CITY OF MORGAN HILL

Regular Meeting Agenda

City Council

Mark Turner	-	*Mayor*
Rene Spring	-	*Mayor Pro Tem*
Gino Borgioli	-	*Council Member*
Marilyn Librers	-	*Council Member*
Yvonne Martínez Beltrán	-	*Council Member*

Wednesday, April 5, 2023 7:00 PM

Council Chamber Building
17555 Peak Avenue, Morgan Hill, CA 95037

Morgan Hill City Council meetings are held in person with the option for the public to attend in-person or by teleconference/video conference. Information on how the public may observe and participate in the meeting is located below.

MEETING PARTICIPATION AND PUBLIC COMMENT
City Council meetings will be live-streamed on Channel 17, the City's website, and the City's Facebook page.

Those members of the community that would like to participate in the meetings remotely may do so by joining virtually 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 City Council meeting virtually 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 virtually by calling the number above, dial *9 to raise your hand, and be called upon to speak for up to 3 minutes
- Public comment in writing may be submitted via email to ccpubliccomment@morganhill.ca.gov or by mail to the City Clerk at 17575 Peak Avenue, Morgan Hill, CA 95037. Please email your comments to the City Clerk no later than 3:00 p.m. on Tuesday (the day before the City Council meeting) for your comments to be submitted to the members of the City Council with sufficient

time to review the comments. You may continue to provide written comments up to noon on Wednesday (the day of the meeting) although Council Members may not have sufficient time to review them before the meeting. Public comments submitted to the City Clerk after noon the day of the meeting will be provided to the City Council as time allows.

Written comments WILL NOT be read aloud during the City Council Meeting. Please note that written comments are posted on the City's website, so do not include any personal information you do not want to be posted on the web.

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

The week of April 9 - 15, 2023 as Public Safety Telecommunicators Week/Dispatcher Appreciation Week
The month of April as Parkinson's Awareness Month
The month of April as American Red Cross Month

CITY COUNCIL REPORTS

Council Member Yvonne Martinez Beltran

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.

1. **ADOPT ORDINANCE NO. 2344, NEW SERIES, APPROVING A ZONING MAP AMENDMENT FROM PLANNED DEVELOPMENT/GENERAL COMMERCIAL TO MIXED-USE FLEX FOR A MIXED-USE DEVELOPMENT ON A 3.82-ACRE SITE LOCATED ON THE SOUTHWEST QUADRANT OF COCHRANE ROAD AND MONTEREY ROAD (MONTEREY – CITY VENTURES (THE GATES)) (APNS 764-10-013 AND 764-10-015)**

   Recommendation:
   Waive the reading, adopt Ordinance No. 2344, 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.

2. **ADOPT RESOLUTION MAKING FINDINGS IN SUPPORT OF FINANCING FOR THE PREVIOUSLY APPROVED REHABILITATION OF SKEELS AND VILLA CIOLINO APARTMENTS**

Recommendation:
Adopt a resolution to support Eden Housing's ability to apply for new Low Income Housing Tax Credit financing and tax-exempt bonds to support the re-capitalization and rehabilitation of Skeels and Villa Ciolino Affordable Apartment Communities.

3. **APPROVE CONTRACT FOR BANKING SERVICES WITH WELLS FARGO BANK**

Recommendation:

1. Approve contract for banking services with Wells Fargo Bank; and
2. Authorize the City Manager to execute and administer a banking services contract with Wells Fargo Bank through 2028 with subsequent renewal subject to budget appropriation.

4. **APPROVE FIFTH AMENDMENT TO AGREEMENT WITH INNOVATIVE CLAIMS SOLUTIONS, INC.**

Recommendation:
Authorize the City Manager to execute and administer a Fifth Amendment to Agreement with Innovative Claims Solutions, Inc. to provide third party claims administration for workers' compensation extending the agreement for one additional year of service at annual amount of $35,755, for a new total contract amount of $276,735 over 8 years.

5. **APPROVE THE MARCH 15, 2023 CITY COUNCIL MEETING MINUTES**

Recommendation:
Approve the March 15, 2023 City Council minutes.

PUBLIC HEARINGS

6. **ADOPT RESOLUTION ESTABLISHING CARRY CONCEALED WEAPON (CCW) LICENSE FEE, BUSINESS LICENSE RENEWAL FEE, AND UPDATING CREDIT CARD PAYMENT SERVICE FEE**

Recommendation:

1. Open/Close public hearing; and
2. Adopt resolution establishing carry concealed weapon license fee, business license renewal fee, and updating credit card service fee for development fees and transient occupancy tax payments by credit card.

OTHER BUSINESS

7. PROVIDE DIRECTION ON NEXT STEPS FOR DOWNTOWN COMMUNITY PARKLET AND/OR ALTERNATIVE DOWNTOWN ACTIVATION OPTION

Recommendation:
Provide direction on next steps for Downtown Community Parklet and/or Alternative Downtown Activation Option.

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 and Quality of Life
- 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
- Advocating for Local, Regional, and State Legislative 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 recovering from the global pandemic, and we will continue to have equity, public health, and financial responsibility in mind.

CITY OF MORGAN HILL

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: April 5, 2023

PREPARED BY:
Kim Mancera, Deputy City Clerk
APPROVED BY: City Manager

ADOPT ORDINANCE NO. 2344, NEW SERIES, APPROVING A ZONING MAP AMENDMENT FROM PLANNED DEVELOPMENT/GENERAL COMMERCIAL TO MIXED-USE FLEX FOR A MIXED-USE DEVELOPMENT ON A 3.82-ACRE SITE LOCATED ON THE SOUTHWEST QUADRANT OF COCHRANE ROAD AND MONTEREY ROAD (MONTEREY – CITY VENTURES (THE GATES)) (APNS 764-10-013 AND 764-10-015)

RECOMMENDATION(S)
Waive the reading, adopt Ordinance No. 2344, 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
2022-2023 Strategic Priorities
Affordable Housing and Homelessness
Economic Development

Guiding Documents
Morgan Hill 2035 General Plan

REPORT NARRATIVE:
On February 15, 2023, the City Council introduced Ordinance No. 2344 New Series, by the following roll call vote: Ayes: Borgioli, Librers, Martinez Beltran, Turner; Noes: Spring; Abstain: None; Absent: None.

On March 15, 2023, Ordinance No. 2344 New Series, was scheduled for adoption and neither passed nor failed due to lack of majority vote.

The Ordinance implements the Zoning Map Amendment from Planned Development/General Commercial to Mixed Use Flex for a 3.82-acre site to allow for the development of a mixed-use project consisting of 5 commercial flex units, 49 townhome-style condominiums, and associated amenities.

COMMUNITY ENGAGEMENT:

A project webpage was created on the Morgan Hill website. The date and time of this meeting was publicly noticed (mailed to property owners within 600-feet of the project site and newspaper legal notice) for the minimum 10-day period and a project development sign was posted at the property location pursuant to the Planning Division requirements.

ALTERNATIVE ACTIONS:
Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
The existing "Gateway Center" Planned Development (PD) was approved by the City Council (Ordance No. 1549) on May 1, 2002.

The Planning Commission conducted a public hearing on January 11, 2022, for the Preliminary Plan Review SR2021-0020 project proposal, as required by Section 18.115.100 (Preliminary Review) of the Morgan Hill Municipal Code (MHMC). All General Plan Amendments require a Preliminary Plan Review prior to the formal submittal of a General Plan application. After receiving input from the Planning Commission, the applicant, City Ventures, worked with City staff and changed the site layout to improve on-site circulation and address concerns regarding ingress/egress and access to the site via Monterey Road.

The Planning Commission reviewed the project on December 13, 2022 and accepted public comment on the proposed project. The Planning Commission recommended approval of the Zoning Amendment application.

On February 15, 2023, the City Council approved the MND and the Mitigation Monitoring and Reporting Program, approved the resolution approving an amendment to the General Plan land use designation, and introduced the Zoning Amendment Ordinance.

FISCAL AND RESOURCE IMPACT:
The City's 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 initial Study/Mitigated Negative Declaration (IS/MND) was prepared for the project by Raney Planning & Management, Inc. dated October 2022 in conformance with the California Environmental Quality Act (CEQA). The IS/MND was circulated for 30 days from November 11, 2022 to December 12, 2022. On February 15, 2023, the City Council approved the MND and the Mitigation Monitoring and Reporting Program.

ORDINANCE NO. 2344, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING A ZONING MAP AMENDMENT FROM PLANNED DEVELOPMENT/GENERAL COMMERCIAL TO MIXED USE FLEX FOR A MIXED-USE DEVELOPMENT ON A 3.82-ACRE SITE LOCATED ON THE SOUTHWEST QUADRANT OF COCHRANE ROAD AND MONTEREY ROAD (MONTEREY – CITY VENTURES (THE GATES)) (APNS 764-10-013 AND 764-10-015)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES 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 proposed project is consistent with the policies of the General Plan and also the proposed General Plan designation of Mixed-Use Flex.

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

The project is a mixed use development that would provide housing and commercial opportunities. The proposed project is not expected to detrimental to public interest, health, safety, convenience, or welfare of the City. An Initial Study/Mitigated Negative Declaration (IS/MND) was prepared for the project per the California Environmental Quality Act (CEQA). A Mitigation Monitoring and Reporting Program (MMRP) has been prepared for the project which includes all measures required to reduce potentially significant environmental impacts to a less-than significant level which will be incorporated into any approval of a future development project.

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 amendment would allow for development of a mixed-use project. Based upon analysis of the conceptual plan, the project would comply with all the required development standards outlined in the MU-F zone district. The project site is large enough to fit the proposed project and be complementary to the other residential mixed-use projects located along Monterey Road. The zone change would provide an appropriate transition from the lower density single-family detached neighborhoods to the north and west of the project site to the higher density single-family attached neighborhoods and commercial areas along Monterey Road.

SECTION 4. The request was considered by the Planning Commission at its regular meeting of December 13, 2022, at which time the Planning Commission recommended approval of Zoning Amendment application, ZA2021-0006: Monterey – City Ventures (The Gates).

SECTION 4. Effective Date; Posting.

This Ordinance shall take effect on the 31st day after adoption. 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 15TH DAY OF FEBURARY 2023, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 5TH DAY OF APRIL 2023, 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:

MARK TURNER, Mayor

ATTEST:

MICHELLE BIGELOW, City Clerk

ꕥ CERTIFICATE OF THE CITY CLERK ꕤ

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. 2344, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 5th day of April 2023.

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

DATE: ______________________ __________________________________

MICHELLE BIGELOW, City Clerk

MEMORANDUM OF UNDERSTANDING
WITH RESPECT TO "THE GATES"

This Memorandum of Understanding ("MOU") is made this 15th day of March, 2023, by and between CITY VENTURES, LLC, a Delaware limited liability company ("City Ventures"), and CITY OF MORGAN HILL, a municipal corporation (the "City"), with respect to the following facts:

A. City Ventures has made application to the City for the approval of the entitlements (the "Application") with respect to a project commonly known as "The Gates" which is located at 18545-18565 Monterey Road, Morgan Hill (the "Property"). The Application presently proposes a mixed-use project with both residential and commercial uses as described in the General Plan Amendment application GPA2021-0005 and Zoning Map Amendment application ZA2021-0006: Monterey – City Ventures (The Gates) on the Property. A copy of the Application is attached hereto as Exhibit A.

B. The City is in the process of amending its General Plan covering an area within the City of Morgan Hill which includes the Property, in a manner which would allow for the Property to be developed as an all-residential project.

C. The City seeks the assurance of City Ventures that City Ventures will preserve the mixed-use designation on the site and not amend the Application or leverage any state laws to build a residential-only project.

NOW THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, City Ventures and its successors and assigns hereby provides its assurance to the City that City Ventures and its successors and assigns will not amend the Application to build a residential-only project and will maintain the commercial space substantially as shown on the Application.

IN WITNESS WHEREOF, City Ventures and the City have executed this MOU as of the date and year first written above.

CITY VENTURES, LLC,
a Delaware limited liability company

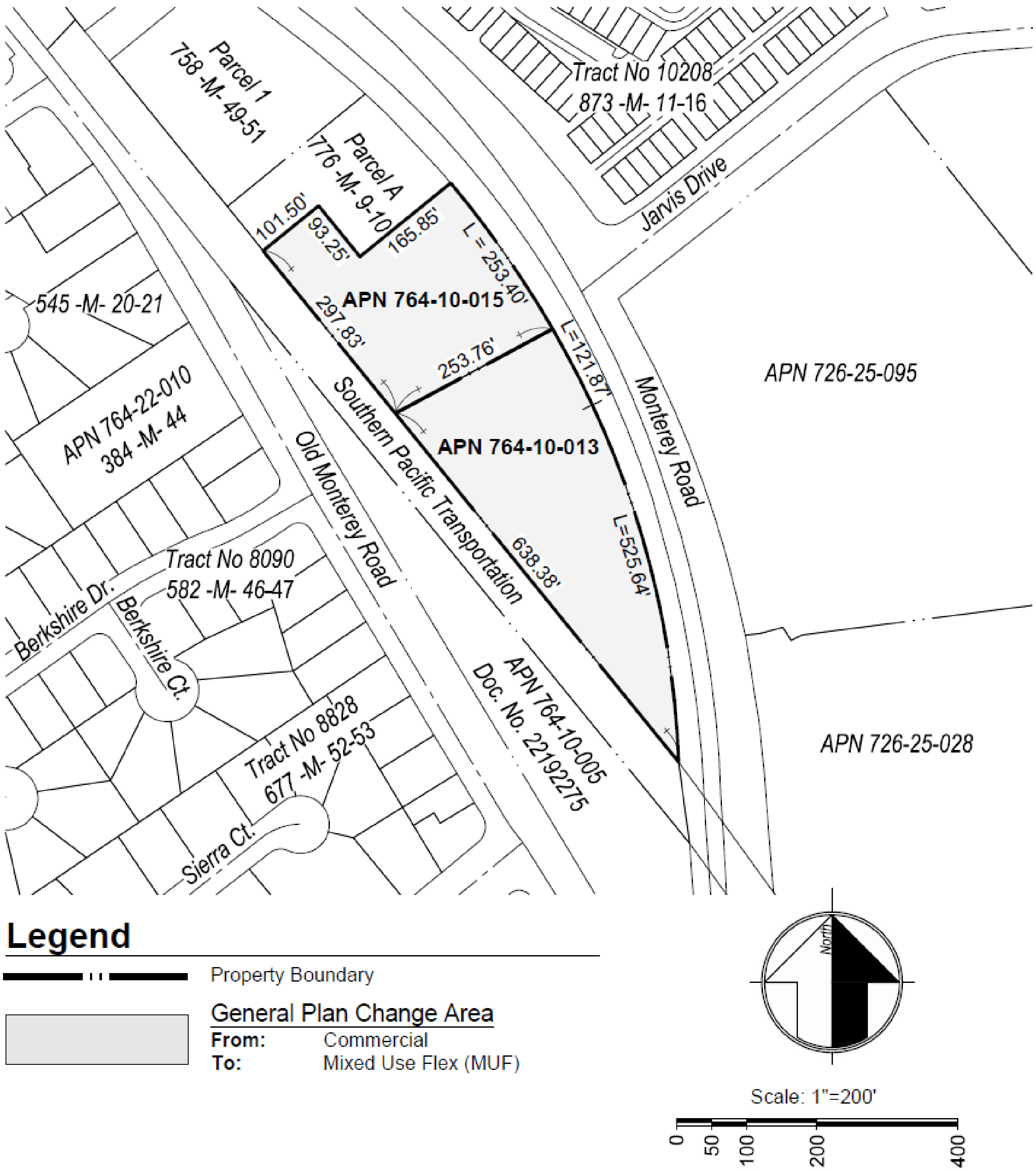
By: Samantha Hauser
Name: Samantha Hauser
Its: Executive Vice President

CITY OF MORGAN HILL,
a Municipal corporation

By: ____________________
Name: ____________________
Its: ____________________

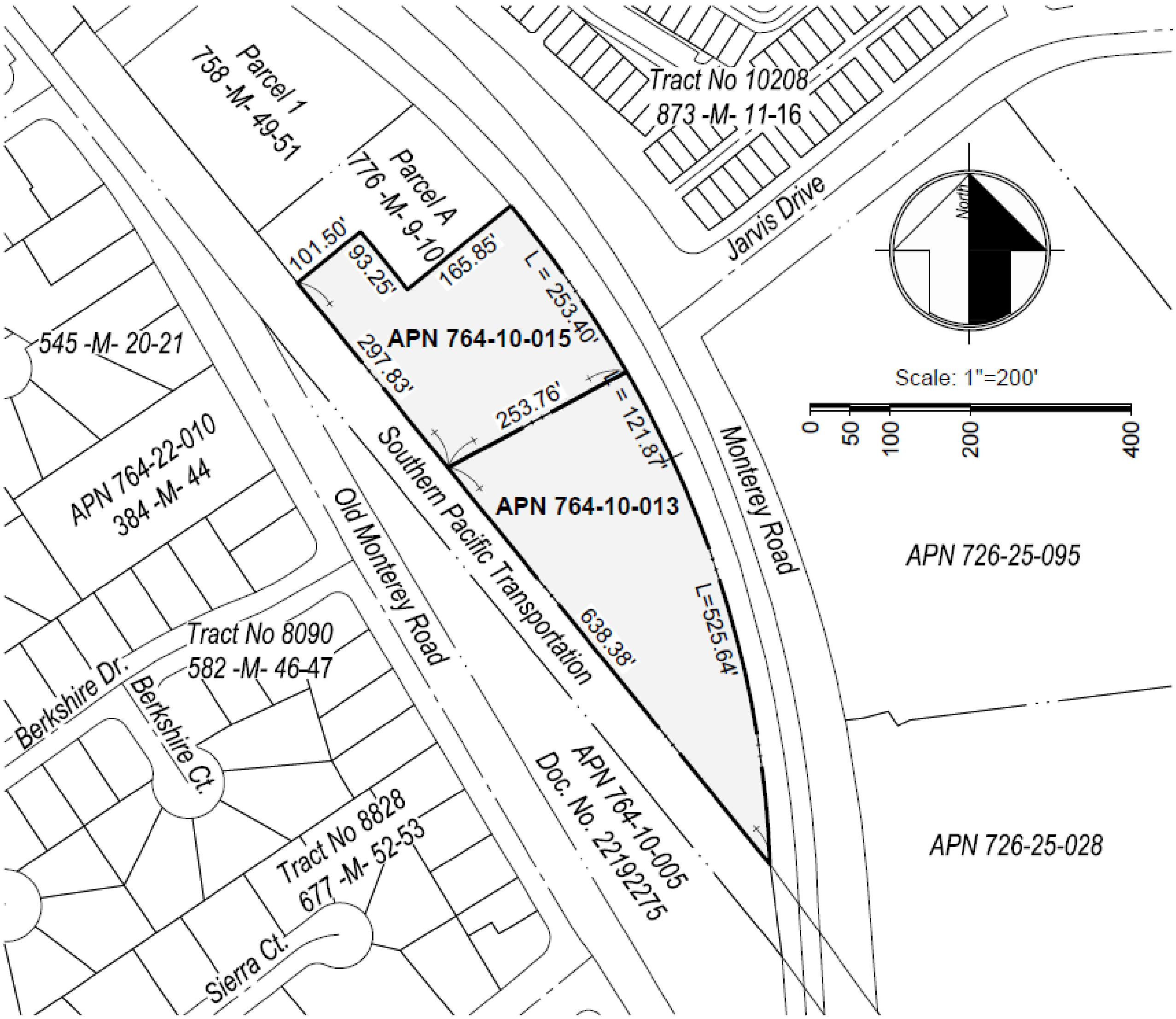
EXHIBIT

APPLICATION

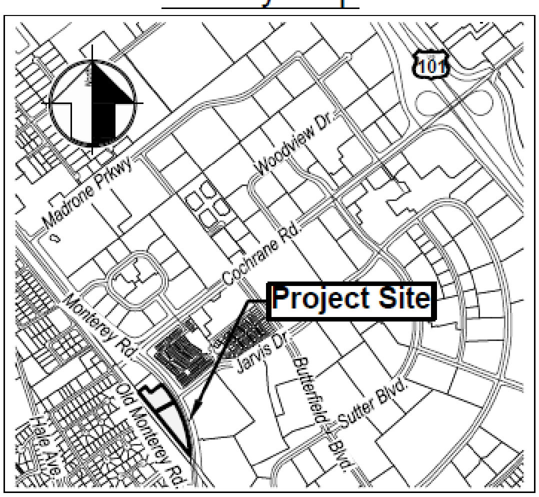


Proposed General Plan Amendment to the City of Morgan Hill entitled "City Ventures Homebuilding, LLC"

MH engineering Co. 16075 VINEYARD BOULEVARD MORGAN HILL, CA 95037 (408) 779-7381	SCALE: 1" = 200'	JOB #: 221005	SHEET
	DRAWN BY: MiguelM	DATE: October 20, 2021	1 of 1



Vicinity Map



Legend

Property Boundary

Zoning Change Area
From: General Commercial (PUD)
To: Mixed Use Flex (MUF)

"Exhibit B"

Map showing Rezoning
Lands of
"City Ventures Homebuilding, LLC"
City of Morgan Hill
Being a Part of
Ordinance No. ________, New Series

MH engineering Co.
16075 VINEYARD BOULEVARD MORGAN HILL, CA 95037 (408) 779-7381

SCALE: 1" = 200'	JOB #: 221005	SHEET
DRAWN BY: MiguelM	DATE: October 20, 2021	1 of 1

From: Joe Baranowski
To: CityCouncil; CC Public Comment
Cc: Christina Turner; Donald Larkin; Jennifer Carman
Subject: March 15, 2023 City Council Meeting: Public Comment on Agenda Item #7 on the Consent Calendar
Date: Tuesday, March 14, 2023 12:34:24 PM

Re: Ordinace 2344, the Gates Mixed-Use Flex project

Council members, staff and my neighbors,

I am aware that the above referenced item is 'only' an administrative procedure at this point with the Council having voted 4-1 a few weeks ago to approve General Plan and Zoning Amendments allowing a site with a Planned Development agreement to be changed to Mixed-Use Flex so that 49 townhouse style condos (that will be sold at market rate except as required by the City of MH inclusionary housing policy) can be built. I am wrting this Public Comment because I do not believe the Public Interest was served during that decsion-making process and I think that subsequent events show that there are still unanswered questions that should be discussed as they may impact future decisions.

A preliminary review of the Gates project was held on Jan 11, 2022.

The Planning Commission held a Public Hearing and approved the requested General Plan and Zoning Amendment on December 13,2022.

Months before the February 15th 2023 City Council meeting, Staff presented detailed presentations of 'legislative changes' to both the Planning Commission and the Cit Council. These included discussions of SB6 and AB 2011 (The Affordable Housing and High Road Jobs Act).

Approximately 72 hours before the Feb 15, 2023 City Council meeting the Staff Report was posted.

The staff report notes that:

The existing "Gateway Center" Planned Development (PD) was approved by the City Council (Ordance No. 1549) on May 1, 2002 (Attachment 6). The PD and Master Plan encompasses four lots:

a. The two parcels proposed to be developed with this application; and,
b. The two parcels to the north are developed with an Arco gas station, AM/PM convenience market, and car wash, and a multi-tenant commercial building that includes a hair salon and Starbucks with drive-through.

The PD includes Development Standard Guidelines and specifies the allowed uses within the PD. The two project parcels were to be developed as a multi-tenant commercial retail building with up to 2,800 square feet of restaurant space and an office building. (bold emphasis added by me)

The PD and Master Plan is in fact a **ten-page document**. It defines allowed uses, a design theme, site development specifications, site planning, signage and miscellaneous requirements.

The *entirety* of the "Alternative Actions' section states: (again emphasis added by me)

The City Council could deny the request to amend the General Plan and Zoning designation for the property from General Commercial to Mixed-Use Flex. This would prevent the development of the property as mixed-use residential. The City Council could also require the applicant to enter into a Memorandum of Understanding (MOU) to ensure that the commercial spaces are preserved

to prevent the project from changing to a 100% residential project if the General Plan Amendment and Zoning Amendment are approved.

There is no mention whatsoever of any concern with the developer of THAT property using any state laws to build an all-residential project if their requested changes were not granted.

During the question-and-answer period on February 15th, Councilmember Spring asks about the value of the property increasing and the possibility that if the developer got the changes they were requesting, the 'mixed use' designation turning into 'all residential'. His remarks lead to a discussion about the logic and rationale for granting the proposed General Plan and Zoning amendments, possibly with a memorandum of understanding being included.

A staff member states that *our position is we have a planned development which is an agreement, in exchange for certain benefits to the City, which would include mixed-use, the developer is getting something they wouldn't otherwise be able to get through straight zoning, so our position is that because there's an agreement to develop a mixed-use project, the mixed-use project would be binding on the applicant. Absent a change in the zoning this would absolutely become a straight housing project or at least have the potential to become a straight housing project under state law that allows housing on commercial property.*

This was and IS confusing because of course, the Staff recommendation was to allow the developer to REMOVE the parcels from the EXISTING Planned Development Agreement.

Councilmember Spring: *So it would be taken out of the PD Zone?*

Staff*: That is what is the proposal is, to remove it from the PD.*

Councilmember Spring: *So the protection you just said, is gone.*

Staff*: But that's where the alternative of the MoU came to be.*

Councilmember Spring: *Which, according to our City Attorney, current me if I'm wrong, wouldn't trump state law.*

Staff: *It's still an agreement, we would have an agreement, that's really what we don't have otherwise, otherwise we just have the commercial zone that's allowed to be built with housing.*

With all due respect, how is ANYONE supposed to make an informed decision with the mumble jumble that was presented? Why didn't the Staff Report say ANYTHING about the concern over 'state law' that would have allowed all interested parties to review the concern and ask appropriate questions?   Why wasn't the staff clear, even when I asked during public comment, 'what' state law they were talking about? The answer that was provided by email after I wrote an email would have taken sixty seconds at most to say verbally. Instead, when I wrongly guessed that SB6 was the reason for concern, the only response was head shaking. Why not just give a simple answer then?

There WAS a Planned Development Agreement. The 'master plan' is ten pages long. During the March 3rd goal setting workshop Councilmember Spring was reminded of that when the discussion of protecting commercial land came up during the Economic Development discussion:

Councilmember Spring: *I was also under the impression that the PD would protect the retail piece of a PD, but then in the same meeting (meaning the Feb 15th 'Gates' project agenda item) someone said that well someone could come in and build anything, so which is it?*

Staff: *We have two different types of PDs in this city. We have PDs that are fully flushed out with zoning and development standards and the uses that are allowed in them, and then we have sites where PD's* *were put on them but never really created. We call those 'PD Shells'. And the 'PD Shells' are the ones that could be developed. PD's that are fully flushed out have been determined to be protected by our City Attorney Office.*

It's STILL NOT CLEAR – WHICH IS IT? Can you please provide a definition of 'PD Shell'? Does that concept come from case law, text in the California legal code, something that was discussed during a legislative session or in some other forum or where?

The PD that WAS applicable on the Gates parcels did include zoning and development standards and clearly specified the uses that were allowed. Why is that a 'PD Shell'.

I do not believe a single decision-maker nor anyone in the public had ANY reasonable way to ascertain what was in the Public Interest on February 15th, 2023. Just read the above directly quoted statements.

Whether a new state law makes it possible, and to what likelihood, that a developer could build housing on the subject parcels without the City Council granting the proposed changes that will provide significant Private Benefit to the property owner, there are many other reasons to legitimately question whether a project that would qualify under AB 2011 would be likely to get the necessary funding and be able to 'pencil'. This point was also mentioned during the goal setting workshop. The assumption that moving forward with an MoU was the way to maximize 'local control' is certainly not supported by what was said in the Public Hearing and subsequently. And IMO, an opportunity to discuss whether an AB2011 project on that site would be better than another market rate condo development was missed. After all AB2011 is called the **Affordable** Housing and High Road Jobs Act for a reason. While not wanting to speak for residents in the most nearby neighborhoods, there are certainly already approved 'high density' projects that can reasonably by presumed to be much more impactful to existing residences than what would occur on the subject property. During the goal setting workshop it was reaffirmed that what we want and what we need is more affordable housing NOT more expensive housing – no matter how beautiful it turns out and how closely the developer has worked with the City in the past.

The decision-making process on the Gates project was at best a mess. I don't believe anyone understood the rationale for the Staff's recommendation or their own vote. IMO, it was NOT impartial, unbiased or based on any established set of facts. This is no way to ensure that Public Interest is served and it leaves some important unanswered questions.

Regards,

Joe Baranowski
MH Resident of 21+ years

From:	Christina Turner
To:	Michelle Bigelow; Kim Mancera
Cc:	Edith Ramirez; Jennifer Carman; Donald Larkin
Subject:	FW: Basis for your rationale on "Gates" General Plan Amendment this evening
Date:	Thursday, March 16, 2023 1:48:39 PM

Please supplement this with the Gates items, to come back on April 5. Thank you!

From: Donald Larkin <Donald.Larkin@morganhill.ca.gov>
Sent: Thursday, March 16, 2023 12:14 PM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: FW: Basis for your rationale on 'Gates' General Plan Amendment this evening

FYI

From: Donald Larkin
Sent: Thursday, February 16, 2023 4:19 PM
To: Joe Baranowski [redacted]
Cc: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: RE: Basis for your rationale on 'Gates' General Plan Amendment this evening

Hi Joe,

Beginning July 1, 2023, Article 3 of the Affordable Housing and High Road Jobs Act of 2022 (not SB 6) will require ministerial approval of a mixed-income housing development on any vacant property that is zoned for retail, office, or parking and has at least 50 feet of frontage on a commercial corridor (which includes Monterey Road). A developer would need to provide a higher level of affordability than our existing inclusionary housing ordinance to be eligible for ministerial approval, but the densities would be a minimum of 30 units/acre and they could be as high as 80 units/acre. The statute also defines setback and height requirements that differ from City standards.

There are some other requirements that a developer would need to meet, but we believe the property where the Gates project is located would be able to meet those requirements if a different developer wanted to build there. Ministerial approval will be required until the City meets its RHNA requirements at every income level.

Thanks,
Don

Donald A. Larkin
City Attorney
City of Morgan Hill
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Morgan Hill, CA 95037

Tel: (408) 778-3490

Email: donald.larkin@morganhill.ca.gov

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From: Joe Baranowski [redacted]
Sent: Wednesday, February 15, 2023 11:28 PM
To: Mark Turner <mark.turner@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>
Cc: Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Basis for your rationale on 'Gates' General Plan Amendment this evening

Hi Mark and Don,

I obviously have not had time to re-listen to your exact words yet so please accept my apology for what might be inaccurate paraphrasing, but as I understood your remarks tonight you both strongly implied, and Mark you based some of your decision on, the 'fact' that if the requested General Plan Amendment had been denied, the developer or some other developer would almost certainly come back with a proposal to build an all-residential project on that same site which the City would have 'no' or at least far less control over.

I believe the community has a right to understand the basis for your assumptions. Don, based on your body language to my assumption that it must be related to SB6, I honestly have zero idea. I plan to write about tonight's decision on social media and, as always, I will strive to be as accurate as possible and certainly don't want to be accused of 'misinformation'.

What is the basis for your assumptions that a property with a General Plan designation of 'commercial' that has an existing Planned Development overlay would be subject to having a developer build a residential project now or 'in less than two years'? To be clear, and to minimize the length of any response, I fully understand there are other reasons for supporting the requested change and you don't need to spend any time explaining those. I am only confused about the comments relating to the LOSS of 'local control' that you implied was a near certainty if the City did not allow the designation to be changed to MU-F so that more condos can be built.

Thanks, I look forward to discovering what I am obviously completely missing,

Joe

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: April 5, 2023

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

ADOPT RESOLUTION MAKING FINDINGS IN SUPPORT OF FINANCING FOR THE PREVIOUSLY APPROVED REHABILITATION OF SKEELS AND VILLA CIOLINO APARTMENTS

RECOMMENDATION(S)
Adopt a resolution to support Eden Housing's ability to apply for new Low Income Housing Tax Credit financing and tax-exempt bonds to support the re-capitalization and rehabilitation of Skeels and Villa Ciolino Affordable Apartment Communities.

COUNCIL PRIORITIES, GOALS & STRATEGIES
City Council Ongoing Priorities
Maintaining and Enhancing Infrastructure
Supporting our Youth, Seniors, and Entire Community
Advancing Regional Initiatives

2022-2023 Strategic Priorities
Affordable Housing and Homelessness

Guiding Documents
Morgan Hill 2035 General Plan

REPORT NARRATIVE:
NARRATIVE:
Eden Housing, Inc. and its affiliates ("Eden Housing") control the ownership of these two developments and they still intend to apply for new Low-Income Housing Tax Credit financing and tax-exempt bonds in April of 2023 to support their re-capitalization and rehabilitation plan. Eden Housing, Inc., a California nonprofit public benefit corporation and sponsor of several affordable housing developments in the City of Morgan Hill, previously sought and received approval in December of 2018 from the City Council to approve the assignment, modification, extension, assumption, and re-subordination of its existing City debt and ground lease in support of substantially rehabilitating Skeels Hotel and Villa Ciolino Apartments.

On December 5, 2018, the City Council approved Eden Housing's request to apply for new Low Income Housing Tax Credit financing and tax-exempt bonds to support the rehabilitation of the Skeels and Villa Ciolino Affordable Apartment Communities. Their original intent was to submit a tax credit application in early 2019. However, shortly after receiving the Council's authorization in 2018, the State decided to significantly reduce the tax credits available for rehabilitation projects. Fortunately, now there is a window to be competitive for the tax credits and they will apply and compete in the 2023 round. The State Tax Credit Allocation application now requires a formal resolution to be adopted by the local jurisdiction, instead of a letter of support. Although Eden Housing has not been able to conduct a full rehabilitation of Villa Ciolino, they have completed some repairs exceeding $400,000 in 2023, with more than $300,000 in dry rot repairs and repainting of the exterior. Although that repair was a substantial and immediate need for the property, there are significant rehabilitation needs remaining. The plan is to invest approximately $6 million in Low Income Housing Tax Credit proceeds in comprehensive repairs at Villa Ciolino.

The tax credit application process is competitive and they have not yet been awarded an allocation, but the hope is that they will be successful this round. If successful, the closing date would be late 2023/early 2024, at which time construction would begin. A new tax credit limited partnership controlled by Eden will be created to facilitate the tax credit investment. Eden has already received the City Council's approval for the following actions needed on December 5, 2018.

The intent and use of the loan proceeds remains the same as what was presented to the City Council in December of 2018. They will enable Eden to repair and upgrade the properties for the long-term benefit of the residents and the community. The estimate of the repairs is in process. The proposed repairs will include roof repair and/or replacement, mechanical system upgrades, substantial repairs to the building envelope and exterior stairs and balconies, common area, and unit interior improvements. In addition, Eden will implement increased energy and water efficiency measures. The impacted housing projects are:

Skeels Apartments is located at 17305 Monterey Road and consists of 13 affordable efficiency studios for extremely-low and very-low income residents. Skeels Hotel has an existing City loan (initially for $300,000, restated April 13, 2006 for $198,331.31) with a principal balance of $147,331 and $76,487 of accrued interest at 3% simple interest as of March 15, 2023, with a maturity date of April 1, 2026. Skeels has an existing City ground lease of $1 per year.

Villa Ciolino Apartments are located at 80 Ciolino Ave and consists of 41 rental units affordable for low-income families and one staff unit. Villa Ciolino has an existing City loan in the principal amount of $2,375,000 and $2,105,896 of accrued interest at 4% simple interest as of March 15, 2023, with a maturity date of April 1, 2054.

COMMUNITY ENGAGEMENT:
Inform

ALTERNATIVE ACTIONS:
As an alternative action, the City Council may choose not to adopt a resolution to

support the tax credit application to rehabilitate the projects.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
On December 5, 2018, the City Council previously consented to the assignment, modification, extension, assumption, and re-subordination of existing City loans and ground leases to new Eden Housing-controlled tax credit partnerships for the rehabilitation of Eden Housing affordable apartment communities, Skeels and Villa Ciolino apartments. Specific actions included:

1. Authorize City Manager to negotiate and approve assignment, modification, extension, assumption, and re-subordination of existing City loan in the principal amount of $162,331 and accrued interest of approximately $68,339 for rehabilitation of 13-unit Skeels Affordable Housing Apartment Complex subject to the final review and approval of the City Manager;
2. Authorize City Manager to negotiate and approve assignment, modification, extension, and assumption, of ground lease for rehabilitation of housing component of Skeels Affordable Housing Apartment Complex and potential subdivision of commercial space subject to the final review and approval of the City Manager;
3. Authorize City Manager to negotiate and approve assignment, modification, extension, assumption, and re-subordination of existing City loan in the principal amount of $2,375,000 and accrued interest of approximately $1,783,111 for rehabilitation of 42-unit Villa Ciolino Affordable Housing Apartment Complex subject to the final review and approval of the City Manager;
4. Approve a letter of commitment to support EDEN's efforts to seek new Low Income Housing Tax Credit financing and tax-exempt bonds to support their re-capitalization and rehabilitation of projects.

FISCAL AND RESOURCE IMPACT:
As indicated in the December 5, 2018 staff report, if awarded tax credits and with the execution of the refinance, the City's Housing Fund (255) will potentially be increased by a $100,000 loan payment during Fiscal Year 2025-26, and possibly in coming years through residual receipts payments.

CEQA (California Environmental Quality Act):
These projects are Categorically Exempt pursuant to Section 15301 of CEQA Guidelines as proposed repairs, maintenance and minor alteration of existing facilities involving no expansion of existing use will not have a significant effect on the environment.

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: December 5, 2018

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

EDEN HOUSING - APPROVE ASSIGNMENT, MODIFICATION, EXTENSION, ASSUMPTION, AND RE-SUBORDINATION OF EXISTING CITY LOANS AND GROUND LEASES FOR REHABILITATION OF APARTMENTS; SKEELS, VILLA CIOLINO, WILLOWS APARTMENTS AND DEPOT COMMONS

RECOMMENDATION(S)

1. Authorize City Manager to negotiate and approve assignment, modification, extension, assumption, and re-subordination of existing City loan in the principal amount of $162,331 and accrued interest of approximately $68,339 for rehabilitation of 13-unit Skeels Affordable Housing Apartment Complex subject to the final review and approval of the City Manager;
2. Authorize City Manager to negotiate and approve assignment, modification, extension, and assumption, of ground lease for rehabilitation of housing component of Skeels Affordable Housing Apartment Complex and potential subdivision of commercial space subject to the final review and approval of the City Manager;
3. Authorize City Manager to negotiate and approve assignment, modification, extension, assumption, and re-subordination of existing City loan in the principal amount of $2,375,000 and accrued interest of approximately $1,783,111 for rehabilitation of 42-unit Villa Ciolino Affordable Housing Apartment Complex subject to the final review and approval of the City Manager;
4. Authorize City Manager to negotiate and approve assignment, modification, extension, and assumption, of ground lease for 20-unit Willows Affordable Housing Apartment Complex subject to the final review and approval of the City Manager; and
5. Approve a letter of commitment to support EDEN's efforts to seek new Low Income Housing Tax Credit financing and tax-exempt bonds to support their re-capitalization and rehabilitation of projects.

COUNCIL PRIORITIES, GOALS & STRATEGIES

<u>Ongoing Priorities</u>
Maintaining Infrastructure
Supporting Our Youth
Seniors
and Entire Community

<u>2020-2021 Strategic Priorities</u>
Regional Initiatives
Fiscal Sustainability

GUIDING DOCUMENTS

Fire Services Standards of Coverage

POLICY CONSIDERATIONS:
Should the City Council approve the assignment, modification, extension, assumption, and re-subordination of existing City loans and ground leases for the rehabilitation of Eden Housing affordable apartment communities?

REPORT NARRATIVE:
Eden Housing, Inc., a California nonprofit public benefit corporation and sponsor of several affordable housing developments in the City of Morgan Hill, requests that the City approve the assignment, modification, extension, assumption, and re-subordination of its existing City debt and ground leases in support of substantially rehabilitating Depot Commons, Skeels Hotel, Villa Ciolino, and Willows Apartments.

Eden Housing, Inc. and its affiliates ("Eden") control the ownership of these four developments and intend to seek new Low-Income Housing Tax Credit financing and tax-exempt bonds to support their re-capitalization and rehabilitation. Eden will sell these developments to new tax credit limited partnerships controlled by Eden in order to facilitate the tax credit investment, and the new tax credit limited partnerships will need to assume the modified and extended existing City loans and ground leases. Eden is seeking the City's approval and consent to assign, modify, extend ground leases and re-subordinate rehabilitation loans unique to each project site.

Eden proposes financing four sites together in two "bundles" to reduce transactional costs and attract a higher level of tax credit investment. Eden proposes to finance Depot Commons and The Willows together; and, Skeels Hotel and Villa Ciolino together. The non-profit developer is also considering subdividing the commercial portion of Skeels Hotel and transferring it to separate ownership that would be controlled by Eden or yet another of its affiliates. This determination will be made at a later date, depending upon the financing advantage and terms acceptable to the City.

Eden is seeking to use financing provided by a geographically-based Low Income Tax Credit "boost" that will expire at the end of this year. To qualify, Eden will need to submit an application for tax-exempt bonds to the State of California prior to December 14th. Notice that this geographically-based tax credit boost is terminating was only recently published by the Federal Government on October 19th. By utilizing this tax credit boost, Eden can proportionately reduce any commensurate need for local sources of gap financing, preserving that financing for other affordable housing projects. To qualify, Eden must be able to demonstrate that the City of Morgan Hill will re-subordinate its loan(s) and extend/assign the ground leases which exist on each property but Depot Commons, to the newly created tax credit entity.

Morgan Hill's policy towards its multifamily housing partnerships is to provide stewardship to guaranty investment and re-investment in quality, long term housing stock. This generally results in supporting non-profit partners as they raise rehabilitation dollars for renovation of older aging structures from the private market through a combination of sources including tax credit funds. With a goal of rehabilitation and modernization of dwelling units, it makes sense for Morgan Hill to re-subordinate its' position in the transactions and assign ground leases to support the modernization of the structures.

Although a letter of intent must be submitted by December 14th, 2018, Eden will have up to two years from December 14th to close the new tax credit financing and retain the tax credit boost. Prior to that, a Tax Equity and Fiscal Responsibility Act (TEFRA) hearing will be held before the Morgan Hill City Council, with rehab work intended to occur immediately thereafter. The Housing Team has worked with Eden to review the proposed improvements at each site and made recommendations regarding their intended scopes of work. The impacted housing projects are:

Depot Commons:
Depot Commons, located at 17135-17145 Depot Street, contains 12 studio apartments affordable to low-income residents and one staff apartment. Eden proposes combining Depot Commons with Willows Apartments to obtain new scattered-site financing. Depot Commons does not currently have existing City loans or a ground lease but, as part of a scattered-site project, would share financing and be cross-collateralized with The Willows Apartments, which does have a ground lease from the City.

Depot Commons has an existing residual receipts loan from the California Department of Housing and Community Development ("HCD"), with a principal amount of $600,000 and accrued interest of $394,323. Depot Commons has two existing Santa Clara County ("County") loans with combined principal of $324,672 and accrued interest of $440,269. Eden is asking HCD and the County to approve the assignment, modification, extension, assumption, and re-subordination of those loans as well.

Eden is working with City staff to evaluate the potential of increasing the number of affordable units provided at Depot Commons by an additional three units, for a total of 15 units. With minor alterations to the footprint of the existing buildings, by reconfiguring the interior spaces, Eden may be able to create 3 new units. If agreement is reached on this strategy, Eden anticipates returning to the City for all requisite approvals. This could be an opportunity for the City to obtain much needed very low-income units in an existing building, assisting the City with its Regional Housing Needs Allocation (RHNA) Goals.

Skeels Apartments:
Skeels Apartments, located at 17305 Monterey Road, contain 13 efficiency studios affordable to low-income residents. Eden proposes combining the residential portion of Skeels Hotel with Villa Ciolino in a new scattered-site financing. They would share financing and be cross-collateralized. Eden is exploring the possibility of subdividing the commercial portion of the building and transferring it to separate ownership that is controlled by Eden or its affiliates to eliminate complications with financing and underwriting.

Skeels Hotel has an existing City loan ($300,000) with a principal balance of $162,331 and $68,339 of accrued interest at 3% simple interest with a maturity date of April 1, 2026. By the time the financing closes, Eden anticipates that additional interest would have accrued. Eden is proposing to extend the term of the loan and the affordability restrictions attached to the loan for a new 55-year term. In order to be compatible with new tax credit financing and to satisfy Internal Revenue Code requirements, Eden proposes recasting the principal and accrued interest at the Applicable Federal Rate (“AFR”) that will be in effect as of the date of closing for the new financing (for reference, the AFR is 3.22% as of November 1st, 2018). The residual receipts repayments of the City loan may also have to be renegotiated among the government entities that have existing loans to Skeels Hotel and Villa Ciolino. Eden is asking the City to approve the assignment, modification, extension, assumption, and re-subordination of its loan and its related regulatory agreement.

Skeels Hotel has an existing City ground lease of $1 per year. Eden is proposing to extend the term of the ground lease and the affordability restrictions attached to the ground lease to satisfy the terms of new financing. Eden is asking the City to approve the assignment, modification, extension, and assumption of its ground lease, based upon the terms of the financing subject to the City of Morgan Hill’s final review. In addition, in the event that Eden subdivides the commercial portion, Eden is asking the City to approve modifying the existing ground lease to remove the commercial portion from the legal description and to enter into a new separate ground lease to encumber only the subdivided commercial parcel, under the same ground lease terms. Skeels Hotel has four existing residual receipts loans from the County, with a combined principal amount of $961,195 and accrued interest of $803,587. Eden is asking the County to approve the assignment, modification, extension, assumption, and re-subordination of those loans as well.

Villa Ciolino:
Villa Ciolino Apartments, located at 80 Ciolino Ave, contains 41 rental units affordable to low-income families and one staff unit. Eden proposes combining Villa Ciolino with the residential portion, and possibly also the commercial portion, of Skeels Hotel in a new scattered-site financing. They would share financing and be cross-collateralized.

Villa Ciolino has an existing City loan in the principal amount of $2,375,000 and $1,783,111 of accrued interest at 4% simple interest with a maturity date of April 1, 2054. By the time the financing closes, Eden anticipates that additional interest would have accrued. Eden is proposing to extend the term of the loan and the affordability restrictions attached to the loan for a new 55-year term. In order to be compatible with new tax credit financing, Eden proposes recasting the principal and accrued interest at AFR as of the date of closing for the new financing. The residual receipts repayments of the City loan may also have to be renegotiated among the government entities that have existing loans to Skeels Hotel and Villa Ciolino. Eden is asking the City to approve the assignment, modification, extension, assumption, and re-subordination of its loan and its related regulatory agreement.

Villa Ciolino has an existing residual receipts loan from the County, with a principal amount of $300,000 in accrued principal and $314,705 in accrued interest. Eden is asking the County to approve the assignment, modification, extension, assumption, and re-subordination of those loans as well.

Willows Apartments:
The Willows Apartments, located at 50 West Edmundson Ave, contains 19 rental units affordable to low-income families and one staff unit. Eden proposes combining Depot Commons with Willows Apartments in a new scattered-site financing. They would share financing and be cross-collateralized.

The Willows Apartments has an existing City ground lease that terminates in 2046. Eden is proposing to extend the term of the ground lease and the affordability restrictions attached to the ground lease for a new year term, commensurate with their financing requirements. Eden is asking the City to approve the assignment, modification, extension, and assumption of its ground lease, subject to final review of documents.

Villa Ciolino has an existing residual receipts loan from HCD, with a principal amount of $954,228 and accrued interest of $719,857. Eden is asking HCD to approve the assignment, modification, extension, assumption, and resubordination of its loan.

Uses of the Loan Proceeds:
The uses proposed for the loan proceeds include performing critical repairs in excess of $4 million across the four sites, within 12 months of the closing of the refinancing, and customary entitlement, design, financing, and transactional costs. In addition, Eden will earn a developer fee in accordance with the Internal Revenue Code and State of California's regulations controlling developer fee.

The loan proceeds will enable Eden to repair and upgrade the property for the long-term benefit of the residents and the community. The estimate of the repairs is in process. The proposed repairs will include (among other items) roof repair and/or replacement, mechanical system upgrades, and common area and unit interior improvements. In addition, Eden will implement increased energy and water efficiency measures and pursue the installation of solar photovoltaic systems to offset electricity usage where feasible.

In the event that excess funds are available from the refinance, Eden proposes that the refinance transaction repay up to $100,000 of its current City loans. This pay down would be contingent on the project securing favorable tax credit and tax-exempt bond financing, and the ability to cover the costs for renovations and improvements. Eden would also ask that the City consider some lesser amount (amount to be determined) if staff and Eden determine that project funds would be best utilized to address current and unforeseen renovation scope items.

The City loans are Residual Receipt loans, which means that the City would continue to be eligible for a prorated portion of cash flow from these affordable housing developments, to the extent that there is sufficient cash flow. The proration will be made among all of the residual receipts loans from all sources, as well as deferred sources coming from Eden and its affiliates in accordance with Internal Revenue Code and State of California tax credit regulations.

Staff has discussed with EDEN Housing the City's desire to work together to streamline opportunities to assist individuals and families that are serviced by South County programs and the Morgan Hill school district, experiencing homelessness, and overcrowded living accommodations. One example of a connection that could be made is as new units are created, and possibly as turn over occurs, there may be an opportunity to create a bridge to permanent housing for families participating in the City's homeless safe parking program.

COMMUNITY ENGAGEMENT: Inform. This report is intended to inform the Morgan Hill community.

ALTERNATIVE ACTIONS:
As an alternative action to the staff recommendation, the City Council may decide to not approve the recast and re-subordination of the its loans and require Eden Housing to pay the loans off in full, and the opportunity to substantially rehabilitate these projects would no longer be financially viable. Furthermore, in this circumstance, the City would lose the ability to require the projects to remain affordable to low income individuals for an additional 55 years.

The City Council may also decide to not approve the extension of the ground leases for the Skeels Apartments and Willows Apartments on City-owned land. In this circumstance, the City would compromise the financial viability of the rehabilitation projects, and the projects would not be able to qualify for tax credit financing.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
The City Council previously considered the terms of the loans for the Skeels Apartments and Villa Ciolino Apartments and consented to the assignment from entities controlled by South County Housing and its affiliates and to assumption entities controlled by Eden Housing and its affiliates.

The City Council previously considered the terms of the ground leases for Skeels Apartments and The Willows Apartments and consented to the assignment from entities controlled by South County Housing and its affiliates and to assumption entities controlled by Eden Housing and its affiliates. The City Council also approved restating the annual ground rent due from Skeels Apartments and The Willows and forgiving accrued unpaid ground rent.

FISCAL AND RESOURCE IMPACT:
With execution of the refinance, the City's Housing Fund (255) will potentially be increased by $100,000 during Fiscal Year 2019-20, and possibly in coming years through residual receipts payments.

The execution of the refinance will extend the affordability agreements associated with the Skeels Apartments, Villa Ciolino Apartments, and The Willows Apartments, continuing to make affordable housing available to the City's low-income residents for the next 55 years.

CEQA (California Environmental Quality Act):
These projects are Categorically Exempt pursuant to Section 15301 of CEQA Guidelines as proposed repairs, maintenance and minor alteration of existing facilities involving no expansion of existing use will not have a significant effect on the environment.

LINKS/ATTACHMENTS:
1. City Commitment Letter_EDEN Rehab (002)
2. Conflicts
3. 23 Presentation

RESOLUTION NO. 23-00_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING MODIFICATION OF LOAN TERMS AND GROUND LEASE AND SUBDIVISION FOR SKEELS APARTMENTS LOCATED AT 17305 MONTEREY ROAD AND AUTHORIZING MODIFICATION OF LOAN TERMS FOR VILLA CIOLINO APARTMETNS LOCATED AT 80 CIOLINO ROAD ET AL AND FINDING THAT THIS ITEM IS NOT A "PROJECT" PURSUANT TO CEQA GUIDELINES SECTION 15378(b)(4-5)

WHEREAS, the Skeels Apartments owned by Skeels Hotel LLC and operated by Eden Housing, Inc., is a 13-unit affordable housing development with ground floor commercial located at 17305 Monterey Road in Morgan Hill providing housing for families with extremely low and very-low incomes; and

WHEREAS, Villa Ciolino owned by Villa Ciolino Associates, L.P. and operated by Eden Housing, Inc. is a 42-unit affordable housing development at 80 Ciolino Avenue in Morgan Hill providing 41 units of housing for families with very-low incomes and one staff unit; and

WHEREAS, the City of Morgan Hill providing funding to acquire and substantially rehabilitate the improvements of the 17305 Monterey Road property in the form of a City loan in the original principal amount of $300,000 secured by a borrower's note on March 17, 1995 and restated on April 13, 2006 as new principal amount of $198,331.31 and with the loan bearing 3% simple interest; and

WHEREAS, the City of Morgan Hill provided a Ground Lease to the owner of the improvements of 17305 Monterey Road property on November 1, 1994 in the amount of $1 per year; and

WHEREAS, the City of Morgan Hill provided funding to acquire and develop the 80 Ciolino Road property in the form of a City loan in the original principal amount of $2,375,000 secured by a borrower's note on April 1, 1999 with the loan bearing 4% simple interest; and

WHEREAS, the 20-year term of the Borrowers Note securing the City loan to Skeels Apartments in the amount of $300,000, restated as $198,331.31, expires on April 1, 2026; and

WHEREAS, the 55-year term of the Ground Lease to the owner of the improvements of Skeels Apartments expires on November 1, 2049; and

WHEREAS the 55-year term of the Borrowers Note securing the City Loan to Villa Ciolino Apartments in the amount of $2,375,000 expires on April 1, 2054; and

WHEREAS, the City of Morgan Hill supports the production and preservation of affordable housing for its lower income and vulnerable populations; and

WHEREAS, the Morgan Hill General Plan includes policies to provide essential housing to all Morgan Hill residents, support efforts to prevent homelessness, and promote the integration of affordable and special needs housing projects in existing neighborhoods; and

WHEREAS, the City Council has established ongoing priorities of maintaining infrastructure and supporting our youth, seniors, and entire community and 2022-2023 strategic priorities of regional initiatives and fiscal sustainability; and

WHEREAS, the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378, as the action does not meet CEQA's definition of a "project," because approving a loan term extension is not a project as it does not commit the City to a definite course of action (See City of Irvine v. County of Orange (2013) 221 Cal 4th 846, 865) and because this action constitutes organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment; and

WHEREAS, Eden Housing plans to continue operation of the Skeels Apartments affordable housing project in accordance with all requirements of the City of Morgan Hill regulatory agreements pertaining to 17305 Monterey Street land and improvements and entered into by the City of Morgan Hill and Skeels Hotel LLC; and

WHEREAS, Eden Housing plans to continue operation of the Skeels Apartments commercial units in accordance with all of the City of Morgan Hill regulatory agreements pertaining to 17305 Monterey Street land and improvements and entered into by the City of Morgan Hill and Skeels Hotel LLC; and

WHEREAS, Eden Housing intends to subdivide the commercial units from the affordable housing at 17305 Monterey Street and transfer them to an ownership entity known as "Eden Commercial, Inc." or its Eden-controlled affiliate; and

WHEREAS, Eden Housing plans to continue operation of the Villa Ciolino Apartments affordable housing project in accordable with all requirements of the City of Morgan Hill regulatory agreements pertaining to 80 Ciolino Street and entered into by the City of Morgan Hill and Villa Ciolino Associates, L.P.; and

WHEREAS, Eden Housing has sponsored a new Federal Low Income Housing Tax Credit Partnership known as "Skeels Villa, L.P." for the purpose of substantially rehabilitating the Skeels Apartments affordable housing project at 17305 Monterey Street and the Villa Ciolino Apartments affordable housing project at 80 Ciolino Street; and,

WHEREAS, the City Council of Morgan Hill approved the Assignment, Modification, Extension, Assumptions, and Resubordination of existing City Loans and a Ground Lease for the

Rehabilitation of Skeels and Villa Ciolino On December 5, 2018 to be followed by the adoption of a formal resolution on April 5, 2023; and,

WHERAS, Eden Housing has sponsored a new Federal Low Income Housing Tax Credit Partnership known as "Skeels Villa, L.P." for the purpose of substantially rehabilitating the Skeels Apartments affordable housing project at 17305 Monterey Street and the Villa Ciolino Apartments affordable housing project at 80 Ciolino Street; and,

WHEREAS, this item was agendized in compliance state and local laws.

NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:

SECTION 1. Declares the above recitals to be true and correct and are incorporated herein by reference.

SECTION 2. Finds that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378, as the action does not meet CEQA's definition of a "project," because approving a loan extension is not a project because this action constitutes organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment pursuant to CEQA Guidelines Section 15378(b)(4). Furthermore, environmental compliance was already completed when the initial loans and ground lease were approved.

SECTION 3. Authorizes the City Manager or other authorized representative to extend, assign, and modify the City's existing regulatory agreements, loan, and bifurcate the ground lease for 17305 Monterey Road to the new tax credit partnership (Skeels Villa, L.P.) which will own the leasehold interest and improvements of the affordable housing subdivision of the project. Authorizes the City Manager or other authorized representative to release the City's existing regulatory agreement and loan from the proposed commercial subdivision at 17305 Monterey Road and approve transfer to Eden or one of its controlled affiliates (Eden Commercial, Inc.) which will own the leasehold interest and improvements of the commercial subdivision of the project.

SECTION 4. Authorizes the City Manager or other authorized representative to extend, assign, and modify the City existing regulatory agreements and loan for 80 Ciolino Street to the new tax credit partnership (Skeels Villa, L.P.) which will own the fee interest and improvements of the affordable housing project.

SECTION 5. Authorizes the City Manager or other authorized representative, for the affordable housing regulatory agreements, loans, and ground lease in Section 3 and Section 4, to extend the terms to a new term of 55 years. The accrued interest to the date that the construction financing closes would be capitalized into the new principal amount and the new interest rate would be reset to the Applicable Federal Rate on the date of construction finance closing, as determined by tax counsel. The exact amount of accrued interest will be determined based on the actual amount of accrued interest as of the date of the construction loan closing.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the __th day of ________ 2023 by the following vote:

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

APPROVED: **ATTEST:**

______________________________ ______________________________
MARK TURNER, 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.23-00_ adopted by the City Council at the meeting held on ____________, 2023.

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

DATE: ______________________ ______________________________
MICHELLE BIGELOW, City Clerk

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: April 5, 2023

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

APPROVE CONTRACT FOR BANKING SERVICES WITH WELLS FARGO BANK

RECOMMENDATION(S)

1. Approve contract for banking services with Wells Fargo Bank; and
2. Authorize the City Manager to execute and administer a banking services contract with Wells Fargo Bank through 2028 with subsequent renewal subject to budget appropriation.

COUNCIL PRIORITIES, GOALS & STRATEGIES
2022-2023 Strategic Priorities
Fiscal Sustainability
Community Outreach, Engagement, and Messaging

REPORT NARRATIVE:
The City has been banking with Wells Fargo Bank (WFB) since 2015. WFB is one of the largest commercial banks in the nation and is considered a systemically important financial institution that U.S. federal regulators determine would pose a serious risk to the economy if it were to collapse. As such, the bank is subject to extra regulatory requirements and increased scrutiny than smaller banks. In light of the recent failures of certain large regional banks, it is important that the City banks with large institutions to provide extra assurance that the City's cash is safe and banking services are not interrupted. As a government entity, the City's deposits at WFB are fully collateralized at 110%.

WFB has offered to keep the pricing at the current level and staff have had positive experience working with the bankers and customer representatives. WFB has a local branch in Morgan Hill, at the southwest corner of Monterey Road and E Main Ave. In addition, changing banks would potentially create a substantial workload for Finance staff as well as for the City's vendors and customers.

COMMUNITY ENGAGEMENT:
Inform

This staff report serves to inform the community of the proposed contract for banking services with WFB.

ALTERNATIVE ACTIONS:
The City Council could direct staff to issue a new RFP for banking services.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
On October 21, 2015, the City Council approved the banking services contract with WFB.

FISCAL AND RESOURCE IMPACT:
The City paid $49,190 in banking service fees in the prior fiscal year 2021-22. Sufficient appropriations have been programmed into the City's budget for the banking service fees.

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.

Amendment to Master Agreement for Treasury Management Services

Treasury Management Services

Introduction

This Amendment supplements and modifies the Master Agreement for Treasury Management Services ("Master Agreement") for City of Morgan Hill. "You," "your" or "yours" refers to the customer identified in the immediately preceding sentence. The terms "we," "us," or "our" refer to the Bank. Capitalized terms used but not defined in this Amendment are defined in the Master Agreement. This Amendment constitutes part of the Service Documentation as defined in the Master Agreement. If there is a conflict between this Amendment and the Master Agreement or other Service Documentation, this Amendment will control. Except as expressly modified by this Amendment, all terms and provisions of Master Agreement and Service Documentation will continue to apply with full force and effect.

Amendment

We agree that the Master Agreement governing our relationship with you is amended as follows:

1. The following text is added at the end of Section 3 of the Master Agreement (titled "**Changes to services**"):

   "Notwithstanding the immediately preceding paragraph, through the Initial Term End Date (as defined below) Bank will not change the fees for Services reflected on Attachment A, except:

   - in order to reflect the impact of any change in Applicable Law;
   - in the event your Service usage volume is materially lower than that reflected on Attachment A;
   - for changes to Bank's pricing methodology for Services, including element IDs associated with a Service, so long as the change does not increase the total price of the Services to you (unless permitted under one of the two immediately preceding bullet points).

   If you implement additional Services not described on Attachment A prior to the Initial Term End Date, the fees for such additional Services will be as disclosed to you in connection with the implementation of such additional Services."

2. The following text is added at the beginning of Section 4 (titled "**Term and termination**") as a new first sentence:

   "Subject to the termination provisions below, the initial term of this Agreement will commence on February 1, 2023 and expire on January 31, 2028 ("Initial Term End Date").

3. The text of Section 12 (titled "**Governing Law**") is deleted in its entirety and replaced with the following:

   "**Governing law.** The Service Documentation will be governed by: (a) U.S. federal law and (b) the law of California, without reference to its principles of conflicts of laws ("Governing Law")."

4. The text of Section 14 (titled "**Jurisdiction**") is deleted in its entirety and replaced with the following:

"**Jurisdiction**. For any proceedings regarding this Agreement (other than a proceeding subject to arbitration), you and we each hereby irrevocably submits to the jurisdiction of the courts of California or the federal courts located there and irrevocably agrees that all claims relating to the proceeding may be heard or determined in those courts."

WELLS FARGO BANK, N.A.	**City of Morgan Hill**
By: Zina Monroe	By:
Name: Zina Monroe	Name:
Title: VP. Sr. Relationship Manager	Title:
Date: March 15, 2023	Date:

Attachment A[1]
Pricing for Specified Treasury Management Services
See Attached

[1] NOTE: Attachment A should only reflect pricing for treasury management products and services governed by the Master Agreement for Treasury Management Services (i.e. it should not reflect pricing for commercial card, merchant services, securities, derivatives, foreign exchange, credit or any other products or services not governed by the Master Agreement for Treasury Management). Any references in Attachment A to products and services not governed by the Master Agreement for Treasury Management Services will not be considered part of or subject to the terms of this Amendment.

Master Agreement for Treasury Management Services

The Service Documentation contains the terms under which Wells Fargo Bank, N.A. and the banks, branches or subsidiaries listed in Appendix X (collectively, "Bank") provide you treasury management services (each, a "Service"). "You," "your" or "yours" refer to the Bank customer identified on the Acceptance of Services that is signed when you enroll in a Service ("Acceptance"). The terms "we," "us," or "our" refer to the Bank. Other capitalized terms used in this Master Agreement for Treasury Management Services ("Agreement") are defined in this document.

You and we agree:

1. Service documentation. The Service Documentation contains the terms governing each Service and includes:
   a. The Service Description (which contains terms and conditions applicable to the specific Service),
   b. The Acceptance (which indicates your acceptance of the Service Documentation),
   c. This Agreement (which contains terms and conditions applicable to all Services),
   d. The account agreement governing the account(s) (each, an "Account") you use in connection with the Service,
   e. The Product Enrollment Form (which contains set-up information for each Service in which you are enrolling), and
   f. User Guides (which include our vendors' and our documentation related to the installation, set-up function, features, operation, use, pricing or other aspects of the Services, including Terms of Use, software, software licenses, price schedules, specifications, instructions, and notices).

The documents and individual provisions of the Service Documentation are intended to be read together as one agreement between you and us. This Agreement and the Service Descriptions for Services you enroll in are posted at our Commercial Electronic Office® (CEO®) portal. If there is a conflict among the documents that are part of the Service Documentation, they will govern in the order listed above. Your use of a Service confirms your receipt of, and agreement to be bound by, this Agreement and all Service Documentation.

2. Services. You and we will agree upon the Services to be provided and the start date for each Service. Each Service is subject to the approval by our applicable branch or subsidiary. We will notify you when you have completed all requirements for enrolling in the Service and the Service is ready for you to use.

3. Changes to services. We may change (or add to) the terms and fees in the Service Documentation at any time. If a change to a Service requires a change to the Service Documentation, we will post the document(s) with the change on the CEO portal. When required by Applicable Law, we will notify you of the change. If you continue to use a Service after a change takes effect, you will be bound by the change. As used in this Agreement, the term "Applicable Law" means all applicable laws (including common or customary laws), statutes, constitutions, policies, decrees, judgments, treaties, regulations, directives, by-laws, rulings, orders or operating circulars governing our activities and/or any Transaction (see section 6-a) governed by this Agreement, including, but not limited to, the funds transfer system and clearing and settlement house rules.

4. Term and termination. Unless a Service is terminated in accordance with the Service Documentation, this Agreement and each Service will continue in effect until terminated by either party upon 30 days' prior written notice to the other party. When a Service is terminated for any reason, the Service Documentation governing the terminated Service is also terminated.

We may suspend or terminate any Service:

a. After we notify you of a breach of any provision of the Service Documentation or any other agreement with us, and you fail to cure the breach (if it can be cured) within 15 days of the date of the notice; or
b. Without prior notice to you if:
    i. We reasonably suspect that an Account associated with a Service has been compromised or otherwise subject to irregular, unauthorized, fraudulent, or illegal activity,
    ii. You become subject to any insolvency or bankruptcy proceeding, or any receivership, liquidation, reorganization, or other similar proceeding, or you enter into any agreement or proceeding for voluntary liquidation, dissolution, composition with or assignment for the benefit of creditors or other winding up,
    iii. We determine in our sole discretion that continuing to provide a Service may place us at risk of financial loss or result in an unacceptable credit exposure,
    iv. Any guaranty of your obligations to us ("Guaranty") is terminated, revoked, or its validity contested by the guarantor ("Guarantor"),
    v. We determine in our sole discretion that a material adverse change has occurred in your ability to perform your obligations under the Service Documentation, or in the ability of a Guarantor to perform its obligations under a Guaranty, or
    vi. The Account necessary to provide a Service is closed.

The termination of a Service will not affect your or our respective rights and obligations with respect to the Service(s) provided before the termination including without limitation Transactions. We will not be liable to you for any losses or damages you may incur as a result of any termination of any Service or termination or restriction of any CEO portal access rights under section 9(d) below.

5. Service fees. You will pay us the fees described in the Service Documentation and any taxes applicable to each Service, however designated, but excluding taxes based on our net income. We may debit your Account for any fees not covered by earnings credits and any taxes that are due, or we may send you an invoice for these amounts, which you will promptly pay. Our charges and fees are in the applicable fee schedule for Services used in connection with your Account.

6. Security procedures.
    a. Unless otherwise agreed, you agree that "Security Procedure" is the applicable security procedure described in the Service Documentation for your Initiation Method for the Service, which we will use to verify the authenticity of a Transaction. The term "Initiation Method" refers to the method we offer in the product enrollment form ("Set-up Form") or other Service Documentation for delivering your Transaction instructions to us with respect to the applicable Service and includes any applicable transmission protocols. The term "Transaction" means (i) any funds transfer, payment order, or payment instruction (including any communication cancelling or amending an instruction), and (ii) any instruction, data or other information which we receive in your name with respect to a funds transfer. The purpose of the Security Procedure is to verify the authenticity of the Transaction. We will not use the Security Procedure to detect an erroneous or duplicate Transaction. You will be responsible for any erroneous or duplicate transaction we receive in your name. You agree to be bound by each Transaction, whether or not authorized by you, issued in your name and accepted by us in compliance with the Security Procedure for the Service.
    b. You agree that each Security Procedure for the Initiation Method in the Set-up Form or other Service Documentation for each of the Services (a) best meets your requirements with regard to the size, type and frequency of your Transactions, and (b) is commercially reasonable.

7. Confidential information. Unless otherwise stated in the Service Documentation, "Confidential Information" means all (a) User Guides, (b) Security Procedures, passwords, codes, security devices and related instructions and technical and non-technical information and intellectual property rights relating to our vendors' or our technology, IT infrastructure or data security, including trade secrets, systems information security program or processes, SSAE or SOC reports, and testing procedures or results. You will not acquire any ownership interest in or rights to Confidential Information as a result of your use of any Service.

You will:

a. Maintain the confidentiality of the Confidential Information,
b. Not disclose (or permit your employees or agents to disclose), copy, transfer, sublicense, or otherwise make any of it available to any person or entity, other than your employees who have a need to use the Confidential Information in connection with the applicable Service, and
c. Not decompile, reverse engineer, disassemble, modify, or create derivative works of any Confidential Information.

You will notify us immediately if you know of or suspect any unauthorized disclosure, possession, use, or knowledge (each, an "Unauthorized Use") of any Confidential Information. If you (or your employees or agents) are responsible for the Unauthorized Use, you will, at your expense, promptly take all actions, including initiating court proceedings to recover possession and prevent further Unauthorized Use of the Confidential Information. You will also compensate us for any injury caused to us as a result of the Unauthorized Use.

8. Currency conversion. When your instructions require us to convert the amount of a Transaction from the currency in which the Account is denominated ("Account Currency") to another currency ("Foreign Currency"), we will do so using the Applicable Exchange Rate in effect at the time we execute your Transaction. "Applicable Exchange Rate" means the exchange rate we set and use for you when we convert one currency to another currency and includes a markup. The markup factors include costs incurred, market risks and our desired return. The exchange rate we provide to you may be different from the exchange rates you see elsewhere. Foreign exchange rates are dynamic, and rates fluctuate over time based on market conditions, liquidity, and risks.

   If a financial institution designated to receive the funds does not pay the beneficiary specified in the Transaction, and the funds are returned to us, we will not be liable to you for a sum greater than the amount of the Transaction after we have converted it from the Foreign Currency to the Account Currency using the Applicable Exchange Rate in effect at the time the funds are returned to us. You accept the risks of any change in the Applicable Exchange Rate between the time you request a Transaction and the time the Transaction is either completed or is unwound due to a cancellation, an amendment, a rejection, or a return.

9. CEO portal.
   a. Description of the CEO portal. The CEO portal is our electronic banking portal that is accessed -through the Internet. Your Authorized Agents (defined below) may use the CEO portal to access (i) Services in which you have separately enrolled and (ii) third-party sites we may make available through the CEO portal. We offer different channels through which you may access the CEO portal, including personal computers and mobile devices. We may add or eliminate channels at any time. A Service or third party site accessible through one channel may not be accessible through another channel.
   b. Access to the CEO portal. When you enroll in the CEO portal, and as we may determine is necessary after enrollment, we will provide Log-On Credentials (defined below) to the persons who are authorized to access the CEO portal on your behalf (each, an "Authorized Agent"). Log-On Credentials mean one or more secure methods we provide to access the Services and may include user IDs, passwords, token IDs, and other methods that we adopt from time to time. We have no obligation to separately verify or authenticate any communication we receive in your name through the CEO portal, whether or not it was actually from an Authorized Agent. You assume the entire risk of (i) unauthorized use of your Log-On Credentials and (ii) unencrypted electronic transmissions.
   c. Administration of the CEO portal. We offer two options for administering the CEO portal: (i) Administration and (ii) Bank administration.
      i. Administration. If you enroll in the Administration option, there are three categories of Authorized Agents: Company Administrator, Administrator, or User. Unless you and we separately agree, we will provide Log-On Credentials only to your initial Company Administrator(s) who will (a) assign Log-On Credentials to other individuals and (b) designate those individuals as one of the following:
         (1) A Company Administrator, who may perform all functions of your initial Company Administrator,
         (2) An Administrator, who may perform all functions of an Administrator including designating other Administrator(s) and User(s), or

(3) A User, who may access the Services designated by a Company Administrator or an Administrator, as well as those Services in which we permit a User to self-enroll.

Each Company Administrator and Administrator has the authority to enroll you in additional Services. In addition to your use of Administration as described in this subsection, you may request that we assign Log-On Credentials to Users that you designate in writing to us. Your designation to us will specify the Services which the User is authorized to access in addition to those Services in which we permit a User to self-enroll.

ii. Bank administration. For the Bank administration option, there is one category of Authorized Agent: Users. We will assign Log-On Credentials to each User you designate.

You will promptly revoke the Log-On Credentials of any Authorized Agent or User when that individual is no longer authorized to access the CEO portal. If you notify us in writing to revoke the Log-On Credentials of an Authorized Agent or User, we will have a reasonable time after receiving your written notification to revoke the individual's access.

d. Terminating access. We may terminate or restrict any Authorized Agent's access to any Service through the CEO portal if we determine such use:
   i. Does not comply with any term applicable to the CEO portal,
   ii. Is not permitted by Applicable Law,
   iii. Is not authorized by you or any third party whose authorization we believe is necessary, or
   iv. Should be denied for your or our protection (without us agreeing to or being required to make this determination in any circumstance).
e. Financial information. Financial market data, quotes, news, research, and other financial information developed by third parties and transmitted to us ("Financial Information") may be available to you at the CEO portal. The posting of any Financial Information or any other information or data at the CEO portal is not a recommendation by us of any particular Service or action. We do not guarantee the accuracy or completeness of any Financial Information, nor are we responsible for (i) the actions or omissions of the third parties developing or transmitting Financial Information or (ii) any decision you make or action you take by relying on any Financial Information.
f. Miscellaneous. For purposes of this section 9 only, "Service" includes each service and product we or any of our affiliates offer that you access through the CEO portal. This section 9 will survive the termination of any Service or this Agreement.

10. Alerts.
   a. Non-subscribed alerts. When you enroll in the CEO portal or other channels or Services, you consent to receiving by email or other delivery channels, servicing messages that we determine are important or urgent. You do not need to subscribe to receive such alerts and you do not pay additional service fees.
   b. Subscribed alerts. You may also enroll in fee-based alerts for applicable Services so that you can receive messages you subscribe to at the intervals and through delivery channels that you choose.

11. Liability and indemnification.
   a. We are not obligated to honor, in whole or in part, any Transaction or other instruction that:
      i. Exceeds the available balance in the Account, unless otherwise provided in the Service Documentation,
      ii. Does not comply with the Service Documentation or our applicable policies, procedures, or practices made available to you,
      iii. We have reason to believe may not have been duly authorized, should not be honored for our or your protection, or involves funds subject to a hold, dispute, restriction, or legal process, or
      iv. Would possibly result in us not complying with Applicable Law.
   b. Neither we nor our software vendors make any express or implied representations or warranties with respect to the Services or any software used in connection with the Services, including any warranty as to the merchantability or fitness for a particular purpose, other than those expressly set forth in the Service Documentation.

c. Any claim, action, or proceeding against us for losses or damages arising from a Service, must be brought within one year from the date of the act or omission, except as otherwise stated in the account agreement governing the Account.
d. We will have no liability for our failure to perform or delay in performing a Service if the failure or delay is due to circumstances beyond our reasonable control. If we determine that any funds transfer or communications network, Internet service provider, or other system used to provide a Service is unavailable, inaccessible, or otherwise unsuitable for use by you or us, we may, upon notice to you, suspend or discontinue the affected Service.
e. We will only be liable to you for actual damages incurred as a direct result of our failure to exercise reasonable care in providing the Services. Reasonable care requires only that we follow standards that do not vary unreasonably from the general standards followed by similarly situated banks. Our policies and procedures are general internal guidelines for our use and do not establish a higher standard of care for us than otherwise established under Applicable Law. A mere clerical error or an honest mistake will not be considered a failure by us to perform any of our obligations. Our liability to you will be limited to an amount not greater than 10 times our fees incurred in the calendar month immediately before the calendar month in which the loss or damages were incurred (or, if no fees were incurred in that month, our fees incurred in the month in which the losses or damages were incurred).
f. Except in the case of our negligence or intentional misconduct, you will indemnify and hold us, our directors, officers, employees and agents ("Representatives") harmless from all losses or damages that arise out of:
    i. The performance of a Service in compliance with the Service Documentation, including any warranty we are required to make to a third party in connection with a Service,
    ii. An act or omission of any of your agents, couriers, or Authorized Agents, and
    iii. If the Service includes a license or sublicense of any software, any use or distribution of the software by you or any person gaining access to the software through you that is inconsistent with the license or sublicense.

    You will promptly provide us with written proof of loss, and notify us if you become aware of any third party claim related to a Service. You will cooperate fully (and at your own expense) with us in recovering a loss. If we reimburse you, we or our designee will be subrogated to all of your rights (i.e., we will be entitled to assert any legal rights you had relating to the claim).

g. Except as expressly provided otherwise in the Service Documentation, neither party nor its Representatives will be liable to the other party for:
    i. Any special, consequential, incidental (including court costs and attorneys' fees), indirect, or punitive losses or damages, or
    ii. Business interruption, loss of profits, loss of business, loss of revenue, loss of goodwill, loss of opportunity, loss or injury to reputation, or loss of anticipated savings, whether any claim is based on contract or tort, or whether the likelihood of these losses or damages was known to the other party and regardless of the form of the claim or action.
h. When you send payments on behalf of your third party customers, you agree you are solely liable to your customers for any and all losses those customers may suffer. We exclude all and any liability of whatever nature (including those losses detailed in subsection g above) arising out of your relationship with your customer.

12. Governing law. The Service Documentation will be governed by: (a) U.S. federal law and (b) the law of (i) the U.S. state in which the office of Bank that maintains the Account is located or, if there is no such state or no account associated with such Service, (ii) the State of New York, without reference to its principles of conflicts of laws ("Governing Law").

13. Arbitration agreement. Upon demand by you or us, any dispute or claim arising out of or relating to this Agreement, or the breach thereof, must be submitted to arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, and must be heard before three arbitrators if the amount in dispute is U.S. $5,000,000 or more or its equivalent in any other currency, and before one arbitrator for amounts in dispute of less than U.S. $5,000,000 or its equivalent in any other currency. Arbitration will proceed in a location selected by AAA in

the state of the applicable Governing Law, and if there is no such state, the place of arbitration must be New York, NY. The language of the arbitration must be English. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This arbitration requirement does not limit the right of you or us to: (a) exercise self-help remedies including setoff or (b) obtain provisional or ancillary remedies such as injunctive relief or attachment, before, during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of you or us to submit any dispute to arbitration hereunder, including those arising from the exercise of the actions detailed in (a) and (b) of this section.

14. Jurisdiction. For any proceedings regarding this Agreement (not subject to arbitration as provided in this Agreement), you hereby irrevocably submit to the jurisdiction of the courts of the Borough of Manhattan, New York City, in the State of New York or the federal courts located there and irrevocably agree that all claims in relating to the proceeding may be heard or determined in those courts.

15. Miscellaneous.
    a. Severability. Any portion of the Service Documentation which is inconsistent with Applicable Law or Governing Law will be deemed modified and applied in a manner consistent therewith, and we will incur no liability to you as a result of the inconsistency or modification and application to any dispute regarding the Service Documentation. If any portion or provision of the Service Documentation is deemed unenforceable, it will not affect the enforceability or validity of the remaining Service Documentation nor the enforceability or validity of that portion or provision under the law of any other jurisdiction.
    b. Entire agreement. The Service Documentation (and any documents referred to therein):
        i. Constitutes the entire agreement between you and us regarding the Services we provide for all Accounts opened with us, and
        ii. Supersedes and extinguishes all prior agreements, understandings, representations and warranties of any nature (including requests for proposals and other sales material), whether oral or written, between you and us relating to any of our Services (including any other Master Agreement for Treasury Management Services, but excluding the current Commercial Account Agreement or Global Commercial Account Agreement, as applicable).
    c. Electronic agreement. To facilitate execution, the Service Documentation may be executed by a party in the form of an "Electronic Record" (as defined in the Electronic Signatures in Global and National Commerce Act at 15 U.S.C. §7001 et seq. ["ESIGN Act"]). The Service Documentation may be executed in as many counterparts as may be required to reflect all parties' approval, and all counterparts will collectively constitute a single agreement. An "Electronic Signature" (as defined in the ESIGN Act) that can be authenticated will constitute an original and binding signature of a party. The fact that a document is in the form of an Electronic Record or is signed using an Electronic Signature will not, in and of itself, be grounds for invalidating such document.
    d. No waiver. Neither our failure nor any delay by us in exercising any right or remedy will be deemed to be a waiver of the right or remedy. No course of dealing or waiver of any right on one occasion will constitute a modification of the Service Documentation or be a waiver of that right on a subsequent occasion.
    e. Third party beneficiaries. Except as otherwise provided in the Service Documentation, no person or entity other than the parties to this Agreement will be deemed to be a third party beneficiary under the Service Documentation.
    f. Financial condition. You will provide us promptly upon our request any existing financial statements or other information pertaining to your financial condition or any previously unprepared financial statements which we may require you to prepare and/or to be audited or reviewed by independent certified public accountants acceptable to us.
    g. Your representations and warranties. You represent and warrant that: (i) you will not use any Service in a manner that would violate any Applicable Law by you or us; (ii) if you employ an agent in connection with its use of any Service, you represent and warrant to us that: (1) your governing body has duly authorized the agent; (2) you will exercise appropriate controls to ensure each authorized agent does not exceed the authority granted to it; and (3) you will preserve the confidentiality of the Log-On Credentials and immediately notify us if you become aware or suspect that any Log-On Credential may have been compromised.
    h. Use of names. You and we will not use each other's name or refer to our relationship in any solicitation, marketing material, advertisement, news release, or other written, online or oral communication without specific prior written

consent for each such use or release, except that we may use your name as a reference in service proposals if we obtain your prior written approval for such use.

i. Notices and communications. Either party may provide notice to the other party by mail, personal delivery, or electronic transmission.
    i. You will notify us promptly in writing of any change in your name, Address, legal status, or any other changes relevant to the conduct of the Account or affecting your business relationship with us.
    ii. The term “Address” as used in this Agreement refers to a mailing or electronic address.
    iii. You will use the Address where your relationship manager or other manager is located and will address any notice to the attention of the manager.
    iv. Each party will have a reasonable time after receipt of any notice to act on it.
    v. Any communication or notice to us from your agent about your use of a Service will be deemed to be a communication from you, and you authorize us to communicate with your agent about any such communication or Service.
    vi. We are entitled to rely on any communication or notice from you that we believe in good faith was authorized by your authorized representative or Authorized Agent and, we will have no obligation to verify or authenticate an identity of a sender or signature on any notice or communication, except as expressly provided in the Service Documentation.

16. Survival. Sections 7, 9, 11 - 15 will survive termination of the Services or this Agreement.

Appendix X
Applicable Branches or Subsidiaries of Bank

1. Wells Fargo Bank, N.A., UK Branch
2. Wells Fargo Bank, N.A., Canadian Branch
3. Wells Fargo Bank, National Association, Shanghai Branch
4. Wells Fargo Bank, National Association, Hong Kong Branch

Wells Fargo Treasury Management Pricing

City of Morgan Hill

WF Code	AFP Code	Service Description	Charge Basis	Price
		BALANCE & COMPENSATION INFORMATION		
IAMTH	000230	RECOUPMENT MONTHLY	Deposit assessment	0.12750
		GENERAL ACCOUNT SERVICES		
22051	010000	ACCT MAINTENANCE	Account	5.00000
CK021	010100	DEBITS POSTED	Debit	0.07000
46106	010102	CEO BASIC BANKING - TRANSFER	Transaction	0.00000
15007	010101	DESKTOP DEPOSIT-DEPOSIT CREDITED	Credit	0.75000
		LOCKBOX SERVICES		
03302	050400	LBX TRANSMISSION BASE	Lockbox	225.00000
36707	050500	LBX ONLINE DECISION BASE	Lockbox	150.00000
03611	050000	LBX REMIT PROCESSED EXPRESS MAIL	Remittance	2.50000
03740	050000	LBX REMIT PROCESSED CREDIT CARD	Transaction	2.00000
36731	050530	LBX CORRESPONDENCE OR REJECTS	Envelope	0.70000
36713	050500	LBX ONLINE DECISION EXCEPTIONS	Occurrence	0.25000
03905	05011R	LBX DOCUMENT SCANNED	Remittance	0.05000
36791	050600	LBX 7 YEAR IMAGE ARCHIVE	Image archived	0.02000
52035	050425	LBX IMAGE FILE IMPORT	Image	0.05000
52076	05011R	LBX WL BATCH IMAGE RETRIEVAL	Image	0.06000
36745	050129	LBX VALUE ADDED KEYING	Keystroke	0.01800
48200	050020	LBX WHOLETAIL BASE	Lockbox	55.00000
48210	050100	LBX WT CHECKS	Check	0.00000
48220	050122	LBX WT TOTAL PAYMENTS PROCESSED	Coupon	0.15000
48307	059999	LBX WT STD ITEM PROCESSED NON SCAN	Check	0.55000
48221	050122	LBX WT MULTI PAYMENT	Coupon	0.15000
48222	050002	LBX WT PARTIAL PAYMENT	Coupon	0.04000
48501	050401	LBX WT TRANSMISSION PER ITEM	Remittance	0.01500
		MERCHANT CARD SERVICES		
41912	070223	PMT GATEWAY CREDIT CARD TRANS	Transaction	0.00000
41910	070223	PMT GATEWAY MONTHLY BASIC	Account	0.00000
		DEPOSITORY SERVICES		
08173	100100	CASH VAULT DEPOSIT	Deposit	1.00000
CK197	100040	CASH ORDER FEE IN A WF BRANCH	Transaction	7.00000
CK141	100040	CURRENCY FURNISHED BY WF BRANCH	Dollar	0.00300
CK062	100416	CEO RETURN ITEM RETRIEVAL-IMAGE	Transaction	4.00000
CK064	100416	CEO RETURN ITEM SERVICE MTHLY BASE	Customer ID	0.00000
CK061	100400	RETURN ITEM - CHARGEBACK	Transaction	8.00000
CK075	100402	RETURN ITEM REDEPOSITED	Transaction	8.00000

WF Code	AFP Code	Service Description	Charge Basis	Price
70025	109999	SMART DECISION-ELEC CHECK ACH	Check deposited	0.03000
70029	109999	SMART DECISION-ELEC CHECK ACH ONUS	Check deposited	0.03000
22723	10001A	BRANCH DEPOSIT POST VERIFY	Deposit bag	2.25000
08290	100199	CASH VAULT CURRENCY/COIN DEPOSITED	Dollar	0.00090
08071	100111	CASH VAULT DEP - NONSTD COIN BAG	Coin bag	12.00000
08025	100015	MISCELLANEOUS CREDITS POSTED	Transaction	1.00000
002	100225	DEPOSITED CHECK	Check deposited	0.08000
706	100224	DESKTOP DEPOSIT-DEPOSITED ITEM	Check deposited	0.04000
790	100230	ELECTRONIC DEPOSIT - DEP ADJUSTMENT	Adjustment	17.00000
311	100225	WHOLESALE LOCKBOX - DEPOSITED CHECK	Check deposited	0.10000
		PAPER DISBURSEMENT SERVICES		
DS191	150122	PAYEE VALIDATION STANDARD-ITEM	Check paid	0.01000
22810	150500	WF CHK CASHED FOR NONACCT HOLDER	Check cashed	0.00000
22030	150412	STOP PAYMENT - AUTO RENEWAL	Stop payment	2.00000
12812	151352	CEO IMAGE VIEW < 90 DAYS - ITEM	Image retrieved	1.00000
12816	151352	DESKTOP DEPOSIT IMAGES RETRIEVED	Image	0.00000
22235	150240	OTC DEBIT BLOCK MONTHLY BASE	Account	10.00000
12908	150310	POS PAY CHECKS WITH NO ISSUE RECORD	Check	0.50000
12505	150222	POSITIVE PAY EXCEPTION CHECKS RETND	Check returned	15.00000
12903	150310	POSITIVE PAY EXCEPTIONS - ITEM	Exception	6.00000
12682	150120	POSITIVE PAY ONLY - ITEM	Check issued	0.04000
12681	150030	POSITIVE PAY ONLY MONTHLY BASE	Account	20.00000
MD091	150240	PYMT AUTH MAX CHECK MTHLY BASE	Account	10.00000
12670	150410	STOP PAYMENT - ONLINE	Stop payment	15.00000
22202	150100	DDA CHECKS PAID	Check paid	0.07000
64104	151350	IFI MAINTENANCE PER PRODUCT	Customer ID	100.00000
64101	151354	IFI PAID CHECKS - IMAGE	Image	0.06000
		PAPER DISBURSEMENT RECON SERVICES		
34337	200201	CEO CHECK ISSUES-ITEM	Check issued	0.20000
12687	209999	ARP AGED ISSUE RECORDS ON FILE-ITEM	Record	0.01000
		GENERAL ACH SERVICES		
CK018	250201	ELECTRONIC CREDITS POSTED	Credit	0.07000
34342	250400	ACH CEO RETURN SUBSCRIPTION - ITEM	Item accessed	0.20000

WF Code	AFP Code	Service Description	Charge Basis	Price
34340	250400	ACH CEO RETURN SUBSCRIPTION-ACCOUNT	ACH company ID	45.00000
ES280	250000	ACH MONTHLY BASE	Subscription	25.00000
ES211	250102	ACH FUTURE DATED ITEM	Transaction	0.04000
ES216	250102	ACH SAME DAY	Transaction	1.50000
ES206	250120	ACH ORIGINATED - ADDENDA REC	Addenda record	0.05000
ES349	250220	ACH RECEIVED ADDENDA	Addenda record	0.00000
ES344	250202	ACH RECEIVED ITEM	Transaction	0.10000
06504	250302	ACH RETURN ADMIN -MANUAL	Return	4.00000
06502	250302	ACH RETURN ITEM-ELECTRONIC	Return	6.50000
06503	250302	ACH RETURN ITEM-MANUAL	Return	4.00000
06506	250312	ACH RETURN UNAUTHORIZED -MANUAL	Return	4.00000
ES803	250500	ACH PAYMENTS ONLINE BATCH RELEASE	Batch/file	5.00000
ES801	250501	ACH TRANSMISSION CHARGE	Batch/file	5.00000
ES802	250501	ACH TRANSMISSION SPECIAL	Batch/file	5.00000
ES237	250710	ACH FAX SERVICE	Page	4.00000
34377	250000	ACH PAYMENTS BASE FEE	Company ID	25.00000
ACH1D	250102	ACH PAYMENTS FUTURE DATED ITEM	Transaction	0.03000
70033	250102	SMART DECISION-VAULT ACH	Check deposited	0.03000
34333	251050	ACH CEO FRAUD FILTER REVIEW MO BASE	Account	7.50000
34335	251053	ACH CEO FRAUD FILTER REVIEW - ITEM	Transaction filtered	5.00000
34285	250703	CEO ACH HYP ITM DET INQ - PER ITEM	Inquiry	1.50000
		WIRE & OTHER FUNDS TRANSFER SERVICE		
ES078	350300	WIRE IN DRAWDOWN RESPONSE-USA ACCT	Message	10.00000
ES030	350300	WIRE IN TO USA ACCT-USA DOMESTIC	Transfer	7.00000
ES191	350320	WIRE IN XBDR CORRESP BANK-USD/FX	Transfer	7.00000
ES139	350100	WIRE OUT DOMESTIC CEO/API	Transfer	8.00000
		INFORMATION SERVICES		
34123	40022Z	CEO ALERTS SERVICE - EMAIL	Email	0.25000
34121	400274	CEO INTRADAY REPORTING ITEMS RPTD	Item reported	0.05000
34120	400055	CEO INTRADAY REPORTING SUBSCRIPTION	Account	45.00000
34115	400271	CEO PREV DAY REPORTING ITEMS LOADED	Item loaded	0.05000
34100	400052	CEO PREV DAY REPORTING SUBSCRIPTION	Account	45.00000
27707	400340	CEO SEARCH	Inquiry	1.00000
34212	400340	WIRE INQUIRY DETAIL PER ITEM-CEO	Inquiry	3.50000
46100	40005Z	CEO BASIC BANKING - MONTHLY BASE	Company	20.00000
46102	40005Z	CEO BASIC BANKING ADDL ACCT-MO BASE	Account	10.00000
15017	400003	DESKTOP DEPOSIT MONTHLY BASE	Account	25.00000
15003	400231	DESKTOP DEPOSIT REPORT PER ITEM	Item reported	0.00000
		Setup Charges		
41918	070223	PMT GATEWAY SET UP	Account	0.00000
34376	251120	ACH PAYMENTS SET UP FEE	Setup	300.00000

A book transfer is a wire between two accounts on the Wells Fargo US account system initiated via CEO Wires or Payment Manager. The debit and credit accounts are in the same relationship and linked by the bank on the wire system

For additional service definitions, please contact your Treasury Management Sales Consultant or visit: www.wellsfargo.com/accountanalysis

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: April 5, 2023

PREPARED BY:
Michael Horta, Human Resources Director
APPROVED BY: City Manager

APPROVE FIFTH AMENDMENT TO AGREEMENT WITH INNOVATIVE CLAIMS SOLUTIONS, INC.

RECOMMENDATION(S)
Authorize the City Manager to execute and administer a Fifth Amendment to Agreement with Innovative Claims Solutions, Inc. to provide third party claims administration for workers' compensation extending the agreement for one additional year of service at annual amount of $35,755, for a new total contract amount of $276,735 over 8 years.

COUNCIL PRIORITIES, GOALS & STRATEGIES
City Council Ongoing Priorities
Maintaining and Enhancing Infrastructure
Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities
Fiscal Sustainability

REPORT NARRATIVE:
The current agreement with Innovative Claim Solutions (ICS) has been in effect since June 2016. During this time, ICS has administered several lengthy and complex workers' compensation case settlements that resulted in City Council review and approval. ICS has expended significant resources and continues to educate and inform Human Resources, departmental workers' compensation liaisons, and the City Attorney on the particular workers' compensation cases, as well as the general aspects of workers' compensation and case law. In early 2016, staff conducted a joint Request For Proposal (RFP) with the City of Gilroy for such services, through which ICS was selected as the most qualified firm to provide the services. ICS was also the lowest overall cost as a result of the RFP. ICS has offered to provide its services for an additional year with a slight increase to their current fees. Therefore, staff recommends that Council approve the Fifth Amendment to the Agreement, increasing the contract amount by $35,755 to a revised not to exceed amount of $276,735.

COMMUNITY ENGAGEMENT:
Inform
This report serves to inform the community of the recommended fifth amendment to the agreement.

ALTERNATIVE ACTIONS:
The Council could choose not to approve the fifth amendment to the agreement with ICS and direct staff to conduct an RFP or consider a different third-party administrator for workers' compensation in the interim.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
The Council approved the City's current agreement with ICS on May 18, 2016, as well as subsequent amendments.

FISCAL AND RESOURCE IMPACT:
The fifth amendment to the agreement would increase the compensation by $35,755 over one year. Costs for these services are budgeted and paid from the Workers' Compensation Fund (770) (GL#:770.8220.42231).

CEQA (California Environmental Quality Act):
This is an administrative action that will not result in physical changes in the environment.

FIFTH AMENDMENT TO AGREEMENT
INNOVATIVE CLAIMS SOLUTIONS, INC.

This FIFTH AMENDMENT TO AGREEMENT is entered into and becomes effective on ______________________ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and INNOVATIVE CLAIMS SOLUTIONS, INC., a California Corporation ("CONSULTANT"), hereinafter referred to collectively as the "Parties".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Fifth Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on ___________, ____, 20___.

2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of Jun 14, 2016, for consultant services for a maximum compensation of Sixty-Nine Thousand Eighty and no/100 dollars ($69,080.00) ("CONSULTANT AGREEMENT").

3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of June 7, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to One Hundred Three Thousand Four Hundred Sixty and no/100 dollars ($103,460.00) and the term was extended to June 30, 2019.

4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of November 14, 2019, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to One Hundred Seventy-Two Thousand Two Hundred Twenty and no/100 dollars ($172,220.00) and the term was extended to June 30, 2021.

5. The CITY and CONSULTANT entered into a "Third Amendment to Agreement" made as of June 29, 2021, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended was increased to Two Hundred Six Thousand Six Hundred and no/100 dollars ($206,600.00), and the term was extended to June 30, 2022.

6. The CITY and CONSULTANT entered into a "Fourth Amendment to Agreement" made as of May 6, 2022, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to Two Hundred Forty Thousand Nine Hundred-Eighty and no/100 dollars ($240,980.00) and the term was extended until June 30, 2023. The CONSULTANT AGREEMENT, and the First, Second, Third and Fourth Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the CONSULTANT AGREEMENT, as amended, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

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

   "2. **Term of Agreement**. This Agreement shall be effective and cover services rendered from June 14, 2016, until June 30, 2024."

B. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. Amount. Compensation under this Agreement shall not exceed TWO HUNDRED SEVENTY-SIX THOUSAND SEVEN HUNDRED THIRTY-FIVE DOLLARS ($276,735.00) and shall be billed based on the rate and basis set forth in revised Exhibit B dated March 15, 2023."

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.

3. **Conflicts**. In the event of a conflict between the terms and provisions of this Fifth Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT or any earlier amendment, the terms of this Fifth 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:

____
Michelle Bigelow, City Clerk
Date: ______________________

APPROVED AS TO FORM:
Donald Larkin, City Attorney

By: ______________________________

Date: ______________________

CITY OF MORGAN HILL

____
Christina Turner, City Manager
Date: ______________________

INNOVATIVE CLAIMS SOLUTIONS, INC.

____
By:
Title: Dan Greco, VP Client Services
Print Name and Title of Signer.
If Corporate: Chairman, President, or Vice President

Date: 3/21/23

____
By:
Title: Pete Stephens CFO
Print Name and Title of Signer.
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 3/21/2023

REVISED EXHIBIT B

INNOVATIVE CLAIMS SOLUTIONS, INC.-FIFTH AMENDMENT TO AGREEMENENT

March 15, 2023

City shall pay CONSULTANT:

An Annualized fee of $34,380 for the period of July 1, 2016-June 30, 2017.
An Annualized fee of $34,700 for the period of July 1, 2017-June 30, 2018.
An Annualized fee of $34,380 for the period of July 1, 2018-June 30, 2019.
An Annualized fee of $34,380 for the period of July 1, 2019-June 30, 2020.
An Annualized fee of $34,380 for the period of July 1, 2020-June 30, 2021.
An Annualized fee of $34,380 for the period of July 1, 2021-June 30, 2022.
An Annualized fee of $34,380 for the period of July 1, 2022-June 30, 2023.
An Annualized fee of $35,755 for the period of July 1, 2023-June 30, 2024.

The payments will be made in equal monthly installments of $2,979.58 for the current term July 1, 2023-June 30, 2024.

EXHIBIT 1

FOURTH AMENDMENT TO AGREEMENT
INNOVATIVE CLAIMS SOLUTIONS, INC.

This FOURTH AMENDMENT TO AGREEMENT is entered into and becomes effective on 5/6/2022 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and INNOVATIVE CLAIMS SOLUTIONS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Fourth Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on April, 20, 2022.

2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 14, 2016, for consultant services for a maximum compensation of Sixty-Nine Thousand Eighty and no/100 dollars ($69,080.00) ("CONSULTANT AGREEMENT").

3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of June 7, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to One Hundred Three Thousand Four Hundred Sixty and no/100 dollars ($103,460.00).

4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of November 14, 2019, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to One Hundred Seventy-Two Thousand Two Hundred Twenty and no/100 dollars ($172,220.00).

5. The CITY and CONSULTANT entered into a "Third Amendment to Agreement" made as of June 29, 2021, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to Two Hundred Six Thousand Six Hundred and no/100 dollars ($206,600.00). The CONSULTANT AGREEMENT, and the First, Second and Third Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the CONSULTANT AGREEMENT, as amended, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

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

"2. **Term of Agreement**. This Agreement shall be effective and cover services rendered from June 14, 2016, until June 30, 2023."

B. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. Amount. Compensation under this Agreement shall not exceed TWO HUNDRED FORTY THOUSAND NINE HUNDRED EIGHTY AND NO/100 DOLLARS ($240,980.00) and shall be billed based on the rate and basis set forth in revised Exhibit B dated March 28, 2022.

2. **Conflicts.** In the event of a conflict between the terms and provisions of this Fourth Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT or any earlier amendment, the terms of this Fourth Amendment to Agreement shall govern and control.

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

ATTEST:
DocuSigned by:
Michelle Bigelow
Michelle Bigelow, City Clerk
Date: 5/6/2022

CITY OF MORGAN HILL
DocuSigned by:
Christina Turner
Christina J. Turner, City Manager
Date: 5/6/2022

APPROVED AS TO FORM:
Donald A. Larkin, City Attorney
DocuSigned by:
By: Donald Larkin
45E6F0273EA2464...
Date: 5/5/2022

INNOVATIVE CLAIMS SOLUTIONS, INC.

By:
Title: Dan Greco, VP of Client Services
Print Name and Title of Signer.
If Corporate: Chairman, President or Vice President

Date: 4/4/22

By:
Title: Pete Stephens, CFO
Print Name and Title of Signer.
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 4/4/22

REVISED EXHIBIT B
INNOVATIVE CLAIMS SOLUTIONS, INC.-FOURTH AMENDMENT TO AGREEMENT
MARCH 28, 2022

CITY shall pay CONSULTANT:

An annualized fee of $34,380 for the period of July 1, 2016-June 30, 2017
An annualized fee of $34,700 for the period of July 1, 2017-June 30, 2018
An annualized fee of $34,380 for the period of July 1, 2018-June 30, 2019
An annualized fee of $34,380 for the period of July 1, 2019-June 30, 2021
An annualized fee of $34,380 for the period of July 1, 2021-June 30, 2022; and
An annualized fee of $34,380 for the period of July 1, 2022-June 30, 2023.

The payments will be made in equal monthly installments of $2,865.00 for the current term July 1, 2022-June 30, 2023.

EXHIBIT 1

THIRD AMENDMENT TO AGREEMENT
INNOVATIVE CLAIMS SOLUTIONS, INC.

This THIRD AMENDMENT TO AGREEMENT is entered into and becomes effective on 6/29/2021 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and INNOVATIVE CLAIMS SOLUTIONS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on June, 23, 2021.

2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 14, 2016, for consultant services for a maximum compensation of Sixty-Nine Thousand Eighty and no/100 dollars ($69,080.00) ("CONSULTANT AGREEMENT").

3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of June 7, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to One Hundred Three Thousand Four Hundred Sixty and no/100 dollars ($103,460.00).

4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of November 14, 2019, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to One Hundred Seventy-Two Thousand Two Hundred Twenty and no/100 dollars ($172,220.00). The CONSULTANT AGREEMENT, and the First, Second and Third Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the CONSULTANT AGREEMENT, as amended, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

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

"2. **Term of Agreement**. This Agreement shall be effective and cover services rendered from June 14, 2016, until June 30, 2022."

B. Rates as described in Exhibit B dated May 22, 2019, are continued in place through June 30, 2022.

C. Paragraph 5 shall be amended by adding the following:

"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."

D. Paragraph 9 shall be amended and replaced in its entirety by the following to correct reference from SERVICE PROVIDER to CONSULTANT:

"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."

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Signatures on the Next Page

2. **Conflicts.** In the event of a conflict between the terms and provisions of this Third Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT or any earlier amendment, the terms of this Third Amendment to Agreement shall govern and control.

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

ATTEST:

DocuSigned by:
Michelle Bigelow
Michelle Bigelow, City Clerk
Date: 6/29/2021

APPROVED AS TO FORM:
Donald A. Larkin, City Attorney

DocuSigned by:
By: Donald Larkin
45E6F0273EA2464...
Date: 6/24/2021

CITY OF MORGAN HILL

DocuSigned by:
Christina Turner
Christina J. Turner, City Manager
Date: 6/29/2021

INNOVATIVE CLAIMS SOLUTIONS, INC.

By: Cheryl Westgren
Title: President & COO
Print Name and Title of Signer.
If Corporate: Chairman, President or Vice President

Date: 6/2/2021

By: Gary Archibald
Title: President + CIO
Print Name and Title of Signer.
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 6/3/2021

12604-16-053

EXHIBIT 1

SECOND AMENDMENT TO AGREEMENT
INNOVATIVE CLAIMS SOLUTIONS, INC.

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on 11/4/19 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and INNOVATIVE CLAIMS SOLUTIONS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on JUNE, 26 2019

2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 14, 2016, for consultant services for a maximum compensation of SIXTY-NINE THOUSAND EIGHTY AND NO/100 DOLLARS ($69,080.00) ("CONSULTANT AGREEMENT").

3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of June 7, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to ONE HUNDRED THREE THOUSAND FOUR HUNDRED SIXTY AND NO/100 DOLLARS ($103,460.00). The CONSULTANT AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** *All terms and conditions of the CONSULTANT AGREEMENT, as amended, as* attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

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

"2. Term of Agreement. This Agreement shall be effective and cover services rendered from June 14, 2016, until June 30, 2021."

B. Effective July 1, 2019, CONSULTANT'S billing rates are set forth in the revised Exhibit "B" dated May 22, 2019, approved by CITY and attached hereto and incorporated herein by this reference. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. Amount. Compensation under this Agreement shall not exceed ONE HUNDRED SEVENTY-TWO THOUSAND TWO HUNDRED TWENTY AND NO/100 DOLLARS ($172,220.00) and shall be billed based on the rate and basis set forth in Exhibit B.

C. Paragraph 5 shall be amended and replaced in its entirety by the following:

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.

D. Paragraph 7.2.2 shall be amended and replaced in its entirety by the following:

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.

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2. **Conflicts.** In the event of a conflict between the terms and provisions of this Second Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT or any earlier amendment, the terms of this Second Amendment to Agreement shall govern and control.

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

ATTEST:

Michelle Bigelow, Deputy City Clerk
Date: 11/8/19

APPROVED AS TO FORM:

Donald A. Larkin, City Attorney
Date: 10-28-19

CITY OF MORGAN HILL

Christina J. Turner, City Manager
Date: 11/4/19

INNOVATIVE CLAIMS SOLUTIONS, INC.

By: Cheryl Westeren
Title: President & COO
Print Name and Title of Signer.
If Corporate: Chairman, President or Vice President

Date: 6/12/19

By: GARY ARCHIBALD
Title: President + CIO
Print Name and Title of Signer.
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 6-12-19

REVISED EXHIBIT B

INNOVATIVE CLAIMS SOLUTIONS, INC. – SECOND AMENDMENT TO AGREEMENT MAY 22, 2019

City shall pay CONSULTANT:

1. An annualized fee of $34,380 for the period of July 1, 2019 – June 30, 2020; and
2. an annualized fee of $34,380 for the period of July 1, 2020 – June 30, 2021.

The payments will be made in equal monthly installments of $2,865.00.

126-04-16-055

EXHIBIT "1"

FIRST AMENDMENT TO AGREEMENT
INNOVATIVE CLAIMS SOLUTIONS, INC.

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on June 7, 2018 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, INNOVATIVE CLAIMS SOLUTIONS, INC., a California corporation ("CONSULTANT").

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 May 16, 2016.

2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 14, 2016, for consultant services for a maximum compensation of SIXTY-NINE THOUSAND EIGHTY AND NO/100 DOLLARS ($69,080.00) ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Amendments: All terms and conditions of the CONSULTANT AGREEMENT, as amended, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

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

"2. Term of Agreement. This Agreement shall be effective and cover services rendered from June 14, 2016, until June 30, 2019."

B. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. Amount. Compensation under this Agreement shall not exceed ONE HUNDRED THREE THOUSAND FOUR HUNDRED SIXTY AND NO/100 DOLLARS ($103,460.00) and shall be billed based on the rate and basis set forth in the revised Exhibit B dated May 17, 2018, attached hereto and incorporated herein by this reference."

C. Paragraph 9 shall be amended and replaced in its entirety by the following:

"9. "Compliance with Law.

9.1 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.

9.2 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.

9.3 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.

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

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

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

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

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

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

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

[Signatures on Next Page]

2. Conflicts. In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the CONSULTANT, 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:

Deputy City Clerk
Date: 6/13/18

APPROVED AS TO FORM:

for City Attorney
Date: 5-21-18

CITY OF MORGAN HILL

City Manager
Date: 6-7-18

INNOVATIVE CLAIMS SOLUTIONS, INC.

By:
Title: Cheryl Westeren President
Print Name and Title of Signer.
If Corporate: Chairman, President or Vice President

Date: 5-21-2018

By:
Title: Gary Archibald President + CIO
Print Name and Title of Signer.
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 5-21-2018

REVISED EXHIBIT B

INNOVATIVE CLAIMS SOLUTIONS, INC. - FIRST AMENDMENT TO AGREEMENT

MAY 17, 2018

City shall pay CONSULTANT an annualized fee of $34,380 for the period of July 1, 2018 – June 30, 2019, and payments will be made in equal monthly installments of $2,865.00.

126-04-16-053

EXHIBIT "1"

CONSULTANT AGREEMENT
Innovative Claims Solutions, Inc.

THIS AGREEMENT is entered into and becomes effective on 6/14/16 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Innovative Claims Solutions, 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. <u>City Authority.</u> This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on May, 18, 2016.

2. <u>Term of Agreement.</u> This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2018 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. <u>Scope of Service.</u> The services to be performed by CONSULTANT shall be workers compensation claims administration as further described in Exhibit A.

4. <u>Compensation.</u> CONSULTANT shall be compensated as follows:

   4.1. <u>Amount</u>. $69,080.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed sixty nine thousand eighty dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.

   4.2. <u>Billing</u>. CONSULTANT shall provide CITY with a monthly 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. 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. <u>Termination.</u> 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 on behalf of CITY.

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 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, 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. 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) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars ($1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to 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) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars ($1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to 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 contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars ($1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to 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, 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.

7.1.5.3. 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) 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.

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

7.2.1.2. 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,

7.2.1.3. Insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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.

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 an financial size rating of "VII" or better.

7.4. Certificates. CONSULTANT shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

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.** 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.

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:

Innovative Claims Solutions, Inc.
P.O. Box 5128
San Ramon, CA 94583

Address of CITY is as follows:

Human Resources 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. Maintenance of Records.

15.1. 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.

15.2. 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.

15.3. 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.

16. 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.

17. Time of Essence. Time is of the essence in the performance of this Agreement.

18. 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.

19. 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.

20. Defense and Indemnification.

20.1. 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").

20.2. 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.

20.3. 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.

20.4. 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 (20) 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.

20.5. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. Binding Agreement. Notwithstanding the provisions of Section 18 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.

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

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

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:
(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

City Clerk/Deputy City Clerk

Michelle Wilson
Print Name

Date: 6/14/16

APPROVED AS TO FORM:

Interim City Attorney
for
Gary Baum
Print Name

Date: 06/14/16

CITY OF MORGAN HILL

City Manager

Steve Rymer
Print Name

Date: 6/14/16

Innovative Claims Solutions

By: Cheryl Westeren

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

Date: 5/9/16

By: Gary Archibald

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

Date: 5/9/16

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EXHIBIT A
SCOPE OF SERVICES

Claims Administration. ICS shall adhere to the following claims administration standards and procedures:

1. ICS shall review and process reported claims for workers' compensation benefits that have not been closed as of the Effective Date of this Agreement and closed claims that reopen on or after the Effective Date. ICS shall have no responsibility other than custody of files and statistical reporting for claims closed prior to the Effective Date.

2. Determine liability for claimed injuries and illnesses in accordance with California Workers' Compensation Laws.

3. Review and process all claims in accordance with rules and regulations established by the Division of Industrial Relations, Department of Self-Insurance Plans.

4. Establish files containing medical and factual information on each reported claim together with complete accounting records and maintain same in accordance with statutory time requirements.

5. ICS shall make all workers compensation disability payments and send all notices in a timely and accurate manner and in conformance in all material respects with all applicable provisions of the California Labor Code and the California workers' compensation laws, rules and regulations.

6. Determine nature and extent of permanent disability and arrange for informal disability rating whenever possible to avoid Workers' Compensation Appeals Board litigation.

7. Explain to and assist employee in completing necessary forms for permanent disability ratings.

8. Review compute and pay all informal rating, findings and awards, life pensions or compromise and release settlements.

9. Maintain and establish reserve estimates for each reported claim.

10. Arrange for and supervise all necessary investigations to determine eligibility for compensation benefits and/or liability of negligent, third parties.

11. Identify, recommend and obtain special fraud investigations after obtaining advance authority from the CLIENT.

12. As a service to the CLIENT, ICS will report all excess claims to excess reinsurance carrier, although the final responsibility for reporting such claims is that of the CLIENT's.

13. Arrange and supervise rehabilitation services where indicated.

14. Arrange for and set up system for payment of benefits and allocated expenses in accordance with CLIENT's needs.

15. ICS shall prepared with the assistance of the CLIENT all reports, which are now, or will be required by the State of California or other government agencies with respect to self-funded programs.

16. ICS shall subscribe to and pay for enrollment in the Index Bureau System and will report to the Index Bureau on each and every indemnity claim. The per claim cost of this service shall be posted as an allocated expense to the CLIENT.

17. On behalf of the Client, ICS will perform all workers compensation claim reporting services required by the Medicare, Medicaid and SCHIP Extension Act (MMSEA) Section 111 Mandatory Reporting to the Centers for Medicare & Medicaid Services (CMS) for the periods identified in this contract.

18. ICS will comply with the performance standards as required by the City's excess carrier. ICS will advise if there are any exceptions, or when compliance with new standards may impact our annual fee.

B. Medical Administration. ICS shall adhere to the following medical administration standards:

1. Authorize, review and monitor all medical treatment required on injury or illness claims.

2. Audit and pay all medical expenses in a timely manner, and within statutory guidelines.

3. Maintain close contact with treating physicians to ensure employees receive proper medical treatment and are returned to full employment at earliest date.

4. Arrange for medical-legal opinions in disputed cases, conferring with medical examiners, CLIENT, and legal counsel where indicated.

5. Consult as required with CLIENT on those cases where injury residual might involve restriction and/or retirement potential.

C. Legal Administration. ICS shall adhere to the following legal administration standards:

1. Refer litigated cases, when needed, to attorneys recommended by ICS and approved by CLIENT for purposes of defending CLIENT's interests before Workers' Compensation Appeals Board and the court.

2. Work closely with counsel in preparing defense of litigated cases.

3. Obtain CLIENT's authorization on all settlements or stipulations when required.

4. Work closely with applicant's attorney and legal counsel in informal dispositions of litigated cases.

5. Attend, when required, Workers' Compensation Appeals Board hearings.

6. Discharge on behalf of CLIENT, all legal obligations to its injured employees imposed by Workers' Compensation Appeals Board and higher courts.

7. Protect and preserve CLIENT's interests in all potential subrogation cases.

D. Medical Cost Containment Services. ICS shall adhere to the following medical cost containment services standards:

1. ICS shall use and cooperate fully with the designated medical cost containment vendor (bill review and utilization review service provider) to review the medical bills for the CLIENT and other medical charges and provide necessary utilization review services relating to treatment requests on all claims of industrial injury or illness.

2. Unless otherwise directed, ICS will select the service provider to be utilized and CLIENT will pay for such services. The City of Morgan Hill shall be responsible for all Managed Care Services and Loss Adjustment Expenses. Managed Care Services shall include medical bill review, utilization review, and medical case management. Costs for such services are documented in Exhibit B; however, bill review services shall be billed at a rate not to exceed $30.00 per bill. Loss Adjustment Expenses shall include all reasonable expenses necessary to the adjustment of a claim in accordance with the Service Agreement, including, but not limited to, fees for engaging defense counsel, court reporters, expert witnesses and field investigators, incurred on behalf of the City of Morgan Hill.

E. Information Systems. ICS will provide a computer system with appropriate data base management capabilities to maintain records related to the administration of the Client's workers' compensation program. ICS shall coordinate data entry for employees in the program and for services supplied by ICS. The CLIENT shall have access to the computer system during normal working hours and access to the database through its own computers at its own expense. ICS shall provide computer-generated reports that are reasonably requested on a regular basis as detailed in section F below.

F. Statistical. ICS will adhere to the following statistical report production obligations and provide all required reports to the client at agreed to intervals:

1. Report to CLIENT, monthly status of claim payments and reserves on an individual claim basis and in the aggregate.

2. Report to CLIENT, quarterly loss analysis of claims filed by frequency and severity.

3. Assist in the preparation of all reports required by the State of California or other Governmental agencies relating to Workers' Compensation claims.

4. ICS will prepare the federal information return (Form 1099) by the statutory deadline for all payments subject to 1099 reporting made by ICS on behalf of the CLIENT during the term of this Agreement.

5. Additional ad-hoc reports will be provided to CLIENT at their request at no additional cost. Special report requests that require programming time will be charged to CLIENT at $150 per hour, which is our direct cost. Our system is capable of generating standardized reports as follows:

Claim Logs
Claim Activity
Claim Cost Detail
Claim Cost Summary
Claim Cost Summary by Year
Examiner Activity
Examiner Case Log
Frequency Reports
Location Summary
Management Summary
Multiple Claims Listing
Occurrence Cost
OSHA
Payment Type Totals
Vendor Payments Summary
State Annual Report

6. Ad-hoc reports queries, which require no specific programming will be provided at no cost to CLIENT.

G. Banking Services. ICS will adhere to the following services standards, as directed by the clients:

1. The CLIENT agrees to establish, fund and replenish an account at a financial institution agreed upon by the CLIENT and ICS for the purpose of paying benefits to workers or care providers and to pay Allocated Loss Adjustment Expenses.

2. All funds in the CLIENT Account belong to the CLIENT. ICS shall have authority to write checks on the CLIENT Account, however, two signatures may be required at client's requested level.

3. ICS shall have authority to pay Allocated Loss Adjustment Expenses from the CLIENT Account to vendors. ICS shall provide the CLIENT with detailed accountings of the expenditures from the CLIENT Account.

4. ICS agrees to make records pertinent to the CLIENT's account available to CLIENT for audit purposes at all reasonable times with at least 24 hours' notice.

5. ICS agrees to maintain CLIENT's trust fund account, if CLIENT elects such arrangement. Otherwise, CLIENT is responsible for all reconciliation and banking processes involved with CLIENT account.

6. Additional services, including but not limited to, field and investigative services, legal expenses, managed care services, index bureau inquiries, bill review and all services which are provided by outside vendors on behalf of the CLIENT shall be paid out of the CLIENT's account, or trust account.

H. Assignments. ICS shall not assign this Agreement, nor any part thereof.

I. File Storage. Pursuant to RR 15400.2 Of the California Code of Regulations all files closed for more than 5 (five) years shall be identified. UPON CLIENT direction ICS shall return the file(s) to CLIENT, destroy file(s) or maintain file(s) at CLIENT expense with an off-site storage facility.

J. Cooperation. In the event of early termination or non-renewal, both parties will cooperate in good faith to implement a transition to a new service provider with minimum disruption to the provision of benefits to workers. ICS will make available to client, and to a new service provider, all files, summary data, records and information developed with respect to this Agreement, including all loss records and a record layout describing the format of the date tapes. Such information shall be made available electronically whenever possible. The CLIENT shall assume all responsibility for open claims as of the effective date of termination.

K. Files All claims files, records, reports and other documents pertaining to employee claims are the property of the CLIENT and CLIENT may audit or inspect the files at any time during normal business hours. ICS shall turn over possession of all files and other documents to the CLIENT or its designee promptly upon the effective date of termination or non-renewal of this Agreement. The CLIENT shall allow ICS to review all files and other documents with information relating to its performance pursuant to this agreement.

L. Penalties and Fines. ICS and client agree to the following standards, protocols and principals relating to the fines and penalties:

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1. ICS and CLIENT hereto acknowledge the various penalties and administrative fines that contained in The California Workers' Compensation Reform Act of 1989 (effective January 1, 1990 and January 1, 1991) that may be imposed on both employers and claim administrators.

2. ICS will be responsible for any fines or penalties associated with questionable or converted claims that ICS denies without first consulting and obtaining approval by the CLIENT for denial of the claim(s). ICS will not be responsible for any fines or penalties levied by the Division of Workers' Compensation or any other judicial or quasi-judicial organization for improper denial of a claim(s) if, over the objections of ICS, ICS has denied said claim(s) at the direction of the CLIENT.

3. The CLIENT shall be responsible for all penalties where ICS has not been given sufficient notice such that ICS has had at least seven (7) working days in which to investigate the claim and to pay temporary disability or send the required wage continuation notice before the penalties were assessed. ICS shall be responsible for all penalties in which it has had seven (7) or more working days in which to investigate and pay temporary disability or send a wage continuation notice. For the purposes of this section "working day" means all days except Saturdays, Sundays, and commonly observed holidays.

4. The services as described in this Agreement shall be performed in all material respects in accordance with applicable laws, rules, regulations and standards of governmental authorities including, in particular, applicable Workers' Compensation Laws of the State of California.

5. This Agreement shall be construed in accordance with, and governed by, the internal laws of the State of California and the venue for any disputes is the county of Santa Clara as requested by the CLIENT.

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

City shall pay CONSULTANT an annualized fee of $34,380 for the period of July 1, 2016 - June 30, 2017 and an annualized fee of $34,700 for the period of July 1, 2017 - June 30, 2018.

For FY 16/17, payments will be made in equal monthly installments $2,865.00 and for FY 17/18, payments will be made in equal monthly installments of $2,891.66.

CITY OF MORGAN HILL

City Council

Meeting Minutes

Mark Turner	-	*Mayor*
Rene Spring	-	*Mayor Pro Tem*
Gino Borgioli	-	*Council Member*
Marilyn Librers	-	*Council Member*
Yvonne Martinez Beltran	-	*Council Member*

Wednesday, March 15, 2023 7:00 PM

Council Chamber Building
17555 Peak Avenue, Morgan Hill, CA 95037

CALL TO ORDER

Mayor Turner called the City Council meeting to order at 7:00 pm.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

PRESENT	Rene Spring, Gino Borgioli, Yvonne Martinez Beltran, Mark Turner
ABSENT	Marilyn Librers

DECLARATION OF POSTING AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PRESENTATIONS

YAC Presentation - Asset #17 - Creative Activities

PROCLAMATIONS

Youth Arts Month
Solidarity with Ukraine
Cesar Chavez Day
Women's History Month

CITY COUNCIL REPORTS

None.

CITY MANAGER'S REPORT

City Manager Christina Turner provided an update on the weather event that took place on Tuesday, March 14, 2023. She shared that the Hale Avenue Extension Project is moving along, and DeWitt Ave is now open. She announced that the Citizens Police Academy is accepting applications. This Saturday the Bay Area Panthers are holding a "Meet the Players" event. She shared that the Mushroom Festival will take place this year as a smaller event at the Community and Cultural Center. City offices will be closed on Friday, March 31 in observance of Cesar Chavez Day. She shared that on April 1, 2023 the American Association of University Women is hosting the Young Womens Youth Leadership Conference at Central High School. She also noted two supplements with changes to items 9 and 12 on our Consent Calender.

CITY ATTORNEY'S REPORT

None.

OTHER REPORTS

Council Member Yvonne Martinez Beltran thanked the women that lead the City in honor of Womens History Month and those that are celebrating Cesar Chavez Day. She mentioned a League webinar that was done on the RHNA process.She reminded everyone of the legislative priorities that were posted to the League of California Cities website and provided an update on Silicon Valley Clean Energy.

Mayor Turner spoke about the Cities Association meeting he attended. Two bills related to Valley Water were discussed. Specifically, Valley Water is looking to construct homeless housing on properties Valley Water owns. This was discussed by the policy committee, but no recommendation was made. The Council should review this item because Valley Water would like support from the City of Morgan Hill.

PUBLIC COMMENT

Public comment opened at 7:20 pm. There being no requests to speak, public comment closed.

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	Passed
MOVER:	Council Member Borgioli
SECONDER:	Mayor Pro Tem Spring
AYES:	Mayor Pro Tem Spring, Council Member Borgioli, Council Member Martinez Beltran, Mayor Turner
NAYS:	None
ABSTAIN:	None
ABSENT:	Council Member Librers

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

Public comment opened at 7:23 pm. The following people were called to speak:
Joe Baranowski (Miguel Jimenez ceded his time)
Samantha Hauser - Applicant
There being no further requests to speak, public comment closed.

MOTION:

Approving consent calendar items 1 through 4, 6, 9 and 12 through 17.

RESULT:	Passed
MOVER:	Council Member Borgioli
SECONDER:	Mayor Pro Tem Spring
AYES:	Mayor Pro Tem Spring, Council Member Borgioli, Council Member Martinez Beltran, Mayor Turner
NAYS:	None
ABSTAIN:	None
ABSENT:	Council Member Librers

1. ACCEPT THE 2022 GENERAL PLAN AND HOUSING ELEMENT ANNUAL

PROGRESS REPORT (APR)
Recommendation:
Accept the 2022 General Plan and Housing Element Annual Progress Report (APR) and direct staff to file the report with the Governor's Office of Planning and Research (OPR) and the State Department of Housing and Community Development (HCD).

2. **ACCEPT $595,748 IN GRANT FUNDS FROM SILICON VALLEY CLEAN ENERGY**
Recommendation:
Authorize City Manager to execute and administer grant funding agreements with Silicon Valley Clean Energy.

3. **ACCEPTANCE OF EAST DUNNE REHABILITATION PROJECT IN THE AMOUNT OF $2,090,840**
Recommendation:

1. Accept as complete the East Dunne Rehabilitation Project;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

4. **ACCEPT 2022 PAVEMENT REHABILITATION PROJECT IN THE AMOUNT OF $4,001,888**
Recommendation:

1. Accept as complete the 2022 Pavement Rehabilitation Project;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office

5. **ACCEPT DONATION FROM COMMUNITY LAW ENFORCEMENT FOUNDATION**
Recommendation:
1. Accept the Community Law Enforcement donation of:

a. Canine Challenge Coins,
b. cash donation in the amount of $8,727 for equipment, and
c. cash donation in the amount of $29,868 to reimburse the City of Morgan Hill for expenses related to the December 10, 2022, Gun Buyback Event.

2. Adopt a resolution to amend the City's Fiscal Year 2022-23 General Fund budget, accepting a donation of $38,595 and appropriating $38,595.

MOTION:
Approving the recommended actions.

RESULT:	Passed
MOVER:	Council Member Borgioli
SECONDER:	Mayor Pro Tem Spring
AYES:	Mayor Pro Tem Spring, Council Member Borgioli, Mayor Turner
NAYS:	None
ABSTAIN:	Council Member Yvonne Martinez Beltran
ABSENT:	Council Member Librers

6. ACCEPT 2022 EMERGENCY MANAGEMENT PERFORMANCE GRANT AND ADOPT RELATED RESOLUTIONS

Recommendation:
Adopt resolution:

1. Authorizing the City Manager to execute and administer the Memorandum of Understanding with the County of Santa Clara for the 2022 Emergency Management Performance Grant; and
2. Amending the City's Fiscal Year 2022-23 adopted budget to recognize revenue and appropriate related expenditures, in the amount of $15,200 from the General Fund.

7. ADOPT ORDINANCE NO. 2344, NEW SERIES, APPROVING A ZONING MAP AMENDMENT FROM PLANNED DEVELOPMENT/GENERAL COMMERCIAL TO MIXED USE FLEX FOR A MIXED-USE DEVELOPMENT ON A 3.82-ACRE SITE LOCATED ON THE SOUTHWEST QUADRANT OF COCHRANE ROAD AND MONTEREY ROAD (MONTEREY – CITY VENTURES (THE GATES)) (APNS 764-10-013 AND 764-10-015)

Recommendation:
Waive the reading, adopt Ordinance No. 2344, 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.

MOTION:
No action taken.

MOVER:	Council Member Borgioli

SECONDER:	Mayor Pro Tem Spring
AYES:	Council Member Borgioli, Mayor Turner
NAYS:	Mayor Pro Tem Spring
ABSTAIN:	Council Member Yvonne Martinez Beltran
ABSENT:	Council Member Librers

8. <u>ADOPT ORDINANCE NO. 2345, NEW SERIES, AMENDING SECTION 2.04.010 OF THE MUNICIPAL CODE, REGARDING THE TIME AND LOCATION OF THE COUNCIL MEETINGS</u>

Recommendation:
Waive the reading, adopt Ordinance No. 2345, 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.

<u>MOTION:</u>
Adopting the ordinance.

RESULT:	Passed
MOVER:	Council Member Borgioli
SECONDER:	Mayor Pro Tem Spring
AYES:	Mayor Pro Tem Spring, Council Member Borgioli, Mayor Turner
NAYS:	Council Member Martinez Beltran
ABSTAIN:	None
ABSENT:	Council Member Librers

9. <u>ADOPT RESOLUTION OPPOSING BALLOT INITIATIVE #21-0042A1, SPONSORED BY CALIFORNIA BUSINESS ROUNDTABLE, LOBBYING ARM OF THE LARGE CORPORATIONS IN CALIFORNIA</u>

Recommendation:

1. Adopt resolution to oppose ballot Initiative #21-0042A1; and
2. Authorize staff to send a letter to the League of California Cities formalizing the City's position.

10. <u>APPROVE PURCHASE OF MAINTENANCE DIVISION DUMP TRUCK</u>

Recommendation:

1. Approve the purchase of a 2022 Ram 5500 Chassis Cab Dump Truck from the Gilroy Chrysler Dodge Jeep Ram in the amount of $114,887 to replace vehicle D08127; and

2. Authorize the disposal of the surplus vehicle D08127 in accordance with Section 3.04.400 of the City of Morgan Hill Municipal Code.

MOTION:
Reconsider item 10.

RESULT:	Failed
MOVER:	Council Member Martinez Beltran
SECONDER:	Mayor Pro Tem Spring
AYES:	Mayor Pro Tem Spring, Council Member Martinez Beltran
NAYS:	Council Member Borgioli, Mayor Turner
ABSTAIN:	None
ABSENT:	Council Member Librers

MOTION:
Approving the recommended action

RESULT:	Passed
MOVER:	Council Member Borgioli
SECONDER:	Mayor Pro Tem Spring
AYES:	Mayor Pro Tem Spring, Council Member Borgioli, Mayor Turner
NAYS:	Council Member Martinez Beltran
ABSTAIN:	None
ABSENT:	Council Member Librers

12. APPROVE THE FEBRUARY 15, 2023 CITY COUNCIL MEETING MINUTES
Recommendation:
Approve the February 15, 2023 City Council Meeting Minutes

13. APPROVE SEWER AND TRAFFIC IMPACT FEE FINANCING AND SECURITY AGREEMENT WITH JOHN MICHAEL MONACO AND NORA GAYLE MONACO REVOCABLE LIVING TRUST AT 195 MAST ST
Recommendation:
Adopt resolution authorizing the City Manager to execute a Sewer and Traffic Impact Fee Financing and Security Agreement, consistent with the Sewer and Traffic Impact Fee Deferral Program and Government Code section 53083, with John Michael Monaco and Nora Gayle Monaco Revocable Living Trust for the approved Conditional Use (Indoor Recreation/Gym) on a property zoned for light

industrial at 195 Mast Street.

14. APPROVE UPDATES TO THE SUSTAINABLE MORGAN HILL DOCUMENT AND COUNCIL POLICY REGARDING RULES FOR CONDUCT OF CITY COUNCIL MEETINGS, PLACEMENT OF ITEMS ON THE AGENDA, AND MATTERS TO BE RECONSIDERED

Recommendation:

1. Adopt updates to the Sustainable Morgan Hill document; and
2. Adopt updates to City Council Policy (CP 97-01) - Rules for the Conduct of City Council Meetings, Placement of Items on the Agenda, and Matters to be Reconsidered.

15. RECEIVE ANNUAL REPORT ON 2022 CITY ENGINEER ACCEPTANCES OF PUBLIC IMPROVEMENTS COMPLETED BY PRIVATE DEVELOPMENT PROJECTS

Recommendation:
Accept and file Annual Report on 2022 City Engineer acceptances of public improvements completed by private development projects.

16. RECEIVE MONTHLY BUDGET UPDATE AND JANUARY 2023 FINANCIAL AND INVESTMENT REPORTS

Recommendation:
Accept and file report.

17. TERMINATE LOCAL EMERGENCY PROCLAMATION

Recommendation:
Proclaim the termination of the local emergency related to the winter storms.

ITEM PULLED FOR DISCUSSION

11. APPROVE UPDATED EMERGENCY OPERATIONS PLAN

Recommendation:
Approve the distribution and use of the updated City of Morgan Hill's Emergency Operations Plan.

MOTION:
Approving the recommended action.

RESULT:	Passed

MOVER:	Council Member Borgioli
SECONDER:	Council Member Martinez Beltran
AYES:	Mayor Pro Tem Spring, Council Member Borgioli, Council Member Martinez Beltran, Mayor Turner
NAYS:	None
ABSTAIN:	None
ABSENT:	Council Member Librers

PUBLIC HEARINGS

18. ADOPT UPDATED WATER CAPACITY (IMPACT) FEES

Recommendation:

1. Open/Close Public Hearing; and
2. Adopt resolution approving the 2023 NBS Water Capacity Fee Analysis and updating the Water Capacity (Impact) Fee as proposed in the study.

Finance Director Dat Nguyen and Public Services Director Chris Ghione provided the report and presentation.

The public hearing opened at 7:49 pm. There being no requests to speak, the public hearing closed.

MOTION:
Approving the recommended action.

RESULT:	Passed
MOVER:	Council Member Borgioli
SECONDER:	Mayor Pro Tem Spring
AYES:	Mayor Pro Tem Spring, Council Member Borgioli, Council Member Martinez Beltran, Mayor Turner
NAYS:	None
ABSTAIN:	None
ABSENT:	Council Member Librers

OTHER BUSINESS

19. APPROVE DESIGN CONSULTANT AGREEMENT WITH VERDE DESIGN FOR BUTTERFIELD PARK

Recommendation:

1. Authorize the City Manager to execute and administer a design consultant agreement for $296,454 with Verde Design for the design of the Butterfield Park Site; and
2. Adopt a resolution to amend the City's Fiscal Year 2022-23 adopted budget to appropriate $180,000 from the Park Impact Fund.

Public Services Director Chris Ghione provided the report and presentation.

Public comment opened at 8:06 pm. There being no requests to speak, public comment closed.

MOTION:
Approving the recommended actions.

RESULT:	Passed
MOVER:	Council Member Borgioli
SECONDER:	Mayor Pro Tem Spring
AYES:	Mayor Pro Tem Spring, Council Member Borgioli, Council Member Martinez Beltran, Mayor Turner
NAYS:	None
ABSTAIN:	None
ABSENT:	Council Member Librers

20. APPROVE PARTNER AGREEMENT FOR BUTTERFIELD PARK DEVELOPMENT WITH FOUNDATION FOR A BETTER RIDE IN COLLABORATION WITH USA BMX

Recommendation:
Authorize the City Manager to execute and administer an operator agreement with Foundation for a Better Ride for the construction, operations, and maintenance of a BMX facility at the Butterfield Park site.

Public Services Director Chris Ghione provided the report and presentation.

Public comment opened at 8:23 pm.
Nick Valencia was called to speak.
There being no further requests to speak, public comment closed.

MOTION:
Approving the recommended action.

RESULT:	Passed

MOVER:	Council Member Martinez Beltran
SECONDER:	Mayor Pro Tem Spring
AYES:	Mayor Pro Tem Spring, Council Member Borgioli, Council Member Martinez Beltran, Mayor Turner
NAYS:	None
ABSTAIN:	None
ABSENT:	Council Member Librers

CLOSED SESSION
City Attorney Donald Larkin read the closed session into the record.

REAL PROPERTY NEGOTIATIONS
Pursuant to: Government Code Section 54956.8
Property: APN - 81706002
Negotiating Parties: City Manager and Public Services Director
Under Negotiation: Price and Terms

OPPORTUNITY FOR PUBLIC COMMENT
Public comment opened at 8:27 pm. There being no requests to speak, public comment closed.

ADJOURN TO CLOSED SESSION
The meeting adjourned to closed session at 8:27 pm.

Reconvene
The meeting reconvened at 8:44 pm.

City Attorney Donald Larkin announced that there was no reportable action.

FUTURE COUNCIL INITIATED AGENDA ITEMS
None.

ADJOURNMENT
There being no further business, Mayor Turner adjourned the meeting at 8:45 pm.

Minutes Prepared by:
Michelle Bigelow, City Clerk

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: April 5, 2023

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

ADOPT RESOLUTION ESTABLISHING CARRY CONCEALED WEAPON (CCW) LICENSE FEE, BUSINESS LICENSE RENEWAL FEE, AND UPDATING CREDIT CARD PAYMENT SERVICE FEE

RECOMMENDATION(S)

1. Open/Close public hearing; and
2. Adopt resolution establishing carry concealed weapon license fee, business license renewal fee, and updating credit card service fee for development fees and transient occupancy tax payments by credit card.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities
Enhancing Public Safety

2022-2023 Strategic Priorities
Fiscal Sustainability
Community Outreach, Engagement, and Messaging

REPORT NARRATIVE:

To ensure the City's fiscal sustainability and as part of the staff workplan, staff regularly reviews the City's fee schedule to establish and or update fees to recover the cost of providing the services.

<u>Establish carry concealed weapon (CCW) license fee:</u>

The Morgan Hill Police Department does not currently have a Carry Concealed Weapon (CCW) license fee established. The Morgan Hill Police Department does not currently have any CCW licenses issued.

Pursuant to the June 23, 2022, New York v. Bruen Supreme Court decision, Carry Concealed Weapon (CCW) License applicants are no longer required to provide “proper cause” or demonstrate a “special need” to exercise the right to carry a firearm.

Subsequent to this decision and along with the processing and administration of CCW license applications shifting from the Santa Clara County Sheriff's Office to local police municipalities, the Morgan Hill Police Department has received a significant number of inquiries from residents who are wishing to pursue a license to carry a concealed weapon.

Fees associated with a CCW license stem from State and Federal obligations as determined by the Department of Justice. As the licensing authority, the City of Morgan Hill also assumes various costs related to the processing of the application, noting pursuant to Penal Code Section 26190(b)(1) these costs may be recovered…"in an amount equal to the reasonable costs for processing the application for a new license, issuing the license, and enforcing the license…" The law also allows for the collection of 20% of this fee upon the filing of the initial CCW license application, with the remaining balance collected upon the issuance of the license. Additionally, pursuant to Penal Code Section 26190(d), local fees may be increased at a rate not to exceed the California Consumer Price Index.

Of significance, prior to 2019, language contained within Penal Code Section 26190(b)(1) identified a maximum allowance of $100 the licensing authority (The City of Morgan Hill) could recover for processing a CCW license application, specifically reading:

> The licensing authority of any city, city and county, or county may charge an additional fee in an amount equal to the actual costs for processing the application for a new license, including any required notices, excluding fingerprinting and training costs, but in no case to exceed one hundred dollars ($100), and shall transmit the additional fee, if any, to the city, city and county, or county treasury.

Since 2019, and as the law remains, the language regarding the maximum amount a licensing authority may charge for the costs relating to processing a CCW license application has been omitted. As such and as legally permitted, the City of Morgan Hill is requesting full reimbursement for application processing.

Ensuing analysis from the Command Staff of the Police Department determined it will cost the City $807 to process a CCW license application for a new license; however, the Department is recommending City Council establish $800 as the City fee related to application processing. The standard CCW license would be good for two years.

The CCW fees are calculated from the fully burdened rate of the perspective police officer's time to process the application:

- Community Services Officer (6 hours total $419.52), Police Administrative Sergeant (1 hour $167.81), and a Police Captain (1 hour $209.56).

The police officers' time is divided amongst the following processes:

- Review of a CCW license application, legal documents, resident documents/verification, payment collection, Livescan/Fingerprinting, review/validate three character letters, review proof of registered firearms ownership, background investigation to determine good moral character, applicant interview panel, review of psychological testing, review and validate firearms training/qualification, issuing, and enforcement.

The estimated cost for a standard Carry Concealed Weapon License is as follows:

CCW Standard License: Total cost is approx. $1,366 (This amount may fluctuate depending on what training provider the applicant selects).

- DOJ Fees: $131
- City Fees: $800
- Fingerprints: $20
- Psychological Testing: $150
- Firearms Safety/Training (16 hours): Approximately $350 depending on what training agency an applicant chooses

Renewals for a Standard License: Total cost is approx. $227 (This amount may fluctuate a bit depending what training provider the applicant selects).

- Department of Justice (DOJ) Fees: $52
- City Fees: $25 (per Penal Code 26190(c))
- Psychological Testing: N/A unless MHPD demonstrates a need to have a licensee see a psychologist prior to renewing their CCW
- Firearms Safety/Training (4 hours): Approximately $150 dependent on the training agency an applicant chooses

Amendment/Modification to a CCW license: $10

- No DOJ Fees
- City Fees: $10 (per Penal Code 26190(e)(1).

<u>Establish business license renewal fee:</u>
The City currently pays HdL Companies, a 3rd party business license processor, $14 per account for every business renewing a business license annually. A fee of $14 would offset this 3rd party cost, which amounts to approximately $49,000 a year.

<u>Update credit card service fee:</u>
On June 23, 2021, the City Council adopted a resolution establishing new credit card service fee for development fees and transient occupancy tax (TOT) payments by credit

card at 2%, slightly less than 2.17% in fees paid by the City to process the transactions from the period of May 2019 to May 2021. Since then, fees have increased steadily and based on the most recent period from January 2022 to February 2023, the City pays 2.71% to process the transactions. As such, staff is proposing to increase the credit service fee to 2.7% to offset the increase in bank fees when residents and customers are paying by credit card for development fees and TOT. To continue encouraging residents and customers to sign up for autopay, online, and prompt payment, the City will continue to not charge credit card service fees for utilities, business licenses, recreation services, and other certain small fees.

COMMUNITY ENGAGEMENT:
This public hearing has been properly noticed in the Morgan Hill Times on March 24, 2023. In addition, an e-blast was sent to all registered community members. Furthermore, an email was sent by HdL Companies, the City's third party business license processor, to Morgan Hill businesses to notify of this public hearing.

ALTERNATIVE ACTIONS:
The Council has the discretion not to adopt the proposed fees or lower them.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
On June 23, 2021, the City Council adopted a resolution to establish a credit card payment fee.

FISCAL AND RESOURCE IMPACT:
CCW license fee:
Assuming approximately 15 residents that have inquired with the Morgan Hill Police Department about CCW license, applied and qualified for CCW license, adopting the proposed fee would generate approximately $12,000 for the general fund every two years. No net impact to the general fund.

Business license renewal fee:
Adopting the proposed fee would generate approximately $49,000 for the general fund annually.

Updated credit service fee:
Adopting the updated fee would increase the net revenue for the general fund and development services fund by approximately $14,000 annually.

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.

RESOLUTION NO. 23-xxx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ESTABLISHING CARRY CONCEALED WEAPON LICENSE FEE, BUSINESS LICENSE RENEWAL FEE, AND UPDATED CREDIT CARD SERVICE FEE FOR DEVELOPMENT FEES AND TRANSIENT OCCUPANCY TAX PAYMENTS BY CREDIT CARD

WHEREAS, the City Council, pursuant to Section 3.50.010 of the Morgan Hill Municipal Code ("Code"), requires the recovery of costs reasonably born from fees and charges levied in providing the regulation, products or services enumerated in Code Chapter 3.50 – Fee and Service Charge Revenue/Cost Comparison System; and

WHEREAS, the City of Morgan Hill has conducted a fee study to calculate the costs reasonably borne to provide carry concealed weapon license, business license renewal, and the specified payment by credit card, which study has been available to the public for at least ten (10) days prior to the adoption of this Resolution; and

WHEREAS, the proposed establishment and updating of the fees that are the subject of this Resolution was agendized for consideration by the City Council of the City of Morgan Hill at a duly noticed public hearing of the Council held on April 5, 2023 at which hearing all interested persons were afforded an opportunity to be heard on said proposed fees; and

WHEREAS, the Council heard all relevant testimony and reviewed all written materials submitted in connection with its hearing on this Resolution.

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 conducted an extensive analysis of its carry concealed weapon license, business license renewal and credit card service fees, including the cost to the City for providing the services for carry concealed weapon license, business license renewal, and payments made by credit card; and

2. Based upon the analysis and the provided information, the City (i) identifies the purpose of the proposed fees, (ii) identifies the use to which the fees will be put, (iii) demonstrates a reasonable relationship between the fees' use and the types of services on which the fees are imposed, and (iv) demonstrates a reasonable relationship between the amount of the fees and the cost of the City's services attributable to the applications on which the fees are imposed; and

3. The City Council finds and determines the fees calculations utilized to establish carry concealed weapon license fee, business license renewal fee, and update credit card service fee for development fees and transient occupancy tax payments by credit card will not cause fee revenues to exceed the estimated cost reasonably borne of providing the services which the fees are levied; and

4. The City Council hereby adopts and approves the establishment of a new carry concealed weapon fee, business license renewal fee, and updated credit service fee for the development fees and transient occupancy tax payments by credit card as set forth in attached **Exhibit A** and incorporated by this reference; and

5. The City Council finds and determines that it is reasonable to continue to annually adjust the fees set forth in Schedule by the Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco, Oakland and San Jose Area, and hereby instructs, authorizes and directs the City Manager or his/her designee to so annually adjust the carry concealed weapon license fee as set forth Resolution 6503 adopted January 18, 2012 and to annually adjust business license renewal fee at the amount charges by the City's business license processor; and

6. The City Manager or his/her designee is hereby authorized and directed to amend the City Fee Schedule to reflect the fees as set forth in **Exhibit A**.

7. Effective Date. This Resolution shall take effect upon its adoption; provided, however, that the New and Updated Fees established hereunder shall first be imposed and collected sixty (60) days from the date of adoption of this Resolution.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 5th day of April, 2023.

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

APPROVED: **ATTEST:**

______________________________ ______________________________
MARK TURNER, Mayor **MICHELLE BIGELOW, City Clerk**

ꕥ <u>CERTIFICATION</u> ꕥ

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. ________, adopted by the City Council at a regular meeting held on April 5, 2023.

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

DATE: ____________________ ________________________________
Michelle Bigelow, City Clerk

EXHIBIT A

TABLE OF CONTENTS

PROPOSED CARRY CONCEALED WEAPON (CCW) LICENSE FEE

Personnel	Hours	Rate/Hr	Total
Community Services Officer	6.00	$69.92	$419.52
Sergeant	1.00	$167.81	$167.81
Captain	1.00	$209.56	$209.56
Total Personnel			$796.89
Permit Tracker			$10.00
TOTAL COST			$806.89
PROPOSED FEE			**$800.00**

PROPOSED CREDIT CARD SERVICE FEE FOR DEVELOPMENT FEES AND TRANSIENT OCCUPANCY TAX (TOT) PAYMENTS BY CREDIT CARD

Total amount processed less utilities, debit and prepaid cards from January 2022 to February 2023	$2,068,394.23
Total credit card fees less utilities, debit and prepaid cards fees paid by City from January 2022 to February 2023	$56,107.93
Percentage	2.71%
CURRENT FEE	2.00%
PROPOSED FEE	**2.70%**

PROPOSED BUSINESS LICENSE RENEWAL FEE

Amount charges by 3rd party, HdL Companies, per account	$14.00
CURRENT FEE	$0.00
PROPOSED FEE	**$14.00**

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: April 5, 2023

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

PROVIDE DIRECTION ON NEXT STEPS FOR DOWNTOWN COMMUNITY PARKLET AND/OR ALTERNATIVE DOWNTOWN ACTIVATION OPTION

RECOMMENDATION(S)
Provide direction on next steps for Downtown Community Parklet and/or Alternative Downtown Activation Option.

COUNCIL PRIORITIES, GOALS & STRATEGIES
City Council Ongoing Priorities
Enhancing Public Safety
Maintaining and Enhancing Infrastructure
Supporting our Youth, Seniors, and Entire Community
Enhancing Diversity and Inclusiveness

2022-2023 Strategic Priorities
Community Outreach, Engagement, and Messaging
Economic Development
Transportation

Guiding Documents
Bikeways, Trails, and Recreation Master Plan
Economic Blueprint
GIS Strategic Plan
Morgan Hill 2035 General Plan
Vision Zero

REPORT NARRATIVE:
Summary
On January 19, 2022, the City Council directed staff to take the next steps in implementing the Downtown Lane Reduction and Place Branding/Beautification project. Within the scope of this project, the City Council approved $200,000 for a community parklet. The intent of the community parklet is to accomplish several goals, including making Downtown more walkable, supporting businesses that could not afford a parklet, and creating more community space that did not require a purchase.

The primary purpose of this report is to seek feedback on the scope, goals, and process for the implementation of a community parklet and/or explore alternative Downtown activation option.

Background

The National Association of City Transportation Officials defines “Parklets” as public seating platforms that convert curbside parking spaces into vibrant community spaces. In addition to creating additional community space, parklets serve as a buffer between cars and people, making these community spaces safer and more comfortable. The visual interest and activation that parklets provide can also encourage slower traffic.

A parklet is usually funded, constructed, and maintained by a sponsoring business. A community parklet, on the other hand, would be funded with public money, and be used by the community as a public space for seating, dining, or recreating, without the need to patronize a particular business.

In 2018, the City Council approved a Parklet Pilot Program. In 2020, in response to the COVID-19 pandemic, the City created the Al Fresco Program, streamlining Parklet permits. In May 2022, the City Council approved a Parklet Program that allows for semi-permanent parklets. The cost for designing and constructing a parklet can range between $40,000 to $90,000. In an effort to make parklets more accessible and affordable to businesses, on January 19, 2022, the Council approved $50,000 toward a Parklet Fee Financing Assistance Program to assist businesses with a $5,000 grant to help pay for the costs of parklets and comply with the new City design and safety parklet standards. In addition, the City Council approved $200,000 for a Community Parklet project to create more community spaces within the Downtown.

Through the extensive community outreach completed in 2022, City staff also heard from residents and businesses about additional ways to activate Downtown, enhancing accessibility, placemaking, and arts and culture through temporary street activations. Temporary street activations are presented as an alternative approach to creating more community gathering spaces and opportunities.

Community Parklet Concept

The space created by the community parklet could support passive or active uses. For example, the space could provide elements such as trees, planters and benches and act as a pop-up park for seating and respite. Or it could allow for temporary displays, pop-up retail kiosks or performances. Lighting, technology, and art could be incorporated into the design and provide for enhanced beautification and branding opportunities. In order to create enough space for a community parklet, staff recommends using approximately three parking spaces. Based on the current space, visibility, and accessibility, examples of four potential locations for a community parklet have been identified below:

To implement the Community Parklet, staff proposes using the Call for Artists process used for the 2015 Gateway Art Project, which resulted in the installation of multiple permanent art installations. The process includes inviting professional artists, designers, and landscape architects to submit proposals. The process entails a robust community engagement process that includes a Community Panel, a Selection Jury, and public meetings with the Library, Culture, and Arts Commission (LCAC) and City Council. The scope and selection process parameters are listed in Exhibit A (Attached).

The concept for the Community Parklet calls for artists, landscape architects or designers to develop a vision for a community parklet with an art component. While staff has identified potential locations that may fit the space needs for the Community Parklet, the final location has not been identified. Instead, staff proposes that the applicant help identify the location that best fits his/her design and proposal.

Alternative Downtown Activations

Temporary Retail Kiosks
In addition to or instead of art being incorporated into the Community Parklet, Retail Kiosks could be incorporated to activate the space and create more retail offerings and opportunities in Downtown. While Downtown restaurant offerings continue to grow, Downtown retail attractions continue to remain stagnant. The need to expand and grow retail offerings has been consistent feedback about Downtown. A retail kiosk could also act as a retail incubator and has the opportunity to build local, long-term retail investment and permanent retail tenancy in Morgan Hill.

Retail kiosks act as retail incubators, reducing the barrier to entry for independent businesses ready to grow but not quite ready to take the next step into a brick and mortar space. Retail kiosks would be available to home-based businesses as an intermediate step to a full retail lease, to new retailers curious about our market, and to existing businesses as an opportunity for a temporary expansion or to secure feedback on a new product prototype. Retail kiosks could be available through short-term, low-cost leases and could require specific hours of operation to promote greater walkability and activity during peak hours of Downtown foot traffic. A Community Parklet could incorporate two retail kiosks but would likely not be able to incorporate an art component within the existing budget.

Downtown Programming and Temporary Street Activation
Instead of or in addition to a Community Parklet, Council may choose to program Downtown with temporary street activations that are free and family friendly, promoting social and cultural connectivity across all areas of the community. The logistics for activations could include weekend street closures (Saturday and/or Sunday) of Monterey Rd, between Main and 4th Street and a collaboration with local partner organizations such as the Downtown Association, Chamber of Commerce, Visit Morgan Hill, and the Downtown Property Based Improvement District (PBID).

Programming could enhance existing events or pilot new activations. For example, the street activation could launch the first ever Downtown Morgan Hill silent disco rollerblading party or enhance the existing Wine Stroll event with the addition of a local artist show and sidewalk chalk art competition. Additional activation ideas could include: "Doggy Days of Summer" pet activation in collaboration with Operation Freedom Paws, Air for Paws, and the Santa Clara County Animal Shelter, a "Cultural Festival" in collaboration with LCAC and the Morgan Hill Historical Society, and a Picnic and Plant sale in collaboration with local farmers and growers. Day-long activations could end with a free family-friendly outdoor movie night that fits the theme of the programming. These temporary weekend street closures with programming would increase walkability, while supporting and increasing visibility for existing Downtown restaurants and retail shops.

Potential Next Steps
The main goal of the Placemaking Investment Strategy is to make the Downtown the most walkable, bike-friendly, urban, family-oriented, and transit-oriented neighborhood in Morgan Hill. While parklets contribute to making a community more inviting, temporary street closures accompanied by event programming would create a pedestrian-friendly environment, enhance visual interest and increase activation of Downtown. In addition, the Downtown activations would bring increased social, cultural, and connectivity to the community, advancing the City’s goals to make Downtown the community’s “living room.” In alignment with the goals of the original Community Parklet concept, City staff recommends the City Council consider temporary weekend street closures to create new activations or enhance existing programs.

COMMUNITY ENGAGEMENT:
COLLABORATE
Community Parklet and Downtown Activation Presentations were given at the following public meetings:

February 9, 2023- Morgan Hill Chamber of Commerce Economic Development Meeting
February 16, 2023- Morgan Hill Downtown Association Board Meeting
February 27, 2023- Visit Morgan Hill Board Meeting
March 6, 2023- Two Community Participation Meetings

ALTERNATIVE ACTIONS:

1. The Council may provide direction on the scope, goals, and process for the community parklet selection process.
2. The Council may choose to allocate a portion of the funds for the community parklet to one of the alternative activation ideas.
3. The Council may choose to redirect the community parklet funds to one of the alternative Downtown activation ideas.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
On January 19, 2022, the Council approved the first steps to a Lane Reduction and Placebranding/Beatification project that included direction and funding for a Community Parklet with art installation.

FISCAL AND RESOURCE IMPACT:
The Council has appropriated $200,000 for the project. No additional funds are necessary to implement the Community Parklet with art.

Retail Kiosks cost approximately $50,000 each. Staff anticipates being able to construct a Community Parklet with two Retail Kiosks within the current budget. No additional funds would be necessary to implement the Community Parklet with Retail Kiosks.

Downtown Programming and Temporary Street Activations could be implemented within the existing budget. A single Downtown street activation would cost approximately $40,000. The existing budget could support between four to six activations. No additional funds are necessary to fund the Downtown Programming and Temporary Street Activations.

CEQA (California Environmental Quality Act):
Categorical Exemption
This project is categorically exempt from environmental review under CEQA pursuant to California Code of Regulations, Title 21, Section 15304(b) (Minor Alterations to Land which do not involve removal of healthy, mature, scenic trees).

Exhibit A

COMMUNITY PARKLET AND ART INSTALLATION PROJECT

SCOPE

Design and construction of a community parklet to enliven the landscape and enrich the fabric and culture of Downtown Morgan Hill. The project should result in the creation of a new community gathering space through the utilization of parking spaces to create one or a series of installations. The community parklet can offer passive or active recreation. The design should be visually interesting and inviting. A successful installation is one that is inclusive to all people, is visually attractive and interesting, and creates place branding. Interactive art is desired but not required. Long-term sustainability and maintenance requirements are to be considered.

OPPORTUNITY

The City of Morgan Hill has budgeted $200,000 for the Downtown community parklet project. The project could be in a single location or in multiple locations located within Downtown to achieve the greatest community impact and utilization. The City may choose to award multiple projects that meet the goals of the project. Proposals should be inclusive of all project costs, including design, engineered drawings, fabrication, and installation.

Applicants are encouraged (not required) to work with partners who can provide financial support or in-kind support in the form of materials, labor, or project maintenance to leverage public art funds and assist in the creation and/or maintenance of the project. Interactive art installations, use of lighting and technology is encouraged to bridge the City's past, present, and future, embracing Morgan Hill's location within Silicon Valley, strong roots in agriculture, and the growing bicycle culture.

LOCATION

A Community Parklet is envisioned to utilize approximately three (3) parking spaces to create a large enough space to allow for community gatherings. There are several locations along Monterey Road that offer three or more continuous parking spaces. While staff has identified potential locations that may fit the space needs for the Community Parklet, the final location has not been identified. Instead, staff proposes that the applicant help identify the location that best fits his/her design and proposal.

PROJECT PERMANANCY

Construction of the project would be semi-permanent in nature. Elements of a parklet should include some permanent elements such as signage, roadway striping (if necessary), and the use traffic control devices.

Exhibit A

SELECTION PROCESS

The selection process will mirror the Morgan Hill Gateway Art selection process, which included a Request for Proposal (RFP), a Community Panel, a Jury of Practitioners, and review and selection by the Library, Culture, and Arts Commission (LCAC) and final approval of project/art commission by the City Council.

Phase 1—Community Panel: A Community Panel made up of representatives from LCAC, City staff and community-based organizations and community members with perspectives that are inclusive of residents, businesses, and property owners will review all the applications and recommend up to ten (10) Semi-Finalists.

Phase 2—Selection Jury: The Jury will be made up of artists with backgrounds in art history/teaching, or public art, landscape architects, and people with construction backgrounds. Jury will recommend up to four (4) semi-finalists to complete Conceptual Designs supported with a $1,000 honorarium.

Phase 3—Finalist Selection: Design Concepts completed by the semi-finalists will be reviewed by the Selection Jury. City staff and Selection Jury will make recommendations to LCAC of one or more finalist. LCAC will make final recommendation(s) to the Morgan Hill City Council.

TENTATIVE SCHEDULE

April 2023	Issue RFP
May 2023	Proposals Due
June 2023	Community Panel selects Semi-Finalists
July 2023	Jury to hold interviews and review Conceptual Designs
August 2023	Planning Commission Review
September 2023	City Council Selection & Contract Award
Summer 2024	Community Parklet & Art Installation

SELECTION CRITERIA

The following criteria will be considered:

- **Concept**—Artist, Landscape Architect or Designer's vision for community parklet. Consideration will be given to creativity and use of art. The review of the project concept will include a review of the project's proposed budget, use of materials, longevity of the project and the applicant's ability to execute.
- **Experience**-- Artist, Landscape Architect or Designer's relevant experience and qualifications of project's personnel. Review of relevant experience of public projects or art projects in the public right-of-way.
- **Project Specifics**-- Appropriateness of budget, its feasibility, and maintenance requirements.
- **Community Impact—**Project's ability to engage and highlight the community by celebrating diversity and inclusiveness, enhancing livability, creating place branding, and celebrating Morgan Hill's rich and diverse context.

Exhibit A

Examples

From: Brittney Sherman

To: Christina Turner

Subject: DOWNTOWN COMMUNITY PARKLET AND ALTERNATE ACTIVATIONS – Questions and Answers

Date: Thursday, March 30, 2023

<u>COMMUNITY PRESENTATION Q & A</u>

1. Can we choose all three options or only one?

City Council has the option to choose (1) of the Community Parklet projects, either consisting of an art activation or retail kiosk, the (1) alternate activation idea, or a combination of both. However, the more projects the funding is spread across the less of an impact and footprint each project will have. For instance, if funding is spread between a Community Parklet and the alternative activation, it might result in no art activation or reduced number of Downtown Programming events.

2. Are the four locations outlined on the Downtown Monterey Rd map the only locations being considered for a parklet? How will the final location be selected?

The (4) locations identified on the map on Monterey Rd are examples of areas where (3) adjacent parking spaces could be used to build a community parklet. The exact location of the parklet would be determined based on the selected artist's design and which location best compliments the design.

3. Can you explain the color coding on the goals per activation slide?

Council goals for the Community Parklet have been paired with all (3) of the project proposals. How well each project addresses each goal determines whether it receives a green, yellow, or red check mark. Green signifies the goal is 100% achieved, yellow signifies portions of the goal are achieved, and red signifies the project does not meet that goal.

4. What is the lifespan and fiscal sustainability of each of the three options?

The lifespan of either the community parklet with art activation or community parklet with retail kiosks would be a minimum of (7) years, in alignment with restaurant parklets operating under the Outdoor Dining Program. Ongoing maintenance and upkeep/replacement would be required over the years. The Temporary Programming and Street Activation could create anywhere from 4-6 community events based on the programming cost and whether it supports a new program or an existing event. There would be no ongoing maintenance or upkeep/replacement with this option.

5. Regarding the retail kiosks, how much money and how long would it take for the kiosks to be constructed, implemented, and leased?

The full community parklet funding would cover the cost to build the parklet and purchase and install the retail kiosks. We would estimate the parklet and kiosks to be implemented and leased during Fall 2023.

6. As it relates to the retail kiosks, why are there required dates/times of operation?

Through the years, and most recently during the Community Workshops, Morgan Hill residents have asked for more retail Downtown and longer hours of existing retail shops. Requiring retailers leasing the kiosks to operate on certain days/times of the week, is an effort to activate the streetscape when foot traffic is highest and encourage existing retailers to also stay open and encourage patronize during those times.

7. General "community parklets" in theory are great and can definitely add to our downtown. But, what I have seen in other areas is that without oversight they can become mis-used and sometimes attract unexpected maintenance issues such as graffiti, trash, homeless use, and other unexpected concerns. I simply mention this as whatever is chosen to be created will also need solutions for these kinds of issues that might arise. When there is no private business responsibility, unfortunately it falls back on the City to keep watch and deal with issues. Will people know how to report issues and to whom? This will need to be addressed so people feel aware and confident on resolutions if anything comes up.

We have parklets in front of some of the properties we own elsewhere that are used by the businesses in the buildings and they simply love them. But even then it can become an issue of who is going to clean them up when people don't pick up their mess, or kids decide to add their "artwork" to the seats or walls etc... I don't have any solutions for your project, but I am simply bringing up that unlike current parklets that a specific business is responsible for, the public parklet clean up, maintenance and oversight will be an important aspect of this project as well.

General cleanliness, trash abatement, graffiti removal, and lighting component replacements have all been listed under the Community Parklet and Retail Kiosk activation ideas and the long-term maintenance required for each of the activations will be considered. The Temporary Programming and Street Activation idea already has maintenance built into each event budget and is limited to the number of events we can hold Downtown with a $200k overall budget. This activation is sustainable from a cleanliness and trash abatement sense, but not specifically in a long-term sense because once the $200k has been used, that is the end of the activation, unless of course another community organization manages, operates, and funds it in future years.

8. We consulted with our tenants before installing a decent parklet at one of our properties - At the time none of the tenants wanted any shade in the parklet design as it would block the view of the front of their businesses from the street. Then after they began using them and they realized the added value for their business use, now they all want shade to be added for the hot summers when people enjoy the outdoors but not the blazing sun. It is just a comment - again, I

have no real solution to offer on this. But perhaps it will make a difference on what side of the street you may place the initial "test" parklet on for summer shade consideration.

Only two of our restaurant parklets are investing in overhead covers due to the cost of materials and an engineering review, however I am sure others would have liked to if they could have afforded it. If City Council decides to choose the Community Parklet and Art Activation idea an overhead component will be considered.

From: Michelle Bigelow
To: Michelle Bigelow
Subject: FW: Doug Muirhead comment re: Downtown Community Parklet and Alternative Activations Presentation
Date: Thursday, March 30, 2023 12:40:04 PM

From: D. Muirhead [redacted]
Sent: Saturday, March 18, 2023 8:18 PM
To: Brittney Sherman <brittney.sherman@morganhill.ca.gov>
Subject: comment Downtown Community Parklet and Alternative Activations

Hello Brittney,
I guess the new "in" word for City People is "activations".
I know I am not your target audience. When someone says "walkable"
I always want to add "and other non-motorized modes of travel".

You said "city not looking to purchase". I first thought you meant
not purchase land for Parklet (city takes 3 adjacent parking spaces}
but later it seemed to relate to not having to buy from biz?

You have goals: accessible, inclusive, free, walkable,
activate sidewalks, branding, visitor trips, support existing biz

I assumed wrongly that Alternative Activations meant Parklet but Not
Community rather than Not Parklet.

So as far as Parklets go, I am not in favor of your Retail Kiosk.
While I like the concept of retail incubator and low-cost entry,
I feel we are already overwhelmed with advertising and want Parklets
to support community interaction and not sell products or the City (branding).
Artful seating is nice. Bike parking is also nice.

So that takes us to alternative activations that have nothing to do
with Parklets. Does that have to be only one or the other? Why not both!
You mentioned free family-friendly events, 1-day weekend only street closure
(multiple blocks), collaborate with local partners and non-profits, local
rather than regional attendance, free and paid components.

My ideal would be to replace the streets in downtown with a pedestrian
plaza with traffic circulating around an outside oval. But 2022 Measure B
shows car lovers are still in control. So I am eager to see how the May
Open Streets event from the Bike/Ped team evolves. I passed on some thoughts
based on San Jose Viva Calle, although we cannot really scale a 4-6 mile
route with branches down to 4-5 blocks.

Because I am visual rather than verbal, I wish you had put the slides up

on your Econ Dev web site. I was surprised by the Open Streets alternative to Parklets, but I complement you on your range of thoughtful options.
Regards, DougM

From: Michelle Bigelow
To: Michelle Bigelow
Subject: FW: Tena Knea resident feedback re: Downtown Community Parklet and Alternative Activations Presentation
Date: Thursday, March 30, 2023 12:46:49 PM

From: [redacted]
Sent: Tuesday, March 21, 2023 11:00 AM
To: Brittney Sherman <brittney.sherman@morganhill.ca.gov>
Subject: Downtown Community Parklet

Dear Brittney,

I realize that I am sending this feedback email after yesterday's deadline, but I hope you will at least read it and give it some thought.

I am writing to express my concerns regarding the proposed Community Parklet. After reviewing the PowerPoint Slide Show, I realize that one of the criterias calls for the Parklet to be built on Monterey Road. Also one of the criterias is that it will take 3 adjacent parking spaces. Both criterias are extremely frustrating.

I am a local citizen of Morgan Hill for the past 20+ years. I have established and frequent several Downtown businesses (Hair Salon, Clothing Store, Bank, etc.) and restaurants will regularity. I also have medical issues that require the use of a disabled parking placard, or I can park in other spaces as long as they are located relatively close to the business. Please don't suggest that I use the 4th Street garage. It is located too far away from the businesses that I frequent. The availability of marked disabled spaces throughout the Downtown area are not ideal. 2 new spaces near the public lot between 2nd and 3rd supposedly are for only the use of the Giorgio's Restaurant? (Their food delivery trucks constantly park there for extended periods of time even if I was a paying customer.) The 2 spaces on 3rd Street and Monterey are difficult to maneuver. They are set back with an additional 3rd space that most drivers then encroach into the disabled spot. Boulders and poles are another challenge as you try to park, along with dealing with all of the double-parked delivery trucks. There are several new spaces near the train station, but again they are too far away from Downtown area. **For these reasons I rely heavily on available street parking spaces near the businesses.**

Also, the amount of restaurant parklets that have been allowed to be permitted are ridiculous. They take up large amounts of public parking spaces during the work week when they are not even open until the evening, or they do not do enough business to even put the tables out. Mohi Social and Sushi Confidential are 2 prime examples. **I know that these businesses paid their large permit fees, but for the sake of**

reasonable public parking during the day so that we can still frequent Downtown businesses?

Add to the list of reserving public parking spaces is Pediatric Pathways on 2nd Street. The business received complaints about their abuse of parent pick-up double-parking. No one would really mind if the instructors didn't chat up the parents for up to 15 minutes on the street. They have a large waiting area at their business for consults/updates. There's also email, text messages, and Zoom. But somehow they now have permission to put cones out on the street during their business hours, which is 9am-5:30pm M-F? **That's another 2 public parking spaces gone.**

If this Community Parklet and Art Installation does move forward, please consider utilizing the one possible location that would have the least amount of impact to public parking. **In my opinion it is the one marked near the Morgan Hill Amphitheater.** Less congestion, more of a draw to the southern end of the Downtown area, and a parking lot nearby for accessibility.

Thank you for your time.....

Tena Knea

MORGAN HILL
DOWNTOWN ASSOCIATION

Hi Ms. Sherman,

Morgan Hill Downtown Association thanks you for the recent Community Parklet presentation and opportunity to present Alternative Action to a Parklet model in the Downtown. We propose activating Temporary Weekend-Only Monterey closure(s) and have 3 groundwork concepts meeting the goals of Community Parklet.

1. **Trick Or Treat** - MHDA imagines an enhancement of the Safe Trick Or Treat event held Halloween Night, and we have more detail on that idea. Structure of community events have changed over the past few years making nighttime events with large crowds a higher security risk -- especially those involving large gatherings of children. "Safe" Trick or Treat now brings with it increased security concerns. MHDA is proposing a change to this event that will increase safety, reduce traffic disruption, benefit downtown businesses, encourage participation from the broader Morgan Hill community and reduce costs. The proposal is modeled after Pacific Grove's Downtown Trick or Treat Event, that has run successfully for over 10 years.

Current "Safe Trick or Treat" -- Held Halloween Night, 5-7pm (after dark)

- Monterey Street closed during commute hours creating traffic complaints (if Halloween is Monday-Friday)
- Protection is needed from MHPD and costs have increased significantly year over year
- Halloween night is an already busy night for any police department and current event places additional demand on a lean department
- Much of the Downtown is not open for business:
  - All Retail is closed by 5pm; many are not open at all on Monday and Tuesday
  - Many restaurants are closed Monday and Tuesday evenings
- Some participants have complained that some trick or treaters are wearing costumes are not family friendly

Proposed "Downtown Trick or Treat" -- Held the Saturday before Halloween, 10:00 am – 1:00 pm

- Monterey Street closed Saturday morning-early afternoon, re-opening late afternoon
- Daylight event does not require excess as much police department engagement
- All Downtown is open for business: retail and restaurants
- Families spend the afternoon in the Downtown enjoying festivities, restaurants, farmer's market, etc.
- All Morgan Hill Businesses (outside of the downtown) encouraged to participate with a "Trunk or Treat". Their vehicles will be parked along Monterey Street with business signage
- Event could be supplemented with family-friendly vendors
- Anticipated large turnout of young families

Benefits:

- Provides a Safer Trick or Treat environment
- Benefits downtown businesses
- Engages and benefits broader Morgan Hill business community
- Eliminates traffic issues for commuters
- Enables planning consistency (consistent day of week, year to year)
- Better leverages of Police resources on Halloween night

2. **Downtown Doggie Day Afternoon** – concept in the works. Comparable to the annual Carmel Poodle Day weekend (Google it for the basic idea), the MHDA event will unite pooch owners and lovers and their furry friends for a fun-filled day. Our Doggy Parade held during Brew Crawl in 2022 was a huge success and has much room for expansion to the community's delight.

3. **Downtown Fiesta** – concept in the works. This could be held as a multi-cultural family friendly event. We envision traditional fare, music, dancing, art, and history embracing the roots of all in our community.

We feel the above events are the right fit addressing the Alternative Action and hope City is in alignment. Please let us know your thoughts and provide direction going forward.

Thanks for your time and all you do for the community.

Best Regards,

David Dindak – MHDA BOD President
MHDA Board of Directors