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes

final or of learning of the final judgment, decision or order. CONSULTANT and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. The City reserves the right to require CONSULTANT to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

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

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

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

10. **Independent Contractor**. CONSULTANT is an independent contractor and not an agent or employee of CITY.

11. **Confidentiality**. All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.

12. **Conflict of Interest and Reporting**. CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

13. **Notices**. All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

Akel Engineering Group
7433 North First Street, Suite 103
Fresno, CA 93720

Address of CITY is as follows:

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

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

14. **Licenses, Permits and Fees.** CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.
15. **Consultant's Proposal.** If applicable, this Agreement shall include CONSULTANT'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
16. **Maintenance of Records.**
- 16.1. **Maintenance.** CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then CONSULTANT shall retain said records until such action is resolved.
- 16.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 16.3. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
17. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
18. **Time of Essence.** Time is of the essence in the performance of this Agreement.
19. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
20. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
21. **Defense and Indemnification.**

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

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

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

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

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

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

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

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

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

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

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

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

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[Signatures on Next Page]

29. **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:

Akel Engineering Group, Inc.

City Attorney

By: _____

Donald A. Larkin
Print Name

TONY AKEL, PRESIDENT

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: 11/23/2022

By: _____

TONY AKEL, SECRETARY

Print Name and Title of Signer.

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

Date: 11/23/2022

EXHIBIT A SCOPE OF SERVICES

Task 1 – Collect and Review New Data

Consultant shall meet with City staff to hold a kickoff meeting/workshop. Consultant will receive copies of recent as-built drawings, City utility map sets from updated geographical information system (GIS) and other records useful to the understanding of the City's wastewater collection system.

- Submittal Package: Request for Information (RFI) Matrix, Data Gaps Analysis Package

Task 2 - Update Design Performance Criteria

Consultant shall update the design and planning criteria used for judging the capacity adequacy of the existing sewer system and for planning future facilities, and future demand analysis based on updates to demand design and planning criteria. This task will incorporate the land use documented in the City's 2016 General Plan. The sewer flow analysis accounts for recent trends in water conservation. This task shall include updating the City's existing land use inventory which is important for projecting anticipated future sewer flows.

- Submittal Package: Updated Design and Planning Criteria, Existing/Future Land Use and Demand Inventory (Tables and Figures)

Task 3 – Update/Expand Hydraulic Model to include All Pipes

Consultant shall update the hydraulic model to reflect recent sewer pipeline construction and expand it to include all gravity mains, and reflecting the latest GIS update. The existing hydraulic model is a skeletonized model that only included major trunk 10-inches in diameter and larger, in addition to some critical smaller gravity mains. This master plan update will include all the sewer collection system pipelines to reflect more accurately the existing system and demands to reflect actual conditions of the sewer system. The invert elevations for the expanded model will be calculated based on minimum slopes, and the purpose is to maintain a more comprehensive model. The updated sewer flows will be based on the geo-coded distribution of the water billing records and shall include a return-to-sewer ratio to account for landscape irrigation.

Task 4 – Flow Monitoring Program

Consultant shall obtain the services of Villalobos and Associates to install 10 flowmeters measuring wastewater flows for a period of 4 weeks. The analysis shall include an infiltration and inflow study. Prior to commencing the work, a flow monitoring program shall be prepared and submitted to City staff for approval. The flow monitoring results and infiltration and inflow analysis will be used for calibrating the hydraulic model and will be documented in a separate report, and shall also be included in the master plan report.

Task 5 – Calibrate Hydraulic Model to Flow Monitoring Program

Consultant shall calibrate the hydraulic model to the new flow monitoring program, reflecting a new benchmark for future analysis. The hydraulic model shall be calibrated to mimic the system behavior in the flow monitoring program.

Task 6 – Evaluate Existing System and Propose Capacity Improvements

Consultant shall use the hydraulic model InfoSWMM (by Innovyze) to evaluate capacity adequacy of the update sewer collection system to meet the service requirements established in the Design and Planning Criteria. Consultant shall identify improvements to mitigate existing deficiencies and document them in tables and exhibits.

- **Submittal Package: Results of Existing System Analysis and Recommended Improvements to mitigate existing deficiencies (Tables and Figures)**

Task 7 – Propose Capacity Improvements for Future Growth

The hydraulic model shall also be used for extending the sewer collection system infrastructure to service future growth. This task consists of identifying needed improvements to service growth and document in tables and exhibits.

- **Submittal Package: Recommended improvements to mitigate existing deficiencies and serve future growth (Tables and Figures)**

Task 8 – Integrate Renewal and Replacement and Asset Management Plan Recommendations

Consultant shall incorporate the recommendations and findings of the City's Sewer System Asset Management Plan completed by B&V and the ongoing condition assessment being completed by Waterworks Engineers. It is understood that the prioritized renewal and replacement projects that shall be included in the Capital Improvement Program will be based on the work completed by waterworks. The updated Wastewater Master Plan report shall include a summary of the background, methodology, findings, and recommendations of the Asset Management Plan, and the Condition Assessment, including the Existing Morgan Hill-Gilroy Joint Trunk condition assessment by Waterworks Engineers.

Task 9 – Integrate Joint Trunk and Relief Trunk Analysis

Consultant shall incorporate the recommendations and findings of the City's Joint Trunk and Relief Trunk Theory of Operations and Capacity Allocation Study. The updated Wastewater System Master Plan report will include a summary of the current and planned joint trunk theory of operations as well as the flow split recommendations and maximum theoretical capacities identified as part of this the ongoing study. This task will also summarize the capacity allocation between the Cities of Morgan Hill and Gilroy.

Task 10 – Develop Phased Capital Improvement Program for Capacity and R&R Projects

Consultant shall prepare a Capital Improvement Program (CIP) on the basis of the findings of the previous tasks. The proposed capacity improvements will be prioritized based on their hydraulic capacity deficiency, and the Renewal and Replacement Projects will be based on the priorities assigned by Waterworks Engineers, Inc. The CIP projects will be identified as improvement projects to mitigate existing deficiencies (existing customer) or capacity expansion projects to accommodate growth (future customers). Where a proposed improvement accommodates both existing and future customers, a percent of benefit to existing versus future customers will be provided. This percent benefit will be used for cost sharing purposes.

- **Submittal Package: Capital Improvement Program (Tables and Figures)**

Task 11 – Prepare Master Plan Report

Consultant shall prepare a draft master plan report that documents the development of the hydraulic model, the design and performance criteria, the future flow projections, the identified deficiencies, the proposed improvements, the capital improvement programs, and cost sharing suggestions. The master plan will also include associated maps and exhibits. The draft copy of the report shall be submitted in electronic PDF format for City staff review. Following the review period, Akel Engineering Group will incorporate the changes in the final document. The final document shall be produced in PDF and five hardcopies.

- **Submittal Package: Draft Master Plan (Electronic PDF Format) and Final Master Plan Report (5 hard copies and Electronic PDF Format)**

Task 12 – Public Meetings and Presentations

Consultant shall participate in up to two public meetings via zoom, and up to two City Council meetings or presentations during the adoption phase.

Task 13 - Project Management and Team Meetings

Consultant shall be in continuous communication between the project team members throughout the duration of the project. Akel Engineering Group will schedule as needed web conference meetings, and ,if needed, face to face meetings with City staff. Key meetings include the kickoff meeting and data collection, performance criteria and demand allocation methodology, capacity analysis results, capital improvements and cost sharing, and master plan report.

Task 14 – Project Contingencies

This task adds project contingencies for tasks and unplanned efforts that may surface during the project completion. The project contingency is to be used only after approval by the City.

EXHIBIT B SCHEDULE OF COMPENSATION RATES

City of Morgan Hill 2023 Wastewater System Master Plan Update Fee Estimate

Final
11/21/2022

New Task No.	Old Task No.	Task Description	Hours							Costs				
			Senior Principal Engineer	Senior Engineer	Associate Engineer	Assistant Engineer	GIS Technician	Secretarial	Total	Labor Costs	Subconsultant	Other Expenses	Desc.	Tasks Total
			\$273	\$206	\$182	\$155	\$134	\$107						
Task 1	Task 1	Collect and Review New Data	2	2	8		4		16	\$2,950		\$0		\$2,950
Task 2	Task 2	Update Design Performance Criteria	1	4	8	10	4		27	\$4,639		\$0		\$4,639
Task 3	Task 3	Update/Expand Hydraulic Model to Include all Pipes	1		72		20		93	\$16,057		\$0		\$16,057
Task 4	Task O1	Flow Monitoring Program (10 sites - 4 weeks)	2	4	12		10		28	\$4,894	\$55,000		V&A	\$59,894
Task 5	Task O2	Calibrate Hydraulic Model to Flow Monitoring Program	1		10	40			51	\$8,293				\$8,293
Task 6	Task 4	Evaluate Existing System and Propose Capacity Improvements	2	6	12	24	8		52	\$8,758		\$0		\$8,758
Task 7	Task 5	Propose Capacity Improvements for Future Growth	2	6	8	14	12		42	\$7,016		\$0		\$7,016
Task 8	Task 6	Integrate Renewals and Replacement and Asset Management Plan Recommendations	5	8	28	8	14		63	\$11,225		\$0		\$11,225
Task 9	Task 7	Integrate Joint Trunk and Relief Trunk Analysis	1	2	16		6			\$4,401		\$0		\$4,401
Task 10	Task 8	Develop Phased Capital Improvement Program for Capacity and R&R Projects	2	6	16	24	20		68	\$11,094		\$0		\$11,094
Task 11	Task 9	Prepare Master Plan Report	12	4	52	24	16	10	118	\$20,498		\$1,500	5 Hard Copies	\$21,998
Task 12	Task 10	Public Meetings and Presentations	16		6				22	\$5,460				\$5,460
Task 13	Task 11	Project Management and Team Meetings	18	2	18		4	6	48	\$9,780				\$9,780
Task 14	Task 12	Project Contingencies	18		18		8		44	\$9,262				\$9,262
Total - Wastewater System Master Plan Update			83	328	428	144	142	688	672	\$124,327	\$56,500	\$1,500	\$180,827	\$180,827

EXHIBIT C
SCHEDULE OF PERFORMANCE

The City plans to update the Sewer Rates in June 2023, and this project will need to be expedited to target completing the Capital Improvement Program, to be used by the rate consultant, by that date.

RESOLUTION NO. 22-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL APPROVING AN AMENDMENT TO
THE CITY'S FISCAL YEAR 2022-2023 BUDGET IN THE
SEWER IMPACT FUND (FUND NO. 641) TO
APPROPRIATE \$80,827, 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 Sewer System Master Plan Update Consultant Agreement" submitted for City Council consideration at its meeting of December 7, 2022, 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 2022-2023 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 2022-2023 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 2022-2023 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 7th day of December 2022 by the following vote:

AYES:	COUNCIL MEMBERS:	None
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

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. 22-_____ adopted by the City Council at the meeting held on the 7th day of December 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

AGENDA BUDGET SCORECARD

FISCAL YEAR 2022-2023

ADJUSTMENT #

002

FUND:

DEPARTMENT:

OBJECT:

641 Sewer Impact Fund
8140 Sewer Impact Expansion
86360 CONSTRUCTION

AGENDA DATE:

12/07/22

AGENDA ITEM TITLE:

Approve Sewer System Master Plan Update Consultant Agreement

	07/01/22 AUDITED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/23 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	20,552,531	17,711,893	31,168,760	7,095,664
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		-	80,827	(80,827)
RESULT OF RECOMMENDED ACTION	<u>20,552,531</u>	<u>17,711,893</u>	<u>31,249,587</u>	<u>7,014,837</u>

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Michael Horta, Human Resources Director

APPROVED BY: City Manager

APPROVE THE PART-TIME TEMPORARY AND SEASONAL EMPLOYEES SALARY SCHEDULE EFFECTIVE JANUARY 1, 2023

RECOMMENDATION(S)

Approve the Part-Time Temporary and Seasonal Employees salary schedule effective January 1, 2023.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Maintaining and Enhancing Infrastructure

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The Part-Time Temporary and Seasonal Salary Schedule has been updated to align with the increased minimum wage of \$15.50 per hour which takes effect January 1, 2023. Some positions show more significant increases in the pay scale than others to account for compaction issues related to the hierarchy of positions in a series (i.e. Lifeguard, Lifeguard – Lead, Recreation Leader and Swim Instructor, etc). The new salary schedule is designed to support recruitment and retention of part-time teammates in the Recreation Division, within the existing budget. In addition, the Reserve Police Officer Trainee classification has been added to the salary schedule and the Police Cadet classification titles have been updated.

COMMUNITY ENGAGEMENT:

Inform

The Human Resources Team will post the approved Part-Time Temporary and Seasonal Employees salary schedule on the Human Resources website page as is the City's practice for all salary information.

ALTERNATIVE ACTIONS:

The City Council could decide to not approve the Part-Time Temporary and Seasonal Employees Salary Schedule and continue operating under the current Salary Schedule or Council could decide to choose select classification salary ranges to increase.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On November 17, 2021, the City Council approved the Part-Time Temporary and Seasonal Employees salary schedule.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact to increase the minimum part-time temporary and seasonal employees' salaries from the current California minimum wage rate of \$15.00 per hour to the California new minimum wage requirement of \$15.50 per hour effective January 1, 2023. The fiscal impact to increase salary ranges was known and included in the adopted biennial budget. Future salary increases would have a fiscal impact as select positions' salary increases fall within the new ranges.

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.

CITY OF MORGAN HILL
PART-TIME TEMPORARY AND SEASONAL EMPLOYEES SALARY SCHEDULE

Salaries effective the pay period including January 1, 202~~32~~

CLASSIFICATIONS	Bottom Step Hourly	Top Step Hourly
INTERNS		
High School/College Work Experience Student	\$15. 50 <u>00</u>	\$25.00
POLICE DEPARTMENT		
Graffiti Abatement Worker	\$15. 50 <u>00</u>	\$17.00
Level I Reserve Police Officer	Hourly rate for Step A Police Officer	
Level II Reserve Police Officer	90% of hourly rate for Step A Police Officer	
<u>Reserve Officer Trainee</u>	<u>\$15.50</u>	
Per Diem Dispatcher	Hourly rate for Public Safety Dispatcher	
Police Cadet – High School	\$15. 00 <u>50</u>	\$16.00
Police Cadet – Junior College (<u>Fresh/Soph</u>)	\$16.00	\$18.00
Police Cadet – College (<u>Jr./Senior</u>)	\$18.00	\$21.00
Police Officer Trainee	90% of monthly rate for Step A Police Officer	
TEMPORARY AND SEASONAL		
Building Coordinator	\$18 <u>20</u> .00	\$25 <u>27</u> .00
Clerical Assistant	\$15 <u>19</u> .00	\$23 <u>26</u> .00
Communications Technician	\$15. 50 <u>00</u>	\$30 <u>32</u> .00
Deck Coordinator	\$20 <u>22</u> .00	\$30 <u>32</u> .00
Government Access Technician	\$20.00	\$30.00
Fire Plans Examiner/Inspector	\$35.50	\$45.00
Lifeguard	\$15.50 <u>16.75</u>	\$21 <u>25</u> .00
Lifeguard - Lead	\$18 <u>20</u> .00	\$23 <u>28</u> .00
Maintenance Worker Assistant	\$15 <u>18</u> .00	\$20 <u>25</u> .00
Recreation Instructor	\$15.75	\$52.50
Recreation Leader	\$15.00 <u>16.50</u>	\$17 <u>25</u> .00
Recreation Specialist	\$18.00	\$35.00
Retired Annuitant	\$20.00	\$100.00
Senior Recreation Leader	\$16 <u>19</u> .00	\$21 <u>26</u> .00
Special Projects Coordinator	\$18.00	\$50.00
Swim Instructor	\$15.00 <u>16.50</u>	\$21 <u>26</u> .00
Swim Instructor - Lead	\$18 <u>20</u> .00	\$23 <u>27</u> .00
Welcome Desk Coordinator	\$18 <u>20</u> .00	\$23 <u>27</u> .00
Welcome Desk Representative	\$15.00 <u>16.50</u>	\$21 <u>25</u> .00

Other Part-Time Temporary or Seasonal positions may be tied to the Salary Schedule for the Bargaining Units which are not listed above. The above list only includes those part-time and temporary positions which are frequently used or are not contained on a bargaining unit salary schedule.

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Donald Larkin, City Attorney

APPROVED BY: City Manager

APPROVE RESPONSE TO 2022 CIVIL GRAND JURY REPORT "IF YOU ONLY READ THE BALLOT TITLE, YOU'RE BEING DUPED"

RECOMMENDATION(S)

1. Approve response to 2022 Civil Grand Jury Report "If You Only Read the Ballot Title, You're Being Duped," and
2. Authorize the Mayor to sign the response.

COUNCIL PRIORITIES, GOALS & STRATEGIES

N/A

REPORT NARRATIVE:

On October 7, 2022 the Santa Clara County Civil Grand Jury issued a report titled "If You Only Read the Ballot Title, You're Being Duped." A copy of the report is included in this report as Attachment A. Under Penal Code section 933 and 933.05, the City is required to respond to the following findings and recommendations in the report:

Finding 1

The Civil Grand Jury finds that in the current environment, which is unregulated at the local level, it is easy for the author of a ballot measure question to write the question in a way that is confusing or misleading to voters.

Recommendation 1b

Governing entities within Santa Clara County should voluntarily submit their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendation 1d is implemented.

Recommendation 1c

Governing entities within Santa Clara County should, by March 31, 2023, adopt their own resolution or ordinance to require submission of their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendations 1d and 1e are implemented.

Recommendation 1e

Governing entities within Santa Clara County should submit their ballot questions for review by the Good Governance in Ballots Commission pursuant to Recommendation 1d.

Under penal Code section 933.05, the City is required to respond to each finding by stating whether the City agrees with the finding, or whether the City disagrees wholly or partially with the finding. If the City disagrees with the finding, the response must include an explanation of the disagreement. With regard to the recommendations, the City is required to state 1) the recommendation has been implemented, 2) the recommendation will be implemented in the future, 3) the recommendation requires further analysis, or 4) the recommendation will not be implemented because it is not warranted or is not reasonable.

In this case, each of the recommendations would require changes to state and local law that are not within the jurisdiction of the City Council. With regard to recommendations 1b and 1c, staff believes that the recommendations would create additional burdens that are not warranted, but City Council could consider voluntarily consulting with County Counsel when there is a question regarding whether a ballot title is appropriate, and there is no potential conflict. With regard to Recommendation 1e, staff would recommend implementing this recommendation if authorized under state law.

A draft response to the Grand Jury is included as Attachment B.

COMMUNITY ENGAGEMENT:

The Grand Jury's report was released for public review on October 7, 2022.

ALTERNATIVE ACTIONS:

Council could modify the draft response.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None

FISCAL AND RESOURCE IMPACT:

The submittal of the Grand Jury response will have no fiscal impact. If the Grand Jury's recommendations are implemented, it would likely result in increased cost for the review of ballot questions by County Counsel.

CEQA (California Environmental Quality Act):

Not a Project. Organizational or administrative activities of government that will not result in direct or indirect physical changes in the environment are not projects subject to CEQA review.

IF YOU ONLY READ THE BALLOT,
YOU'RE BEING DUPED



2022 Santa Clara County
Civil Grand Jury

Release Date: [tentative 10/7/22]

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GLOSSARY AND ABBREVIATIONS

Attorney General	The chief law officer who represents a state in legal proceedings.
Ballot Card	The printed ballot, usually on high-grade paper, consisting of the ballot questions and names of individuals running for elected office.
Ballot Measure	Ballot measures are proposals, usually at a county or local level, to enact new laws or repeal existing laws, which are placed on the ballot for approval or rejection by the electorate.
Ballot Proposition	Ballot propositions are proposals, usually at the state level, to enact new laws or constitutional amendments or repeal existing laws or constitutional amendments, which are placed on the ballot for approval or rejection by the electorate.
Ballot Question or Ballot Label	For purposes of this report, Ballot Question or Ballot Label means the 75-word or less statement of a measure that precedes “Yes” or “No” on the ballot card.
Boards and Commissions	Boards and Commissions are made up of residents who volunteer their time and expertise to assist and advise governing bodies in the chosen capacity.
Caselaw	Law or legal precedent established by the outcome of court cases.
County Counsel or Office of the County Counsel	The County Counsel is the chief legal advisor and representative for the county, including the county board of supervisors and all county agencies and departments.
Elections Code	A collection of California laws related to public elections.
Governing Entity	A jurisdiction such as a city, county, school district, special district, or political subdivision.

Home Rule	The right of self-government that is granted by state constitution or statute to give autonomy to a local government. Home Rule implies that each level of government has a separate realm of authority.
Public Opinion Pollsters	Opinion polls are designed to represent the opinions of a population by conducting a series of questions and then extrapolating generalities in ratio or within confidence intervals. A person who conducts polls is referred to as a pollster.
Registrar of Voters	The department responsible for the operation, administration, and direction of the elections department, with primary responsibility for the registration of voters, the holding of elections, and all matters pertaining to elections.
Single Subject Rule	Per Article II, Section 8(d) of the California Constitution, "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect." Essentially, the rule stands for the notion that where an initiative embraces more than one subject, it can neither be submitted to, nor enacted by, the voters.
Term Limits	A specified number of terms (in years) that a person in office is allowed to serve.
Writ of Mandate	In California, writs of mandate are used by superior courts, courts of appeal, and the Supreme Court to command lower bodies, including both courts and government agencies, to do or not to do certain things.

SUMMARY

It is not uncommon for the public to be confronted daily with news and information through multiple sources—traditional television programming, 24/7 cable news, satellite radio, social media, and phone alerts. In the context of elections, voters' busy lives can be overwhelmed with many different voices. County and state voter information guides are required by law to be mailed to every registered voter, but voters today do not have a lot of time to read these resources. As a result, the ballot measure question printed on the ballot itself becomes a key factor in the outcome of an election.

There is an expectation in California law that ballot questions be drafted in a manner that is not false, misleading, or partial to one side.¹ But there are ways to work around it. Among the fifty or so jurisdictions in Santa Clara County that are eligible to put forth a ballot measure, the 2022 Santa Clara County Civil Grand Jury (Civil Grand Jury) has seen ballot question language that is confusing, advocacy-oriented, or simply dishonest. Yes, sometimes voters are being deceived. Many voters cannot comprehend the complicated language or the implications of that "yes" or "no" vote. In a perfect world, voters would have the luxury of time to research these issues. In reality, however, voters almost always rely on the language of the ballot measure question itself.

What can be done about this? The Civil Grand Jury proposes an oversight person or body, one who has taken an oath to act with integrity, is well versed in the requirements of the law, and is empowered to review and to reject ballot question wording that is false, misleading, or partial to one side. Santa Clara County should have a climate whereby governing entities in Santa Clara County are discouraged from using dishonest or deceitful wording in a ballot question, especially when they know it will be reviewed and could be rejected. In so doing, due process will be strengthened. With clearer writing, ballot measure questions will be more transparent and straightforward, which will lead to a better perception of government by the voters. It is time to remove impediments to good governance.

¹ California Elections Code section 10403 requires a ballot question to "conform to this code governing the wording of propositions submitted to the voters at a statewide election." The California Elections Code contains Section 9051, which provides that in a statewide election the ballot title and summary of an initiative or referendum must be a "true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure." (Elec. C. §9051(c); *see also*, *McDonough v. Superior Ct.* (2012) 204 Cal. App. 4th 1169, 1172.)

BACKGROUND

Ballot measures or ballot propositions are proposals to enact new laws or constitutional amendments or to repeal existing laws or constitutional amendments. They are placed on the ballot for approval or rejection by the voting public. The words “ballot *measures*” are often used by county, city, and local governing entities, whereas at the state level, the California State Legislature uses the term “ballot *propositions*” to refer to the same concept. The ballot measure question, which is the subject of this report, refers to the maximum 75-word text that precedes the “Yes” or “No” selection on the ballot card itself. Because most voters never read beyond what is printed on the ballot card, it is of critical importance that ballot measure questions be concise, accurate, and impartial.

Recently, two local newspaper articles highlighted the tactics that governing entities have used to manipulate voters:

- Borenstein, Daniel, *Tricks California Local Officials Use To Trick Voters*, Bay Area News Group, January 21, 2022.
- Mercury News and East Bay Times Editorial Boards, *Stop Deceiving Bay Area Voters on Local Tax Measure Costs*, June 26, 2020, updated September 5, 2020.

As part of its charge, the Civil Grand Jury is responsible for identifying areas within local government that lack good governance or practices. This Civil Grand Jury identified as a problem the choice of wording used in local ballot measure questions. Specifically, the Civil Grand Jury discovered that some local governing entities presenting measures for a public vote create ballot questions that are purposefully misleading so they may obtain their desired result. In particular, it was noted that the wording of a ballot question from the June 2022 election, although representing a relatively simple issue, created confusion among the public. When voters found out what the text of the measure actually meant, they felt deceived by the wording of the ballot question. Deception in ballot questions is worth the attention of the Civil Grand Jury. This problem must be remediated to reinstate good governance in the election process.

METHODOLOGY

The Civil Grand Jury used the following investigative methods:

- Interviews with ten individuals who are well versed in the intricacies of the election process and experts in political science and local governments
- Three published Civil Grand Jury reports: 2021-22 Alameda County, 2021-22 Santa Cruz County, 2021 Santa Clara County
- Editorials from local and regional newspapers: Mercury News, Los Angeles Times, San Francisco Chronicle
- Close reviews of ballot measures, past and upcoming, from the counties of San Mateo, Santa Clara, Santa Cruz, and the City and County of San Francisco
- Legal research of court challenges involving ballot questions

INVESTIGATION

Throughout this report, the Civil Grand Jury was interested only in the process of ballot measure question drafting, not the substance of the underlying ballot measure itself. In its research and analysis, the Civil Grand Jury does not examine the merits of the measure, but rather whether the question as drafted is truthful, impartial, and fair. Ballot questions must conform to statutory requirements and should provide voters with sufficient information and transparency to make informed decisions.

A straightforward ballot question can be summarized this way: A vote for “Yes” means yes and a vote for “No” means no. Unfortunately, it is common for ballot questions to be presented whereby a vote for “Yes” actually means no, and vice versa. This wording is arguably confusing. Inching farther away from confusing questions, the research performed by the Civil Grand Jury found ballot questions that are even worse—they are misleading.

Santa Clara Valley Water District’s Measure A

During the last election in June 2022, the question for Measure A put forth by the Santa Clara Valley Water District (Water District) employed such a tactic:

Shall the measure amending the Santa Clara Valley Water District Ordinance 11-01 to limit Board members to four successive four-year terms be adopted?

The Water District had term limits already in place for board members to serve three four-year terms, or 12 years at most. Measure A sought to increase term limits to four four-year terms, or 16 years at most. However, the ballot question hid the fact that a term limit was already in place; it

asked voters whether a term limit of four terms should be adopted, thereby couching the question as a measure to *adopt* term limits generally, which one political science expert described to the Civil Grand Jury as a concept widely favorable to the voting public. The ballot question did not reflect what the Water District wanted to do. The Water District wanted to extend term limits, but it wrote the ballot question without using the words “extend,” “change,” or “increase.” Instead, the Water District characterized the ballot measure as setting term limits, which is a mischaracterization of what Measure A was actually about.

Further, it is notable that in November 1998, the County of Santa Clara placed a substantially similar measure on the ballot using the same tactic. Measure E asked:

Shall the County of Santa Clara amend section 202 to limit the number of terms a member of the Board of Supervisors may serve to three terms, consisting of four years each?

Again, the ballot question failed to inform the reader that each member of the County of Santa Clara Board of Supervisors was already limited to two terms and that the ballot measure proposed to *extend* years served, not “*limit*” them. By not being transparent, this tactic of ballot question drafting is tantamount to a lie by omission; it borders on deceiving the public. From Measure E in 1998 to Measure A this year, 24 years later, the climate has not changed.

Regulations that Govern Ballot Questions

Sections 9100-9190 of the California Elections Code specifically address county-level elections. Other sections of the Elections Code, while they do not specifically address county-level elections, have import and therefore apply as well. The County of Santa Clara has not enacted local ordinance code provisions regarding ballot question language.

Under the Elections Code, the wording of a ballot measure must state the ballot question, or what the Elections Code calls the “label,” in 75 words or less (Elec. C. §9051(b), §10403, §13247). The ballot question must state “the nature” of the measure (Elec. C. §13120). The official who drafts the ballot question “shall give a true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure” (Elec. C. §9051(c)). In other words, ballot measure questions shall not be false, misleading, or partial to one side.

Who is Responsible for Writing Ballot Questions?

Today, ballot questions are rarely written “from scratch.” Residing in the public domain are hundreds, if not thousands, of boilerplate questions spanning the universe of issues typically faced by government and public agencies. Putting a measure on the ballot usually starts with selecting

an existing template, preferably one that had been used successfully within a reasonable timeframe and geographic proximity to the one at hand. Tweaks are then made to the chosen template to fit the measure being proposed.

Governing entities are ultimately responsible for approving the final text of the ballot question, but the actual selection of words is often the calculated and carefully calibrated work product of hired election experts, consultants, and attorneys. These outside consultants often rely on public opinion pollsters to determine the type of proposal and wording to put before voters that would achieve the desired outcome. Often, this includes using “feel good” wording that is shown to resonate with voters: “reduce crime;” “funds spent locally;” “all money locally controlled;” and “with citizen oversight.” Results from public opinion polls often dictate the structure and selection of words used within the ballot question, which is then voted on and, if successful, adopted by the governing body such as a city council, a county board of supervisors, the board members of a school district, or any governing body of a government entity operating within the county. During the course of this investigation, the Civil Grand Jury learned that local measures on the ballot that governing entities choose wording likely to be most successful at the ballot box over clarity of language to the voter.

For purposes of this investigation, the Civil Grand Jury focused on ballot questions relating to local ballot measures, not state propositions, because according to the California Elections Code, the state attorney general is responsible for providing ballot questions for state propositions. In contrast, there is no similar requirement that a certain officer provide the ballot question for local elections, so it is instead drafted by the proponent of the measure at the local level.

Advocacy and Tactical Wordplay Result in Poorly Drafted Ballot Questions

It has been widely observed today that the 75-word ballot questions are being used as advocacy pieces, at the expense of fairness and impartiality. In an aptly titled [report](#) published in June of last year, the Alameda County Civil Grand Jury advocated for “*The Need for Accuracy and Impartiality of Ballot Measure Questions*.” The jury explained how and why the desire to achieve a certain outcome has tainted the process to produce ballot measure questions that are not accurate and impartial:

In general, we found ballot questions suffer from a “proponent’s bias” that is a natural outgrowth of the typical process through which questions are selected, drafted, and proposed. ... In general, we found that ballot questions too often fall short of what voters have a right to expect in terms of transparency and impartiality, even when satisfying minimum legal standards.

IF YOU ONLY READ THE BALLOT, YOU'RE BEING DUPED

The jury in Alameda reviewed and provided an in-depth analysis of six ballot questions to reach their conclusion. In so doing, they exposed the “tricks of the trade”—wording chosen for the sole purpose of increasing the odds of success at the polls. Adopting the same methodology as the Alameda report, the Civil Grand Jury reviewed past and upcoming ballot measure questions from local jurisdictions within Santa Clara County. The Santa Clara County Civil Grand Jury observed the same tricks and tactics used by governing bodies to deceive voters:

- (1) Using “feel-good” words to garner voter approval. Measure F, November 2020, said “all funds spent locally,” which is meaningless when one pauses to think about it.
- (2) Adding favorable language even where it plainly does not apply. Measure F, November 2020, said “independent audits, citizens’ oversight” where the underlying ordinance implementing the measure makes no mention whatsoever of audit and oversight requirements.
- (3) Adding misleading words to lead voters astray. Measure S, November 2020, said “until ended by voters,” falsely implying that the measure itself provided for repeal or that voters would have an opportunity to repeal the tax when they did not; Measure L, November 2020, conveyed the same with “can be ended by voters.” Measure A, March 2017, said “[funds] cannot be taken away by the State,” falsely implying that the state may access local funds when it may not.
- (4) Manipulating words to divert voters from what is actually at issue. Upcoming Measure N, November 2022, which seeks authorization of \$572 million in school bonds costing approximately 3 cents per \$100 of assessed valuation, states “no increase in tax rates.”
- (5) Omitting relevant information necessary for voters to make informed decisions. Measure AA, November 2016, and Measure H, November 2014, made no mention of the tax increase that would be required to fund the school bonds that were at issue.
- (6) Putting multiple issues on a single measure, ostensibly violating the single subject rule. Measure H, November 2020, sought to increase card room tax and the number of card tables allowed in gambling facilities.

At the writing of this report, the following measures slated for the upcoming November 2022 election also rely on at least one of the tactics described:

E	“all funds spent locally with no money taken by the State and spent elsewhere” - see (1) and (3) above.
G, H, J, L	“until ended by voters” - see (3) above.
I	“Shall the City Charter be amended to add the City's ethics and elections commission (Board of Fair Campaign and Political Practices) to the Charter; remove requirements that members of the Planning, Civil Service, and Salary Setting Commissions be electors and/or citizens; remove gender-specific language; and require the City Council to adopt equity values, standards, and assessments in making certain decisions?” - see (6) above.

O	"all money staying local" - see (1) above.
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Along the same lines, it is worth noting that in June 2022, the Santa Cruz County Civil Grand Jury released its [report](#), "*Words Matter: Did Measure G Deceive Voters?*" The question confronting the jury was whether the County of Santa Cruz was honoring the provisions in the ballot measure following its passage. The jury concluded that the ballot question behind the November 2018 Measure G was misleading after its investigation and research revealed no basis whatsoever for including the words "annual audits and independent citizens oversight" within the ballot question. Arguably, these words were used for no purpose other than to elicit good feelings in the voter.

The Elephant in the Room: Big Money

Elections cost money—lots of money. In an [article](#) published June 30, 2002, updated June 22, 2022, CalMatters put it succinctly: "*Ballot measures are big business.*" The Civil Grand Jury learned that cost is a major factor in the decision to get to the ballot. San Jose's *Mercury News* reported that the Water District's Measure A from the June 2022 election cost taxpayers \$3.2 million.

Once the decision is made by the government entity to spend the money to go to ballot, a lot of pressure is put on the entity to do whatever it takes to secure a win. For this reason, proponents of ballot measures stay focused on the result, hiring high-priced election consultants, attorneys, and opinion pollsters to carefully frame the ballot question to achieve the desired outcome. Successful elections will reward those that are behind them. It does not take much imagination to understand how this practice has evolved to become "high stakes." For example, a school district superintendent who has successfully secured funding through school bond measures may parlay these wins to rally support for a more prestigious role or a position at a larger public institution.

On the other hand, if a measure fails, individuals' livelihoods are at stake because someone will likely have to take the blame for it—usually either someone on staff or the board proponents of the governing body. This is why proponents advocate so strongly, often—as exemplified above—sacrificing context, clarity, truthfulness, and transparency in ballot question wording in favor of pure advocacy. The Civil Grand Jury learned from those in the ballot question business that it is understood that the drafter will make sure the statement is "lawful," but it is also understood that it will not necessarily provide full disclosure.

Eroding the Public's Trust

Many voters in Santa Clara County felt that they were tricked by the Water District based on how Measure A was worded. The Civil Grand Jury compiled the following descriptors of Measure A from local news sources and through its interviews: "deceitful," "deceptive ballot language," "designed to confuse voters," "dishonest," "false," "hiding the ball," "lacks integrity," "lie by

omission,” “misleading,” “not ethical,” “not transparent,” “not clear,” “violates the norm,” “violates standards of good governance,” “board must be held accountable,” “board should resign,” “board violated its fiduciary duty,” “board violated the trust of the people,” “board wasting money,” “failure of character,” “failure to represent its constituents,” “fraudulent misappropriation of public funds,” “misled the public for political gain,” “self-serving hoodwinking of the electorate,” “self-serving dishonesty,” “unacceptable in a democracy.”

Public opinion made it clear that where a ballot question fails to provide voters with sufficient information to make an informed decision, it does so at the expense of public trust. Forming distrust between government and its citizenry hurts. What the Water District did through Measure A has severe ramifications because it creates distrust between the government agency and the people the agency is supposed to serve and protect. Going forward, Santa Clara County residents will likely question the integrity and ethical behavior of the Water District. Once the bonds of trust have been weakened, citizens are less inclined to trust the actions and decisions of this agency and more inclined to ask, “If the Water District cannot be trusted to be truthful on the ballot, how can we know them to be truthful in other matters?”

With the passage of Measure A, many residents lost confidence in the Water District. It may take a long time to regain trust from the community. While the Civil Grand Jury appreciates the desire of a government entity to advocate for itself when putting ballot measures up for a public vote, ballot questions cannot be false, misleading, or partial to one side. Based on Civil Grand Jury research and reports, too many local measures fail to meet this standard in favor of advocacy and “proponent’s bias.”

Lack of Oversight Results in Poorly Drafted Ballot Questions

Despite the number of hands that touch a proposal from inception to ballot card, the Civil Grand Jury was surprised to discover that there is no filter or oversight by an appropriate official prior to the adoption of ballot question wording. At the state level, the “Attorney General gives a true and impartial statement of the purpose of the measure in such language that the ballot title [e.g., the ballot question] and summary shall neither be an argument, nor likely to create prejudice, for or against the proposed measure” (Elec. C. §9051(c)). But the Attorney General does not have jurisdiction over *local* measures and thus does not provide the ballot question. When it comes to local measures, the Civil Grand Jury learned that there is not a similar role performed by an official, like the Attorney General, that can provide the wording for ballot questions. Rather, when the ballot question is submitted to the Santa Clara County Registrar of Voters, their review is narrowly limited to enforcement of the 75-word limit. Staff at the County Registrar of Voters manually count the number of words to ensure that the word cap has not been stretched. They do not monitor the content of the ballot question.

At the local level, the County of Santa Clara Office of the County Counsel performs legal services that are most analogous to the Attorney General's role at the state level with respect to elections. Further, County Counsel has expertise in election law and advises the County of Santa Clara Registrar of Voters. The County Counsel does not, however, have authority over cities and political subdivisions within the boundaries of the county. Therefore, when a city, school district, or special district places a local measure on the ballot, they are permitted under current law to draft the language themselves. They have every incentive to adopt wording proposed by their polling consultants, who will give weight to "feel good" words over simplicity, transparency, and impartiality. Fundamentally, the government entity's self-interest dictates the ballot question wording.

The Current Sole Remedy—Initiating a Court Challenge—Falls Short

Under current legislation, there is no realistically expedient method to challenge problematic ballot questions. When a measure is to be placed on the ballot for an upcoming election, it is subject to a 10-day public examination period during which any voter in the jurisdiction may file a lawsuit to amend the language of the measure. California Elections Code section 9295 sets forth the procedure:

During the 10-calendar-day public examination period provided by this section, any voter of the jurisdiction in which the election is being held, or the elections official, himself or herself, may seek a writ of mandate or an injunction requiring any or all of the materials to be amended or deleted. The writ of mandate or injunction request shall be filed no later than the end of the 10-calendar-day public examination period.

A peremptory writ of mandate or an injunction shall be issued only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with the requirements of this chapter, and that issuance of the writ or injunction will not substantially interfere with the printing or distribution of official election materials as provided by law.

There are several reasons why the 10-calendar-day public examination period to object in a formal court setting does not work well:

- (1) The public tends not to hear about ballot measures until it is too late. This is due in part to a dearth of media coverage of local news, a result of the consolidation of local news outlets by media conglomerates. It is no secret that in today's news environment, local news coverage has been reduced significantly. Furthermore, ten days is a very short window to react, let alone mount a court challenge to remediate.

- (2) Ten days is much too short a time to locate an attorney well versed in the laws and processes of elections to file a lawsuit in this specialized field.
- (3) Even if an attorney can be available within the 10-day window, it is not within the means of the average person to afford the attorney fees necessary to pursue a remedy.
- (4) Voters challenging the wording in a ballot question face an uphill battle because the courts give deference and considerable latitude to the original author. Further, courts uphold the ballot measure question if it substantially complies with the requirement not to be “false, misleading, or partial to one side.” (See Bibliography, *Amador* and *McDonough* decisions.)
- (5) There is practically no recourse to fix non-conforming ballot questions after the 10-calendar day public examination period has passed. (See Bibliography, *Denny* decision.)
- (6) Even the single subject rule—a state constitutional doctrine—has been watered down by case law; hence it is no longer vigorously enforced. (See Bibliography, *Amador* and *Harbor* decisions.)

When confronted with challenges to ballot measures, the courts have stated:

- Relief under a writ of mandate may be granted "only upon clear and convincing evidence" that the challenged election material is "false or misleading or otherwise inconsistent with the provisions." (See Bibliography, *McDonough* decision.)
- The test is not whether the ballot question could be more complete. (See Bibliography, *Martinez* decision.)
- The ballot title need not be the “most accurate,” “most comprehensive,” or “fairest” that a skilled wordsmith might imagine. (See Bibliography, *Yes on 25, Citizens for an On-Time Budget* decision.)
- The courts are not free to change an accurate statement to reflect their interpretation of the common sense understanding of the language. (See Bibliography, *Yes on 25, Citizens for an On-Time Budget* decision.)
- The courts are not free to wordsmith the ballot question and change it just because they believe it could be better. (See Bibliography, *Martinez* decision.)
- The courts must give deference to the official who drafts the ballot question; “all legitimate presumptions should be indulged in favor of the propriety” of the drafter’s actions. (See Bibliography, *Becerra* decision.)

Solutions

The Civil Grand Jury has learned that the sole legal remedy currently available to right a wrong when it comes to ballot measure questions is insurmountable for the average citizen. Nonetheless, the Civil Grand Jury notes that there could be two potential mechanisms to improve the current process.

1. Task an appropriate official to review ballot measure questions

Current law requires that the individual who drafts the ballot question do so in a way that is not false, misleading, or partial to one side. In order to meet this requirement, an objective, neutral third party is needed to speak on behalf of the voting public, ideally someone who is well versed in the law, has a fiduciary duty to uphold the law, and has taken an oath to act with integrity. The Civil Grand Jury recommends that County Counsel perform this task. Further, the Civil Grand Jury recommends that the County of Santa Clara Board of Supervisors should endorse the County Counsel to act in a role, like that of the Attorney General, to provide for ballot question wording for all local measures.

What this might look like: After the governing entity ratifies the concept behind the proposed measure, as is the practice today, the entity's lawyer, whether a city attorney, school district attorney, or special district attorney, would draft a ballot question that is impartial, unbiased, and non-argumentative. The proposed ballot question would then be submitted to the County Counsel, who would be charged with overseeing the narrow task of ensuring that the wording of the question is not false, misleading, or biased in favor of one view. Most importantly, County Counsel would also be authorized to reject non-conforming or deficient wording and to compel revisions. Only when the ballot question at issue conforms to statutory requirements would County Counsel approve it for use.

2. Create an independent oversight commission to review ballot questions

It is not unusual for jurisdictions to convene independent advisory commissions to assist in county governance. The County of Santa Clara alone boasts over 75 boards and commissions, ranging from an Advisory Commission on Consumer Affairs to a Youth Task Force.

For purposes of overseeing conformity of ballot measure questions, the Civil Grand Jury recommends that the County form a Good Governance in Ballots Commission (Good Governance Commission). This advisory commission should act quickly to review and comment on ballot questions or provide recommendations to remediate questions that are false, misleading, or partial to one side. The composition of the Good Governance Commission should, at a minimum, include an attorney member of the California State Bar, either to participate as a full member or act as an ex officio member without voting privileges. Because County Counsel is the attorney to most Santa Clara County advisory boards and commissions, it could therefore be tasked to help members of this commission navigate the intricacies of California's statutory requirements.

Apart from the obvious benefits—non-partisanship and public representation—another advantage of having a single commission perform the task of reviewing ballot questions would be to maintain

consistency across all governing entities. Regardless of whether a city, county, school district, or other jurisdiction puts forth the measure, the output from a neutral, uninterested third party would probably help eliminate the rhetoric and advocacy inherent in the current practice.

To be successful, the Good Governance Commission should ideally have the ability to review and to reject language that is biased and partial. The power of rejection is crucial because it would also likely have the effect of encouraging the governing entity to self-police. It must not be merely optional for governing entities to submit their ballot questions for review. If the commission were granted mere advisory powers, then it would have very limited impact; it is reasonable to surmise that most, if not all, governing entities would choose to decline to submit their ballot questions for consideration in the interest of the time required to add a layer of review.

Unfortunately, adoption of a Good Governance Commission that has the power to reject language would require passage of a state law that would enable the County of Santa Clara to have an express grant of power to impose a requirement on other entities. This is because “[t]he board of supervisors has no inherent powers; the counties are legal subdivisions of the state, and the county board of supervisors can exercise only those powers expressly granted it by Constitution or statutes and those necessarily implied therefrom” (*Hicks v. Board of Supervisors* (1977) 69 Cal. App. 3d 228, 242). In general, absent other express authorization, one governmental entity cannot regulate another.

Put another way, charter cities operate under home rule, which means that they do not answer to the county the city is located in. For example, the County of Santa Clara Board of Supervisors does not have jurisdiction to compel the City of Gilroy, a charter city, to abide by a county ordinance. Absent some legislative authorization, the County of Santa Clara cannot impose a mandatory review process for ballot questions on other entities. For this reason, the Civil Grand Jury urges the County to pursue legislative solutions to facilitate a process by which the County Counsel would be required to review and approve local measure ballot questions before they are voted on.

Formation of a Good Governance in Ballots Commission

The Civil Grand Jury believes that having an independent oversight commission with advisory powers will improve the local electoral process. It puts pressure on governing bodies, sending the message that their ballot questions are being monitored for clarity, truthfulness, fairness, and impartiality.

The Alameda Civil Grand Jury report provides detailed instructions around the formation, structure, and operation of an oversight committee. This can be found in Appendix B of their June 2021 report. Last, but not least, another possibility is to lean on an existing Santa Clara County

advisory body, the [Citizens' Advisory Commission on Elections](#), to create a subcommittee focused on ballot question integrity and good governance. Because time is of the essence when it comes to the elections process, the subcommittee must act within the short turnaround timeframe established by state statutes and county ordinances.

There do not appear to be any advocates for transparent and neutral language. Action must be taken. Having the Office of the County Counsel review and approve ballot questions to ensure conformity to statutory requirements would be a good start. Convening a citizen-led, independent oversight Good Governance Commission is another solution.

CONCLUSION

Civil Grand Juries are charged to help government develop practical solutions to improve government operations. Poorly worded ballot questions may not be illegal, but if they withhold information to shield what is really at issue, they are unethical. There are insufficient workable checks and balances to prevent this ongoing issue from being curtailed. Not doing anything about this only adds to the distrust of government. The Civil Grand Jury recommends that elected officials be held accountable—ballot questions must be transparent and clear in order to enable today's voters to make informed decisions. The Civil Grand Jury wants governing entities to know that the public is paying attention and will not tolerate questions that are anything less than truthful, impartial, and fair. Further, ballot measure questions need to be straightforward, understandable, transparent, and honest.

FINDINGS AND RECOMMENDATIONS

Finding 1

The Civil Grand Jury finds that in the current environment, which is unregulated at the local level, it is easy for the author of a ballot measure question to write the question in a way that is confusing or misleading to voters.

Recommendation 1a

The Board of Supervisors should ask the County Counsel to review all ballot questions submitted to it pursuant to Recommendation 1b.

Recommendation 1b

Governing entities² within Santa Clara County should voluntarily submit their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendation 1d is implemented.

Recommendation 1c

Governing entities³ within Santa Clara County should, by March 31, 2023, adopt their own resolution or ordinance to require submission of their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendations 1d and 1e are implemented.

Recommendation 1d

The County should create an independent, citizen-led oversight commission like the recommended Good Governance in Ballots Commission as described in the “Solutions” section of this report. The Commission should be implemented by August 1, 2024.

² There are approximately 50 governing entities within Santa Clara County. The Civil Grand Jury has elected to address these recommendations to the County, cities, and a select number of special districts and school districts that have historically the most measures on the ballot for response. The Civil Grand Jury encourages all governing entities to adopt these recommendations.

³ *Id.*

Recommendation 1e

Governing entities⁴ within Santa Clara County should submit their ballot questions for review by the Good Governance in Ballots Commission pursuant to Recommendation 1d.

Recommendation 1f

The County should, by March 31, 2023, take appropriate action to request that the state legislature consider amending current law to require the County Counsel to review and approve local ballot measure questions before they are voted on.

⁴ *Id.*

REQUIRED RESPONSES

Pursuant to California Penal Code § 933(b) et seq. and California Penal Code § 933.05, the County of Santa Clara 2022 Civil Grand Jury requests responses from the following governing bodies:

Responding Agency	Findings	Recommendations
County of Santa Clara Board of Supervisors	1	1a, 1b, 1d, 1f
City of Campbell	1	1b, 1c, 1e
City of Cupertino	1	1b, 1c, 1e
City of Gilroy	1	1b, 1c, 1e
City of Los Altos	1	1b, 1c, 1e
Town of Los Altos Hills	1	1b, 1c, 1e
Town of Los Gatos	1	1b, 1c, 1e
City of Milpitas	1	1b, 1c, 1e
City of Monte Sereno	1	1b, 1c, 1e
City of Morgan Hill	1	1b, 1c, 1e
City of Mountain View	1	1b, 1c, 1e
City of Palo Alto	1	1b, 1c, 1e

IF YOU ONLY READ THE BALLOT, YOU'RE BEING DUPED

Responding Agency	Findings	Recommendations
City of San Jose	1	1b, 1c, 1e
City of Santa Clara	1	1b, 1c, 1e
City of Saratoga	1	1b, 1c, 1e
City Sunnyvale	1	1b, 1c, 1e
Santa Clara Valley Water District	1	1b, 1c, 1e
Valley Transportation Authority	1	1b, 1c, 1e
El Camino Healthcare	1	1b, 1c, 1e
Foothill-DeAnza Community College District	1	1b, 1c, 1e
San Jose Unified School District	1	1b, 1c, 1e
East Side Union High School District	1	1b, 1c, 1e
Cupertino Union School District	1	1b, 1c, 1e

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Bibliography:

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Caselaw:

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Harbor v. Deukmejian, 43 Cal.3d 1078 (1987).

Hicks v. Bd. of Supervisors, 69 Cal. App. 3d 228 (1977).

Home Gardens Sanitary Dist. v. City of Corona, 96 Cal. App. 4th 87 (2002).

Martinez v. Superior Court, 142 Cal.App.4th 1245 (2006).

McDonough v. Superior Court of Santa Clara, 204 Cal.App.4th 1169 (2012).

People v. Langdon, 54 Cal. App.3d 384 (1976).

Rodeo Sanitary Dist. v. Bd. of Supervisors, 71 Cal. App.4th 1443 (1999).

Yes on 25, Citizens for an On-Time Budget v. Superior Court, 189 Cal.App.4th 1445 (2010).

Interviews:

The Civil Grand Jury conducted interviews with ten individuals between June 28, 2022, and August 22, 2022.

This report was **ADOPTED** by the Santa Clara County 2022 Civil Grand Jury on
this _____ day of _____, 2022.

Mr. James Renalds
Foreperson

DRAFT

December 7, 2022

Honorable Beth McGowen
Presiding Judge
Office of the Civil Grand Jury
Superior Court of Santa Clara County
191 N. First Street
San Jose, CA 95113

Re: City of Morgan Hill's Response to the 2022 Santa Clara County Civil Grand Jury Report
"If You Only Read the Ballot Title, You're Being Duped"

Dear Judge McGowen,

Thank you for the opportunity to review and respond to the 2022 Grand Jury Report, "If You Only Read the Ballot Title, You're Being Duped." We appreciate the Grand Jury's thoughtful work on this issue. Our responses to the specific findings and recommendations, which were approved by the City Council at its December 7, 2022 meeting are below:

FINDING 1:

The Civil Grand Jury finds that in the current environment, which is unregulated at the local level, it is easy for the author of a ballot measure question to write the question in a way that is confusing or misleading to voters.

CITY RESPONSE TO FINDING 1: Partially Agree

Elections Code section 13119 provides the form of question for a local ballot measure: "Shall the measure (stating the nature thereof) be adopted?" The code further provides that the "statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure."

Where a measure is placed on the ballot by a city council, the council has some discretion in preparing the synopsis of the measure and the statement of purpose. But the ballot language must be true and impartial, and must use neutral language that is unlikely to create prejudice for or against the measure.¹

In Morgan Hill, while the ballot question is ultimately the responsibility of the City Council, under Municipal Code section 2.09.020(F) the City Attorney is responsible for drafting the resolution placing the measure on the ballot, and for advising the City Council on the law regarding ballot language.

¹ Where the author of a ballot measure in a city election places the measure on the ballot through a citizens' initiative, the city attorney is required to prepare a ballot title that includes the purpose of the measure prior to circulation of the measure. While the ballot question is still subject to approval by the city council, the council has less ability to define the purpose of the measure.

RECOMMENDATION 1B:

Governing entities within Santa Clara County should voluntarily submit their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendation 1d is implemented.

CITY RESPONSE TO RECOMMENDATION 1B:

The recommendation will not be implemented because it is not warranted or reasonable, and would require a change to California law. The Elections Code currently provides a process to challenge a ballot question when a legislative body abuses its discretion by adopting a question that is misleading or is likely to create prejudice for or against the measure. The Grand Jury has identified significant impediments to utilizing that process, which is set forth in Elections Code section 9295. Those impediments should be addressed by the legislature.

Until the legislature enacts Election Code reforms, the City of Morgan Hill will consider consulting with County Counsel's office when there is a question regarding whether a ballot title is appropriate, and there is no potential conflict. However, because state law vests authority for the ballot question in the local legislative body, the opinion of the County Counsel would be advisory only.

RECOMMENDATION 1C:

Governing entities within Santa Clara County should, by March 31, 2023, adopt their own resolution or ordinance to require submission of their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendations 1d and 1e are implemented.

CITY RESPONSE TO RECOMMENDATION 1C:

The recommendation will not be implemented because it is not warranted or is not reasonable. Placing a measure on the ballot is already costly and complicated. Adding an additional step to the already cumbersome process is not warranted. However, the City of Morgan Hill will consider consulting with County Counsel's office when there is a question regarding whether a ballot title is appropriate, and there is no potential conflict. Further, the City of Morgan Hill would support a legislative solution to prevent the rare circumstances in which an agency abuses its discretion in adopting ballot language.

RECOMMENDATION 1E:

Governing entities within Santa Clara County should submit their ballot questions for review by the Good Governance in Ballots Commission pursuant to Recommendation 1d.

CITY RESPONSE TO RECOMMENDATION 1E:

The recommendation has not been implemented, but will be implemented if state law is amended to allow the creation of a commission as described in the Grand Jury report, and 1) cities are required to submit ballot language to such a commission, or 2) a commission is formed that both protects the ability of the City to fairly define the purpose of any ballot measures it submits to the voters and is required to solicit input from and be responsive to the Morgan Hill community.

Sincerely,

Rich Constantine
Mayor

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

David Gittleson, Associate Engineer

APPROVED BY: City Manager

APPROVE PACIFIC GAS AND ELECTRIC COMPANY AGREEMENT FOR UNDERGROUNDING OVERHEAD UTILITIES AS PART OF THE HALE AVENUE EXTENSION PROJECT

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer a Pacific Gas and Electric Company Agreement for undergrounding overhead utilities as part of the Hale Avenue Extension Project for a not to exceed amount of \$63,876.72

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Transportation

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

As part of the Hale Extension project, undergrounding the overhead utilities has been a part of the project from the start for safety purposes. Overhead utilities on the north end of the project at the Main Avenue and Hale Avenue intersection are currently being undergrounded with Valley Water's West Llagas Creek Flood Control project and undergrounding of overhead utilities on the south end of the project at Dewitt and Spring Avenues was completed in June 2022. There is one remaining overhead power line between Dunne and Spring Avenues which runs parallel with the new sound wall/property line for 175 feet, and then crosses the Hale Extension roadway for a total distance of 300 feet (Attachment 1). The design for this particular undergrounding work took longer than anticipated and, therefore became a separate contract with PG&E in order to avoid delaying the other undergrounding work on the project.

Attached is an agreement with Pacific Gas and Electric Company for \$63,876.72

(Attachment 2), to underground the overhead utilities that parallel and cross Hale Avenue between West Dunne Avenue and Spring Avenue. This work includes installing new cables, connections, de-energizing/energizing the lines and removal of old overhead lines and wood poles. Thus, staff requests the City Council approve the PG&E contract for the undergrounding work for the benefit of public safety.

COMMUNITY ENGAGEMENT:

Numerous community engagement and design meetings were held throughout the early planning and design phases. In addition, the environmental studies process also solicited input from the community regarding environmental impacts from the project. Staff has been providing project updates on the City's website and will continue posting updates throughout construction.

ALTERNATIVE ACTIONS:

The City Council could decide not to execute the Pacific Gas and Electric Company agreement at this time. This is not recommended as undergrounding overhead utilities is a safety concern. In addition, this could prevent PG&E from performing their betterment work.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On February 19, 2020, the City Council approved an agreement with Pacific Gas and Electric Company for the undergrounding work associated with the project at the Spring/DeWitt Avenue Intersection.
- On November 4, 2020, the City Council approved an agreement with Pacific Gas and Electric Company to underground dry utilities near Hale Avenue and Main Avenue.
- On August 17, 2022, the City Council approved an agreement with Pacific Gas and Electric Company to underground dry utilities for the Upper Llagas Creek Flood Control and Hale Extension Phase 2B project.

FISCAL AND RESOURCE IMPACT:

Fiscal:

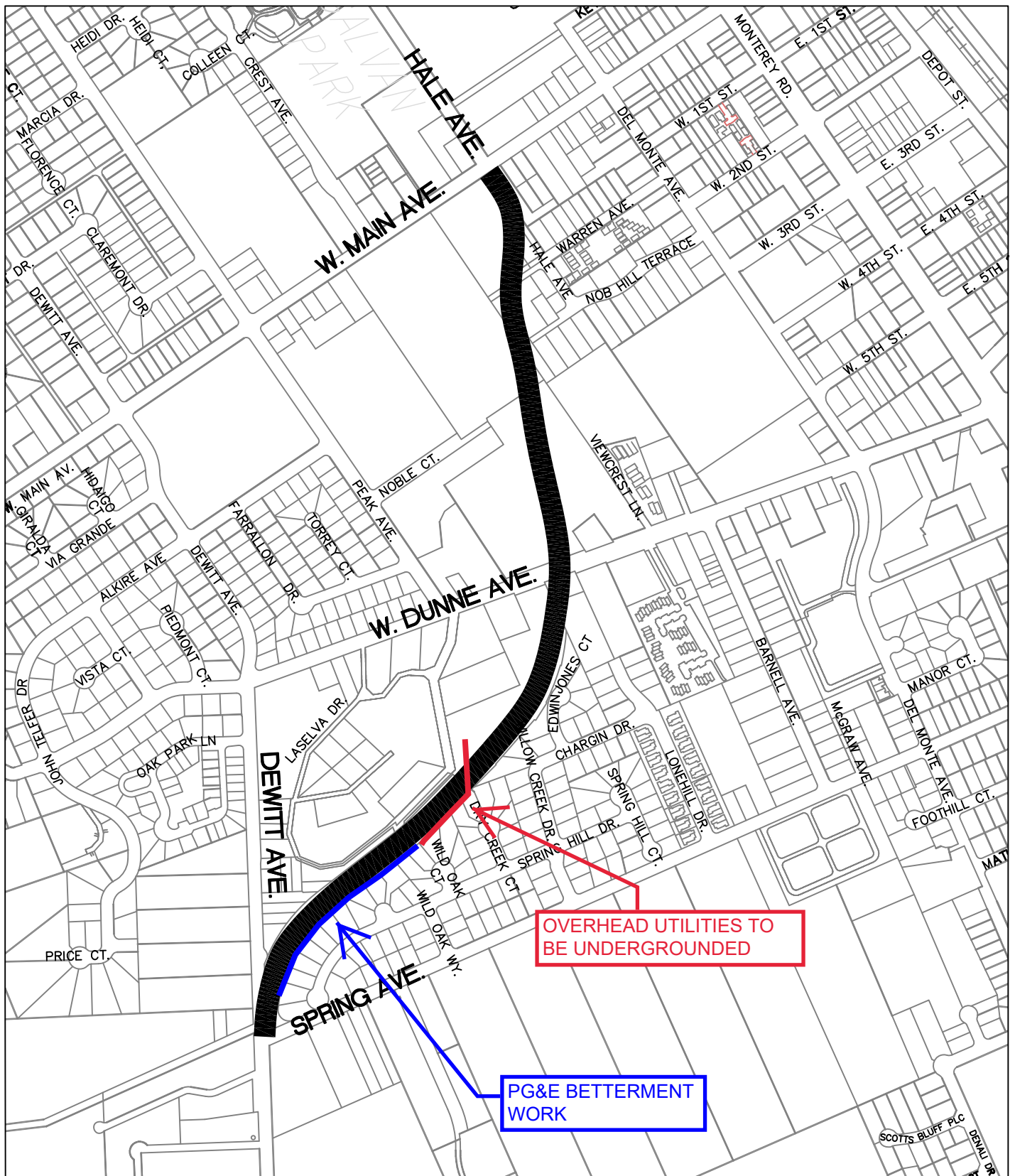
Sufficient funds and budgetary appropriations are available in the approved Hale Avenue Extension Project. The VTA's Measure B Grant is contributing \$16.5 million towards the project.

CEQA (California Environmental Quality Act):

Project

A Final Environmental Impact Report was prepared by David J. Powers & Associates for the Hale Avenue Extension and Hale Avenue Plan Line Projects. City Council certified the Final Environmental Impact Report (FEIR) and adopted a Mitigation and Monitoring Program (MMRP) for construction of the Hale Avenue Extension Project

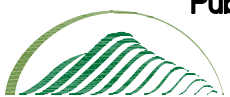
("Project") by Resolution No. 17-070, adopted on August 23, 2017.



SCALE: NTS

City of Morgan Hill

Public Works Department



CITY OF MORGAN HILL

N:\PROJECTS\CIP\STREETS\546007-Santa Teresa Const\Staff Reports\hale plot 8-24-11.dwg

LOCATION PLAN

Hale Avenue Extension

Date: 12/07/22

Drwn by: DIG

PAGE 1 OF 1



Customer Payment Coupon

October 21, 2022

City of Morgan Hill
17575 Peak Ave.
MORGAN HILL, CA 95037

References	
Notification #	120935016
Contract #	50065706 V2
E20C-PM #	35354566
Customer #	2965007

Customer Cost Summary

HALE ROAD EAST OF DEWITT AVE, MORGAN HILL

Amounts Due		Total Due
Rule 20C Non-Refundable Payment	\$63,876.72	
Minus the following credit		
Advance Credit	(\$2,500.00)	
		\$61,376.72

Important Payment Information

To complete your contract ONLINE

- Follow the instructions provided with your electronic contract
- Submit payment at pge.com/contractpayments

To complete your contract BY MAIL

- Please make check payable to: **PG&E** or **Pacific Gas and Electric**
- Complete, sign and return the enclosed agreement(s), the SACAC form and the customer payment coupon with your payment
- Remit payment and SACAC form to:**
PG&E CFM/PPC Department
PO BOX 997340
Sacramento, CA 95899-7340

IMPORTANT MESSAGE

Please review the enclosed information and total due. This document needs to be returned with the enclosed agreements.

If you complete your contract ONLINE, a copy will be saved to your Customer Connections Online (CCO) account at pge.com/cco.

To learn more about PG&E's gas and electric safety initiatives and resources please visit pge.com/safety.

Have Questions?
Please Call 1-800-422-0436



120935016



**® Pacific Gas and Electric Company
Agreement to Perform
Tariff Schedule Related Work**

October 21, 2022

DISTRIBUTION:

- ☐ Applicant (Original)
☐ Division (Original)
☐ ACCTG. SVCS.

REFERENCES:

Notification # 120935016
Contract # 50065706 V2
R20-PM # 35354566

City of Morgan Hill, A GOVERNMENT AGENCY (Applicant) has requested PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (PG&E), to perform the tariff schedule related work as located and described in paragraph 3 herein. PG&E agrees to perform the requested work and furnish all necessary labor, equipment, materials and related facilities required therefore, subject to the following conditions:

1. Whenever part or all of the requested work is to be furnished or performed upon property other than that of Applicant, Applicant shall first procure from such owners all necessary rights-of-way and/or permits in a form satisfactory to PG&E and without cost to it.
2. Applicant shall indemnify and hold harmless PG&E, its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of any person, including but not limited to, employees of PG&E, Applicant or any third party, or for the loss, destruction or damage to property, including, but not limited to property of PG&E, Applicant or any third party, arising out of or in any way connected with the performance of this agreement, however caused, except to the extent caused by the active negligence or willful misconduct of PG&E, its officers, agents and employees. Applicant will, on PG&E's request, defend any suit asserting a claim covered by this indemnity. Applicant will pay all costs that may be incurred by PG&E in enforcing this indemnity, including reasonable attorneys' fees.
3. The location and requested work are described as follows: (Describe in detail the materials and facilities to be furnished and/or work to be performed by PG&E. If more space is required, use other side and attach any necessary drawings as Exhibits A, B, C, etc):

LOCATION: HALE ROAD EAST OF DEWITT AVE, MORGAN HILL

DESCRIPTION OF WORK: Rule 20C - Underground existing overhead electric facilities

Engineering & Administrative Costs		<u>\$27,748.88</u>
Including Applicant Design Value of	<u>\$0.00</u>	
Cost of Additional Applicant Design Plan Checks	(+)	<u>\$0.00</u>
Value of 20C Underground System	(+)	<u>\$4,236.26</u>
Tie-In of 20C by PG&E	(+)	<u>\$10,841.73</u>
PG&E Land Rights Costs	(+)	<u>\$0.00</u>
Inspection Fees	(+)	<u>\$1,070.43</u>
Value of 20C Trench & Excavation	(+)	<u>\$0.00</u>
Value of 20C Conduits & Substructures	(+)	<u>\$13,131.01</u>
Rule 20C Trench Permits Obtained by PG&E	(+)	<u>\$0.00</u>
less Salvage & Depreciation for Overhead Facilities	(-)	<u>\$0.00</u>
SUB TOTAL	(=)	<u>\$57,028.31</u>
Including Net Joint Pole Credit Value of	<u>\$0.00</u>	
plus ITCC @ 24%	(+)	<u>\$13,686.79</u>
plus Cost to Remove Overhead Line by PG&E		<u>\$5,891.24</u>
Value of 20C Trench, Excavation & Conduit for Others (no ITCC)	(+)	<u>\$0.00</u>
SUB TOTAL	(=)	<u>\$76,606.34</u>
less 20C Underground System Installed by Applicant	(-)	<u>\$0.00</u>
less 20C Trench & Excavation Provided by Applicant	(-)	<u>\$0.00</u>
less 20C Conduits & Substructures Installed by Applicant	(-)	<u>\$12,729.62</u>
less Value of Applicant Design Work	(-)	<u>\$0.00</u>
Electric Rule 20C Cash Payment	(=)	<u>\$63,876.72</u>



120935016

4. Applicant shall pay to PG&E, promptly upon demand by PG&E, as the complete contract price hereunder, the sum of
Sixty-three thousand eight hundred seventy-six dollars and seventy-two cents \$63,876.72

Upon completion of requested work, ownership shall vest in: ☒ PG&E ☐ Applicant

Executed this _____ day of _____

**City of Morgan Hill, A
GOVERNMENT AGENCY**

Applicant

PACIFIC GAS & ELECTRIC COMPANY

By: _____

Christina Turner

Print/Type/Name

By: _____ David Conoscenti

Title: City Manager

Title: Service Planning Supervisor

Mailing Address: 17575 Peak Ave.
MORGAN HILL, CA 95037



120935016



City Council

Meeting Minutes

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

Wednesday, November 16, 2022 7:00 PM

Hybrid Meeting

17555 Peak Avenue, Morgan Hill, CA 95037 and Virtual (Link to join the meeting can be found below)

CALL TO ORDER

Mayor Pro Tem Borgioli called the City Council meeting to order at 7:02 p.m.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

PRESENT	Rich Constantine, Rene Spring, Gino Borgioli, John McKay, Yvonne Martinez Beltran
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TELECONFERENCE

Mayor Rich Constantine participated in the City Council meeting via teleconference as follows:

The Westin
3838 Wyllie Road
Princeville, HI 96722

DECLARATION OF POSTING AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PRESENTATIONS

YAC Presentation- Asset #34- Cultural Competence

RECOGNITIONS

Recognizing the Edward Boss Prado Foundation for their support of the Magical Bridge Playground and Aquatics Center Summer Access Passes for low-income youth

PROCLAMATIONS

Proclaiming the month of November as Native American Heritage Month

CITY COUNCIL REPORTS

Council Member John McKay spoke regarding the South County Youth Task Force, sharing their mission and the work they do. He spoke regarding his work on the City/School Liaison Committee. Recently, the committee discussed active shooter situations and how we can ensure that our police response would be swift.

CITY MANAGER'S REPORT

City Manager Christina Turner shared that on November 23, 2022, the City's Housing team will be hosting an in-person Community Meeting which is a free orientation for the Affordable Housing Below Market Rate Program and will be presented in English and Spanish.

She shared some information on upcoming events. On December 17, 2022 from 3 p.m. - 6 p.m. the Magical Bridge Playground will host a Winter Wonderland. Saturday, December 3, 2022, is the annual Kiwanis Holiday Lights Parade through Downtown beginning at 5:30 p.m. Come out and join your friends, neighbors, and Santa! She also wanted to remind everyone that the Senior Center Café is now open for in-person dining Monday - Friday. Registration and Café open at 10:30 a.m. and lunch is served at 11:30 a.m.

The last item she mentioned was that as of November 14, 2022 our Santa Clara CalFire Unit's new Hawk, helicopter 106, is officially in service. This new generation helicopter will bring enhanced capabilities including flight safety, higher payloads, increased power margins, and future night flying capabilities. The helicopter will be able to respond to initial attack wildfires and rescue missions. She thanked CalFire for their collaboration and partnership.

CITY ATTORNEY'S REPORT

No report.

OTHER REPORTS

Council Member Spring spoke about a few events that he had attended in Morgan Hill. The first was the Morgan Hill Open Studios event, led by the Library, Culture, and Arts Commission, which highlighted many wonderful artists. Next, he spoke about the Morgan Hill United Against Hate event which took place on Sunday, November 13, 2022. Finally, he mentioned the Diwali event, organized by the Indian Association of South County.

Council Member Martinez Beltran thanked the team that put together the United Against Hate event. She also provided information about the last Board meeting for the Silicon Valley Clean Energy Authority.

PUBLIC COMMENT

Public comment opened at 7:21 p.m. The following people were called to speak:

Michael Burchfield

Joe Baranowski

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	Passed
MOVER:	Council Member Spring
SECONDER:	Council Member McKay
AYES:	Mayor Constantine, Council Member Spring, Mayor Pro Tem Borgioli, Council Member McKay, Council Member Martinez Beltran
NAYS:	None
ABSTAIN:	None
ABSENT:	None

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

MOTION:

Approving consent calendar items 1 through 11.

RESULT:	Passed
MOVER:	Council Member McKay
SECONDER:	Council Member Spring
AYES:	Mayor Constantine, Council Member Spring, Mayor Pro Tem Borgioli, Council Member McKay, Council Member Martinez Beltran
NAYS:	None
ABSTAIN:	None
ABSENT:	None

1. **ACCEPT THE MORGAN HILL INCLUSIVE PLAYGROUND/MAGICAL BRIDGE PROJECT**

Recommendation:

1. Accept as complete the Morgan Hill Inclusive Playground/Magical Bridge Project;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County

2. **ADOPT ORDINANCE 2338, NEW SERIES, APPROVING A ZONING MAP AMENDMENT FOR EXPANSION OF A MIXED-USE FLEX ZONE AND PLANNED DEVELOPMENT COMBINING DISTRICT AND MASTER PLAN FOR A 66.49-ACRE AREA LOCATED AT THE NORTHEAST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101 (APNs 728-37- 001, -002, -004, -005 & -007)**

Recommendation:

Waive the reading, adopt Ordinance No. 2338, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

3. **AMEND CONFLICT OF INTEREST CODE REPORTING CATEGORIES**

Recommendation:

Adopt resolution amending the list of positions subject to the City's Conflict of Interest Code.

4. **APPROVE FIRST AMENDMENT TO THE BATTALION ONE FIRE PROTECTION MAINTENANCE SERVICE AGREEMENT**

Recommendation:

1. Approve the first amendment to the maintenance service agreement with Battalion One Fire Protection, Inc. for an additional year of services for \$17,969, for a total contract amount of \$60,179; and
2. Authorize the City Manager to execute and administer two additional one-year extensions of the maintenance service agreement.

5. **APPROVE ACQUISITION OF SEWER EASEMENT (PATEL) APN 841-03-063 FOR THE SEWER RELIEF TRUNK LINE PROJECT**

Recommendation:

1. Adopt resolution approving the purchase of a sewer easement (1,984 square feet), APN 841-03-063 for \$27,000 plus escrow and closing costs from Jitendra and Nayana Patel for the Sewer Relief Trunk Line Project; and
2. Authorize the City Manager to execute all documents and make minor modifications as necessary in order to consummate the transaction.

6. **APPROVE SECOND AMENDMENT TO THE JOINT VENTURE SILICON VALLEY CONSULTANT AGREEMENT FOR THE COUNTYWIDE SOLID WASTE SERVICES PROGRAM**

Recommendation:

1. Approve the Second Amendment to the Consultant Agreement with Joint Venture Silicon Valley to add Special Projects for \$49,324 for a revised total contract amount of \$399,324; and
2. Authorize the City Manager to execute and administer the Second Amendment to the Consultant Agreement with Joint Venture Silicon Valley.

7. **APPROVE AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC. TO PROVIDE PLAN CHECK/REVIEW ASSISTANCE**

Recommendation:

Approve the First Amendment to the professional services agreement with CSG Consultants, Inc. for Building Department review services for a total not-to-exceed amount of \$260,000.

8. **APPROVE FRANCHISE AGREEMENT WITH RECOLOGY SOUTH VALLEY FOR SOLID WASTE MANAGEMENT SERVICES**

Recommendation:

Approve franchise agreement with Recology South Valley and authorize the City Manager to execute the agreement subject to the review and approval of the City Attorney.

9. **APPROVE THE NOVEMBER 2, 2022 CITY COUNCIL MEETING MINUTES**

Recommendation:

Approve minutes.

10. **AWARD LANDSCAPE MAINTENANCE SERVICE AGREEMENT FOR CITY PARKS, MEDIANS, AND DOWNTOWN**

Recommendation:

1. Award a Maintenance Service Agreement to Brightview Landscape Services, Inc. in the amount of \$274,608 for a two-year period (\$137,304 annually) to service Group 1: Park Mowing at City Parks; Group 3: Street Medians, Streetscapes, and Parking Lots; and Group 6: Downtown Area and extra services, with three consecutive one-year extensions, subject to future annual budget appropriations by the City Council; and

2. Authorize the City Manager to execute and administer said Agreement.

11. RECEIVE REPORT REGARDING UPCOMING 2023 COMMISSION VACANCIES PER MADDY ACT

Recommendation:
Receive report.

PUBLIC HEARINGS

12. ADOPT RESOLUTION OF FORMATION TO FORM THE MORGAN HILL PROPERTY AND BUSINESS IMPROVEMENT DISTRICT (MHPBID)

Recommendation:

1. Open/close public hearing;
2. At the close of the public hearing, order the tabulation of ballots; and
3. If ballots in support of MHPBID formation exceed ballots in opposition to MHPBID formation, adopt resolution forming the MHPBID.

Economic Development Director Matt Mahood provided the report.

The public hearing opened at 7:49 p.m. The following people were called to speak:

Nick Gaich

Rosy Bergin

Joe Baranowski

Michael Van Every

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

While the ballots were being tabulated, the meeting moved to item 13. Item 12 will reconvene after item 13 is complete.

Item 12 resumed at 9:11 p.m.

City Clerk Michelle Bigelow announced the results of the ballot.

36 ballots received. Two ballots were not counted due to a lack of signatures or votes.

Of the 34 ballots counted, 18 ballots were yes votes, and 16 ballots were no votes.

The weighted results are as follows:

88% yes votes and 12% no votes.

If the City's vote were removed, the weighted results would be as follows:

66% yes votes and 34% no votes.

MOTION:

Approving the recommended action.

RESULT:	Passed
MOVER:	Council Member McKay
SECONDER:	Mayor Pro Tem Borgioli
AYES:	Mayor Constantine, Mayor Pro Tem Borgioli, Council Member McKay, Council Member Martinez Beltran
NAYS:	Council Member Spring
ABSTAIN:	None
ABSENT:	None

13. **APPEAL (AAE2022-0007) OF PLANNING COMMISSION APPROVAL OF VESTING TENTATIVE MAP (SD2021-0004), DESIGN PERMIT (SR2021-0014), AND A DETERMINATION THAT THE PROJECT IS EXEMPT FROM CEQA, FOR A 93-UNIT RESIDENTIAL CONDOMINIUM DEVELOPMENT PROPOSED BY DENOVA HOMES. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBERS 726-42-001 AND -002 ARE LOCATED WEST OF THE MONTEREY ROAD/BURNETT AVENUE INTERSECTION (FAMILY RV SITE)**

Recommendation:

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

Senior Planner Gina Paolini provided the report and presentation.

The public hearing opened at 8:23 p.m. The following people were called to speak:

Trent and Kerri with DeNova Homes, Applicant - zoom

Bob Long

Weng Tam - zoom

Joe Baranowski

Trent and Kerri with DeNova Homes, Applicant - zoom

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

The public hearing reopened at 8:45 p.m. The following people were called to speak:

Bob Long

Trent with DeNova Homes, Applicant - zoom

Kevin Rock - zoom

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

MOTION:

Approving the recommended action.

RESULT:	Passed
MOVER:	Council Member McKay
SECONDER:	Council Member Martinez Beltran
AYES:	Mayor Constantine, Council Member Spring, Mayor Pro Tem Borgioli, Council Member McKay, Council Member Martinez Beltran
NAYS:	None
ABSTAIN:	None
ABSENT:	None

The meeting recessed at 9:02 p.m. and reconvened at 9:10 p.m.

14. APPROVE A ZONING AMENDMENT TO ADD THE PLANNED DEVELOPMENT COMBINING DISTRICT AND APPROVE A DESIGN PERMIT AMENDMENT TO ALLOW FOR AN ADDITIONAL LEVEL (5TH FLOOR) FOR THE APPROVED GRANADA HOTEL ON A 1.09-ACRE SITE (APN726-14-047)(ZA2022- 0004/AAE2022-0004/EA2022-0010 MONTEREY - GRANADA HOTEL)

Recommendation:

1. Open/Close Public Hearing;
2. Waive the first and second reading of the proposed ordinance;
3. Introduce a Zoning Amendment Ordinance approving a Planned Development Combining District; and
4. Adopt resolution approving a Design Permit Amendment for the addition of a 5th floor with minor facade modifications.

Council Member McKay, Mayor Pro Tem Borgioli, and Mayor Constantine announced their ex-parte contacts.

Senior Planner Tiffany Brown and Development Services Director Jennifer Carman provided the report and presentation.

The public hearing opened at 10:12 p.m. The following people were called to speak:

Frank Leal, Applicant

Nick Gaich

Anthony Villafranca

Rick Kent

Joe Baranowski
Michael Van Every
Armando Benavides
Kevin Rock
Michael Meredith
Frank Leal, Applicant

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

MOTION:

Extending the meeting to 11:30 p.m.

RESULT:	Passed
MOVER:	Council Member Martinez Beltran
SECONDER:	Council Member Spring
AYES:	Mayor Constantine, Council Member Spring, Mayor Pro Tem Borgioli, Council Member McKay, Council Member Martinez Beltran
NAYS:	None
ABSTAIN:	None
ABSENT:	None

MOTION:

Waiving the first and second reading of the ordinance.

RESULT:	Passed
MOVER:	Council Member Martinez Beltran
SECONDER:	Mayor Constantine
AYES:	Mayor Constantine, Council Member Spring, Mayor Pro Tem Borgioli, Council Member McKay, Council Member Martinez Beltran
NAYS:	None
ABSTAIN:	None
ABSENT:	None

MOTION:

Introduce the ordinance.

RESULT:	Passed
MOVER:	Council Member McKay

SECONDER:	Mayor Constantine
AYES:	Mayor Constantine, Mayor Pro Tem Borgioli, Council Member McKay
NAYS:	Council Member Spring, Council Member Martinez Beltran
ABSTAIN:	None
ABSENT:	None

MOTION:

Adopting the resolution.

RESULT:	Passed
MOVER:	Council Member Martinez Beltran
SECONDER:	Mayor Constantine
AYES:	Mayor Constantine, Council Member Spring, Mayor Pro Tem Borgioli, Council Member McKay, Council Member Martinez Beltran
NAYS:	None
ABSTAIN:	None
ABSENT:	None

OTHER BUSINESS

15. INTRODUCE AN ORDINANCE REQUIRING ELECTRIC VEHICLE CHARGING INFRASTRUCTURE IN NEW CONSTRUCTION

Recommendation:

1. Waive the first and second reading of the ordinance; and
2. Introduce the ordinance.

Environmental Program Administrator Tanya Carothers provided the report and presentation.

MOTION:

Extending the meeting to 11:40 p.m.

RESULT:	Passed
MOVER:	Mayor Pro Tem Borgioli
SECONDER:	Council Member McKay
AYES:	Mayor Constantine, Council Member Spring, Mayor Pro Tem

	Borgioli, Council Member McKay, Council Member Martinez Beltran
NAYS:	None
ABSTAIN:	None
ABSENT:	None

Public comment opened at 11:34p.m. There being no requests to speak, public comment closed.

MOTION:

Waiving the first and second reading of the ordinance.

RESULT:	Passed
MOVER:	Council Member Spring
SECONDER:	Council Member Martinez Beltran
AYES:	Mayor Constantine, Council Member Spring, Mayor Pro Tem Borgioli, Council Member McKay, Council Member Martinez Beltran
NAYS:	None
ABSTAIN:	None
ABSENT:	None

MOTION:

Introduce the ordinance.

RESULT:	Passed
MOVER:	Council Member Martinez Beltran
SECONDER:	Council Member Spring
AYES:	Mayor Constantine, Council Member Spring, Mayor Pro Tem Borgioli, Council Member McKay, Council Member Martinez Beltran
NAYS:	None
ABSTAIN:	None
ABSENT:	None

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Spring requested Leal MOU.

Council Member Martinez-Beltran requested discussion on Local Workforce PLA's.

Council Member McKay wanted to encourage the City to have a holiday celebration of some sort.

Mayor Pro Tem Borgioli requested a SB330 committee and to collaborate with other cities.

ADJOURNMENT

There being no further business, Mayor Constantine adjourned the meeting at 11:38 p.m.

Minutes Prepared by:

Michelle Bigelow, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

DELEGATE THE AUTHORITY TO CITY MANAGER TO ACCEPT DONATIONS FROM SHOE PALACE

RECOMMENDATION(S)

Delegate the authority to City Manager to accept donations from Shoe Palace.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Supporting our Youth, Seniors, and Entire Community

2022-2023 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

Shoe Palace has approached the City and offered to make various donations now and in the future that would benefit the City of Morgan Hill residents. Shoe Palace is a Morgan Hill business with headquarters in the City. Shoe Palace has expressed its desire to enhance its relationship with the City as well as with its customers. Current policy requires all donations with estimated values exceeding \$5,000 be formally accepted by the City Council. Shoe Palace has indicated their donations will be year-round and that they would work with the City on the needs and timing. Some of the items that Shoe Palace has mentioned that they would buy or reimburse the City are certain public safety equipment that Morgan Hill Police Department and Fire would need, as well as funding or sponsoring certain programs for Morgan Hill residents. To save staff time and to speed up the process, staff recommends the City Council delegate the authority to the City Manager to accept all future donations from Shoe Palace and direct the City Manager to report any donations from Shoe Palace over \$5,000 in the quarterly financial reporting, similar to the City Manager's report on delegation of authority for contracts and or agreements between \$25,000 to \$60,000.

COMMUNITY ENGAGEMENT:

Inform

This staff report serves to inform the Community of the proposed delegation of authority to City Manager to accept donations from Shoe Palace.

ALTERNATIVE ACTIONS:

The City Council could elect not to delegate this authority.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

Approval of this delegation of authority is expected to save staff time on preparing staff reports on future donations from Shoe Palace.

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.

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Adam Paszkowski, Principal Planner

APPROVED BY: City Manager

INTRODUCE ORDINANCE AMENDING THE ZONING CODE TO UPDATE ACCESSORY DWELLING UNIT PROVISIONS TO COMPLY WITH STATE LAW AND MAKING MINOR CORRECTIONS TO VARIOUS PROVISIONS, EXEMPT FROM CEQA UNDER SECTION 15061(B)(3)

RECOMMENDATION(S)

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

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Advancing Regional Initiatives

2022-2023 Strategic Priorities

Affordable Housing and Homelessness

Community Outreach, Engagement, and Messaging

Guiding Documents

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

As part of the implementation of the Zoning Ordinance and yearly update, staff has found several clerical errors, inconsistencies between sections, and the need to update certain portions of the Municipal Code as well as provide further clarification or to expand on certain topics within the Code. In addition, Senate Bill 897 and Assembly Bill 2221 were signed by the Governor on September 28, 2022, requiring several changes to Accessory Dwelling Unit law. The purpose of the proposed Ordinance is to correct these issues. Staff regularly brings forward bundles of minor amendments as necessary to enhance, correct, and/or refine the Code.

The Planning Commission held a public hearing regarding the proposed draft Ordinance on November 8, 2022 and recommended the following amendments to the Municipal

Code:

- A. Amend Table 18.44-2 (Minimum Accessory Structure Setbacks) and Subsection A of Section 18.44.030 (Accessory Structures in Residential Zoning Districts) of Chapter 18.44 (Accessory Structures and Uses) to remove “covered patios” (patios are defined as not having walls or a roof within Chapter 18.128 (General Terms) of the Zoning Code), clarify setbacks for decks, and to allow roofed structures (such as sheds) with a height of eight feet or less to have a side and rear setback of three feet.
- B. Amend Subsection C of Section 18.52.030 (Measurement of Fence and Wall Height) of Chapter 18.52 (Fences and Walls) to clarify that the section only applies to fences or walls that are not located on a retaining wall.
- C. Amend Chapter 18.56 (Height, Setback, and Lot Coverage Exceptions) and Chapter 18.84 (Accessory Dwelling Units) updating Accessory Dwelling Unit (ADU) provisions to comply with State law, including amending Section 18.56.040 (Lot Coverage Exceptions) to clarify that ADUs, up to 850 square feet, are exempt from lot coverage requirements and amending Section 18.84.050 (Site and Design Standards) to clarify that the conversion of an existing accessory structure is not subject to the maximum floor area identified in Table 18.84.-1 (Maximum Accessory Dwelling Unit Floor Area), that an existing accessory structure may be expanded by up to 150 square feet to accommodate ingress and egress only, and to reflect changes to State law regarding setbacks and heights of accessory dwelling units including the allowance of up to a 25-foot tall attached ADU setback four-feet from the side and rear property lines.
- D. Amend Subsection A of Section 18.64.060 (General Landscape Requirement) of Chapter 18.64 (Landscaping) to allow turf areas for active recreation if the turf areas are consistent with Chapter 18.148 (Water Conservation).
- E. Amend Section 18.72.020 (Applicability) of Chapter 18.72 (Parking and Loading) to require the continued use and availability of parking and loading areas.
- F. Add Subsection B of Section 18.72.040 (General Requirements) of Chapter 18.72 to reintroduce the prohibition of parking automobiles in the front yard landscaping of a property.
- G. Update Subsection J of Section 18.72.060 (Parking Design and Development Standards) of Chapter 18.72 to correct a clerical error in which the location to measure from an intersection in feet was not identified.
- H. Update Figure 18.88-4 (Maximum Aggregate Sign Area – Single Frontage Outside Downtown Specific Plan Overlay Zone) of Section 18.88.080 (Sign Standards for Non-Residential Zones) of Chapter 18.88 (Signs) to correct a clerical error in which the title of the figure misidentifies the figure as a “Single Frontage” instead of a “Double Frontage”.
- I. Update Figure 18.90-2 (Residential Transitions – Daylight Plane) of Section 18.92.130 (Residential Transition Standards) of Chapter 18.92 (Supplemental Standards) to correct a clerical error in the numbering of the Figure from “18.90-2” to “18.92-2”.
- J. Update Subsection F of Section 18.96.050 (Application Submittal and Review; Post-Approval Permit Requirements) of Chapter 18.96 (Wireless Communications Facilities) to correct a clerical error in properly identifying that

an appeal of a Planning Commission decision on a conditional use permit may be appealed to the City Council.

- K. Amend Subsection C of Section 18.96.060 (Section 6409(a) Modifications) of Chapter 18.96 to correct a clerical error which the proposed collocation or modification that involves the installation of more than the standard number of new equipment cabinets applies to all cell towers and base stations, not just cell towers located outside the public right-of-way.
- L. Update Subsection B of Section 18.104.160 (Effective Date of Decision) of Chapter 18.104 (Common Permit Requirements) to correct the reference to Chapter 18.112 (Appeals) instead of Chapter 18.122, which does not exist in the Code.
- M. Update Subsection F of Section 18.108.090 (Temporary Use Permits) of Chapter 18.108 (Specific Permit Requirements) to correct a clerical error in which a Temporary Use Permit finding ends midsentence due to omitted language.
- N. Amend Subsection I of Section 18.108.090 (Temporary Use Permits) of Chapter 18.108 (Specific Permit Requirements) to clarify that the director shall approve a cash deposit in an adequate amount for temporary uses that require a temporary use permit to cover the cost of cleaning the site if the applicant fails to leave the property in a presentable and satisfactory condition after the temporary use ceases to exist.
- O. Update Section 18.140.010 (Purpose and Intent) of Chapter 18.140 (Post Construction Stormwater Pollution Prevention) to correct a clerical error in which the word “minimize” was omitted from one of the objectives of the purpose to establish minimum stormwater management requirements and controls.

Complete details of the proposed amendments are provided in the draft Ordinance (Attachment 1) and in the [Planning Commission staff report](#). If the proposed Ordinance is approved, the Code Amendment becomes effective 30 days following the adoption of the Ordinance by the City Council.

Pursuant to Section 18.114.060 (Findings for Approval), the City Council may approve a zoning code amendment only if all of the following findings are made:

1. The proposed amendment is consistent with the General Plan and any applicable specific plan as provided by Government Code Section 65860.
2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.
3. The proposed amendment is internally consistent with other applicable provisions of the zoning code.

The proposed amendments are consistent with the above findings as they correct clerical errors and inconsistencies in the Municipal Code as well as comply with State law regarding updates to Accessory Dwelling Unit provisions.

PLANNING COMMISSION ACTION:

The Planning Commission reviewed the proposed amendments on November 8, 2022. Following discussion, the Planning Commission unanimously approved [Resolution No. 22-22](#) recommending the City Council approve the proposed Amendments as presented by Staff with the exception of allowing an attached ADU to be setback four-feet from the side and rear property lines as required by Government Code Section 65852.2.

COMMUNITY ENGAGEMENT:

Inform

A 10-day public hearing notice was published in the Friday, November 25, 2022 edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notice was also provided on the website and social media. On November 8, 2022, the Planning Commission held a public hearing regarding the proposed ordinance amendments in which a 10-day public hearing notice was published in the Friday, October 28, 2022 edition of the Morgan Hill Times.

ALTERNATIVE ACTIONS:

If the City Council does not take action on the proposed ordinance amendments, the Municipal Code will remain as-is, and the clerical errors and inconsistencies within the Code and with State Accessory Dwelling Unit laws will remain. The Council may also make modifications to the proposed amendments, or not approve certain sections that the Council deems appropriate.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 6, 2018, the City Council adopted Ordinance No. 2277 N.S., a comprehensive update of Title 18 – Zoning of the City of Morgan Hill Municipal Code. The update included an amendment to the City’s official zoning map consistent with the Morgan Hill 2035 General Plan.

On December 18, 2019, the City Council adopted Ordinance No. 2313 N.S. to update Chapter 18.84 (Accessory Dwelling Units) of Title 18 (Zoning) to implement changes to accessory dwelling units (ADUs) pursuant to Assembly Bill 68, Assembly Bill 881, and Senate Bill 13.

On January 20, 2021, the City Council adopted Ordinance No. 2319 N.S. and on December 1, 2021, the City Council adopted Ordinance No. 2327 N.S. amending various code provisions within Title 18 (Zoning) implementing minor amendments due to clerical errors and inconsistencies.

On November 8, 2022, the Planning Commission considered and recommended, unanimously, the City Council approve the proposed draft Ordinance (Attachment 1).

FISCAL AND RESOURCE IMPACT:

Staff regularly brings forward bundles of minor amendments as necessary to enhance, correct, and/or refine the Code; and therefore, the cost is borne, and work is accommodated, within the respective division's annual workplan and budget.

CEQA (California Environmental Quality Act):

This Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines. The proposed text amendments are covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed amendments consist of miscellaneous minor amendments to correct clerical errors and inconsistencies within the Municipal Code as well as updates to Accessory Dwelling Unit provisions to comply with State law.

ORDINANCE NO. , NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL AMENDING VARIOUS CODE
PROVISIONS WITHIN TITLE 18 (ZONING) OF THE
MUNICIPAL CODE OF THE CITY OF MORGAN HILL
IMPLEMENTING MINOR AMENDMENTS DUE TO
CLERICAL ERRORS, INCONSISTENCIES, AND
UPDATES TO ACCESSORY DWELLING UNIT
PROVISIONS TO COMPLY WITH STATE LAW**

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

Section 1. Subsection A of Section 18.44.030 (Accessory Structures in Residential Zoning Districts) of Chapter 18.44 (Accessory Structures and Uses) of Title 18 (Zoning) is hereby amended to read as follows:

- A. Applicability. This section applies to the following types of accessory structures in residential zoning districts.
1. Roofed structures, including but not limited to detached garages, carports, sheds, shade structures, play structures, covered dog enclosures, and gazebos, over seven feet in height and/or one hundred twenty square feet in size.
 2. Attached and detached open, unroofed, and roofed structures such as decks.
 3. Trellises and other similar structures over seven feet in height.
 3. Mechanical equipment and mechanical equipment enclosures such as solar panels and water storage tanks, heating, and air conditioning equipment, and other similar mechanical equipment detached from the main building on the site.
 4. Pools, spas and hot tubs.
 5. Ponds eighteen inches or more in depth.
 6. Fireplaces, barbeque structures, statuary, fountains, and other similar ornamental features.

Section 2. Table 18.44-2 (Minimum Accessory Structure Setbacks) within Section 18.44.030 (Accessory Structures in Residential Zoning Districts) of Chapter 18.44 (Accessory Structures and Uses) of Title 18 (Zoning) is hereby amended to read as follows:

Table 18.44-2: Minimum Accessory Structure Setbacks

Accessory Structure	Minimum Setbacks from Property Lines	
	Front	Side and Rear
Roofed structures, such as detached garages and sheds, and other structures such as trellises		
Height 8 ft. or less	Same as minimum primary structure setback	3 ft.
Height greater than 8 ft. to 12 ft.		5 ft.
Height greater than 12 ft.		Same as minimum primary structure setback
Mechanical equipment and mechanical equipment enclosures		50 percent of minimum primary structure setback
Decks, attached and detached, roofed or unroofed [2]		
Height 18 in. or less (unroofed only)	5 ft.	1 ft.
Height 6 ft. or less	15 ft.	5 ft.
Height greater than 6 ft.	20 ft. or same as minimum primary structure setback, whichever is less	12.5 ft. or same as minimum primary structure setback, whichever is less
In ground pools, spas and hot tubs	Same as minimum primary structure setback	4 ft.
Above ground pools, spas, hot tubs and related equipment, accessories, and improvements	Same as minimum primary structure setback	5 ft.
Ponds less than 18 in. in depth	10 ft.	1 ft.
Fireplaces, barbeque structures, statuary and fountains [1]		
Height 8 ft. or less	3 ft.	3 ft.

Height greater than 8 ft. to 12 ft.	5 ft.	5 ft.
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Notes:

[1] All openings for freestanding fireplaces and built-in barbeques shall meet all Uniform Building Code and Uniform Fire Code requirements.

[2] Height measured from ground to walking surface.

Section 3. Subsection C of Section 18.52.030 (Measurement of Fence and Wall Height) of Chapter 18.52 (Fences and Walls) of Title 18 (Zoning) is hereby amended to read as follows:

- C. Fences not located on a Retaining Wall. If the adjacent finished grade is different on opposite sides of a fence or wall, and the fence or wall is not located on top of a retaining wall, the height is measured from the side with the lowest finished grade to the highest point on the fence or wall.

Section 4. Section 18.56.040 (Lot Coverage Exceptions) of Chapter 18.56 (Height, Setback and Lot Coverage Exceptions) of Title 18 (Zoning) is hereby amended to read as follows:

- A. The community development director may increase the maximum lot coverage requirement by up to ten percent with the approval of a minor exception. See Section 18.108.070 (Minor Exception);
- B. Accessory Dwelling Units up to 850 square feet in size, permitted pursuant to Chapter 18.84 (Accessory Dwelling Units), are exempt from lot coverage requirements.

Section 5. Subsection A of Section 18.64.060 (General Landscape Requirement) of Chapter 18.64 (Landscaping) of Title 18 (Zoning) is hereby amended to read as follows:

A. General Standards.

1. Plant Selection. All plants and trees shall be categorized as low or very low water use in the Central Coast as defined by the water use classification of landscape species (WUCOLS) database.
2. Turf Lawns. Turf areas shall be limited to flat areas designed exclusively for active recreation and shall be consistent with Chapter 18.148 (Water Conservation) of this code.
3. Plant Groupings. Where irrigation is proposed, plants shall be grouped in separate hydrozones (i.e., plants within each irrigation valve area shall have the same watering requirements).
4. Water Features. Decorative water features (e.g., fountains, ponds, waterfalls) must be approved by the planning commission and shall have recirculating water systems.
5. Watering Times. Watering shall start after seven p.m. and end before nine a.m.
6. Public Safety. Plant species shall be selected and located so that at maturity they do not interfere with pedestrian, bicycle, or vehicular circulation and do not conflict with overhead lights or utility lines.

Section 6. Section 18.72.020 (Applicability) of Chapter 18.72 (Parking and Loading) of Title

18 (Zoning) is hereby amended to read as follows:

- A. New Buildings and Uses. On-site parking and loading as required by this chapter shall be provided anytime a new building is constructed or a land use is established where no land use previously existed.
- B. Change of Use. Where an existing use is changed to a new use, parking shall be provided for the incremental intensification of the new use. For example, if a new use requiring five on-site parking spaces replaces an existing use requiring four on-site parking spaces, the new use must provide one additional parking space regardless of the number of on-site parking spaces provided by the existing use.
- C. Expansions and Enlargements. Where an existing structure is expanded or enlarged, additional parking is required to serve only the expanded or enlarged area. Additional parking is not required to remedy parking deficiencies existing prior to the expansion or enlargement.
- D. Continued Use of Parking for Existing Parcels, Buildings, and Land Uses. On-site parking and loading as required by this chapter shall be continually available and located to provide parking for the use they were intended to serve.

Section 7. Subsection B of Section 18.72.040 (General Requirements) of Chapter 18.72 (Parking and Loading) of Title 18 (Zoning) is hereby amended to read as follows:

- B. Location of Parking.
 - 1. Residential Uses. Required minimum on-site parking to serve all residential uses shall be located on the same parcel or site as the use which it serves.
 - 2. Non-Residential Uses. Required minimum on-site parking to serve all non-residential residential uses shall be located on the same parcel or site as the use which it serves except as allowed by Section 18.72.050.D (Off-Site Parking).
 - 3. Parking on Landscape Violation. No person shall park or store any automobile or other vehicle, including but not limited to motorcycles, campers, boats, trailers, or other similar vehicles, in any front yard in any residential district. Parking shall be permitted for automobiles only in and upon an improved paved driveway in said front yard area if each vehicle is currently licensed and operative. Parking for camper, boat, trailer, and other similar vehicles shall comply with Section 18.72.040.F.

Section 8. Subsection J of Section 18.72.060 (Parking Design and Development Standards) of Chapter 18.72 (Parking and Loading) of Title 18 (Zoning) is hereby amended to read as follows:

- J. Driveway Spacing.
 - 1. Driveways shall be setback from street intersections as shown in Table 18.72-5:

Table 18.72-5: Driveway Setbacks from Intersections

Use Served by Driveway	Minimum Distance from Intersection
Residential	10 ft.
Commercial	25 ft.
Industrial	30 ft.
Other Uses	As required by the City Engineer

2. Setbacks shall be measured from corner radius or thirty feet, whichever is greater. The corner radius shall be the arc length measured between the linear distance of the adjoining street.

Section 9. Section 18.84.020 (Permits Required) of Chapter 18.84 (Accessory Dwelling Units) of Title 18 (Zoning) is hereby amended to read as follows:

- A. Accessory units consistent with the requirements of this chapter are allowed by-right with the issuance of a building permit.
- B. Time Limit to Act. The city shall complete its review of an accessory unit application requiring a building permit and approve or deny the application within sixty days after receiving an application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory unit is submitted with a permit application to create a new single-family dwelling on the lot, the city may delay acting on the permit application for the accessory until the city acts on the permit application to create the new single-family dwelling. The application to create the accessory unit shall be considered without discretionary review or hearing.
- C. A demolition permit for a detached garage that is to be replaced with an accessory dwelling unit shall be reviewed with the application for the accessory dwelling unit and issued at the same time.

Section 10. Section 18.84.050 (Site and Design Standards) of Chapter 18.84 (Accessory Dwelling Units) of Title 18 (Zoning) is hereby amended to read as follows:

- A. General. Accessory units are subject to the same requirements that apply to primary dwellings on the same lot in the applicable zoning district except as specified in this section.
- B. Number of Accessory Units. No more than one accessory dwelling unit and no more than one junior accessory dwelling unit is permitted on a single lot with a single-family dwelling. Multifamily dwelling structures may have no more than one accessory dwelling unit or up to twenty-five percent of the existing multi-family dwelling units, whichever is larger.

C. Relationship to Primary Dwelling.

1. An accessory dwelling unit may be within, attached to, or detached from the primary dwelling. Attachment to the primary dwelling shall be by sharing a common interior wall or common roof. No passageway (as defined in Government Code Section 65852.2) is required in conjunction with the construction of an accessory dwelling unit.
2. An accessory dwelling unit shall have its own kitchen, bathroom facilities, and entrance separate from the primary dwelling.
3. The city shall allow junior accessory dwelling units as defined in Government Code Section 65852.22 to be constructed within the walls of the proposed or existing single-family residence with a separate entrance from the main entrance to the primary dwelling, an efficiency kitchen (consisting of a cooking facility with appliances, a food preparation counter and storage cabinets) and shared or independent bathroom facilities
4. The accessory unit shall be clearly subordinate to the primary dwelling by size, appearance, and location on the parcel and shall comply with all applicable building and safety codes.

D. Maximum Unit Size.

1. Table 18.84-1 identifies the maximum floor area for detached and attached accessory dwelling units.

Table 18.84-1: Maximum Accessory Dwelling Unit Floor Area

Zoning District	Maximum Floor Area ^{2, 3}
RE 10	1,200 sq. ft. ¹
RE 2.5	1,000 sq. ft. ¹
RE 1	900 sq. ft. (1 bedroom) 1,000 sq. ft. (2 or more bedrooms) ¹
All other zoning districts	850 sq. ft. (1 bedroom) 1,000 sq. ft. (2 or more bedrooms) ¹

¹ An attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

² The conversion of an existing accessory structure or a portion of the existing primary residence to an accessory dwelling unit is not subject to unit size requirements.

³ An attached accessory dwelling unit permitted within the front yard setback pursuant to Subsection E of this Section shall be limited to 800 square feet.

2. The maximum floor area of junior accessory dwelling units shall be five hundred square feet.
3. An accessory dwelling unit created within an existing accessory structure may be expanded up to 150 square feet beyond the same physical dimensions as the existing

accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress only.

E. Property Line Setbacks.

1. No setback is required for an existing accessory structure or living area as defined by Government Code Section 65852.2 that is converted to an accessory dwelling unit.
2. No setback is required for an accessory dwelling unit constructed in the same location and the same footprint as an existing accessory structure.
3. A minimum setback of four feet from the side and rear property lines is required for an accessory dwelling unit.
4. An attached or detached accessory dwelling unit shall comply with the front setback requirements of the applicable zoning district. If an attached or detached accessory dwelling unit of at least 800 square feet in size is not permitted due to front, side, and rear setback requirements, then an attached accessory dwelling unit may be permitted within the front setback that complies with Section 18.92.080 (Intersection Sight Distance).

F. Height.

1. An attached accessory dwelling unit shall be limited to 25 feet in height or the height limitation of the applicable zoning district, whichever is less.
2. A detached accessory dwelling unit that does not comply with the side and rear setbacks of the applicable zoning district shall be limited to sixteen feet in height, unless any of the following applies:
 - a. On a lot within one-half mile walking distance of a major transit stop or a high-quality transit corridor, as defined in Section 21155 of the Public Resources Code, a detached accessory dwelling unit up to eighteen feet in height, and an additional two feet in height to accommodate a roof pitch, is permitted.
 - b. On a lot with an existing or proposed multi-family, multi-story dwelling, a detached accessory dwelling unit up to eighteen feet in height is permitted.

G. Parking.

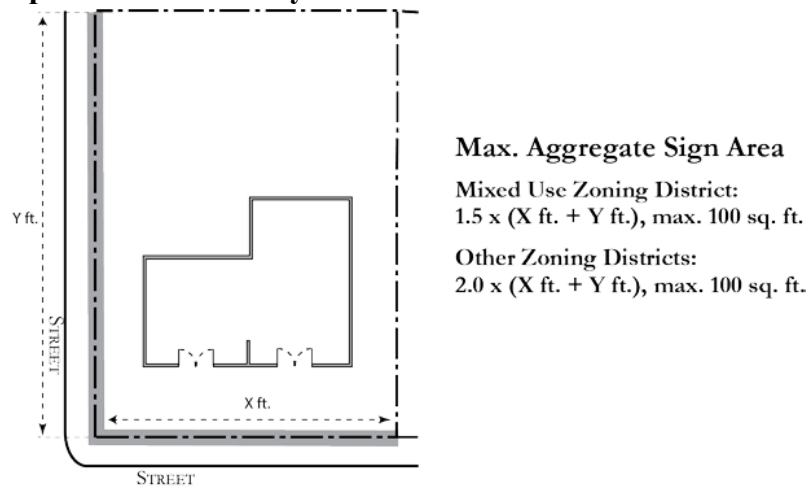
1. On-site parking spaces is not required for junior accessory dwelling units.
2. Except as specified in this subsection, on-site parking for accessory dwelling units shall comply with all parking requirements in chapter 18.72 (parking and loading).
3. On-site parking spaces for accessory dwelling units may be covered or uncovered and may be located within the front, side or rear setback areas (may be tandem).
4. No off-street parking is required for an accessory dwelling unit in the following cases:
 - a. The accessory dwelling unit is located within one-half mile walking distance of public transit.

- b. The accessory dwelling unit is located within a National Register Historic District or other historic district officially designated by the city council.
 - c. When an accessory dwelling unit is constructed within the primary residence or an accessory structure.
 - d. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
 - e. When there is a car share vehicle pick-up/drop-off location within one block of the accessory dwelling unit.
- 5. When an existing garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, or converted to an accessory dwelling unit, the on-site parking spaces are not required to be replaced.
- H. Design. The design of accessory units shall be compatible with the design and scale of the primary dwelling (using substantially the same landscaping, color, materials and design on the exterior) and the general character of the neighboring residential properties.
- I. Doors and Windows. Openings (e.g., doors and windows) on exterior walls that are closest to and face adjacent residentially-zoned properties shall be designed to minimize privacy impacts and maintain access to light and ventilation on adjacent properties.
- J. Utility Connections.
 - 1. General. An accessory unit shall not be considered a new residential use for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service unless constructed in conjunction with a new single-family residence.
 - 2. Accessory Units in Existing Space. For accessory units within an existing primary dwelling, garage, or other accessory structure, the city shall not require an applicant to install a new or separate utility connection directly between the accessory unit and the utility or impose a related connection fee or capacity charge.
 - 3. Attached and Detached Accessory Dwelling Units. Consistent with Government Code Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.
 - 4. Fire Sprinklers. The installation of fire sprinklers shall not be required in an accessory unit if sprinklers are not required for the primary residence.
- K. Septic Tank Disposal System.
 - 1. In areas where septic tank disposal systems are allowed due to lack of sanitary sewer lines, detached accessory dwelling units shall be served by separate and independent septic tank sewage disposal systems. All leach lines shall be designed and installed in accordance with current septic system requirements of the Santa Clara County Environmental Health Services.

2. In other areas of the city, accessory dwelling units shall be connected to the sanitary sewer system through the existing lateral line serving the primary dwelling unit.

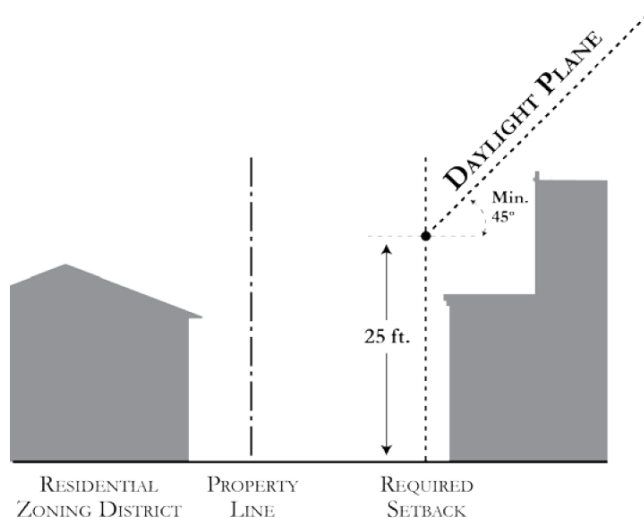
Section 11. Figure 18.88-4 of Section 18.88.080 (Sign Standards for Non-Residential Zones) of Chapter 18.88 (Signs) of Title 18 (Zoning) is hereby amended to read as follows:

Figure 18.88-4: Maximum Aggregate Sign Area - Double Frontage Outside Downtown Specific Plan Overlay Zone



Section 12. Figure 18.90-2 of Section 18.92.130 (Residential Transition Standards) of Chapter 18.92 (Supplemental Standards) of Title 18 (Zoning) is hereby amended to read as follows:

Figure 18.92-2: Residential Transitions — Daylight Plane



Section 13. Subsection F of Section 18.96.050 (Application Submittal and Review; Post-Approval Permit Requirements) of Chapter 18.96 (Wireless Communications Facilities) of Title 18 (Zoning) is hereby amended to read as follows:

F. Appeals

1. Community development director decisions on an administrative use permit may be appealed to the planning commission in accordance with Section 18.112 (Appeals).
2. Planning commission decisions on a conditional use permit may be appealed to the city council in accordance with Section 18.112 (Appeals).

Section 14. Subsection C of Section 18.96.060 (Section 6409(a) Modifications) of Chapter 18.96 (Wireless Communications Facilities) of Title 18 (Zoning) is hereby amended to read as follows:

C. Substantial Change Defined. "Substantial change" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(7), as may be amended, defined according to the facility type and location as follows:

1. Towers Outside the Public Right-of-Way. For towers outside the public right-of-way, a substantial change occurs when:
 - a. The proposed collocation or modification increases the overall height more than ten percent or the height of one additional antenna array not to exceed twenty feet (whichever is greater); or
 - b. The proposed collocation or modification increases the width more than twenty feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
 - c. The proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
2. Monopoles in the Public Right-of-Way. For monopoles in the public rights-of-way, a substantial change occurs when:
 - a. The proposed collocation or modification increases the overall height more than ten percent or ten feet (whichever is greater); or
 - b. The proposed collocation or modification increases the width more than six feet from the edge of the wireless monopoles; or
 - c. The proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
 - d. The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (ten percent) larger in height or volume than any existing ground-mounted equipment cabinets; or
 - e. The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
3. All Towers and Base Stations. In addition, for all towers and base stations wherever located, a substantial change occurs when:

- a. The proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the community development director; or
 - b. The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section;
 - c. The proposed collocation or modification involves the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four.
4. Interpretation of Thresholds.
- a. The thresholds for a substantial change described above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur.
 - b. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012—the date that Congress passed Section 6409(a).

Section 15. Subsection B of Section 18.104.160 (Effective Date of Decision) of Chapter 18.104 (Common Permit Requirements) of Title 18 (Zoning) is hereby amended to read as follows:

- B. Other Decisions. The decision of the community development director or planning commission is final and effective after five p.m. on the tenth day following the date the decision is rendered, when no appeal to the decision has been filed in compliance with Chapter 18.112 (Appeals).

Section 16. Subsection F of Section 18.108.090 (Temporary Use Permits) of Chapter 18.108 (Specific Permit Requirements) of Title 18 (Zoning) is hereby amended to read as follows:

- F. Findings for Approval. To approve a temporary use permit, the community development director shall make all of the following findings:
1. The proposed temporary use is consistent with the general plan, zoning code, and any applicable specific plan or area plan adopted by the city council.
 2. The location, size, design, and operating characteristics of the proposed temporary use will be compatible with the land uses in the vicinity of the property.
 3. The proposed temporary use will not be detrimental to the public health, safety, and welfare.

4. The site for the proposed temporary use is adequate in size and shape to accommodate the temporary use without negatively impacting properties adjacent and near to the site.
5. The site for the proposed temporary use is adequately served by streets and parking areas to accommodate the proposed temporary use.

Section 17. Subsection I of Section 18.108.090 (Temporary Use Permits) of Chapter 18.108 (Specific Permit Requirements) of Title 18 (Zoning) is hereby amended to read as follows:

I. Cash Deposit.

1. For temporary uses that physically changes, alters and/or improves a site, the applicant shall submit to the city a cash deposit prior to the issuance of the temporary use permit. The cash deposit shall be an adequate amount, as approved by the community development director, to defray the cost of cleaning the site if the applicant fails to leave the property in a presentable and satisfactory condition and to guarantee removal of any temporary uses or structures. The cash deposit shall be a minimum of five hundred dollars.
2. After completion of the temporary use, the city shall inspect the site and determine if it has been returned to a presentable and satisfactory condition. The city shall return the cash deposit to the applicant upon finding that the deposit is not needed to clean the site or remove any temporary use of structures.
3. If an applicant does not return the site to a presentable and satisfactory condition, the city may use all or some of the cash deposit to clean the site or remove any temporary use of structures.
4. The community development director may waive this cash deposit requirement upon finding that the requirement would be an unnecessary hardship for the applicant.

Section 18. Section 18.140.010 (Purpose and Intent) of Chapter 18.140 (Post Construction Stormwater Pollution Prevention) of Title 18 (Zoning) is hereby amended to read as follows:

The purpose of this chapter is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing in watersheds in compliance with applicable provisions of the Federal Clean Water Act and any National Pollutant Discharge Elimination System (NPDES) storm water discharge permits issued to the city of Morgan Hill, through the following objectives:

- A. Minimize increases in stormwater runoff from any development in order to reduce flooding, siltation and streambank erosion and maintain the integrity of stream channels.
- B. Minimize increases in nonpoint source pollution caused by stormwater runoff from development which would otherwise degrade local water quality.
- C. Minimize the total annual volume of surface water runoff which flows from any specific site during and following development to not exceed the pre-development hydrologic regime to the maximum extent practicable.

- D. Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management controls and to ensure that these management controls are properly maintained and pose no threat to public safety.

The above objectives shall be met through adoption and implementation of best management practices (BMPs) in design, construction and maintenance. These BMPs shall be incorporated into permanent site design features, which shall remain functioning throughout the life of the development.

Section 19. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 20. Effective Date; Posting. This Ordinance shall take effect on _____, 20___. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 7TH DAY OF DECEMBER 2022, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 1ST DAY OF FEBRUARY 2022, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ **CERTIFICATE OF THE CITY CLERK** ∞

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. XXXX, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 1st day of February 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk



ZA2022-0005

Miscellaneous Code Amendments



Miscellaneous Code Amendments



Project:

Zoning Amendment Amending

- Various sections of Title 18 (Zoning)
- Update Accessory Dwelling Unit (ADU) Provisions to comply with State Law (SB 897 & AB 2221)

Request:

Adopt Ordinance approving the amendments as recommended by Planning Commission on November 8, 2022

Miscellaneous Code Amendments



Minor Clerical Errors:

- 18.72.060.J (Parking Design & Development Standards)
- Figure 18.88-4 (Maximum Aggregate Sign Area – Single Frontage Outside Downtown Specific Plan Overlay Zone)
- Figure 18.90-2 (Residential Transitions – Daylight Plane)
- 18.96.050.F (Application Submittal & Review; Post-Approval Permit Requirements)
- 18.96.060.C (Section 6409(a) Modifications)
- 18.104.160.B (Effective Date of Decision)
- 18.108.090.F (Temporary Use Permits)
- 18.140.010 (Purpose & Intent)

Miscellaneous Code Amendments



Table 18.44-2 (Minimum Accessory Structure Setbacks)

Accessory Structure	Minimum Setbacks from Property Lines	
	Front	Side and Rear
Roofed structures, such as detached garages and sheds, and open, unroofed <u>other</u> structures such as decks and trellises		
<u>Height 8 ft. or less</u>	Same as minimum primary structure setback	<u>3 ft.</u>
<u>Height greater than 8 ft. to 12 ft. or less</u>		5 ft.
<u>Patios and Decks, attached and detached, roofed or unroofed</u>		
<u>Height less than 6ft. or less</u>	15 ft.	5 ft.

Miscellaneous Code Amendments



Section 18.52.030.C (Measurement of Fence and Wall Height)

- Clarify that the section only applies to fences or walls that are not located on a retaining wall

Section 18.64.060.A (General Landscape Requirement)

- Allow turf for active recreation be consistent with Chapter 18.148 (Water Conservation)

Miscellaneous Code Amendments (Accessory Dwelling Units)



Section 18.56.040.B (Lot Coverage Exceptions)

- Clarify ADUs up to 850 square feet in size are exempt from lot coverage requirements.

Section 18.84.020.C (Required Permits)

- Require demolition permits for a detached garage that is to be replaced with an ADU be reviewed and issued concurrently

Miscellaneous Code Amendments

(Accessory Dwelling Units)



Section 18.84.050.D, E, & F (Site and Design Standards)

- ADU created within an existing accessory structure may be expanded up to 150 square feet for ingress and egress only;
- Side and rear setbacks for an attached ADU may be 4-feet;
- If an ADU can not meet required setbacks, an attached ADU up to 800 square feet may be permitted within the front setback;
- An attached ADU shall be limited to 25 feet in height;
- A detached ADU within ½ mile of major transit stop/high-quality transit corridor shall be limited to 18 feet in height and an additional two feet to accommodate a roof pitch; and
- A detached ADU on a lot with a multi-family, multi-story dwelling shall be limited to 18 feet in height.

Miscellaneous Code Amendments (Code Compliance)



Section 18.72.020 (Applicability)

- Require the continued use and availability of parking and loading areas to provide parking for the use they were intended to serve

Section 18.72.040.B (General Requirements)

- Reintroduce the prohibition of parking automobiles in the front yard landscaping of a property

Miscellaneous Code Amendments



Section 18.108.090.I (Temporary Use Permits)

- Clarify that the director shall approve a cash deposit for temporary uses to cover the cost of cleaning the site after the temporary use ceases to exist

Miscellaneous Code Amendments



Recommendation

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

Findings

1. The proposed amendment is consistent with the General Plan and any applicable specific plan as provided by GC Section 65860
2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City
3. The proposed amendment is internally consistent with other provisions of the zoning code

Questions?



CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

AUTHORIZE INITIATION OF NEGOTIATIONS WITH DUB BASEBALL AND USA BMX FOR DEVELOPMENT AT BUTTERFIELD PARK SITE

RECOMMENDATION(S)

Authorize staff to pursue lease/partnership agreements with Dub Baseball and USA BMX for development of portions of the Butterfield Park site.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

2022-2023 Strategic Priorities

Fiscal Sustainability

Economic Development

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

REPORT NARRATIVE:

On August 3, 2022 the City Council received a report on partnership opportunities on the City-owned parkland near the intersection of Butterfield Boulevard and Monterey Road. The City property at Butterfield Boulevard and Monterey Road has been identified as a potential new park space containing both ball fields, a BMX pump track and other amenities. The property is approximately 8 acres and has been designated for future park use. This property has been environmentally cleared for park development with the designated amenities through a CEQA process. Additionally, the City has recently purchased approximately 20 additional acres of adjacent property. However, this recently purchased property is outside the City limits and within the County, and development of this property is planned for further down the road.

The initial development process for this park site was completed for an application to the State of California Department of Park and Recreation for its Statewide Parks Program. Unfortunately, due to the competitive nature of the grant program and the City's demographic makeup, the City's grant applications for the program were not successful. However, during the grant application process, the City engaged potential partners who were willing to take on significant portions of the park maintenance, as the

City does not have the funding available to increase park maintenance services on a Citywide basis. Over the past two years, the City has continued to see interest from prospective partners in the development of this property for both the benefit of the community and the partner organizations. Based on this interest, the City released an "Invitation to Partner" to allow the City to more formally explore potential partners in the development and operation of the park and recreation space. Without partners, the full development of even the first 8 acres will be at least a decade into the future. In submitting proposals, potential partners were asked to use the criteria outlined in developing their letters of interest. The required criteria in the RFP included:

- Provides a direct benefit to the public and an opportunity for direct use by the public.
- Aligns with the environmental documents prepared for the site.
- Safe use of the site from a public safety perspective.
- Compatible with the future development of park space on the site and adjacent site.

Additionally, desired criteria were also included in the RFP:

- Contribution of capital funding for the development of park amenities.
- Contribution of operational funding to support overall site maintenance beyond maintenance of the direct amenities used by the partner organization.

Following the update on August 3, City staff began moving forward with a design consultant and the two organizations to space plan for a build out with both organizations and City park facilities on the 8 acres. Additionally, the City would work to develop a general partnership framework with both partners on site development. Following this work, the next step was to return to the Council with a site development plan, which is the purpose of this item. An initial site development/space planning plan has been created and is included as Attachment 1. As can be viewed in the site plan, the site can be segmented into three areas. The first on the west side of the site includes the BMX area. The second, on the east side of the site, includes the baseball field area. The third in the center would include public park space and shared parking space. The additional undeveloped 20 acres is planned for use for overflow parking and also could include walking trails in the near term, until it is formally developed down the road.

The existing site plan demonstrates that there will be adequate space for both partners on the site. If approved by the Council, the next step would be to develop agreements with both organizations for the operation of the site. It is envisioned that land lease agreements would be developed with each organization and ultimately the site would be developed with three components.

1. City non-leased property for public park space and shared amenities. City to lead operations and maintenance, with identified payment from groups for shared

costs.

2. Baseball leased property to be developed privately for the organization's use and required public access use of the facilities.
3. BMX leased property to be developed privately for the organization's use and required public access use for the facilities.

The public access and use of the areas provided by the two partner organizations is still to be determined through the agreement development process, but may be achieved through a number of means. For the baseball facility, there could be public open hours for the general public and/or low cost field rentals for local youth sports groups. For BMX, it could mean local track practice days for the community. While much planning still needs to be done, it is important to note that the development of the 8 acres with both partners does limit the amount of space available for general park elements. While this may be viewed negatively, it should be noted that more public facilities could be pushed to the neighboring site in the future and that the City has very limited funds for development at this time. It also should be noted that both partner uses will bring facilities to the community that will be used by the community and provide recreational benefits.

One additional benefit from a development perspective of the current design concept is that development of the site can occur in numerous phases as funding for specific elements becomes available. This could come from both the City and the partners.

On November 15, 2022, the Parks and Recreation Commission reviewed the site plan and has recommended to the City Council that the City move forward in negotiating partner agreements with both organizations. In addition to recommending approval, the Commission recommended that City staff work through negotiations to plan for as much public access as possible. Should the Council approve negotiations with the two organizations, City staff would begin those immediately and plan to return to the City Council in early 2023 for review of those proposed agreements.

COMMUNITY ENGAGEMENT:

Involve/Collaborate

Through the prior grant process, significant outreach to the community was performed on the design of the site. It is the intent of staff to utilize the existing design as the basis for any future partnership development. The proposed collaboration with the community partners is critical for the financial feasibility of the project. The invitation for letters of interest was posted on the City website and sent directly to local sports organizations.

ALTERNATIVE ACTIONS:

The City Council could provide alternate direction to City staff.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Developing new park and recreation facilities is a central tenet of the Bikeways, Trails, Parks and Recreation Master Plan that the Council adopted in July 2017. The City

Council authorized a grant application for development of this park site in July 2019 and again in October 2020. The City Council received an update on the partnership opportunities on August 3, 2022. The Parks and Recreation Commission reviewed this item and recommended moving forward with partnership agreement negotiation on November 15, 2022.

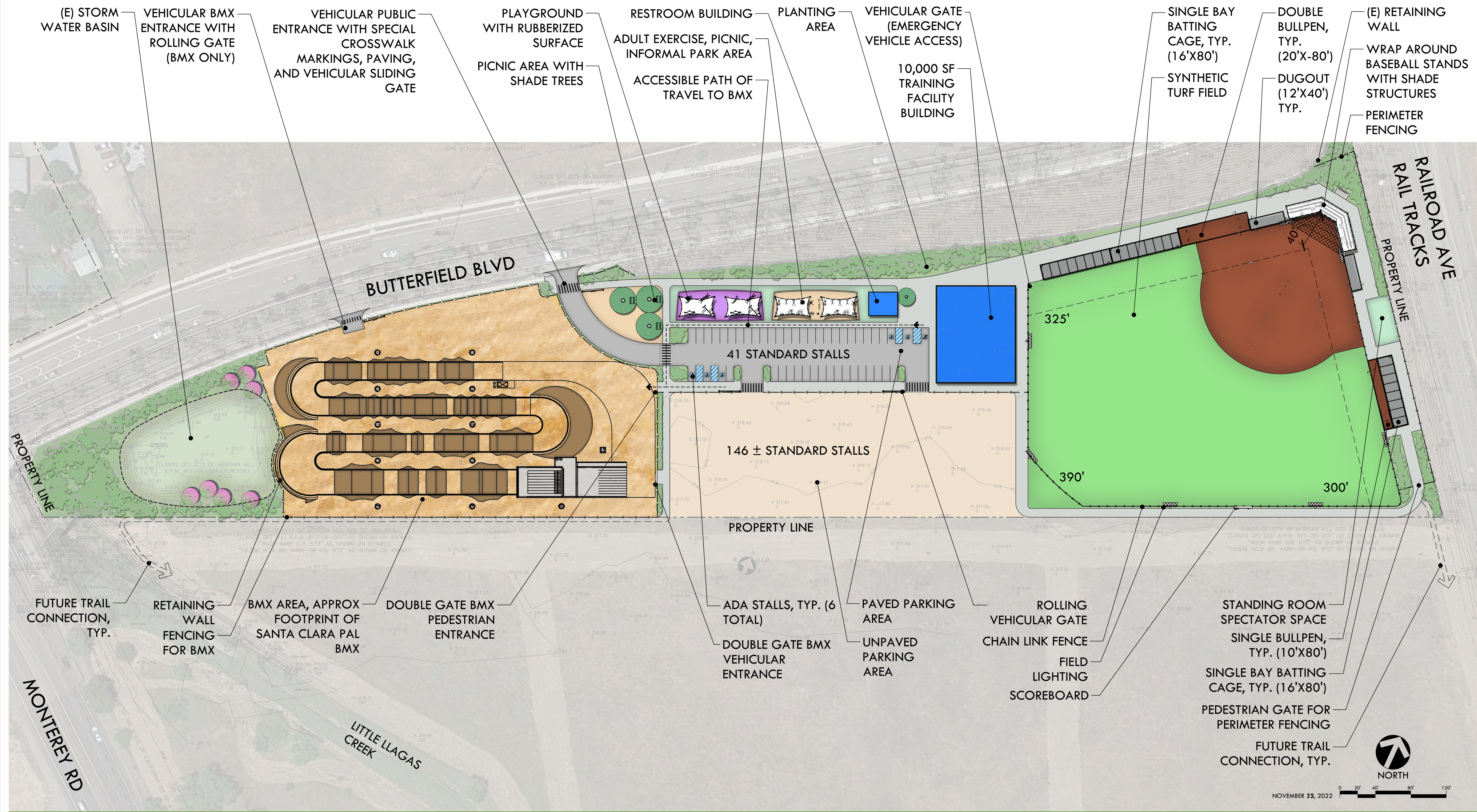
FISCAL AND RESOURCE IMPACT:

Moving forward with negotiating the partnership agreements would not create significant fiscal impact, but will take significant staff resources within the Public Services Department. Park planning efforts are an anticipated function within the Department.

CEQA (California Environmental Quality Act):

Mitigated Negative Declaration

An environmental assessment, including an Initial Study and Mitigated Negative Declaration, has been prepared for the project by David J. Powers & Associates, Inc. in conformance with CEQA for the initial site plan and uses.





USA BMX

The Foundation for a Better Ride

Proposal for Development and Operations

Butterfield Park
City of Morgan Hill





Table of Contents

- A. cover Letter signed by an individual authorized to make commitments on behalf of the organization.
- B. Description of the organization's proposed goals and interests for use of the site.
- C. Detail of the organization's proposed operations on the site.
- D. A description of the organization's past experience managing the type of operation proposed.
- E. An outline of how the proposed operation and development on the property will meet the criteria outlined in this ROI.
 - a. Required Criteria:
 - i. Provides a direct benefit to the public and an opportunity for direct use by the public.
 - ii. Aligns with the environmental documents prepared for the site.
 - iii. Safe use of the site from a public safety perspective.
 - iv. Compatible with the future development of park space on the site and adjacent site.
 - b. Desired Criteria
 - i. Contribution of capital funding for the development of park amenities.
 - ii. Contribution of operational funding to support overall site maintenance beyond maintenance of the direct amenities used by the partner organization.
- F. Other details of the organization's operations intended for the property that are pertinent to the initial discussion.
- G. Desired financial arrangement and terms with the City of Morgan Hill.
- H. If non-profit, please include proof of organization's standing as a non-profit.
- I. Proposed Concept Plan Attached



A. Cover Letter

To:
City of Morgan Hill, CA

Date: May 31, 2022

From:
Justin Travis, Director of New Track Development
USA BMX

RE: USA BMX Cover Letter of Project Support

USA BMX and the USA BMX Foundation fully support the construction of a USA BMX Sanctioned Track at the future location of Butterfield Park. Upon the completion of the BMX track, USA BMX will support the project with full sanction status, local program creation and event scheduling. The USA BMX Foundation will work closely with the city and recreation department in an effort to implement after school and recreational educational programs.

Further, USA BMX recognizes the local non-profit organization, The Foundation for a Better Ride, as a highly capable and high performing organization in good standing. The Foundation for a Better Ride has grown and operated the largest youth racing program in the United States and is capable of providing top level event programming and coaching to the City of Morgan Hill and its residents.

In an effort to enrich the collaboration between the City of Morgan Hill, and any additional stakeholders and USA BMX, USA BMX will guarantee at least one sport tourism economic impact event each year through our State Championship Series (SCR). In addition to the State Championship Series event, USA BMX will give priority consideration for both Regional Events (Gold Cup Qualifiers) through the Gold Cup Application process and National Events through the National RFP process; based on the following criteria.

- Completion of the National Level USA BMX Racing facility per the scope of work and master plan developed by Action Sports Design and built by ABA Ethos.
 - Alternatively, if a National Level Racing Facility is not initially built, once the track has grown to National Capable, it may submit for a National through the National RFP Process
- The first State Championship series event will take place during the second season of operations.
 - If the facility is completed and local events are held in 2022, then the first SCR will be awarded in 2023
- Morgan Hill BMX track must host at least 20 local BMX races for each full season it is open prior to a USA BMX National or Gold Cup Championship Event.

The 2023 National RFP is attached as reference.

Justin Travis

05/31/2022
Date:



USA BMX

B. Proposed Goals

Our goal is to utilize the site of the future Butterfield park to develop and operate a Sanctioned USA BMX local racing program.

USA BMX programs are beginner and family inclusive programs, allowing racers of all ages to compete together and share experiences through thoughtfully designed weekly coaching, practice and competitive cycling events.





C. Proposed Operations

- Operations will include weekly racing, coached practices, and concession sales.
- These will happen five days per week for 11 months.
- The initial BMX Track will be an all dirt facility that will require daily maintenance.
 - Due to this situation, the track should be operated in a similar manner to a swimming pool; it is open to the public, but only during supervised, sanctioned activities.
 - If a point is reached where the track surface is able to be upgraded to a surface that does not require maintenance, and the city is willing to insure the facility during non-sanctioned times (similar to a skatepark) the facility will have the ability to be open daily during hours without supervision.
- A sample/proposed schedule is below.

BMX Racing League: Sessions are 6 weeks each. Offered in Spring, Summer and Fall

BMX Summer Camps and Special Events will be submitted via a separate schedule

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Key
11:00 AM						Sanctioned Racing		
12:00 PM						Sanctioned Racing		
1:00 PM						Sanctioned Racing		
2:00 PM						Sanctioned Racing		
6:00 PM			Coached Lessons	Sanctioned Racing	Coached Lessons			Sanctioned Racing
7:00 PM	BMX Racing League		Coached Lessons	Sanctioned Racing	Coached Lessons			BMX Racing League
8:00 PM	BMX Racing League			Sanctioned Racing				Coached Lessons

D. Past Experience

The Foundation for a Better Rider parents group has operated the USA BMX facility located in Santa Clara for six years.

During this time, the yearly membership was increased from 515 members to 1333 members. In this same period racing was increased from twice a week to three times per week and average racer attendance was increased from 54 participants per event to 165 participants per event.

The above numbers reflect competition days and do not take into account the additional two days per week of coached practice sessions or summer camps.

This level of participation is higher than most other recreational sports and happens 11 months a year, so facility use is not limited to traditional sport seasons.

The Foundation for a Better Ride is currently the number one USA BMX parents organization in the United States.



E. Criteria

Required Criteria:

- Provides a direct benefit to the public and an opportunity for direct use by the public.
 - The residents of Morgan Hill do not currently have access to recreational cycling programs in any form. This directly benefits all families that are looking for alternative, programmed and coached activities outside of traditional team sports.
 - The data from Santa Clara shows that there are more residents not participating in traditional sports than are participating in them.
 - The conclusion is that further investments in traditional sporting activities does not benefit the majority of the community.
- Aligns with the environmental documents prepared for the site.
 - BMX racing is non-motorized and when the surface of the track is prepared properly uses very little natural resources for maintenance.
- Safe use of the site from a public safety perspective.
 - During all programmed activities, organization staff is present.
- Compatible with the future development of park space on the site and adjacent site.
 - BMX racing is complimentary of future park space as many participants and their families enjoy playgrounds, sheltered picnic areas and multi-use spaces.

Desired Criteria

- Contribution of capital funding for the development of park amenities.
 - Unlike many capital projects of this nature, USA BMX owns the events that are used to drive tourism and economic development.
 - USA BMX is able to guarantee State and Regional level events that will drive as much as \$500,000/year in Economic Impact to your city.
 - If a National Event is awarded the Economic Impact averages \$2.1 Million.
- Contribution of operational funding to support overall site maintenance beyond maintenance of the direct amenities used by the partner organization.
 - The majority of BMX Racing is based on the pay-play model allowing for BMX facilities to be completely self-funding on the operational and maintenance levels.
 - BMX facilities are not only operationally sustainable but are able to operate with a positive revenue balance allowing them to re-invest in their programs and facilities.



F. Further Details

A proposed site layout is attached that would allow for the use of a projected 100 participants and 250 total people on site each race day.

The USA BMX Track will serve between 15,000 and 20,000 athletes annually and between 30,000 and 50,000 total visitors annually.

G. Desired Financial Arrangement

Depending on the available infrastructure and experience of the local organization a typical USA BMX track can cost up to \$2,000,000 at full value.

- The Foundation for a Better Ride is able to work with the city of Morgan Hill to develop a USA BMX track at a fraction of the cost to the city.
- As the Foundation for a Better Ride will be funding the majority of the project in return we ask to operate for 5 years with no lease payments.
- After 5 years the Foundation for a Better Ride is prepared to pay a fee of \$2 per participant (not spectator) for every event that happens at the facility.
 - This will allow the program a fair chance for growth without paying more than it is able as the program starts. This also allows the city to receive increased revenue as the program continues to grow.
- Once the program is operating at capacity, the city is projected to receive between \$15,000 - \$20,000 per year in ongoing use fees.

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: **MAY 20 2014**

FOUNDATION FOR A BETTER RIDE
17513 WOODRIDGE CT
SALINAS, CA 93908

Employer Identification Number:
46-0551808
EIN:
17053317335003
Contact Person:
CUSTOMER SERVICE ID# 31954
Contact Telephone Number:
(877) 829-5500
Accounting Period Ending:
December 31
Public Charity Status:
170(b)(1)(A)(vi)
Form 990 Required:
Yes
Effective Date of Exemption:
April 20, 2012
Contribution Deductibility:
Yes
Addendum Applies:
No

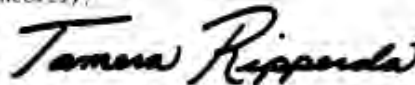
Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. We determined that you are a public charity under the Code section(s) listed in the heading of this letter.

Please see enclosed Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, for some helpful information about your responsibilities as an exempt organization.

Sincerely,



Director, Exempt Organizations

Enclosure: Publication 4221-PC

Letter 947



Entity Status Letter

Date: 5/19/2022

ESL ID: 3106578473

Why You Received This Letter

According to our records, the following entity information is true and accurate as of the date of this letter.

Entity ID: 3470464

Entity Name: FOUNDATION FOR A BETTER RIDE

- ☒ 1. The entity is in good standing with the Franchise Tax Board.
- ☐ 2. The entity is **not** in good standing with the Franchise Tax Board.
- ☒ 3. The entity is currently exempt from tax under Revenue and Taxation Code (R&TC) Section 23701 d.
- ☐ 4. We do not have current information about the entity.
- ☐ 5. The entity was administratively dissolved/cancelled on _____ through the Franchise Tax Board Administrative Dissolution process.

Important Information

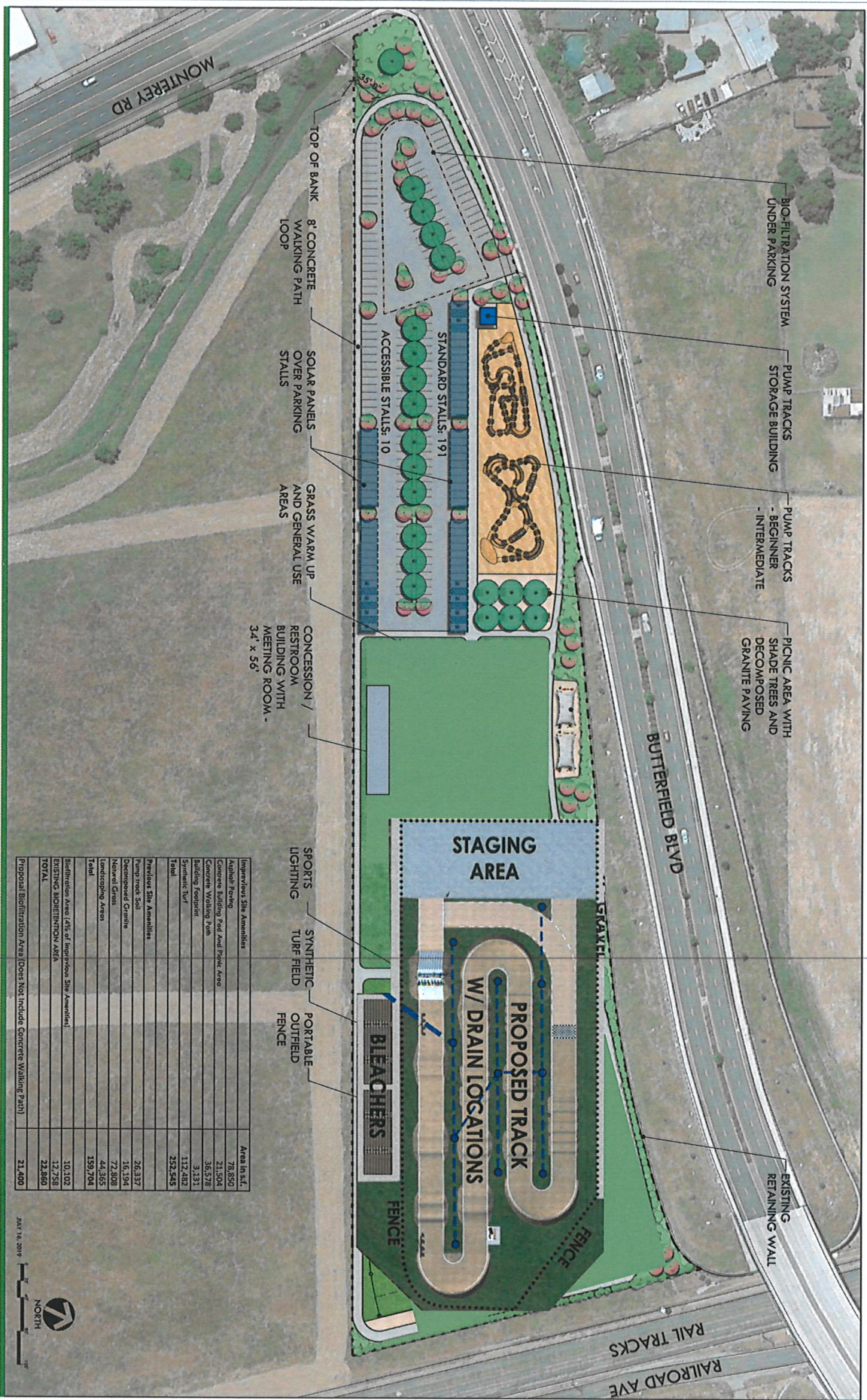
- This information does not necessarily reflect the entity's current legal or administrative status with any other agency of the state of California or other governmental agency or body.
- If the entity's powers, rights, and privileges were suspended or forfeited at any time in the past, or if the entity did business in California at a time when it was not qualified or not registered to do business in California, this information does not reflect the status or voidability of contracts made by the entity in California during the period the entity was suspended or forfeited (R&TC Sections 23304.1, 23304.5, 23305a, 23305.1).
- The entity certificate of revivor may have a time limitation or may limit the functions the revived entity can perform, or both (R&TC Section 23305b).

Connect With Us

Web: ftb.ca.gov

Phone: 800.852.5711 from 7 a.m. to 5 p.m. weekdays, except state holidays
916.845.6500 from outside the United States

TTY/TDD: 800.822.6268 for persons with hearing or speech impairments



Improvised Site Amenities		Area in s.f.
Asphalt Paving	78,850	
Concrete Building Foot And Pave Area	21,504	
Concrete Walking Path	36,578	
Building Footprint	3,131	
Synthetic Turf	112,482	
Total	252,245	
Proposed Site Amenities		Area in s.f.
Pump Track Soil	26,337	
Decomposed Granite	16,194	
Natural Grass	72,808	
Landscaping Areas	44,555	
Total	159,904	
Biodiversity Area (45% of Improvised Site Amenities)		103,022
EXISTING BIODIVERSITY AREA		12,758
TOTAL	21,000	
Proposed Biofiltration Area (Does Not Include Concrete Walking Path)		21,000



Preliminary Design Concept
Butterfield Park
 Morgan Hill, CA



To City of Morgan Hill Staff and Planning Commission,

This letter is in response to the Request for Partnership posted on the City of Morgan Hill website on April 28, 2022. This letter is concerning the potential park complex on the city-owned 8-acre parcel on the corner of Monterey Road and Butterfield Boulevard.

The Dub Baseball/Softball Foundation, Dub Baseball/Softball, LLC, and KPI – Kinetic Performance Institute are eager and willing to partner with the City of Morgan Hill on a ballfield complex at the proposed site. Our vision for the 8-acre site is to build a full baseball field with artificial turf and lighting, along with a 10,000 square foot indoor athlete training facility that can support the operations on the site. We are also interested in adding a smaller softball field on the site, depending on the initial cost of the first phase of the buildout. We have considerable funds and resources to dedicate to the building of this ballfield and training complex and we are ready to partner with the city on the completion of this project. We also have the ability to provide full operational capacity for the site and complex.

There would be numerous benefits to partnering with our brand portfolio on this project. First, the Dub program and accompanying non-profit and Fictitious Business Name, are a home-grown business that will be celebrating its 10th year in August of 2022. We have nurtured thousands of local athletes during the decade we have been in business and we have grown considerably as a business in the last few years. This ballfield complex will be a signature offering for Morgan Hill that will have a lasting impact on local youth for decades to come. Local youth will no longer need to drive to neighboring cities to enjoy a world-class ballfield, hundreds of youth each week will be able to use and develop on a state of the art turf field right here in Morgan Hill. The site also represents a significant economic growth opportunity for local businesses. Currently, we have hundreds of athletes that live outside of Morgan Hill that drive to our facility weekly to enjoy our services and that would increase exponentially with the larger footprint of a ballfield complex, along with the ability to host lucrative tournaments on the weekends. Along with serving local athletes, this complex would bring hundreds and thousands of out of town visitors to Morgan Hill every week to support our thriving businesses and community. A complex of this nature will also continue to separate Morgan Hill from other, completing suburban destinations in the Bay Area.

We have reviewed the environmental documents that have been designed for this site and we believe our proposal fits in well with the vision and design for the site. We are willing to work with the City of Morgan Hill and appropriate designers to ensure our vision is aligned with the appropriate reviews already performed on the site. We are also willing to lead the charge if certain amendments need to be made to accommodate

our vision for the site. We believe our vision will have the highest positive impact on the local community and we are prepared to dedicate resources towards that vision.

We currently have a unique capacity to step in and immediately operate this site safely and efficiently. We have a staff of 20 coaches that is well versed in safely operating youth trainings and practices. We have existing systems and staff in place to ensure all operations at the site are effectively managed with a safety first mentality. Our entire staff is CPR/AED certified, have gone through concussion training, have had background checks, and we plan on dedicating a portion of our staff to this project. We will have our entire staff on site with dedicated members to ensure the site is always maintained and safely operated to a high standard.

We are well positioned to be able to operate this site properly and be a partner with the City on the adjacent site in the future. We have been operating club baseball teams for 10 years and have hosted dozens of teams on local fields for tournaments. We have a strong partnership with Northern California Travel Baseball, one of the premier tournament providers in the entire nation. With our existing infrastructure and experience, we can seamlessly operate the day to day operations of a large ballfield complex, as well as handle the huge operation of running tournaments on the weekends. Both local practices and events during the week, as well as tournaments on the weekend, will be huge benefits to the local youth and economy.

We have significant capital to contribute to this project to ensure it comes to fruition in our vision. We have up to \$2.4 million dollars earmarked for this project, with the ability to potentially raise more, but the level of our contribution would be contingent on reaching an amicable agreement with the City of Morgan Hill. With the construction of a turf field(s) on the site and potential adjacent property, on-going and operational maintenance would be minimal. We currently have the staffing in place to handle the day to day operational aspects of running a site with ballfields, and are willing to contribute more staffing and resources to the project if deemed necessary.

We have very serious interest in developing this site and continuing Morgan Hill's desire to be a sport and recreation destination. We have unique capacities to assist in the development and operation of this site that will be a great benefit to the Morgan Hill community. Please feel free to reach out to me with any questions or further details at 408-623-2520 or erik@kpimh.com.

With Honesty and Respect


Erik Wagle

President
Dub Baseball/Softball, LLC & KPI-Kinetic Performance Institute

Executive Director
Dub Baseball/Softball Foundation (non-profit)

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Tanya Carothers, Environmental Services Administrator

APPROVED BY: City Manager

INTRODUCE AN ORDINANCE UPDATING THE CITY WATER WASTE PROVISIONS CATEGORICALLY EXEMPT FROM CEQA UNDER SECTION 15307

RECOMMENDATION(S)

1. Waive the first and second reading of the ordinance; and
2. Introduce the ordinance updating the City's water waste provisions.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Protecting the Environment

Advancing Regional Initiatives

REPORT NARRATIVE:

The purpose of this agenda item is to introduce updates to the City's Water Waste Ordinance to include the following two items: 1) prohibit new private water wells; and 2) adopt the State ban on watering of non-functional turf into local regulations (Attachment 1). Climate change requires Californians to use water more wisely and to prepare for more frequent and persistent periods of limited water supply. Therefore, the proposed ban on new private water wells and on watering of non-functional turf will be written into the City's permanent water use restrictions which is in alignment with State goals and consistent with prior decisions by the City to make water conservation the way of life.

Prohibition of New Private Water Wells

Previously, some single family home developments would look to utilize private wells for the provision of landscape areas within the development. While these installations might reduce costs for development in the short term, the wells utilize the same groundwater supply as the municipal water system. Considering the ongoing drought conditions, the updated ordinance proposes a ban on new private water wells to provide the following benefits:

- 1) eliminate the risks of cross connections to the City's water lines which can occur when private water wells are installed;
- 2) eliminate new sources of untracked water use; and
- 3) ensure the use of the City's Advanced Metering Infrastructure (AMI) System to inform residents of leaks and provide automated reporting of water waste to the City.

Ban on Watering of Non-Functional Turf

On May 24, 2022, the State Water Board adopted a statewide emergency water conservation regulation that bans using potable (drinkable) water on decorative or non-functional grass at commercial, industrial, and institutional properties (CII Properties) – including areas of non-functional turf under homeowners' association control. On September 13, 2022, the Santa Clara Valley Water District (Valley Water) amended its water waste enforcement ordinance to allow Valley Water to enforce the State's ban on watering of non-functional turf on CII Properties. Valley Water asked that local agencies also update their ordinances to create regional consistency and easier local enforcement where violations could be cited under local codes.

Consistent with the State and Valley Water's ban on watering of non-functional turf, the City Water Waste Ordinance update will ban using potable water on non-functional turf at CII Properties – including areas of non-functional turf under homeowners' association control. Additionally, the City ban will also include a ban on watering of non-functional turf at common areas of mobile home parks, apartments, condominiums, and townhome complexes in order to apply the ban equitably across all property types within the City.

To help with landscape conversion, the City will continue to direct the community to the Valley Water Landscape Rebate Program which is available to Santa Clara County homeowners, apartments, and commercial sites. The program offers rebates to properties wanting to make water-efficient upgrades to their high water-use landscape (e.g., pools and turf), through conversion to low water-use landscape. The program also supports retrofit of existing irrigation equipment with approved high-efficiency irrigation equipment.

COMMUNITY ENGAGEMENT:

Inform

The City advertised the Water Waste Ordinance Update twice in the Weekly 4-1-1, and in a post on social media. The 50 top landscape irrigators in the City were sent letters informing them of the ordinance update and inviting them to attend a Community Meeting to ask questions and to provide comments. The Community Meeting was held on November 14, 2022.

ALTERNATIVE ACTIONS:

The Council could decline to adopt one or both of the Water Waste Ordinance updates. Should new private water wells continue to be allowed in the City, then challenges related to new private water wells will persist including the potential for polluted potable water due to cross connections, and water waste with no metered accountability.

Should the City choose to not adopt the ban on watering of non-functional turf, then the City would have to defer to Valley Water for enforcement. Additionally, once the current drought is declared to be over, properties would have the option to re-establish their decorative non-functional turf which is not consistent with City goals to further the conservation of water and to prevent the waste of water.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City's water waste ordinance was amended by the Council in 2017, and again in April 2022.

FISCAL AND RESOURCE IMPACT:

There are no direct fiscal impacts associated with adopting the updated ordinance as it does not change the fiscal impacts (namely reduced water sales revenues and increased conservation program costs) associated with droughts and other water shortages that already exist under the current ordinance. Administering the City's water waste and drought response programs are activities included in the work program of the Public Services Department.

CEQA (California Environmental Quality Act):

Categorical Exemption

This Ordinance and actions taken hereafter pursuant to this Ordinance are exempt from the California Environmental Quality Act as actions intended to preserve and protect natural resources (CEQA Guidelines section 15307).

ORDINANCE NO. ~~XXXX~~, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL
AMENDING SECTION 13.04.010 (DEFINITIONS) AND
SECTION 13.04.330 (WASTING OF WATER AND
DROUGHT EMERGENCIES) OF CHAPTER 13.04 (WATER
SYSTEM) OF TITLE 13 (PUBLIC SERVICES), TO ADD
REGULATIONS PROHIBITING THE USE OF POTABLE
WATER ON NON-FUNCTIONAL TURF AND
PROHIBITING NEW PRIVATE WATER WELLS

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

Section 1. Section 13.04.010 (Definitions) of Chapter 13.04 (Water System) of Title 13 (Public Services) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

13.04.010 – Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

- A. “CII Property” means commercial, industrial, and institutional properties. For the purpose of this chapter, CII Properties include: a) Homeowners’ Associations-owned property; b) common areas of mobile home parks, and apartment, condominium, and townhome complexes; c) manufacturing plants and facilities; d) industrial and commercial construction sites; e) retail and shopping malls; f) hospitals; g) religious institutions; h) government facilities (including parks); i) restaurants; j) grocery stores; k) educational institutions; l) sporting arenas; m) office buildings; and n) other properties that provide commercial, industrial, and institutional services.
- B. “Functional Turf” means turf that is needed to serve a human function including: a) turf used for recreational purposes and civic or community events; b) turf located on the property of a single-family home; c) turf located on the property of a park used for sport, gathering, or recreation; d) turf on a golf course used directly for sport (driving ranges, chipping, and putting greens, tee boxes, greens, fairways and rough); e) turf located on a school field used for sport, gathering, or recreation; f) turf on a sports field; g) turf needed for pet relief at veterinarians’ offices, boarding facilities, and animal shelters; h) turf within areas of cemeteries used for visitation and gathering; i) species of turf that have a plant factor ≤ 0.3 per the California Code of Regulations Section 491 Title 23; and j) turf in areas that are watered directly beneath tree canopies and shrubs.
- ~~B.C.~~ “Person” means any natural person or persons, corporation, public or private entity, governmental agency or institution, or any other user of water provided by the city.
- ~~B.D.~~ “Landscape irrigation system” means an irrigation system with pipes, hoses, spray heads, or sprinkling devices that are operated by hand or through an automated system.
- E. “Non-Functional Turf” means irrigated lawn grass area not meeting the definition of Functional Turf. Non-functional Turf includes but is not limited to: a) streetscape turf which is located along private or public streets (e.g., mow strips on either side of street), along streetscape sidewalks (narrow spaces of turf that line the sidewalk on private or public property), along driveways and parking lots within the community, business streetscape

frontage areas, and within medians within roundabouts; b) turf that is solely ornamental, and c) other turf that is not Functional Turf.

C.F. "Single pass cooling systems" means equipment where water is circulated only once to cool equipment before being disposed.

D.G. "Potable water" means water which is suitable for drinking.

E.H. "Recycled water" means the reclamation and reuse of non-potable water for beneficial use as defined in Title 22 of the California Code of Regulations.

F.I. "Station" means an area of irrigated landscape controlled by a single irrigation valve.

G.J. "Superintendent" means the superintendent of water of the city, and any act in this chapter required or authorized to be done by the superintendent, may be done on behalf of the superintendent by an authorized officer or employee of the water department.

(Ord. 30 N.S. §§ 2.01, 2.02, 1948)

(Ord. No. 1932 N.S., § 4, 5-27-2009)

Section 2. Section 13.04.330 (Wasting of Water and Drought Emergencies) of Chapter 13.04 (Water System) of Title 13 (Public Services) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

13.04.330 Wasting of water and drought emergencies

A. Applicability

1. The provisions of this chapter apply to any person in the use of any potable water in the city.
2. The provisions of this chapter do not apply to uses of water necessary to protect public health and safety or for essential government services, such as police, fire and other similar emergency services.
3. The provisions of this chapter do not apply to the use of recycled water, with the exception of subsection B (1) of this section.
4. The provisions of this chapter do not apply to the use of water by commercial nurseries and commercial growers to sustain plants, trees, shrubs, crops or other vegetation intended for commercial sale, to the use of water in a community garden providing garden plots to the public, or to home fruit and vegetable gardens less than 200 square feet.
5. This chapter is intended solely to further the conservation of water. It is not intended to implement nor supersede any provision of federal, State, or local statutes, ordinances, or regulations relating to protection of water quality or control of drainage or runoff.

B. Prohibition Against Waste: The following water conservation requirements are effective at all times and are permanent. Violations of this section will be considered waste and an unreasonable use of water.

1. Limits on Watering Hours: Watering or irrigating of lawn, landscape or other vegetated area with potable water is prohibited between the hours of 9:00 a.m. and 7:00 p.m. Pacific Standard/Daylight Savings Time on any day, except 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. Watering or irrigating within 48 hours

- after ¼ inch or more of precipitation is received is prohibited.
2. **Limit on Watering Duration:** Watering or irrigating of lawn, landscape or other vegetated area with potable water using a landscape irrigation system or a watering device that is not continuously attended is limited to no more than fifteen (15) minutes watering per day per station/valve/zone. This subsection does not apply to landscape irrigation stations/valves/zones that exclusively use drip type irrigation systems, soaker hoses, bubblers, or high efficiency sprinkler nozzles that have a precipitation rate of less than two (2) gallons per hour; to systems controlled by weather-based irrigation controllers; and systems having stream rotor sprinklers with a 70% or greater efficiency standard.
 3. **Limit on Watering Days:** During the months of March through October, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to three days per week on a schedule established and posted by the city. During the months of November through February, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to no more than one day per week on a schedule established and posted by the city. This provision does not apply to the following uses of water:
 - a. 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;
 - b. 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;
 - c. To landscape irrigation zones that are controlled by an activated weather-based irrigation controller;
 - d. To watering or irrigating a newly installed or significantly rehabilitated landscape for the first sixty days after the first plant is placed in the ground. For the purposes of this section, a significantly rehabilitated landscape is a landscape in which 25% or more of a property's landscape is replaced.
 4. Watering of Turf: Potable water shall not be applied to Non-Functional Turf at commercial, industrial or institutional sites (CII Properties), including Homeowner's Association-owned property and common areas of mobile home parks, and apartment, condominium, and townhome complexes. The use of potable water on turf is not prohibited to the extent necessary to ensure the health of trees and other perennial non-turf plantings or to the extent necessary to address immediate health and safety, sanitation, or fire protection needs as determined by the fire marshal. Unless otherwise permitted by the fire marshal, all watering permitted must be completed in a manner that prevents runoff.
 - 4.5. **No Excessive Water Flow or Runoff:** Watering or irrigating of any lawn, landscape or other vegetated area in a manner that causes or allows excessive water flow or runoff onto an adjoining sidewalk, driveway, street, alley, gutter or ditch is prohibited.
 - 5.6. **No Washing Down Hard or Paved Surfaces:** Washing down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking areas, tennis courts, patios or alleys, is prohibited except when necessary to alleviate safety or sanitary hazards, and then only by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off device, a low-

- volume, high-pressure cleaning machine equipped to recycle any water used, or a low-volume high-pressure water broom. Washing down structures, fences, and hard surfaces expressly for the purposes of preparing a surface for the application of a surface coating is not prohibited provided it does not occur more than one time in any twelve (12) month period.
- ~~6.7.~~ 6.7. **Obligation to Fix Leaks, Breaks or Malfunctions:** Excessive use, loss or escape of water through breaks, leaks or other malfunctions in the water user's plumbing or distribution system for any period of time after such escape of water should have reasonably been discovered and corrected and in no event more than ten (10) days of receiving written notice from the city, is prohibited.
- ~~7.8.~~ 7.8. **Recirculating Water Required for Water Fountains and Decorative Water Features:** Operating a water fountain or other decorative water feature that does not use recirculated water is prohibited.
- ~~8.9.~~ 8.9. **Limits on Washing Vehicles:** Using water to wash or clean a vehicle, including but not limited to any automobile, truck, van, bus, motorcycle, boat or trailer, whether motorized or not is prohibited, except by use of a hand-held bucket or similar container or a hand-held hose equipped with a positive self-closing water shut-off nozzle or device. This subsection does not apply to any commercial car washing facility that incorporates a recycled or recirculating water system in its operation.
- ~~9.10.~~ 9.10. **Drinking Water Served Upon Request Only:** Eating or drinking establishments, including but not limited to a restaurant, hotel, cafe, cafeteria, bar, or other public place where food or drinks are sold, served, or offered for sale, are prohibited from providing drinking water to any person unless expressly requested.
- ~~10.11.~~ 10.11. **Commercial Lodging Establishments Must Provide Guests Option to Decline Daily Linen Services:** Hotels, motels and other commercial lodging establishments must 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.
- ~~11.12.~~ 11.12. **No Installation of Single Pass Cooling Systems:** Installation of single pass cooling systems is prohibited in buildings requesting new water service.
- ~~12.13.~~ 12.13. **No Installation of Nonrecirculating in Commercial Car Wash and Laundry Systems:** Installation of nonrecirculating water systems is prohibited in new commercial conveyor car wash and new commercial laundry systems.
- ~~13.14.~~ 13.14. **Restaurants Required to Use Water Conserving Dish Wash Spray Valves:** Food preparation establishments, such as restaurants or cafes, are prohibited from using non-water conserving dish wash spray valves.
- ~~14.15.~~ 14.15. **Commercial Car Wash Systems:** All commercial conveyor car wash systems must have installed operational recirculating water systems or must have a waiver of this requirement from the city.
- ~~15.16.~~ 15.16. **Construction Activities:** Use of potable water for construction site dust control, compaction, and other site activities suitable for nonpotable water is prohibited if recycled water is available within five miles of the construction site.
- ~~16.17.~~ 16.17. **Plumbing System Testing:** Use of potable water for plumbing system testing is prohibited unless required by law or alternative testing procedures are determined to be unsuitable by City inspection staff.
- ~~18.~~ 18. **Pool Covers:** Constructing a pool without the inclusion of a pool cover is prohibited. All contracts for the construction of a new pool entered into after September 2, 2015 shall include the provision of a pool cover.

17.19. Wells: New private water wells are prohibited.

- C. Level 1 Water Supply Shortage (1% - 10% reduction): A Level 1 Water Supply Shortage (“Alert” stage) exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a 1% - 10% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 1 Water Supply Shortage condition, the City will implement an active communication campaign asking the community to conserve water in compliance with the City’s permanent water use restrictions.
- D. Level 2 Water Supply Shortage (11% - 20% reduction): A Level 2 Water Supply Shortage (“Severe” stage) exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a 11% - 20% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 2 Water Supply Shortage condition, the City will:
1. Evaluate the water use of individual water utility customers and distribute targeted communications to those water utility customers that are high users or appear to be violating the City’s water use rules; and
 2. Continue implementing all Level 1 response activities.
- E. Level 3 Water Supply Shortage (21% - 30% reduction): A Level 3 Water Supply Shortage (“Critical 1” stage) exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a 21% - 30% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 3 Water Supply Shortage condition, the City will:
1. Actively enforce the City’s current restrictions regarding the limits on watering days contained in Section 13.04.330 B (3);
 2. Suspend exemptions 13.04.330 B (3)(c) and 13.04.330 B (3)(d) to Section 13.04.330 B (3);
 3. Prohibit the use of potable water to wash or clean a vehicle, including but not limited to, any automobile, truck, van, bus, boat or trailer, whether motorized or not, except at a commercial car washing facility that utilizes a recirculating water system to capture or reuse water. This provision does not apply to bicycles and motorcycles. The use of potable water to clean the windshield, windows, or mirrors of a vehicle by use of a hand-held bucket or similar container is not prohibited;
 4. Impose an alternative rate schedule designed for water supply shortage events if such a rate schedule has been adopted by the City Council; and
 5. Continue implementing all other Level 2 response activities.
- F. Level 4 Water Supply Shortage (31% - 40% reduction): A Level 4 Water Supply Shortage (“Critical 2” stage) exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a 31% - 40% consumer demand reduction is

necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 4 Water Supply Shortage condition, the City will:

1. Actively enforce the following limited irrigation schedule: During the months of March through October, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to two days per week on a schedule established and posted by the city. During the months of November through February, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to no more than one day per week on a schedule established and posted by the city. 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; and
2. Continue implementing all other Level 3 response activities.

G. Level 5 Water Supply Shortage (41% - 50% reduction): A Level 5 Water Supply Shortage ("Emergency 1" stage) exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a 41% - 50% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 5 Water Supply Shortage condition, the City will:

1. Actively enforce the following limited irrigation schedule:
 - a. The watering or irrigating of lawns and turf is prohibited except for turf utilized for active recreation at a school, park, or public facility. Turf used for active recreation at a school, park, or public facility may be irrigated in accordance with all other irrigation restrictions up to two times per week from March – October and one time per week from November – February;
 - b. Trees, shrubs, and dedicated landscapes that do not contain turf may be watered one time per week in accordance with all other irrigation restrictions; and
2. Consider limits on the issuance of building permits, new potable water services, temporary meters and/or statements of immediate ability to serve or provide potable water service (such as, will-serve letters, certificates, or letters of availability). The City may consider exemptions to the limitation that include, but are not limited to the following circumstances:
 - a. A valid, unexpired building permit has been issued for the project;
 - b. The project is necessary to protect the public health, safety, and welfare; or
 - c. The applicant provides substantial evidence of an enforceable commitment that water demands for the project will be offset prior to the provision of a new water meter(s) to the satisfaction of the city.

This provision does not preclude the resetting or turn-on of meters to provide continuation of water service or the restoration of service that has been

- interrupted for a period of one year or less; and
3. Continue implementing all other Level 4 response activities.

H. Level 6 Water Supply Shortage (greater than 50% reduction): A Level 6 Water Supply Shortage (“Emergency 2” stage) exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a greater than 50% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 6 Water Supply Shortage condition, the City will:

1. Prohibit all irrigation; and
2. Continue implementing all other Level 5 response activities.

I. Procedures for Determination/Notification of Water Supply Shortage

The existence of Water Supply Shortage conditions may be declared by resolution of the city council adopted at a regular or special public meeting held in accordance with state law. The mandatory conservation requirements relating to each level of Water Supply Shortage conditions will take effect on the tenth day after the date the shortage level is declared. Within five (5) days following the declaration of the shortage level, the city must publish a copy of the resolution in a newspaper used for publication of official notices.

J. Hardship Waiver. If, due to unique circumstances, a specific requirement of this chapter would result in undue hardship to a person using water or to property upon which water is used, that is disproportionate to the impacts to water users generally or to similar property or classes of water users, then the person may apply for a waiver to the requirement as provided in this Section.

1. Application: Application for a waiver must be on a form prescribed by the City Manager and accompanied by a nonrefundable processing fee in an amount set by city council resolution.
2. Supporting Documentation: The application must be accompanied by photographs, maps, drawings, and other information, including a written statement of the applicant.
3. Required Findings for Waiver: The waiver may be granted or conditionally granted only upon a written finding of the existence of facts demonstrating an undue hardship to a person using water or to property upon which water is used, that is disproportionate to the impacts to water users generally or to similar property or classes of water use due to specific and unique circumstances of the user or the user’s property. An application for a waiver will be denied unless the City Manager finds, based on the information provided in the application, supporting documents, or such additional information as may be requested, and on water use information for the property as shown by the records of the city or its agent, all of the following:
 - a. That the waiver does not constitute a grant of special privilege inconsistent with the limitations upon other residents and businesses;
 - b. That because of special circumstances applicable to the property or its use, the strict application of this chapter would have a disproportionate impact on the property or use that exceeds the impacts to residents and businesses generally;

- c. That the authorizing of such waiver will not be of substantial detriment to adjacent properties, and will not materially affect the ability of the city to effectuate the purpose of this chapter and will not be detrimental to the public interest; and
 - d. That the condition or situation of the subject property or the intended use of the property for which the waiver is sought is not common, recurrent or general in nature.
4. Approval Authority: The City Manager must act upon any completed application no later than ten (10) days after submittal and may approve, conditionally approve, or deny the waiver. The applicant requesting the waiver must be promptly notified in writing of any action taken. Unless specified otherwise at the time a waiver is approved, the waiver will apply to the subject property during the period of the mandatory water supply shortage condition. The decision of the City Manager shall be final.”

Section 3. Severability

If any section, subsection, sentence, clause or phrase in this Ordinance is for any reason held invalid, the validity of the remainder of the Ordinance will not be affected. The city council hereby declares it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases or is declared invalid.

Section 4. Effective Date; Posting.

Pursuant to California Water Code Section 376, this Ordinance shall constitute a water conservation program and shall be effective upon adoption. Within ten (10) days of its adoption, this ordinance shall be published in full once in a newspaper of general circulation which is printed, published, and circulated in the City of Morgan Hill.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 7TH DAY OF DECEMBER 2022, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 1ST DAY OF FEBRUARY 2022, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED: ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATE OF THE CITY CLERK ∞

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. XXXX, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 1st day of February 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: December 7, 2022

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

RECEIVE MONTHLY BUDGET UPDATE AND OCTOBER 2022 FINANCIAL AND INVESTMENT REPORTS

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving our Community History

2022-2023 Strategic Priorities

Fiscal Sustainability

Community Outreach, Engagement, and Messaging

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 October 2022 financial and investment reports.

October 2022 Financial Report

The Revenue and Expense Summary through October 2022 is included on the first page of the monthly financial report. Overall, General Fund revenues total \$8.4 million or about 17% of the budget as some of the major revenue categories are received later in the fiscal year. Expenditures, including encumbrances, amounted to \$19.2 million or 35% of the budget.

Budget Update

There has been no material change to the City's revenue since the last budget update to the Council on October 19, 2022. Recreation Services revenues continue to recover from the pandemic and are on target with budget. For water revenue, Morgan Hill residents consumed about 16% less water through October compared to the prior three-year average. As such, the 15% revenue stabilization water rate has been implemented.

COMMUNITY ENGAGEMENT:

Inform

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

ALTERNATIVE ACTIONS:

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

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

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

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.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
October 31, 2022 - 33% of Year Complete



CITY OF MORGAN HILL

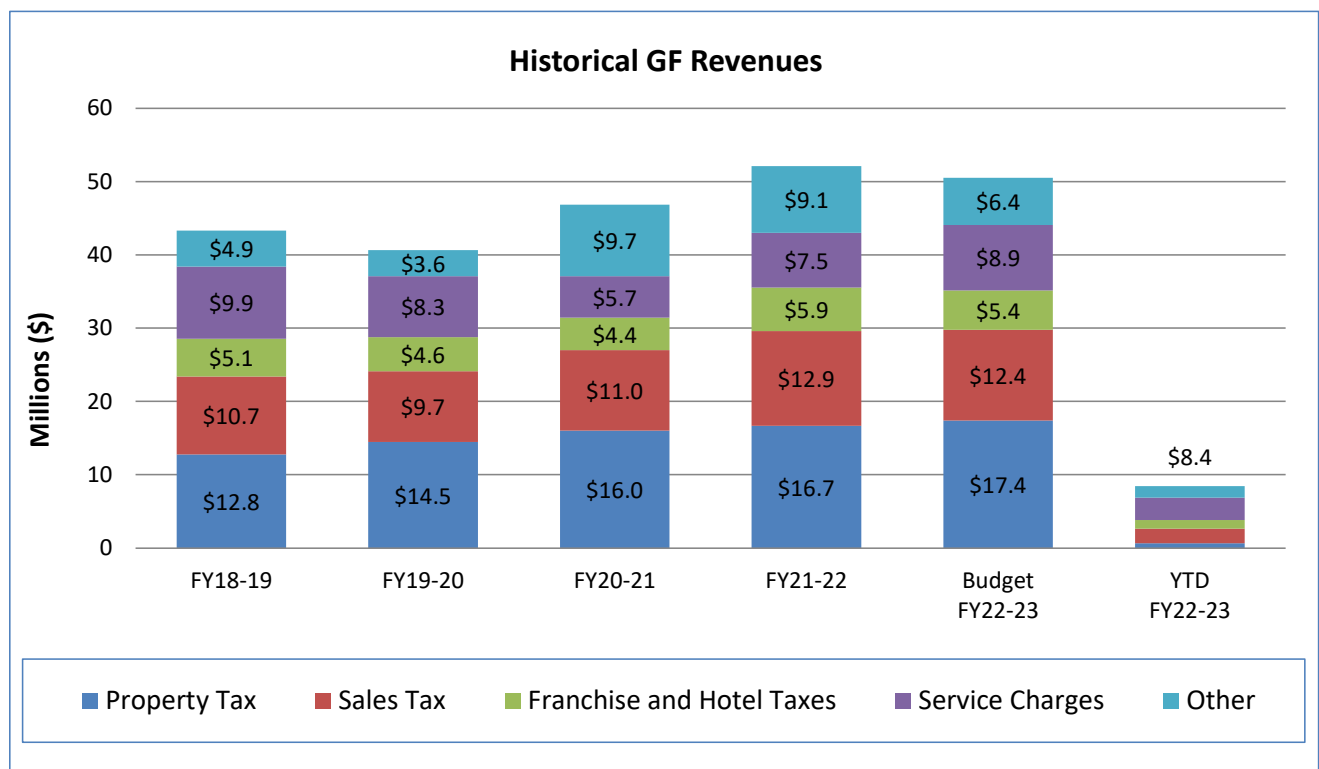
Prepared by:
FINANCE DIVISION



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2022-23
FOR THE MONTH ENDED OCTOBER 2022 – 33% OF YEAR COMPLETE

- **General Fund** Revenues through October totaled \$8.4 million, or about 17% of the budgeted revenues as some of the major revenue categories such as property tax are received later in the fiscal year. With respect to the property tax revenue forecast, the County estimates the City will receive approximately \$17.5 million in property tax revenue for the current fiscal year, slightly more than budget of \$17.4 million.

The chart below shows historical General Fund revenues by major revenue category from FY18-19 through FY21-22 Actual, FY22-23 Budget, and YTD as of October 31, 2022.

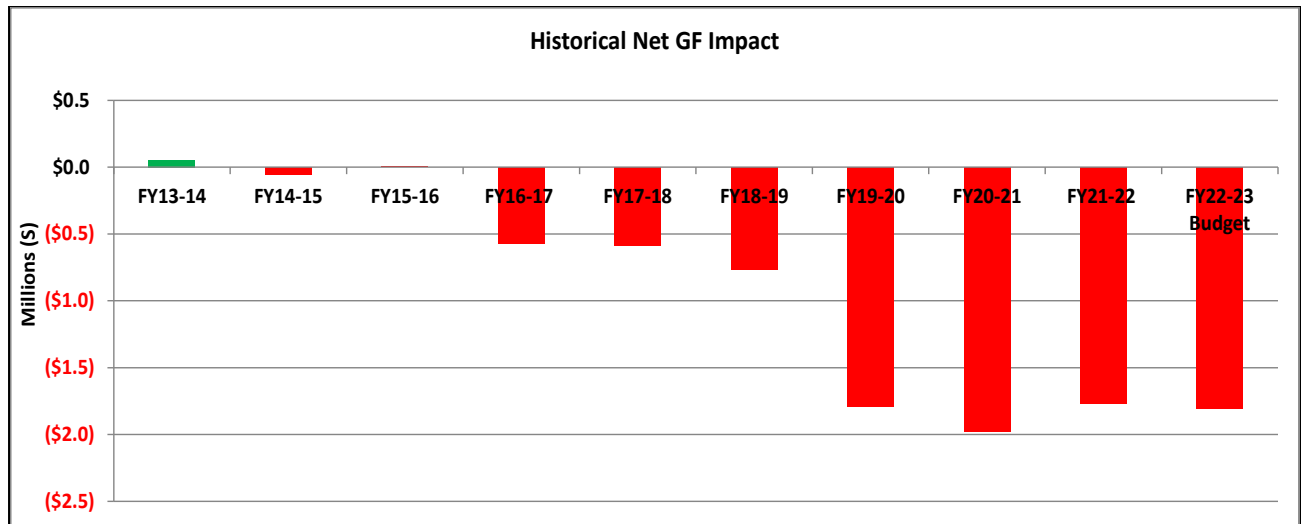


General Fund expenditures and encumbrances as of October 31, 2022 totaled \$19.2 million, of which approximately \$3.7 million is attributable to outstanding encumbrances.

- **Community Services** - The Community Services Department's recreation operations, as reflected in the schedule presented on page 7 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$1.5 million as of October 31, 2022. Recreation Services revenues continue to recover from the pandemic and on target with budget.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2022-23
FOR THE MONTH ENDED OCTOBER 2022 – 33% OF YEAR COMPLETE



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 Development Services, 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 guidelines set forth in the Code of Federal Regulations Title 2, Chapter II, Part 200 (formerly OMB Circular No. A-87), which mandates certain calculation and cost allocation practices that must be followed in order to qualify for Federal grant funding, but which also represent best practice for non-grant funded City operations like utilities and information services.

- **Development Services Fund** – Revenues through October totaled \$2.5 million compared to prior year to date amount of approximately \$1.5 million, partially due to a result of the fees increase approved by the City Council on January 19, 2022. Expenditures, including encumbrances, totaled \$2.0 million.
- **Debt Service Funds** – Expenditures through October totaled \$0.6 million. The debt service for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued, and are budgeted for in the months delineated in the underlying bond documents. The General Fund’s portion of the annual debt service payments is approximately \$200,000, less than one percent of the General Fund’s budgeted revenues.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2022-23
FOR THE MONTH ENDED OCTOBER 2022 – 33% OF YEAR COMPLETE

- **Wastewater Operations** – Revenues from Sewer Operations through October totaled \$3.9 million. Expenditures and outstanding encumbrances totaled \$4.7 million or 29% of the budget. The table below shows historical Sewer Operations revenues and expenditures from FY18-19 through FY21-22 Actual, FY22-23 Budget, and YTD as of October 31, 2022.

(amount in millions)	FY18-19	FY19-20	FY20-21	FY21-22	Budget FY22-23	YTD FY22-23
Revenues	11.4	11.9	13.3	14.9	14.8	3.9
Expenditures	11.4	12.3	13.3	14.8	16.3	4.7
Operating Margin	-	(0.4)	-	0.1	(1.5)	(0.8)
Operating Margin without Encumbrances	0.4	(0.1)	-	0.1	(1.5)	(0.6)

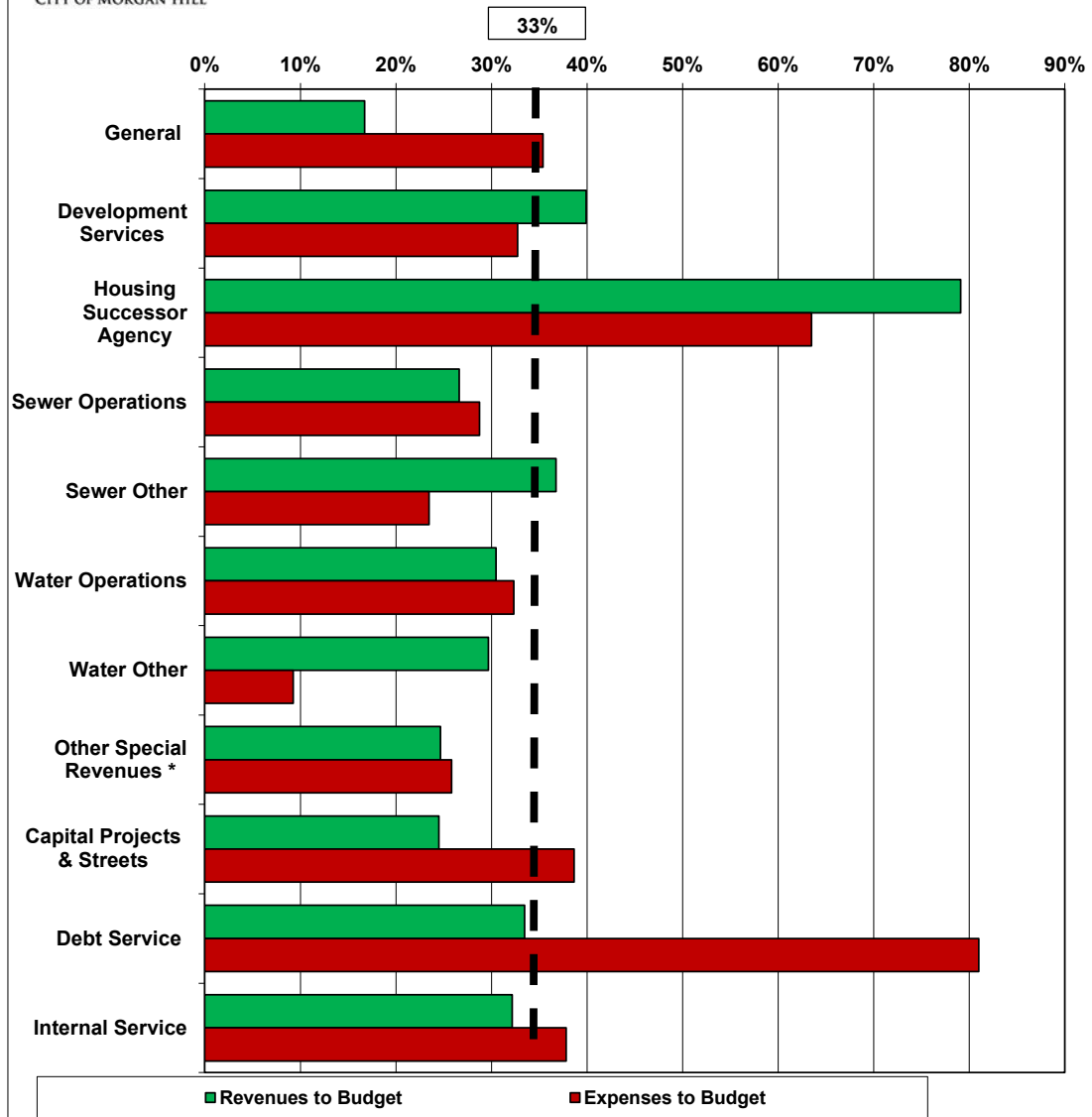
Water Operations – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through October totaled \$5.4 million. Water Operations expenditures, including outstanding encumbrances, totaled \$5.7 million. The table below shows Water Operations revenues and expenditures from FY18-19 through FY21-22 Actual, FY22-23 Budget, and YTD as of October 31, 2022.

(amount in millions)	FY18-19	FY19-20	FY20-21	FY21-22	Budget FY22-23	YTD FY22-23
Revenues	14.2	15.3	16.5	16.0	17.6	5.4
Expenditures	14.3	16.4	16.5	15.2	17.6	5.7
Operating Margin	(0.1)	(1.1)	-	0.8	-	(0.3)
Operating Margin without Encumbrances	0.8	(0.1)	-	0.8	-	0.5

- **Investments** – Total interest earnings received on investments were \$54,000 during the month.



Morgan Hill YTD Revenue & Expense Summary October 31, 2022 - 33% of Year Complete



FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 8,437,904	17%	\$ 19,190,245	35%
Development Services	2,465,884	40%	2,008,342	33%
Housing Successor Agency	184,795	79%	725,824	63%
Sewer Operations	3,927,734	27%	4,687,961	29%
Sewer Other	8,993,319	37%	10,983,898	23%
Water Operations	5,378,517	30%	5,688,064	32%
Water Other	1,800,210	30%	602,501	9%
Other Special Revenues *	1,261,700	25%	2,384,206	26%
Capital Projects & Streets	5,624,834	24%	18,405,705	39%
Debt Service	227,406	33%	550,431	81%
Internal Service	3,692,152	32%	4,747,267	38%
TOTAL FOR ALL FUNDS	\$ 41,994,455	26%	\$ 69,974,445	33%

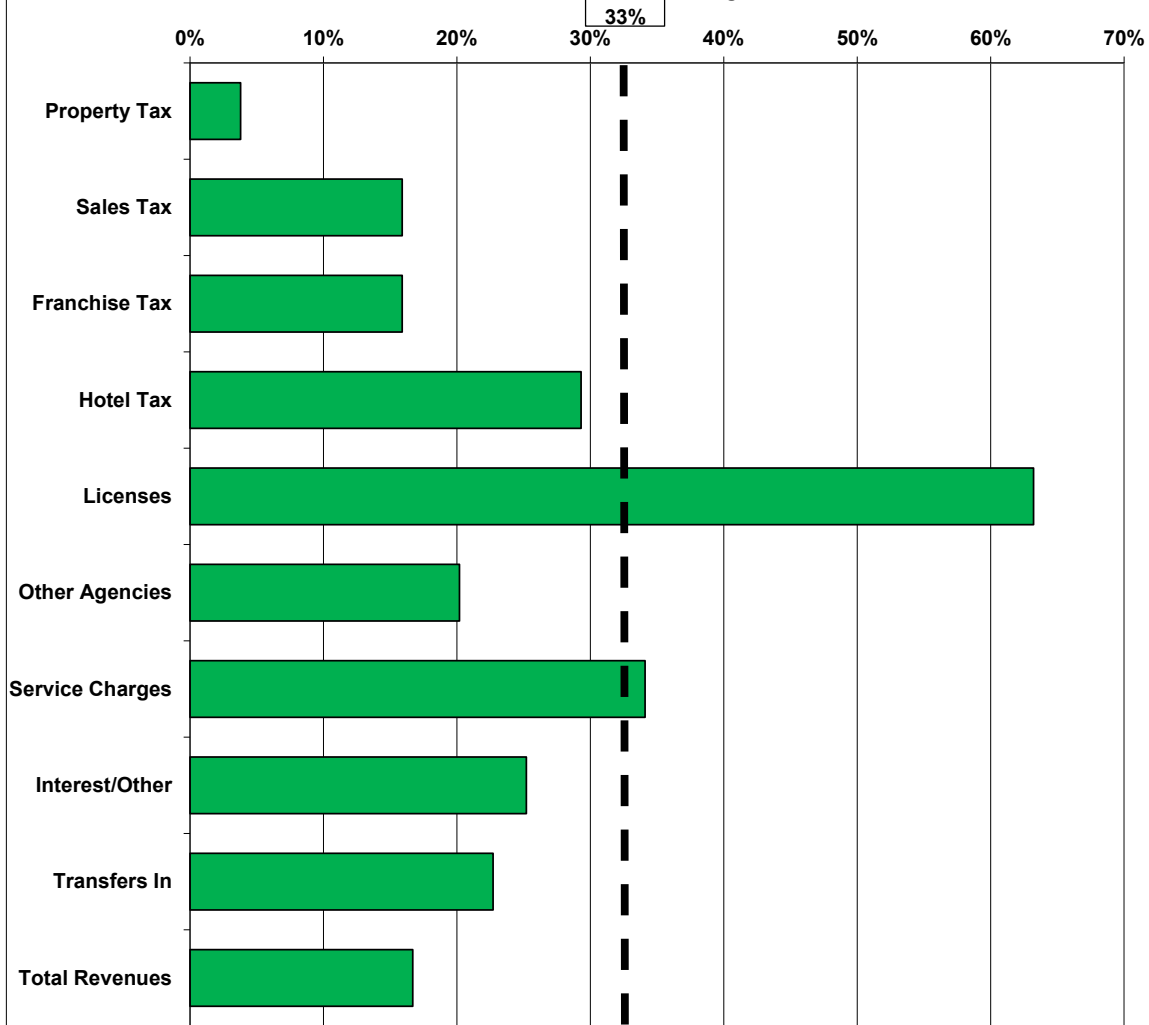
* Includes all Special Revenue Funds except Development Services Fund, Street Funds, and RDA and Housing Successor Agencies.



Morgan Hill YTD General Fund Revenues

October 31, 2022 - 33% of Year Complete

Percent of Actual to Budget



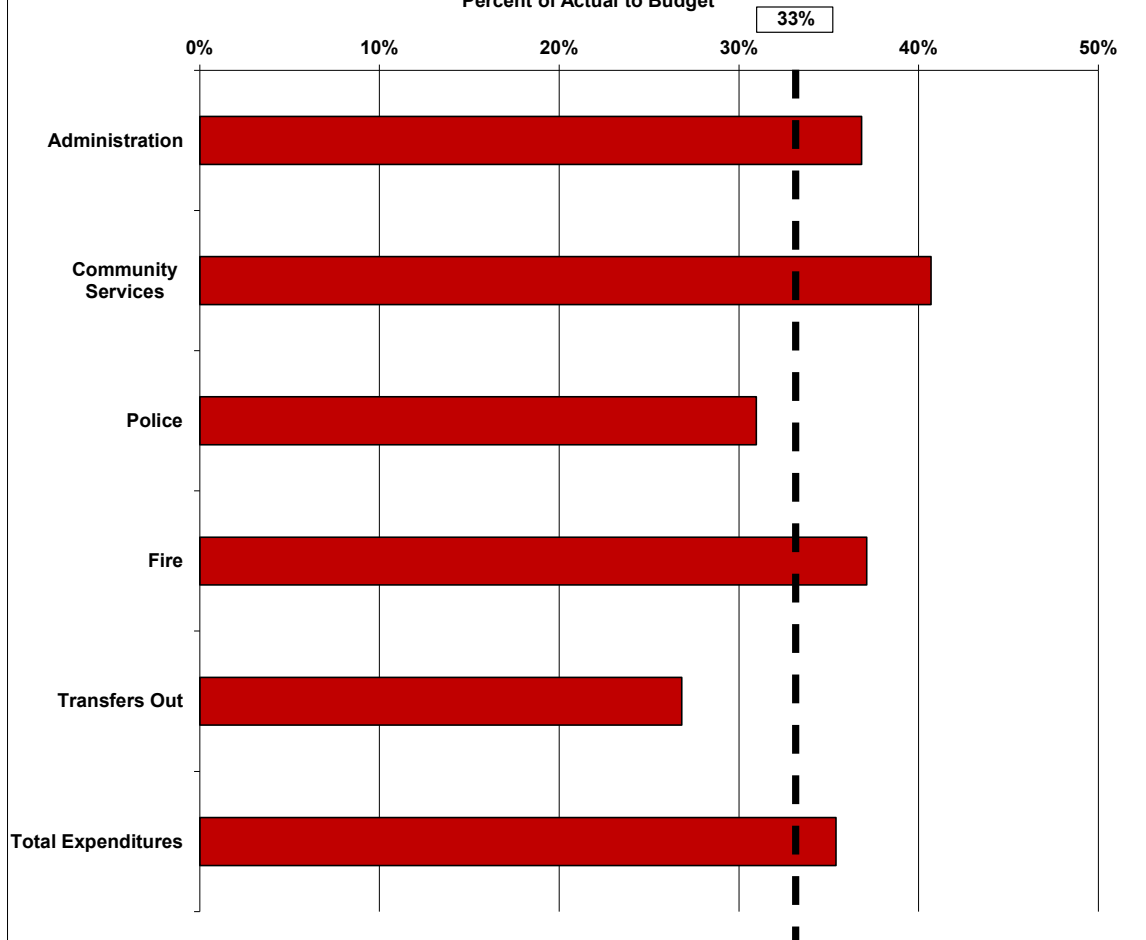
REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$ 17,383,705	\$ 655,923	4%	\$ 589,705	11%
Sales Tax	12,395,413	1,972,719	16%	1,960,858	1%
Franchise Tax	2,760,000	438,964	16%	437,999	0%
Hotel Tax	2,600,000	762,662	29%	616,612	24%
Licenses	223,975	141,485	63%	147,217	-4%
Other Agencies	1,304,130	262,974	20%	189,351	39%
Service Charges	8,942,658	3,047,214	34%	2,399,595	27%
Interest/Other	1,756,151	442,261	25%	463,272	-5%
Transfers In	3,145,538	713,701	23%	718,186	-1%
TOTAL REVENUES	\$ 50,511,570	\$ 8,437,904	17%	\$ 7,522,795	12%



Morgan Hill YTD General Fund Expenditures

October 31, 2022 - 33% of Year Complete

Percent of Actual to Budget



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 6,720,240	\$ 2,475,307	37%	\$ 1,698,038	46%
Community Services	15,909,129	6,472,464	41%	4,811,046	35%
Police	21,324,684	6,602,095	31%	5,924,225	11%
Fire	8,653,847	3,211,274	37%	2,419,929	33%
Transfers Out	1,599,715	429,105	27%	442,236	-3%
TOTAL EXPENDITURES	\$ 54,207,614	\$ 19,190,245	35%	\$ 15,295,473	25%

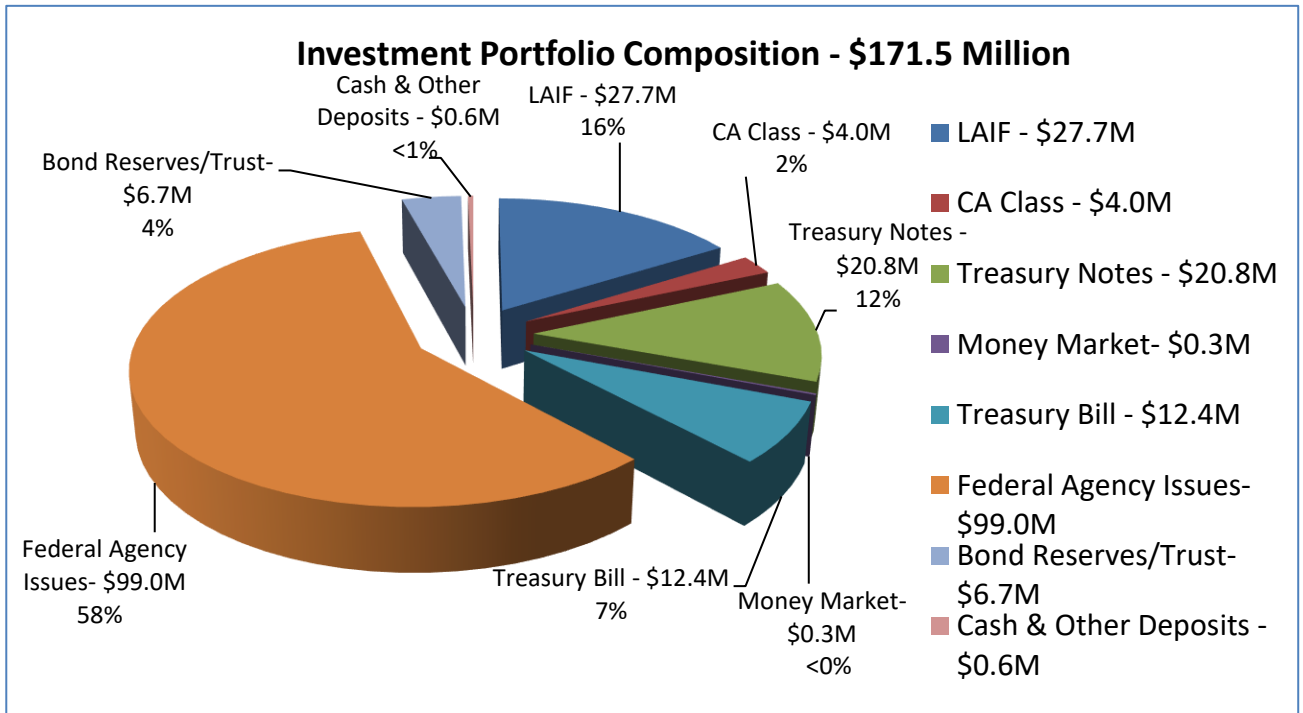


**City of Morgan Hill
Recreation Report - Fiscal Year 2022-23
For the Month Ended October 31, 2022
33% of Year Complete**

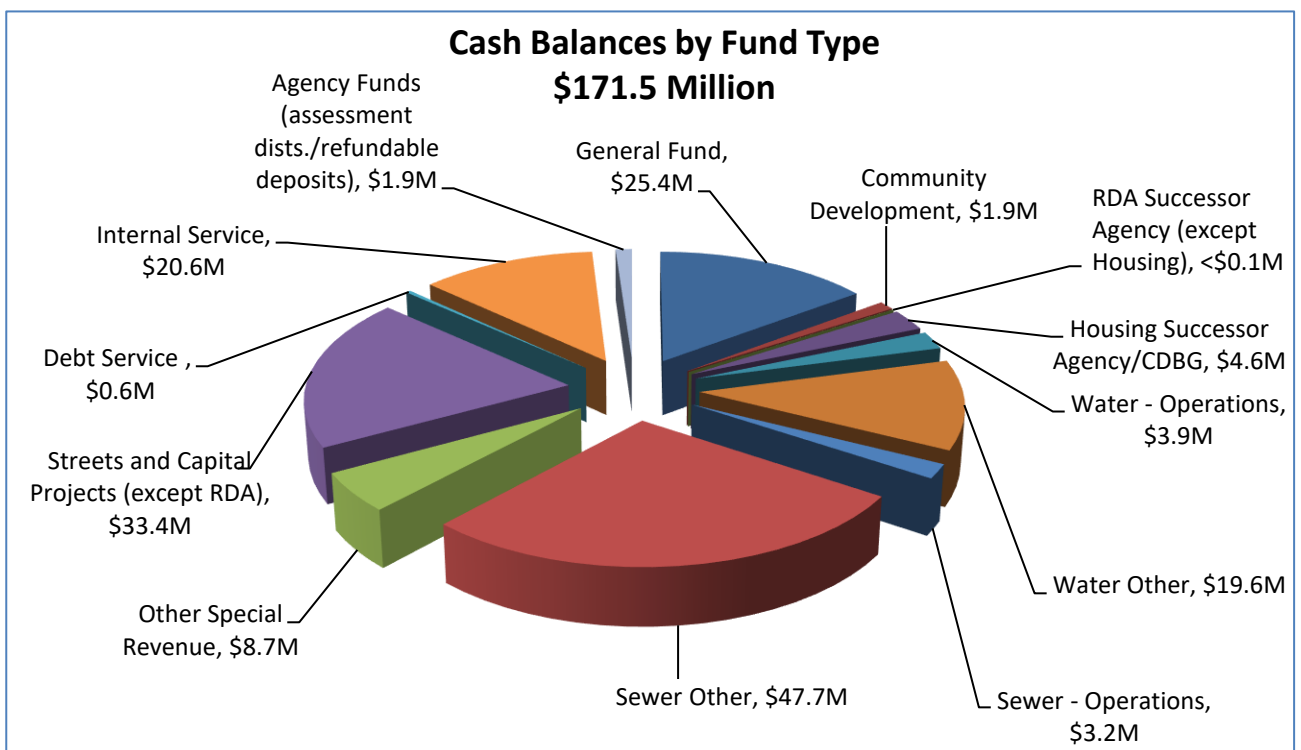
	<u>Budget</u>	<u>October 2022</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 5,136,869	\$ 346,191	\$ 1,778,099	
Facility Rentals	819,459	63,072	305,185	
Community Services	127,498	2,014	8,637	
Transfers in	75,000	6,250	25,000	
Total Revenues	<u>\$ 6,158,826</u>	<u>\$ 417,527</u>	<u>\$ 2,116,922</u>	34%
Less: Expenditures				
Membership & Program Services	\$ 6,772,195	\$ 430,900	\$ 1,993,600	
Facility Rentals	546,870	40,785	157,785	
Community Services	644,107	50,742	173,260	
Total Expenditures	<u>\$ 7,963,173</u>	<u>\$ 522,426</u>	<u>\$ 2,324,645</u>	29%
Net Impact without encumbrances	<u>\$ (1,804,347)</u>	<u>\$ (104,899)</u>	<u>\$ (207,724)</u>	
Encumbrances	-	-	1,268,285	
Net Impact with encumbrances	<u>\$ (1,804,347)</u>	<u>\$ (104,899)</u>	<u>\$ (1,476,009)</u>	

City of Morgan Hill Monthly Investment Report - October 31, 2022

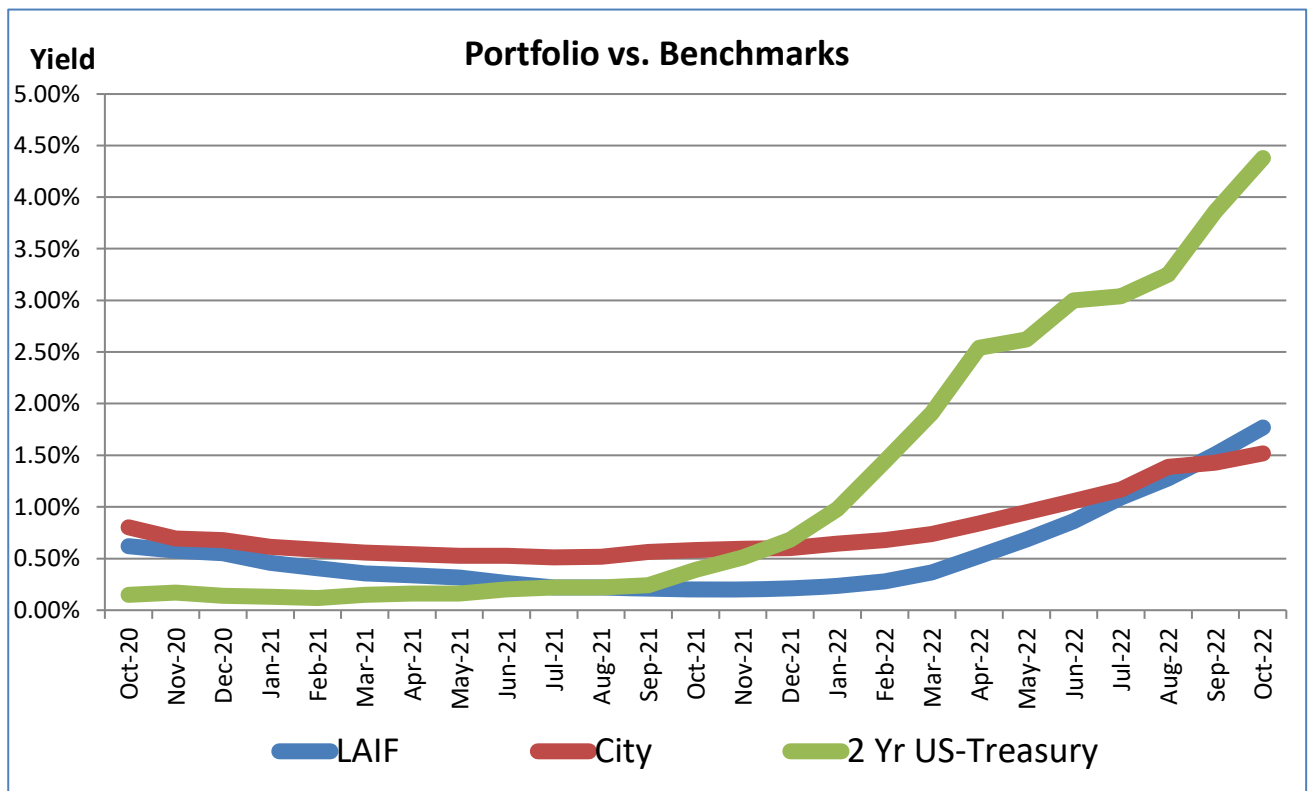
The following are the snapshots of City's investment portfolio as of October 31, 2022. The first chart shows the portfolio composition by investment type:



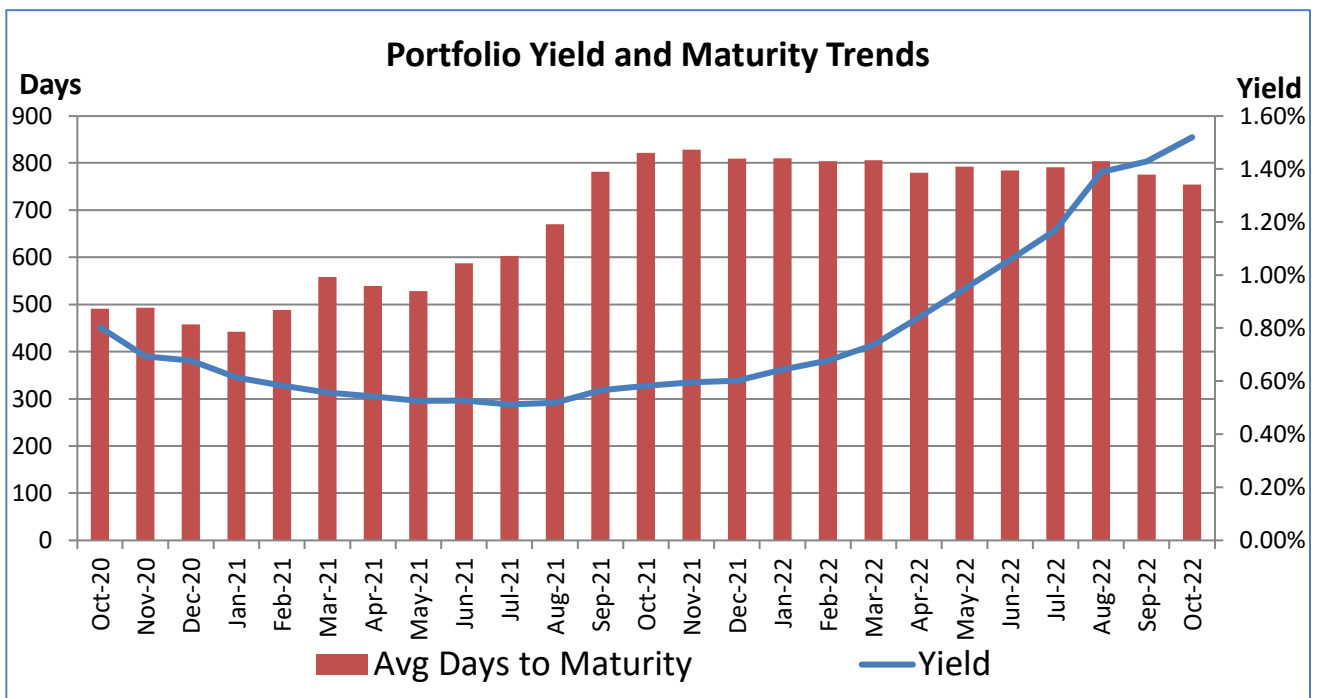
The chart below shows cash balances by fund type reconciled to City's financial system:



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



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





**City of Morgan Hill
Investment Portfolio Detail
As of October 31, 2022**

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
LA I F		\$ 27,669,365	16.14%	\$ 27,313,133	1.77%		
California C L A S S		4,005,931	2.34%	\$ 4,005,931	3.09%		
City Managed							
Treasury Bill	8/17/2022	4,994,074	2.91%	4,993,700	2.56%	11/17/2022	11/17/2022
Treasury Bill	8/17/2022	2,439,469	1.42%	2,416,375	3.22%	8/10/2023	8/10/2023
Treasury Bill	8/18/2022	4,955,675	2.89%	4,939,600	3.04%	2/16/2023	2/16/2023
Treasury Note	4/30/2018	4,478,718	2.61%	4,449,015	2.73%	3/31/2023	3/31/2023
Treasury Note	10/8/2021	1,990,291	1.16%	1,751,100	1.00%	9/30/2026	9/30/2026
Treasury Note	1/4/2022	1,999,496	1.17%	1,911,800	0.77%	12/31/2023	12/31/2023
Treasury Note	1/19/2022	1,993,821	1.16%	1,911,800	1.02%	12/31/2023	12/31/2023
Treasury Note	2/11/2022	1,985,997	1.16%	1,908,200	1.44%	1/31/2024	1/31/2024
Treasury Note	3/28/2022	1,997,365	1.16%	1,930,700	2.34%	4/30/2024	4/30/2024
Treasury Note	4/12/2022	1,992,208	1.16%	1,958,440	1.97%	06/30/2023	6/30/2023
Treasury Note	6/13/2022	1,912,945	1.12%	1,826,560	3.16%	11/15/2026	11/15/2026
Treasury Note	8/17/2022	2,461,436	1.44%	2,441,700	3.04%	5/15/2023	5/15/2023
FFCB Bond	4/8/2020	2,000,000	1.17%	1,889,100	0.88%	4/8/2023	4/8/2024
FFCB Bond	5/27/2020	2,000,000	1.17%	1,805,120	0.73%	11/27/2022	5/27/2025
FHLMC Bond	6/3/2020	2,000,000	1.17%	1,842,720	0.60%	12/3/2022	12/3/2024
FHLMC Bond	10/20/2020	2,000,000	1.17%	1,774,040	0.60%	4/20/2023	10/20/2025
FHLMC Bond	10/27/2020	2,000,000	1.17%	1,775,980	0.63%	4/27/2023	10/27/2025
FHLMC Bond	11/2/2020	2,000,000	1.17%	1,912,660	0.32%	11/2/2022	11/2/2023
FFCB Bond	11/3/2020	2,000,000	1.17%	1,767,060	0.54%	11/3/2022	11/3/2025
FNMA Bond	11/18/2020	2,000,000	1.17%	1,770,500	0.65%	11/18/2022	11/18/2025
FHLMC Bond	11/24/2020	2,000,000	1.17%	1,768,820	0.64%	11/24/2022	11/24/2025
FFCB Bond	11/24/2020	1,000,000	0.58%	884,420	0.60%	11/24/2022	11/24/2025
FHLMC Bond	11/25/2020	3,000,000	1.75%	2,647,620	0.63%	11/25/2022	11/25/2025
FHLMC Bond	11/30/2020	2,000,000	1.17%	1,769,020	0.65%	11/26/2022	11/26/2025
FFCB Bond	12/22/2020	2,000,000	1.17%	1,754,100	0.47%	12/22/2022	12/22/2025
FHLB Bond	1/22/2021	2,000,000	1.17%	1,754,760	0.63%	1/22/2023	1/22/2026
FNMA Bond	1/28/2021	2,000,000	1.17%	1,752,120	0.55%	1/28/2023	1/28/2026
FHLB Bond	1/28/2021	2,000,000	1.17%	1,757,980	0.65%	1/28/2023	1/28/2026
FHLB Bond	2/24/2021	2,000,000	1.17%	1,756,400	0.75%	2/24/2023	2/24/2026
FHLB Bond	2/25/2021	2,000,000	1.17%	1,750,780	0.66%	2/25/2023	2/25/2026
FHLB Bond	2/26/2021	2,000,000	1.17%	1,750,000	0.65%	2/26/2023	2/26/2026
FHLB Bond	3/10/2021	2,000,000	1.17%	1,760,220	0.85%	3/10/2023	3/10/2026
FHLB Bond	3/16/2021	2,000,000	1.17%	1,750,100	0.70%	3/16/2023	3/16/2026
FHLB Bond	3/16/2021	2,000,000	1.17%	1,756,220	0.80%	3/16/2023	3/16/2026
FHLB Bond	6/9/2021	2,000,000	1.17%	1,759,180	1.08%	12/9/2022	6/9/2026
FHLB Bond	6/30/2021	2,000,000	1.17%	1,757,520	1.00%	12/30/2022	6/30/2026
FHLB Bond	7/15/2021	3,000,000	1.75%	2,636,610	1.13%	1/15/2023	7/15/2026
FHLB Bond	7/15/2021	2,000,000	1.17%	1,800,960	0.85%	1/15/2023	7/15/2025
FHLB Bond	8/26/2021	2,000,000	1.17%	1,729,380	0.80%	2/26/2023	8/26/2026
FHLB Bond	8/26/2021	3,000,000	1.75%	2,614,470	1.00%	2/26/2023	8/26/2026
FHLB Bond	8/26/2021	2,000,000	1.17%	1,736,240	0.90%	2/26/2023	8/26/2026
FHLB Bond	9/13/2021	2,079,890	1.21%	1,813,420	0.82%	3/11/2023	9/11/2026
FFCB Bond	9/28/2021	1,986,718	1.16%	1,739,740	0.98%	3/10/2023	9/10/2026
FHLB Bond	9/29/2021	3,000,000	1.75%	2,619,840	1.13%	3/29/2023	9/29/2026
FHLB Bond	9/30/2021	2,000,000	1.17%	1,729,920	0.88%	3/30/2023	9/30/2026
FHLB Bond	9/30/2021	3,000,000	1.75%	2,611,950	1.05%	3/30/2023	9/30/2026
FHLB Bond	9/30/2021	3,000,000	1.75%	2,608,800	1.02%	3/30/2023	9/30/2026
FHLB Bond	10/19/2021	2,000,000	1.17%	1,734,860	1.00%	4/19/2023	10/19/2026
FHLB Bond	11/18/2021	2,000,000	1.17%	1,751,920	1.30%	11/18/2022	11/18/2026
FHLB Bond	12/29/2021	2,000,000	1.17%	1,904,960	0.75%	12/29/2022	12/29/2023
FHLB Bond	1/19/2022	2,000,000	1.17%	1,785,200	1.74%	1/19/2023	1/19/2027
FHLB Bond	1/25/2022	2,000,000	1.17%	1,842,660	1.51%	1/25/2023	7/25/2025
FHLB Bond	3/10/2022	2,000,000	1.17%	1,875,860	3.48%	3/10/2023	3/10/2027
FHLB Bond	3/30/2022	3,000,000	1.75%	2,967,480	1.62%	3/30/2023	3/30/2023
FHLMC Bond	5/3/2022	1,974,315	1.15%	1,943,120	2.25%	12/26/2022	6/26/2023
FHLB Bond	5/27/2022	3,000,000	1.75%	2,974,080	1.88%	11/23/2022	2/23/2023
FHLMC Bond	6/15/2022	2,000,000	1.17%	1,960,160	3.28%	12/15/2022	12/15/2025
FHLB Bond	7/28/2022	2,000,000	1.17%	1,922,680	4.30%	1/28/2023	7/28/2027
Sub Total/Average		\$ 132,242,418	77.12%	\$ 121,409,740	1.42%		
Money Market		\$ 288,505	0.17%	\$ 288,505	3.00%		
Total City Managed/Average		\$ 164,206,218	93.42%	\$ 153,017,309	1.52%		
Bond Reserve Accounts - Held By Trustees		\$ 1,092,822	0.64%	\$ 1,092,822			
Cash/Deposits		\$ 595,403	0.35%	\$ 595,403			
PARS and CALPERS CERBT Trust		\$ 5,587,404	3.26%	\$ 5,627,960			
GRAND TOTAL/AVERAGE		\$ 171,481,846	100%	\$ 160,333,493			



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF OCTOBER 31, 2022
FOR THE FISCAL YEAR OF 2022-23

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	1.77%	\$ 19,068,482	11.12%	\$ 18,822,984
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	1.77%	8,600,882	5.02%	8,490,149
California CLASS	All Funds Pooled	3.09%	4,005,931	2.34%	4,005,931
Federal Issues	All Funds Pooled	1.33%	99,040,923	57.76%	88,970,750
US Treasury Notes	All Funds Pooled	2.05%	20,812,277	12.14%	20,089,315
US Treasury Bills	All Funds Pooled	2.88%	12,389,218	7.22%	12,349,675
Dreyfus Treas Cash Management Acct	All Funds Pooled	3.00%	288,505	0.17%	288,505
	SUBTOTAL		\$ 164,206,218	95.76%	\$ 153,017,309
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility					
Blackrock Liq Fund	Debt Service	0.41%	241,117	0.14%	241,117
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	0.41%	306,877	0.18%	306,877
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	0.00%	23,240	0.01%	23,240
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	0.41%	257,174	0.15%	257,174
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	0.41%	264,414	0.15%	264,414
	SUBTOTAL		1,092,822	0.64%	1,092,822
Other Cash/Deposits					
General Checking	All Funds		549,103	0.32%	549,103
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		16,300	0.01%	16,300
CALPERS CERBT - OPEB Trust			3,887,404	2.27%	3,878,630
PARS - PENSION Trust			1,700,000	0.99%	1,749,330
	SUBTOTAL		6,182,807	3.61%	6,223,363
Total Cash and Investments			\$ 171,481,846	100.00%	\$ 160,333,493

CASH ACTIVITY SUMMARY
FY 2022-23

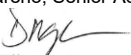
Fund Type	Un-audited 07/1/22 Balance	Change in Cash Balance	10/31/2022 Balance
General Fund	\$ 28,354,149	\$ (2,925,255)	\$ 25,428,894
Community Development	1,919,696	(25,783)	1,893,914
RDA Successor Agency (except Housing)	5,790,342	(5,761,616)	28,726
Housing Successor Agency/ CDBG	4,647,231	(6,602)	4,640,628
Water - Operations	2,980,708	899,449	3,880,157
Water Other	18,208,344	1,359,200	19,567,544
Sewer - Operations	1,663,439	1,489,109	3,152,548
Sewer Other	50,357,493	(2,649,471)	47,708,022
Other Special Revenue	8,482,063	207,480	8,689,543
Streets and Capital Projects (except RDA)	38,094,946	(4,690,969)	33,403,978
Debt Service	339,861	225,296	565,158
Internal Service	21,156,407	(543,525)	20,612,882
Agency Funds (assessment dists./refundable deposits)	3,282,559	(1,372,706)	1,909,852
Total	\$ 185,277,238	\$ (13,795,391)	\$ 171,481,846

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 2022-23
For The Month Ended October 31, 2022
33% of Year Complete

	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
<u>TAXES</u>							
Property Tax - Secured/Unsecured	\$ 14,753,873	14,753,873	\$ 594,999	4%	\$ 568,779	\$ 26,220	5%
Property Tax - RPTTF Residual Distribution	2,429,832	2,429,832	-	n/a	-	-	n/a
Property Tax - Supplemental Roll	200,000	200,000	60,924	30%	20,925	39,998	191%
Sales Tax	11,950,308	11,950,308	1,937,351	16%	1,886,155	51,196	3%
Public Safety Sales Tax	445,105	445,105	35,368	8%	74,703	(39,335)	-53%
Transient Occupancy Taxes	2,600,000	2,600,000	762,662	29%	616,612	146,050	24%
Franchise (Refuse ,Cable ,PG&E)	2,760,000	2,760,000	438,964	16%	437,999	965	0%
Property Transfer Tax	500,000	500,000	124,553	25%	192,075	(67,522)	-35%
TOTAL TAXES	35,639,118	35,639,118	3,954,820	11%	3,797,248	157,572	4%
<u>LICENSES/PERMITS</u>							
Business License	170,000	170,000	120,567	71%	143,587	(23,020)	-16%
Other Permits	53,975	53,975	20,918	39%	3,630	17,288	476%
TOTAL LICENSES/PERMITS	223,975	223,975	141,485	63%	147,217	(5,732)	-4%
<u>FINES AND PENALTIES</u>							
Parking Enforcement	2,932	2,932	1,845	63%	536	1,309	244%
Bails & Fines	46,480	46,480	7,565	16%	5,401	2,164	40%
Administrative Citations	20,000	20,000	1,285	6%	-	1,285	0%
TOTAL FINES AND PENALTIES	69,412	69,412	10,695	15%	5,937	4,759	80%
<u>OTHER AGENCIES</u>							
Motor Vehicle in-Lieu	40,000	40,000	-	n/a	-	-	n/a
Other Revenue - Other Agencies	1,304,130	1,304,130	262,974	20%	189,351	73,623	39%
TOTAL OTHER AGENCIES	1,344,130	1,344,130	262,974	20%	189,351	73,623	39%
<u>CHARGES CURRENT SERVICES</u>							
Police False Alarm Charge	32,280	32,280	8,072	25%	7,983	89	1%
Business License Application Review	53,000	53,000	13,643	26%	14,188	(545)	-4%
Membership Services & Rec Programs	5,136,869	5,136,869	1,778,099	35%	1,454,769	323,331	22%
Facility Rentals	819,459	819,459	305,185	37%	150,994	154,191	102%
Community Services	127,498	127,498	8,637	7%	42,717	(34,080)	-80%
General Administration Overhead	1,775,408	1,775,408	591,803	33%	610,768	(18,965)	-3%
Other Charges Current Services	998,144	998,144	341,776	34%	118,175	223,600	189%
TOTAL CURRENT SERVICES	8,942,658	8,942,658	3,047,214	34%	2,399,595	647,619	27%
<u>OTHER REVENUE</u>							
Use of money/property	774,829	774,829	253,592	33%	157,827	95,765	61%
Other Revenues	371,910	371,910	53,421	14%	107,434	(54,013)	-50%
TOTAL OTHER REVENUE	1,146,739	1,146,739	307,013	27%	265,261	41,752	16%
<u>TRANSFERS IN</u>							
One Time Transfer	180,000	180,000	60,000	33%	60,000	(0)	0%
Public Safety Facilities Fund	50,000	50,000	16,667	33%	8,333	8,333	100%
Supplemental Law Enforcement Fund	100,000	100,000	-	n/a	33,333	(33,333)	-100%
Countywide Solid Waste	355,000	355,000	118,333	33%	-	118,333	n/a
Streets	904,438	904,438	-	n/a	136,747	(136,747)	-100%
Park Maintenance	650,000	650,000	216,668	33%	216,668	-	n/a
Sewer Operations	375,000	375,000	125,000	33%	119,052	5,948	5%
Water Operations	375,000	375,000	125,000	33%	119,052	5,948	5%
Open Space	81,100	81,100	27,033	33%	-	27,033	n/a
Park Development	75,000	75,000	25,000	33%	25,000	-	n/a
TOTAL TRANSFERS IN	3,145,538	3,145,538	713,701	23%	718,186	(4,484)	-1%
TOTAL GENERAL FUND	50,511,570	50,511,570	8,437,904	17%	7,522,795	915,109	12%
SPECIAL REVENUE FUNDS							
<u>202 STREET MAINTENANCE</u>							
Gas Tax 2105 - 2107.5	909,478	909,478	202,993	22%	136,630	66,363	49%
Interest / Other Revenue/Other Charges	58	58	744	1283%	117	627	536%
202 STREET MAINTENANCE	909,536	909,536	203,737	22%	136,747	66,990	49%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2022-23
For The Month Ended October 31, 2022
33% of Year Complete

	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	1,438	1,438	871	61%	281	590	210%
Police Grant/SLEF/JAG	100,000	100,000	73,605	74%	69,618	3,986	6%
205 SUPPLEMENTAL LAW ENFORCEMENT FUND	101,438	101,438	74,476	73%	69,900	4,576	7%
206 DEVELOPMENT SERVICES							
Building Fees	3,433,600	3,433,600	1,380,843	40%	968,002	412,842	43%
Planning Fees	1,259,167	1,259,167	179,086	14%	292,801	(113,715)	-39%
Engineering Fees	1,142,289	1,142,289	758,138	66%	166,145	591,993	356%
Other Revenue/Current Charges	346,181	346,181	147,817	43%	69,699	78,119	112%
206 DEVELOPMENT SERVICES	6,181,237	6,181,237	2,465,884	40%	1,496,647	969,238	65%
207 LONG RANGE PLANNING	995,882	995,882	383,055	38%	227,405	155,649	68%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	244	244	223	91%	92	131	141%
215 and 216 HCD BLOCK GRANT	244	244	223	91%	92	131	141%
225 ASSET SEIZURE	979	979	360	37%	203	158	78%
229 LIGHTING AND LANDSCAPE	199,916	199,916	579	0%	353	226	64%
230 COMMUNITY FACILITIES DISTRICT	37,591	37,591	341	1%	175	166	95%
232 ENVIRONMENTAL PROGRAMS	553,277	553,277	180,279	33%	163,708	16,571	10%
234 MOBILE HOME PARK RENT STAB.	441	441	790	179%	88	702	797%
236 HOUSING MITIGATION	1,575,835	1,575,835	216,700	14%	373,765	(157,065)	-42%
240 EMPLOYEE ASSISTANCE	20,673	20,673	2,524	12%	4,151	(1,626)	-39%
246 COUNTYWIDE SOLID WASTE	1,628,603	1,628,603	401,901	25%	349,556	52,345	15%
247 ENVIRONMENT REMEDIATION	1,023	1,023	472	46%	193	280	145%
255 HOUSING SUCCESSOR AGENCY	233,641	233,641	184,795	79%	142,847	41,948	29%
260 PUBLIC ART	501	501	-	n/a	-	-	n/a
TOTAL SPECIAL REVENUE FUNDS	12,440,818	12,440,818	4,116,116	33%	2,965,828	1,150,288	39%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	1,369,271	1,369,271	1,337,102	98%	5,578,397	(4,241,294)	-76%
302 PARK MAINTENANCE	60,773	60,773	10,153	17%	5,983	4,170	70%
303 LOCAL DRAINAGE	374,484	374,484	682,759	182%	326,141	356,618	109%
304 LOCAL DRAINAGE/NON AB1600	29,166	29,166	68,841	236%	51,090	17,751	35%
306 AGRICULTURE & OPEN SPACE PRESERVATION	5,058	5,058	26,326	520%	49,970	(23,644)	-47%
308 STREET CIP	4,702,650	4,702,650	988,911	21%	702,354	286,556	41%
309 TRAFFIC IMPACT	5,019,799	5,019,799	54,044	1%	2,390,769	(2,336,725)	-98%
315 PUBLIC SAFETY FACILITIES IMPACT	6,221,575	6,221,575	36,674	1%	110,743	(74,069)	-67%
346 PUBLIC FACILITIES NON-AB1600	1,165,537	1,165,537	370,020	32%	34,550	335,469	971%
347 PUBLIC FACILITIES IMPACT	138,168	138,168	10,279	7%	25,056	(14,776)	-59%
348 LIBRARY	480,582	480,582	30,752	6%	101,730	(70,978)	-70%
350 UNDERGROUNDING	29,592	29,592	5,764	19%	364,084	(358,320)	-98%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	482,291	482,291	208,410	43%	29,720	178,690	601%
360 COMMUNITY/REC IMPACT FUND	1,335,488	1,335,488	52,149	4%	133,052	(80,902)	-61%
375 QUIMBY FEE	653,451	653,451	1,538,915	236%	-	1,538,915	n/a
TOTAL CAPITAL PROJECTS FUNDS	22,067,885	22,067,885	5,421,098	25%	9,903,637	(4,482,540)	-45%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	292,184	292,184	98,046	34%	101,945	(3,899)	-4%
441 POLICE FACILITY BOND	387,490	387,490	129,359	33%	128,387	972	1%
TOTAL DEBT SERVICE FUNDS	679,674	679,674	227,406	33%	230,332	(2,926)	-1%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2022-23
For The Month Ended October 31, 2022
33% of Year Complete

	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	14,400,000	14,400,000	3,766,985	26%	3,601,150	165,834	5%
Interest Income/Transfers	38,548	38,548	10,469	27%	3,053	7,416	243%
Other Revenue/Current Charges	319,809	319,809	150,280	47%	105,431	44,848	43%
640 SEWER OPERATION	14,758,357	14,758,357	3,927,734	27%	3,709,635	218,099	6%
641 SEWER EXPANSION							
Interest Income	64,455	64,455	75,187	117%	33,557	41,630	124%
Development Impact Fee	4,336,657	4,336,657	216,973	5%	1,581,839	(1,364,866)	-86%
Transfer From-643 (Sewer Replacement)	13,310,782	13,310,782	6,429,447	48%	-	6,429,447	n/a
641 SEWER EXPANSION	17,711,894	17,711,894	6,721,607	38%	1,615,396	5,106,211	316%
642 SEWER RATE STABILIZATION	50,000	50,000	26,400	53%	53,842	(27,442)	-51%
643 SEWER-CAPITAL PROJECT	6,710,456	6,710,456	2,245,311	33%	1,573,247	672,064	43%
TOTAL SEWER FUNDS	39,230,707	39,230,707	12,921,052	33%	6,952,120	5,968,933	86%
650 WATER OPERATION							
Water Sales	16,400,000	16,400,000	4,829,137	29%	4,244,767	584,371	14%
Meter Install & Service	50,000	50,000	57,837	116%	12,306	45,531	370%
Transfers-In / Interest Income	580,372	580,372	196,783	34%	4,034	192,749	4778%
Other Revenue/Current Charges	614,770	614,770	294,760	48%	461,289	(166,529)	-36%
650 WATER OPERATION	17,645,142	17,645,142	5,378,517	30%	4,722,396	656,122	14%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	21,044	21,044	10,235	49%	4,893	5,342	109%
Development Impact Fee	918,214	918,214	55,519	6%	164,150	(108,631)	-66%
651 WATER EXPANSION	939,258	939,258	65,754	7%	169,043	(103,289)	-61%
652 Water Rate Stabilization	-	-	11,232	n/a	46,171	(34,939)	-76%
653 Water Capital Project	5,128,809	5,128,809	1,723,225	34%	1,690,095	33,130	2%
TOTAL WATER FUNDS	23,713,209	23,713,209	7,178,728	30%	6,627,705	551,023	8%
TOTAL ENTERPRISE FUNDS	62,943,916	62,943,916	20,099,780	32%	13,579,824	6,519,956	48%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	2,233,768	2,233,768	747,284	33%	750,642	(3,358)	0%
740 BUILDING MAINTENANCE	1,655,704	1,655,704	551,915	33%	376,933	174,983	46%
741 BUILDING REPLACEMENT	836,114	836,114	283,106	34%	234,074	49,032	21%
745 CIP ADMINISTRATION	1,977,307	1,977,307	536,618	27%	562,718	(26,100)	-5%
760 UNEMPLOYMENT INSURANCE	2,317	2,317	1,051	45%	468	583	125%
770 WORKERS COMPENSATION	719,150	719,150	267,436	37%	232,793	34,643	15%
790 EQUIPMENT REPLACEMENT	1,259,595	1,259,595	373,777	30%	394,555	(20,778)	-5%
791 EMPLOYEE BENEFITS	813,718	813,718	269,998	33%	202,969	67,029	33%
795 GENERAL LIABILITY INSURANCE	1,981,019	1,981,019	660,966	33%	573,122	87,845	15%
TOTAL INTERNAL SERVICE FUNDS	11,478,692	11,478,692	3,692,152	32%	3,328,273	363,879	11%
TOTAL FOR ALL FUNDS	\$ 160,122,555	\$ 160,122,555	\$ 41,994,455	26%	\$ 37,530,689	\$ 4,463,766	12%



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2022-23
For the Month Ended Oct 31, 2022
33% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
010 GENERAL FUND								
I. ADMINISTRATION								
	CITY COUNCIL	\$ 41,779	\$ 430,915	\$ 162,480	\$ -	\$ 162,480	38%	\$ 135,912
	CITY ATTORNEY	52,659	1,081,769	251,093	163,979	415,072	38%	206,538
	CITY MANAGER	52,065	854,800	185,832	35,040	220,872	26%	194,538
	HUMAN RESOURCES	65,360	847,361	259,759	-	259,759	31%	197,975
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	43,379	595,414	175,089	4,800	179,889	30%	184,857
	Elections	2,262	357,836	3,528	-	3,528	1%	7,424
	COUNCIL SVCS & RECORDS MGMT	45,641	953,250	178,617	4,800	183,417	19%	192,282
	FINANCE	142,561	2,552,145	562,691	671,017	1,233,708	48%	490,024
	TOTAL ADMINISTRATION	400,066	6,720,240	1,600,472	874,836	2,475,307	37%	1,417,268
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	430,900	6,772,195	1,993,600	1,151,870	3,145,470	46%	1,637,707
	Recreation Facility Rentals	40,785	546,870	157,785	46,465	204,250	37%	164,223
	Innovative Transit	36,929	887,471	87,133	749,761	836,894	94%	-
	Community Services	50,742	644,107	173,260	69,950	243,210	38%	150,113
	Park Maintenance	130,913	1,495,918	369,952	47,043	416,995	28%	296,856
	Environmental Services	16,838	390,733	71,786	-	71,786	18%	60,635
	Countywide Solid Waste Program	28,859	354,416	109,500	-	109,500	31%	41,340
	Street Maintenance	227,494	2,710,389	683,361	181,723	865,084	32%	624,693
	Downtown Maintenance	16,736	325,886	59,019	15,162	74,181	23%	96,772
	Cable Television	1,455	74,758	5,872	-	5,872	8%	10,468
	COMMUNITY SERVICES	981,651	14,202,742	3,711,269	2,261,974	5,973,243	42%	3,082,805
	CODE COMPLIANCE	13,797	319,550	55,717	-	55,717	17%	53,333
	INFRASTRUCTURE PLANNING & CONGESTION MGMT	26,032	491,888	97,796	10,031	107,827	22%	90,358
	ECONOMIC DEVELOPMENT PROGRAMS	80,758	894,948	282,113	53,564	335,677	38%	170,020
	TOTAL COMMUNITY SERVICES	1,102,238	15,909,129	4,146,895	2,325,569	6,472,464	41%	3,396,516
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	113,034	1,676,697	546,229	38,311	584,541	35%	539,572
	Field Operations	934,750	10,591,376	3,116,535	41,897	3,158,431	30%	2,839,776
	Support Services	219,405	2,805,374	903,277	-	903,277	32%	845,146
	Emergency Services/Haz Mat	17,470	234,368	63,599	-	63,599	27%	60,770
	Special Operations	303,972	3,900,732	1,261,750	-	1,261,750	32%	896,897
	Dispatch Services	165,734	2,116,137	630,497	-	630,497	30%	552,940
	POLICE	1,754,365	21,324,684	6,521,887	80,208	6,602,095	31%	5,735,100
	FIRE	673,112	8,653,847	2,841,750	369,524	3,211,274	37%	2,418,089
	TOTAL PUBLIC SAFETY	2,427,477	29,978,531	9,363,637	449,732	9,813,369	33%	8,153,189
IV. TRANSFERS								
	Other	107,276	1,599,715	429,105	-	429,105	27%	442,236
	TOTAL TRANSFERS	107,276	1,599,715	429,105	-	429,105	27%	442,236
	TOTAL GENERAL FUND	4,037,057	54,207,614	15,540,108	3,650,137	19,190,245	35%	13,409,209



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2022-23
For the Month Ended Oct 31, 2022
33% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
SPECIAL REVENUE FUNDS								
202	STREET MAINTENANCE	420	909,478	1,680	-	1,680	0%	138,191
205	PUBLIC SAFETY/SUPP.LAW	104	101,252	417	-	417	0%	35,749
206	DEVELOPMENT SERVICES FUND							
	Planning	134,587	1,772,972	501,212	1,059	502,271	28%	621,908
	Building	165,836	2,452,139	653,598	68,895	722,493	29%	651,943
	Engineering	133,532	1,907,855	491,196	292,382	783,578	41%	509,134
206	DEVELOPMENT SERVICES FUND	433,956	6,132,966	1,646,005	362,337	2,008,342	33%	1,782,984
207	LONG RANGE PLANNING	77,291	936,040	270,043	29,345	299,388	32%	199,161
215/216	CDBG	7	81	27	-	27	33%	1,832
225	ASSET SEIZURE	63	759	253	-	253	33%	-
229	LIGHTING AND LANDSCAPE	14,601	224,538	48,140	5,423	53,563	24%	37,361
230	COMMUNITY FACILITIES DISTRICT	4,764	39,852	11,828	-	11,828	30%	7,285
232	ENVIRONMENT PROGRAMS	35,653	525,533	140,151	8,762	148,913	28%	103,751
234	MOBILE HOME PARK	73	881	294	-	294	33%	148
236	HOUSING MITIGATION	60,684	1,900,261	265,784	184,267	450,051	24%	215,408
240	EMPLOYEE ASSISTANCE	77	20,919	4,237	-	4,237	20%	5,844
246	COUNTYWIDE SOLID WASTE PROGRAM	98,138	1,842,223	310,563	1,086,679	1,397,242	76%	142,178
255	HOUSING SUCCESSOR AGENCY	90,524	1,143,490	404,991	320,833	725,824	63%	374,786
260	PUBLIC ART	17,459	18,750	17,993	-	17,993	96%	3,799
TOTAL SPECIAL REVENUE FUNDS		833,814	13,797,023	3,122,406	1,997,646	5,120,052	37%	3,049,355
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	87,787	2,610,959	619,015	168,828	787,843	30%	3,697,356
302	PARK MAINTENANCE	54,318	650,000	217,868	-	217,868	34%	218,092
303	LOCAL DRAINAGE	66,393	8,221,231	687,010	290,248	977,258	12%	14,867
304	LOCAL DRAIN. NON-AB1600	5,325	181,113	13,563	7,940	21,504	12%	960
306	AGRICULTURE & OPEN SPACE PRESERVATI	10,488	275,854	41,951	-	41,951	15%	5,393,514
308	STREET CIP	2,165,477	8,318,556	5,411,041	2,220,875	7,631,916	92%	2,790,683
309	TRAFFIC IMPACT	524,049	9,301,872	1,956,082	4,259,952	6,216,034	67%	5,436,735
315	PUBLIC SAFETY FACILITIES IMPACT	30,038	9,856,026	194,684	653,897	848,581	9%	86,725
346	PUBLIC FAC.NON AB1600	6,020	2,404,515	16,531	6,066	22,597	1%	66,860
347	PUBLIC FACILITIES IMPACT	2,429	279,154	9,718	-	9,718	3%	9,108
348	LIBRARY IMPACT	18,576	222,916	74,305	-	74,305	33%	73,736
350	UNDERGROUNDING	95	1,056,441	380	-	380	0%	380
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	1,697	443,838	6,789	1,350	8,139	2%	788,224
360	COMM/REC CENTER IMPACT	539,366	1,466,276	544,239	883,062	1,427,301	97%	42,825
375	QUIMBY FEE	5,643	1,434,865	72,025	46,604	118,629	8%	105
TOTAL CAPITAL PROJECTS FUNDS		3,517,699	46,723,617	9,865,203	8,538,822	18,404,025	39%	18,620,170
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	233,762	292,184	234,549	-	234,549	80%	3,544
441	POLICE FACILITY BOND DEBT	314,841	387,490	315,882	-	315,882	82%	1,352
TOTAL DEBT SERVICE FUNDS		548,603	679,674	550,431	-	550,431	81%	4,896



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2022-23
For the Month Ended Oct 31, 2022
33% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
ENTERPRISE FUNDS								
SEWER								
640	SEWER OPERATIONS	892,490	16,300,411	4,493,325	194,636	4,687,961	29%	4,493,325
641	SEWER CAPITAL EXPANSION	235,508	23,292,409	369,092	999,897	1,368,989	6%	190,421
642	SEWER RATE STABILIZATION	151	1,818	606	-	606	33%	380
643	SEWER-CAPITAL PROJECTS	1,230,422	23,494,295	8,996,401	617,903	9,614,304	41%	3,681,104
TOTAL SEWER FUND(S)		2,358,572	63,088,933	13,859,424	1,812,436	15,671,860	25%	8,365,230
WATER								
	Water Operations	956,492	16,045,940	4,496,370	746,244	5,242,614	33%	4,357,307
	Utility Billing	98,940	1,097,979	278,316	55,931	334,247	30%	282,710
	Water Conservation	35,174	439,985	79,664	31,539	111,203	25%	27,016
650	WATER OPERATIONS	1,090,605	17,583,904	4,854,350	833,715	5,688,064	32%	4,667,033
651	WATER CAPITAL EXPANSION	57,928	893,125	238,907	25,802	264,709	30%	254,098
652	WATER RATE STABILIZATION	113	1,362	454	-	454	33%	124
653	WATER-CAPITAL PROJECTS	35,089	5,617,611	61,494	275,844	337,338	6%	117,472
TOTAL WATER FUND(S)		1,183,736	24,096,001	5,155,205	1,135,360	6,290,565	26%	5,038,726
TOTAL ENTERPRISE FUNDS		3,542,307	87,184,934	19,014,629	2,947,796	21,962,425	25%	13,403,956
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	150,489	2,518,930	509,974	84,355	594,330	24%	614,340
740	BUILDING MAINTENANCE	109,452	1,668,218	397,189	63,426	460,616	28%	339,934
741	BUILDING REPLACEMENT	2,612	1,611,451	68,526	25,823	94,349	6%	49,940
745	CIP ADMINISTRATION	166,693	1,982,153	569,223	13,738	582,961	29%	519,242
760	UNEMPLOYMENT	-	15,000	-	-	-	n/a	-
770	WORKERS COMPENSATION	11,542	1,106,358	535,143	-	535,143	48%	604,516
790	EQUIPMENT REPLACEMENT	68,683	1,055,964	234,232	395,206	629,438	60%	83,538
791	EMPLOYEE BENEFITS FUND	27,658	700,000	178,440	-	178,440	25%	81,071
795	GEN. LIABILITY INSURANCE	16,795	1,893,436	1,667,342	4,650	1,671,992	88%	1,457,006
TOTAL INTERNAL SERVICE FUNDS		553,924	12,551,510	4,160,069	587,198	4,747,267	38%	3,749,588
REPORT TOTAL		\$ 13,033,404	\$ 215,144,372	\$ 52,252,846	\$ 17,721,599	\$ 69,974,445	33%	\$ 52,237,174

		 City of Morgan Hill Fund Activity Summary - Fiscal Year 2022-23 For The Month Ended October 31, 2022 33% of Year Complete							
Fund No.	Fund	Beginning Fund Balance 07-01-22	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	\$ 30,325,888	\$ 8,437,904	17%	\$ 15,540,108	29%	\$ (7,102,205)	\$ 3,650,137	\$ 19,573,547
TOTAL GENERAL FUND		\$ 30,325,888	\$ 8,437,904	17%	\$ 15,540,108	29%	\$ (7,102,205)	\$ 3,650,137	\$ 19,573,547
202	STREET MAINTENANCE	63,915	\$ 203,737	22%	\$ 1,680	27%	\$ 202,057	\$ -	\$ 265,972
205	PUBLIC SAFETY/SUPPL. LAW	251,291	74,476	73%	417	26%	74,059	-	325,350
206	DEVELOPMENT SERVICES	(495,437)	2,465,884	40%	1,646,005	27%	819,879	362,337	(37,895)
207	LONG RANGE PLANNING	1,197,975	383,055	38%	270,043	29%	113,012	29,345	1,281,642
215 / 216	CDBG	29,812	223	91%	27	33%	196	-	30,008
225	ASSET SEIZURE	101,644	360	37%	253	33%	107	-	101,751
229	LIGHTING AND LANDSCAPE	190,530	579	0%	48,140	21%	(47,561)	5,423	137,546
230	COMMUNITY FACILITIES DISTRICT	132,368	341	1%	11,828	30%	(11,487)	-	120,881
232	ENVIRONMENTAL PROGRAMS	236,258	180,279	33%	140,151	27%	40,128	8,762	267,624
234	MOBILE HOME PK RENT STAB.	69,992	790	179%	294	33%	496	-	70,488
235	SENIOR HOUSING	236,079	-	n/a	-	n/a	-	-	236,079
236	HOUSING MITIGATION	5,879,386	216,700	14%	265,784	14%	(49,084)	184,267	5,646,035
240	EMPLOYEE ASSISTANCE	61,964	2,524	12%	4,237	20%	(1,713)	-	60,251
246	COUNTYWIDE SOLID WASTE	129,862	401,901	46%	310,563	17%	91,338	1,086,679	(865,479)
247	ENVIRONMENT REMEDIATION	139,118	472	46%	-	n/a	472	-	139,590
255	HOUSING SUCCESSOR AGENCY	3,091,721	184,795	79%	404,991	35%	(220,195)	320,833	2,550,692
260	PUBLIC ART	67,129	-	n/a	17,993	96%	(17,993)	-	49,136
TOTAL SPECIAL REVENUE FUNDS		\$ 11,383,607	\$ 4,116,116	33%	\$ 3,122,406	23%	\$ 993,711	\$ 2,020,886	\$ 10,356,432
301	PARK DEV. IMPACT FUND	\$ (822,989)	\$ 1,337,102	98%	\$ 619,015	24%	\$ 718,087	\$ 168,828	\$ (273,730)
302	PARK MAINTENANCE	2,567,344	10,153	17%	217,868	34%	(207,715)	-	2,359,629
303	LOCAL DRAINAGE	11,596,359	682,759	182%	687,010	8%	(4,251)	290,248	11,301,860
304	LOCAL DRAINAGE/NON-AB1600	1,374,682	68,841	236%	13,563	7%	55,277	7,940	1,422,019
306	AGRICULTURE AND OPEN SPACE PRESERV	589,238	26,326	520%	41,951	15%	(15,625)	-	573,613
308	STREET CIP	5,741,205	988,911	21%	5,411,041	65%	(4,422,130)	2,220,875	(901,800)
309	TRAFFIC IMPACT FUND	1,187,038	54,044	1%	1,956,082	21%	(1,902,038)	4,259,952	(4,974,952)
315	PUBLIC SAFETY FACILITIES IMPACT	3,221,824	36,674	1%	194,684	2%	(158,011)	653,897	2,409,917
346	PUBLIC FACILITIES NON-AB1600	2,878,803	370,020	32%	16,531	1%	353,489	6,066	3,226,225
347	PUBLIC FACILITIES IMPACT FUND	1,017,051	10,279	7%	9,718	3%	561	-	1,017,612
348	LIBRARY IMPACT FUND	1,444,583	30,752	6%	74,305	33%	(43,553)	-	1,401,030
350	UNDERGROUNDING	1,600,648	5,764	19%	380	0%	5,384	-	1,606,032
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	(46,063)	208,410	43%	6,789	2%	201,620	1,350	154,207
360	COMM/REC CTR IMPACT FUND	1,295,025	52,149	4%	544,239	37%	(492,090)	883,062	(80,126)
375	QUIMBY FEE	839,370	1,538,915	236%	72,025	5%	1,466,890	46,604	2,259,655
TOTAL CAPITAL PROJECT FUNDS		\$ 34,484,118	\$ 5,421,098	25%	\$ 9,865,203	21%	\$ (4,444,106)	\$ 8,538,822	\$ 21,501,191
420	CIVIC CENTER DEBT	\$ 173,445	\$ 98,046	34%	\$ 234,549	80%	\$ (136,503)	\$ 241,117	\$ (204,175)
441	POLICE FACILITY BOND DEBT	166,744	129,359	33%	315,882	82%	(186,523)	306,877	(326,655)
TOTAL DEBT SERVICE FUNDS		\$ 340,189	\$ 227,406	33%	\$ 550,431	81%	\$ (323,025)	\$ 547,993	\$ (530,830)

City of Morgan Hill
Fund Activity Summary - Fiscal Year 2022-23
For The Month Ended October 31, 2022
33% of Year Complete

Fund No.	Fund	Beginning Fund Balance 07-01-22	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	\$ 4,567,000	\$ 3,927,734	27%	\$ 4,493,325	28%	\$ (565,591)	194,636	3,806,772
641	SEWER IMPACT FUND*	20,552,531	6,721,607	38%	369,092	2%	6,352,516	999,897	25,905,150
642	SEWER RATE STABILIZATION	2,726,339	26,400	53%	606	33%	25,794	-	2,752,133
643	SEWER-CAPITAL PROJECTS	22,007,034	2,245,311	33%	8,996,401	38%	(6,751,090)	617,903	14,638,041
650	WATER OPERATIONS	4,289,349	5,378,517	30%	4,854,350	28%	524,168	833,715	3,979,802
651	WATER IMPACT FUND*	2,924,596	65,754	7%	238,907	27%	(173,154)	25,802	2,725,640
652	WATER RATE STABILIZATION	3,154,313	11,232	n/a	454	33%	10,778	-	3,165,091
653	WATER -CAPITAL PROJECT	10,397,946	1,723,225	34%	61,494	1%	1,661,731	275,844	11,783,833
TOTAL ENTERPRISE FUNDS		\$ 70,619,108	\$ 20,099,780	32%	\$ 19,014,629	22%	\$ 1,085,151	\$ 2,947,796	\$ 68,756,463

730	INFORMATION SERVICES	\$ 795,800	\$ 747,284	33%	\$ 509,974	20%	\$ 237,310	\$ 84,355	\$ 948,755
740	BUILDING MAINTENANCE	(166,058)	551,915	33%	397,189	24%	154,726	63,426	(74,758)
741	BUILDING REPLACEMENT	3,719,439	283,106	34%	68,526	4%	214,580	25,823	3,908,196
745	CIP ENGINEERING	8,327	536,618	27%	569,223	29%	(32,605)	13,738	(38,016)
760	UNEMPLOYMENT	316,781	1,051	45%	-	n/a	1,051	-	317,832
770	WORKERS COMPENSATION	1,944,442	267,436	37%	535,143	48%	(267,707)	30,000	1,646,735
790	EQUIPMENT REPLACEMENT	6,113,244	373,777	30%	234,232	22%	139,545	395,206	5,857,583
791	EMPLOYEE BENEFITS FUNDS	(161,343)	269,998	33%	178,440	25%	91,558	-	(69,785)
795	GEN. LIABILITY INSURANCE	1,123,565	660,966	33%	1,667,342	88%	(1,006,375)	4,650	112,540
TOTAL INTERNAL SERVICE FUNDS		\$ 13,694,197	\$ 3,692,152	32%	\$ 4,160,069	33%	\$ (467,917)	\$ 617,198	\$ 12,609,082

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 30,325,888	\$ 8,437,904	17%	\$ 15,540,108	29%	\$ (7,102,205)	\$ 3,650,137	\$ 19,573,547
SPECIAL REVENUE GROUP	11,383,607	4,116,116	33%	3,122,406	23%	993,711	2,020,886	10,356,432
DEBT SERVICE GROUP	340,189	227,406	33%	550,431	81%	(323,025)	547,993	(530,830)
CAPITAL PROJECTS GROUP	34,484,118	5,421,098	25%	9,865,203	21%	(4,444,106)	8,538,822	21,501,191
ENTERPRISE GROUP	70,619,108	20,099,780	32%	19,014,629	22%	1,085,151	2,947,796	68,756,463
INTERNAL SERVICE GROUP	13,694,197	3,692,152	32%	4,160,069	33%	(467,917)	617,198	12,609,082
TOTAL ALL GROUPS	\$ 160,847,107	\$ 41,994,455	26%	\$ 52,252,846	24%	\$ (10,258,391)	\$ 18,322,832	\$ 132,265,884

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.