



Special/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, June 21, 2023 5:00 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 12:00 p.m. 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.

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:00 pm for the purpose of conducting a closed session.

SPECIAL MEETING

5:00 pm Closed Session

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

CLOSED SESSION

Conference with Labor Negotiators

Authority: Pursuant Government Code Section 54957.6

City Negotiators: Christina Turner, City Manager; Donald Larkin, City Attorney; Michael Horta, Human Resources Director; Dat Nguyen, Finance Director; Edith Ramirez, Assistant City Manager, Development Services

Employee Organization: Morgan Hill Police Officers Association; AFSCME Local 101 Morgan Hill; Community Service Officers Association; Employees Covered under Management Resolution #21-050

Conference with Legal Counsel – Anticipated Litigation

Significant exposure to litigation pursuant to § 54956.9(b): (One case)

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

REGULAR MEETING

6:00 pm

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

Proclaiming June 19, 2023 as Juneteenth
Proclaiming the month of July as Parks and Recreation Month

PRESENTATIONS

YAC Presentation
Morgan Hill Library Presentation

CITY COUNCIL REPORTS

Council Member Librers

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)

Public Comment

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 A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO EXECUTE AN IMPACT FEE FREEZE AGREEMENT, AND A SEWER/TRAFFIC IMPACT FEE FINANCING AGREEMENT WITH CUTINA MORGAN HILL LLC FOR A HOTEL DEVELOPMENT ON A 2.21 ACRE PARCEL IDENTIFIED BY ASSESSOR PARCEL NUMBER (APN) 726-58-006**

Recommendation:

Adopt a resolution to authorize the City Manager to execute an Impact Fee Freeze Agreement and a Sewer/Traffic Impact Fee Financing Agreement with Cutina Morgan Hill LLC for a 114-room hotel development on a 2.21 acre parcel identified by assessor parcel number (APN) 726-58-006.

2. **APPROVE AN IMPACT FEE FREEZE AGREEMENT WITH MERSHO INVESTMENTS, LLC AND CLAYTON PLAZA, LLC FOR INDUSTRIAL DEVELOPMENTS ON 6 PARCELS TOTALING 20.14 ACRES IDENTIFIED BY ASSESSOR PARCEL NUMBERS 726-31-038, APN 726-31-025, APN 726-33-026, APN 726-33-025, APN 726-25-026 , AND APN 726-32-025**

Recommendation:

1. Approve an Impact Fee Freeze Agreement with Mersho Investments, LLC and Clayton Plaza, LLC for the development of six (6) separate industrial/commercial facilities located throughout Morgan Hill Ranch and Madrone Business Park; and
 2. Authorize the City Manager to execute the Impact Fee Freeze Agreement.
3. **ADOPT A RESOLUTION OF LOCAL SUPPORT AND AUTHORIZE THE FILING OF AN OBAG 3 FUNDING APPLICATION FOR THE MONTEREY ROAD TRAFFIC, BICYCLE, AND PEDESTRIAN IMPROVEMENTS PROJECT**

Recommendation:

Adopt a Resolution of Local Support and authorize the filing of an application for funding assigned to the Metropolitan Transportation Commission (MTC) and committing any necessary matching funds and stating assurance to complete the project.

4. **ADOPT A RESOLUTION APPROVING FISCAL YEAR (FY) 2023-24 LIST OF STREET REHABILITATION PROJECTS FUNDED BY SENATE BILL (SB) 1: THE ROAD REPAIR AND ACCOUNTABILITY ACT**

Recommendation:

Adopt a resolution approving a list of street rehabilitation projects for Fiscal Year 2023-24 funded by SB 1, The Road Repair and Accountability Act of 2017.

5. **APPROVE CONSULTANT AGREEMENTS WITH ENGEO, INC. IN THE AMOUNT OF \$400,000 AND TWINING, INC. IN THE AMOUNT OF \$200,000, FOR GENERAL COMPACTION TESTING AND SPECIAL INSPECTION**

Recommendation:

Approve and authorize the City Manager to execute and administer agreements with contingencies to provide general compaction testing and special inspection for various Capital Improvement Program Projects: Enggeo, Inc. in the amount of \$400,000 and Twining, Inc. in the amount of \$200,000.

6. **APPROVE A THREE-YEAR MAINTENANCE SERVICE AGREEMENT WITH PETERSON POWER SYSTEMS FOR GENERATOR MAINTENANCE AND REPAIR SERVICES**

Recommendation:

Approve and authorize the City Manager to execute and administer a three year agreement with Peterson Power Systems in the not-to-exceed amount of \$295,195 for annual and preventive maintenance, repair, emergency repair, and rentals for the City's 28 standby generators.

7. **APPROVE FINAL MAP FOR SAN SEBASTIAN PHASE 4A - TRACT NO. 10600 AND RELATED SUBDIVISION IMPROVEMENTS AGREEMENT**

Recommendation:

1. Approve Final Map;
2. Authorize City Manager to execute the Subdivision Improvements Agreement with Toll CA XX, LP; and
3. Authorize the recordation of the Final Map and Subdivision Improvements Agreement.

8. **APPROVE FREEWIRE TECHNOLOGIES, INC., AGREEMENT FOR INSTALLATION AND OPERATION OF ELECTRIC VEHICLE CHARGING INFRASTRUCTURE**

Recommendation:

Authorize the City Manager to enter into an Own and Operate License Agreement with FreeWire Technologies, Inc.

9. APPROVE LIBRARY, CULTURE AND ARTS COMMISSION WORK PLAN

Recommendation:

Approve the proposed Library, Culture and Arts Commission FY 2023-24 Work Plan.

10. APPROVE THE JUNE 7, 2023 CITY COUNCIL MEETING MINUTES

Recommendation:

Approve the June 7, 2023 City Council Meeting Minutes.

11. APPROVE THE PURCHASE OF AN OFF-ROAD ALL-TERRAIN VEHICLE AND EQUIPMENT IN THE AMOUNT OF \$175,763 FROM ALLTRACK INC.

Recommendation:

Approve and authorize the City Manager to execute a purchase order to Alltrack Inc. in the amount of \$175,763 for the purchase of an off-road all-terrain vehicle and equipment, to provide access to utility infrastructure.

12. AUTHORIZE WRITE-OFF OF CERTAIN UNCOLLECTIBLE RECEIVABLES IN ACCORDANCE WITH THE CITY'S WRITE-OFF POLICY

Recommendation:

Authorize write-off of certain uncollective receivables in the amount of \$161,494 in accordance with the City's write-off policy.

13. RATIFY CITY POSITIONS ON PENDING LEGISLATION

Recommendation:

Ratify the City's position opposing pending legislation, Senate Bill 623 (Laird) Workers' compensation: post-traumatic stress disorder.

14. RECEIVE MONTHLY BUDGET UPDATE AND MAY 2023 FINANCIAL AND INVESTMENT REPORTS

Recommendation:

Accept and file report.

PUBLIC HEARINGS

15. CERTIFY THE ENVIRONMENTAL IMPACT REPORT, ADOPT FINDINGS OF SIGNIFICANCE AND STATEMENT OF OVERRIDING CONSIDERATIONS, APPROVE VESTING TENTATIVE MAP, AND APPROVE DESIGN PERMIT FOR A RESIDENTIAL DEVELOPMENT, COMPRISED OF 269 UNITS. THE PROPERTIES, IDENTIFIED BY ASSESSOR PARCEL NUMBERS 728-30-001, 728-30-002, 728-30-003, AND 728-30-004 ARE LOCATED AT THE

**SOUTHWEST INTERSECTION OF HALF ROAD AND MISSION VIEW DRIVE
(THE CROSSWINDS AT MORGAN HILL, LLC, OWNER)**

Recommendation:

1. Open/close public hearing;
2. Adopt a Resolution to certify the Environmental Impact Report (EIR), approve the Mitigation Monitoring and Reporting Program prepared for the project, and adopt Findings of Significance and Statement of Overriding Considerations; and
3. Adopt a Resolution approving the Vesting Tentative Map and Design Permit.

16. INTRODUCE ORDINANCE AMENDING SECTION 18.24.020 (LAND USE REGULATIONS) OF 18.24 (COMMERCIAL ZONING DISTRICTS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING MINOR AMENDMENTS TO THE ADMINISTRATIVE OFFICE (CO) ZONING DISTRICT TO ALLOW VEHICLE-RELATED USES AND OTHER COMPATIBLE USES ON MINIMUM ONE-ACRE LOTS

Recommendation:

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

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.





READY, SET...READ!

Morgan Hill Steve Tate Library

Heather Geddes
Community Librarian





Visiting the library is the most common cultural activity for Americans

Americans' Reports of Leisure and Activities:

About how many times in the past year, if any, did you do each of the following?

Activity Average

Go to a library	10.5
Go to a movie at a movie theater	5.3
Attend a live sporting event	4.7
Attend a live music or theatrical event	3.8
Visit a national or historical park	3.7
Visit a museum	2.5
Visit a gambling casino	2.5
Go to an amusement or theme park	1.5
Visit a zoo	0.9

Source: Dec. 2-15, 2019 GALLUP





STAR LIBRARY

Expenditure range: \$30,000,000

		PER CAPITA									
LIBRARY	STATE	LEGAL SERVICE AREA POPULATION	PHYSICAL CIRCULATION	E-MATERIAL CIRCULATION	LIBRARY VISITS	PROGRAM ATTENDANCE	PUBLIC COMPUTER USERS	WI-FI SESSIONS	ELECTRONIC RETRIEVALS	LIBRARY WEBSITE VISITS	SCORE
• Saint Louis County Library	MO	859,148	16.28	2.46	6.00	0.80	1.12	0.87	0.84	6.34	2252
• Santa Clara County Library	CA	444,238	13.91	4.68	5.28	0.48	0.63	2.98	4.53	5.36	1898
• San Francisco Public Library	CA	897,806	6.76	5.34	4.25	0.33	0.60	4.26	2.25	7.29	1573
• Multnomah County Library	OR	821,730	12.76	5.23	3.01	0.22	0.54	1.39	0.02	3.51	1333
• Tulsa City-County Library System*	OK	651,552	10.27	1.61	3.06	0.49	0.59	0.94	3.91	3.09	1234
• Nashville Public Library*	TN	694,144	5.02	2.92	3.37	0.49	0.48	1.09	1.02	7.52	1227
• East Baton Rouge Parish Library	LA	439,729	2.81	2.38	2.17	0.42	0.47	1.57	5.24	15.21	1193
• Baltimore County Public Library*	MD	832,468	7.63	1.83	3.37	0.23	0.71	0.76	1.81	5.17	1097
• Mid-Continent Public Library (Independence)*	MO	762,446	6.16	4.13	2.50	0.31	0.40	0.29	5.91	6.38	1080
• District of Columbia Public Library*	DC	689,545	2.96	2.94	2.69	0.34	0.68	0.51	2.17	5.85	1035
• San Diego Public Library*	CA	1,430,489	3.94	0.39	3.76	0.28	0.53	0.47	13.97	3.90	925
• Phoenix Public Library*	AZ	1,634,061	3.22	4.30	1.43	0.12	0.31	2.57	1.84	11.69	907
• Arapahoe Library District	CO	270,550	5.41	5.54	1.38	0.09	0.19	0.18	1.42	11.99	902
• Metropolitan Library System*	OK	797,434	2.67	2.98	2.71	0.11	0.66	2.07	1.06	5.90	901
• San Jose Public Library*	CA	1,049,187	5.64	0.97	3.84	0.26	0.60	0.29	0.66	2.22	898

Morgan Hill by the Numbers



- Items Borrowed per Year
 - 668,118
- Weekly Hours Open
 - 55 hours over 7 days
- Yearly Visitors
 - 264,000
- Programs Offered
 - 953
- Value to our Community
 - \$11,660,449.00

Outside of a dog, a book is a man's best friend. Inside of a dog it's too dark to read.

Groucho Marx

The more that you READ
The more things you will KNOW
The more that you LEARN
The more places you'll GO

DR. Seuss





Benefits of Books

- Reading increases intelligence.
- Reading exercises your brain & boosts your brainpower.
- Helps you improve your communication & presentation skills
- It can make you more empathetic.
- Reading can help you relax and reduce stress.
- It may help fight Alzheimer's disease.
- It may help you live longer.
- Reading before bed helps you sleep.

20 mins a day

=

**1.8 million
words per year**





Benefits of Books

The frequency of reading to children at a young age has a direct causal effect on their schooling outcomes regardless of their family background and home environment.

Never read to, 4,662 words;
1-2 times per week, 63,570 words;
3-5 times per week, 169,520 words;
daily, 296,660 words; and
five books a day, 1,483,300 words

Children who aren't reading at grade level by the end of third grade are four times as likely to drop out of high school.





At Santa Clara County Library District, YOU: **BELONG. CONNECT. DISCOVER.**

Priorities

WELCOME

We welcome all, providing inclusive and compassionate library service throughout the district.

LISTEN

We listen, valuing the voices of our patrons, our communities, and our partners.

INSPIRE

We inspire, building the foundations of literacy with our community.

INNOVATE

We innovate, fostering a culture of curiosity and opportunity.



What is Available to Borrow



Items for all ages in
English, Spanish, & other languages

Most items can be borrowed
for 3 WEEKS

- Books
- eBooks
- Audiobooks: downloadable, CD, Playaways
- Movies: DVDs, Blu-Ray, & streaming
- Music: downloadable & CDs
- Video Games: XBOX, PS3/4/5, Nintendo Switch, Wii
- Magazines: print & digital
- Launchpads
- Read With Me Kits
- Children's books with audio players



What is Available to Borrow

Did You Know?



Rosetta Stone

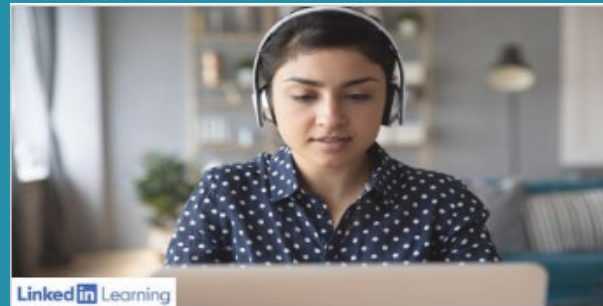


ONLINE RESOURCE

Learn a New Language with Rosetta Stone

Bonjour! Hola! Nǎn hǎo! Say hello to Rosetta Stone, a way to improve your English or learn another language.

LinkedIn Learning



ONLINE RESOURCE

LinkedIn Learning for Libraries

Online self-paced learning courses for business, software, technology, and more.

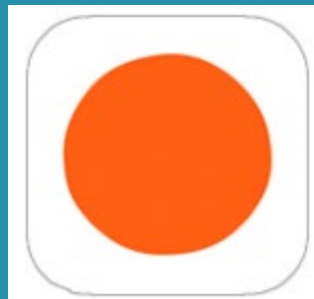
State Parks Pass & County Parks Pass



Museum Passes



Headspace Mobile App



Headspace – Meditation Made Simple »

Access Now





Did you know we have?



libby

EBOOKS AND AUDIOBOOKS

OverDrive / Libby

Read & download eBooks and audiobooks including fiction, non-fiction, bestsellers, and more. For iOS & Android, checkout the new Libby app.



creativebug

Creativebug: Online Art & Craft Video Classes

Nurture your creative side with 1000+ video classes in painting, knitting, crafting, sewing & more!



COMICSPLUS
LIBRARY EDITION powered by Iversemedia

THOUSANDS OF DIGITAL GRAPHIC NOVELS AND COMICS

ComicsPlus Library Edition

Enjoy graphic novels & comics, available 24/7 on web-connected devices. Includes fiction, nonfiction, indie, Sunday funnies, & manga!



kanopy
THOUGHTFUL ENTERTAINMENT

Kanopy: Watch Films & Documentaries Online

Stream award-winning films, major studio releases, independent films, documentaries & more. Watch on Desktop, App Store, Google Play & Roku.



Did you know we have?



Magazines (Print and Online)

- 458,054 eMaterials
- wifi
- meeting space
- Computers & Scanning

Historical Local Newspapers



In 1964, a small group of businessmen decided it was necessary to have a more formal chamber of commerce as a driving force. They were successful in having the organization incorporated on Feb. 5, 1964.

"Mary Pravettoni was the secretary at that time," Weichert said. "We needed a desk for the chamber. She and her husband, Pete Pravettoni, and I went to San Jose and bought one. I remember we had to carry it down a staircase from the second floor to put it in my pickup."

Weichert, who said he was president of the chamber for only a short time, remembers that the

the Year and Fourth of July celebrations.

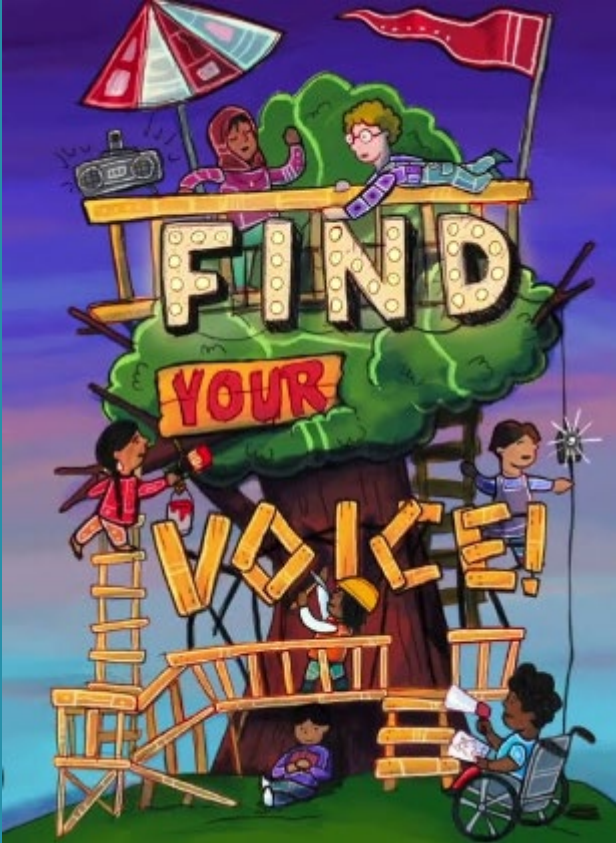
Throughout the 1960s, the Women's Section of the Morgan Hill Chamber of Commerce was very strong and worked with the main chamber. In 1965, the women's section and the Junior Chamber of Commerce together sponsored the Miss Morgan Hill Pageant.

In the mid-1970s, Morgan Hill began a growth boom. In addition to new homes and schools that were needed, traffic on Monterey Highway — which became known as Blood Alley between Morgan Hill and San Jose — became extremely dangerous.





Summer Reading 2023



- Read Books
- Receive prizes
- Enjoy special performances and activities at the library

Earthcapades Circus
Thurs June 15 1pm

STEM with Tech Museum
Fri 6/9 & 6/16 10:00am

Magician Brian Scott
Thursday June 22 10:15am

Python Ron
Thursday July 6 10:15am &
11:30am

Where the Forest Meets the Sea
Saturday July 8 10:15am

Afternoon Art Camp
Week of June 27

Afternoon STEAM Camp
Week of July 18





- Free hot meals onsite for children & families
- June 12th – August 4th
- Monday – Friday 12pm-1 pm





QUESTIONS?



At Santa Clara County Library District, YOU:
BELONG. CONNECT. DISCOVER.



From: [Christina Turner](#)
To: [CityClerk](#)
Subject: FW: Public comment 7/21
Date: Friday, June 16, 2023 3:39:52 PM

You can supplement.

From: Christina Turner
Sent: Friday, June 16, 2023 3:39 PM
To: nate.mazur@gmail.com
Subject: FW: Public comment 7/21

Hi Nate – thank you for your email and sharing your concerns. The City Council will consider changes to our noise ordinance in September or October. I will share your email with the team that oversees our franchise agreement with Recology so that they can ensure that they are working in accordance with allowable times.

Thank you,
Christina

CITY OF MORGAN HILL

Christina J. Turner, CPA
City Manager

17575 Peak Avenue, Morgan Hill, California, USA 95037
d 408.776.7382 | **c** 408.839.1705
e christina.turner@morganhill.ca.gov | www.morganhill.ca.gov
[Facebook](#) | [Twitter](#)

Sent from my iPhone

Begin forwarded message:

From: Nate Mazur <nate.mazur@gmail.com>
Date: June 16, 2023 at 8:00:10 AM PDT
To: CC Public Comment <CCPublicComment@morganhill.ca.gov>
Subject: Public comment 7/21

Please implement changes that reduce noise and gas pollution in the morning for people that live near businesses in Morgan Hill. People who live near businesses in morgan hill suffer every morning listening to loud trash trucks starting at 5:30 am and leaf blowers starting at 6:30.

Quite frankly it's disgusting that businesses have preferred treatment to get their trash and properties as clean as possible before the actual people that live here at the detriment of our sleep and well being. Santa Clara county and Morgan Hill have shown that they put businesses over people with these decisions and not considering the noise or air pollution. It also creates a two tier system, because we all know that there aren't the same noise or air pollutants in wealthier neighborhoods in the hills or tucked away in the valleys.

Some changes that I have thought of that would bring parity between businesses and ALL residents.

- Start by changing the times at which trash is collected from businesses. **Make it the same as collecting from homes, show that businesses aren't above people by putting collection times AFTER 8 AM.**
- this should have already been done, but **no more gas powered leaf blowers or landscaping equipment. Electric landscaping equipment is quieter, and emits less pollution.**

WARNING: This message is from an external user. Confidential information such as social security numbers, credit card numbers, bank routing numbers, gift card numbers, wire transfer information and other personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.

CITY COUNCIL STAFF REPORT

MEETING DATE: June 21, 2023

PREPARED BY:

Matthew Mahood, Economic Development Director

APPROVED BY: City Manager

ADOPT A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO EXECUTE AN IMPACT FEE FREEZE AGREEMENT, AND A SEWER/TRAFFIC IMPACT FEE FINANCING AGREEMENT WITH CUTINA MORGAN HILL LLC FOR A HOTEL DEVELOPMENT ON A 2.21 ACRE PARCEL IDENTIFIED BY ASSESSOR PARCEL NUMBER (APN) 726-58-006

RECOMMENDATION(S)

Adopt a resolution to authorize the City Manager to execute an Impact Fee Freeze Agreement and a Sewer/Traffic Impact Fee Financing Agreement with Cutina Morgan Hill LLC for a 114-room hotel development on a 2.21 acre parcel identified by assessor parcel number (APN) 726-58-006.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

Economic Development

Guiding Documents

Economic Blueprint

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

On June 21, 2017, the City Council adopted a Development Impact Fee Freeze Program. This program locks the impact fee to a specific date for a period of three years, giving the developer increased certainty as to the costs they will incur and creating an incentive to help offset the ever-increasing cost of new development. In return, the developer agrees to develop and apply for building permits within the three-year period.

On October 29, 2018, the City Council entered into a Fee Freeze Agreement with Evergreen Devco, Inc for the Evergreen Villages at the corner of Butterfield and Cochrane. This agreement locked the Impact Fees to the 2016/2017 Impact Fee

Schedule. Due to the COVID-19 pandemic and resulting economic conditions, the City has extended the Fee Freeze Agreement on two occasions through June 30, 2023.

To incentivize hotel development, in June 2022, the City Council adopted the Hotel Incentive Policy. Both incentive programs are consistent with the City's General Plan Update 2035 and the 2017 Economic Development Blueprint as new lodging facilities support the City's goals for tourism, and the viability of the City's sports and recreation facilities.

Details and Analysis:

In 2021, Cutina Morgan Hill LLC purchased 2.21 acres (APN 726-58-006) within the Evergreen Villages planned development area with the intent of building a new 114-room Holiday Inn Express. This is the same site that was previously entitled to a hotel but was never built due to the Covid-19 pandemic and resulting economic conditions. Cutina Morgan Hill, LLC has submitted plans to the City and is currently seeking building permits and project financing. Cutina Morgan Hill, LLC has requested that the City Council honor the 2018 Evergreen Devco Fee Financing Agreement with the 2016/2017 Impact Fee Schedule that was in place when they purchased the land and began their hotel project.

While the Cutina hotel project does not qualify for the Hotel Incentive Policy since all of the project's off-site improvements have already been completed, staff recommends the City Council approve an Impact Fee Freeze Agreement with the 2016/17 Impact Fee Schedule and instead of a three-year agreement, staff recommends an 18-month Fee Freeze Agreement. This will give Cutina LLC increased financial certainty and assist in getting this important project built. If authorized, Cutina will have until December 31, 2024, to apply for, and receive building permits and commence construction in order to benefit from the impact fee freeze extension. The estimated impact fees using the Fee Schedule for FY 2016-17 are \$734,879.

Once completed and operational, it is estimated the new 114-room Holiday Inn Express could generate in excess of \$30,000 in new property tax annually assuming a consistent land and construction valuation with similar sized projects. Property tax contributes to the City's General Fund. In addition, once operational, a new 114-room upper midscale hotel could generate in excess of over \$400,000 in transient occupancy tax (TOT) annually. The City collects 11% of Transient Occupancy Tax (TOT) on all hotel room revenue, which contributes to approximately 5% of the total General Fund revenue.

If the Developer applies for building permits before June 30, 2024, the estimated benefit received by the developer from the impact freeze is \$307,473. If the developer applies for building permits after June 2024 and commences construction, but before December 31, 2024, the estimated benefit of the impact freeze is estimated at \$349,167. If the developer applies for building permits after December 31, 2024, the impact fees in effect at that time will be applied so long as no extension is granted. The estimates assume that the City's Impact Fees will increase at a rate of 4% per year. While the developer receives cost savings for each year the project is deferred, it is very likely that the cost of construction will continue to escalate in the coming years and therefore, continued

delays on building permit submittal and delay in construction will likely cost the developer more than the savings received from an impact fee freeze.

Year	Agreement Base Year	2023 (05-15-23)	2024*
Impact Fee Schedule	2016/17	2023/24	2024/25
Impact Fee Estimate	\$ 734,879	\$ 1,042,352	\$ 1,084,046
Potential Savings to Development		\$ (307,473)	\$ (349,167)
*Estimated fee escalation of 4% per year			

Impact fees have been identified as a barrier to development in Morgan Hill, in particular “greenfield” development which requires significant infrastructure investment by the developer. To address this issue and to attract new industrial and commercial development, the City created the Fee Freeze Program, which would provide some amount of certainty to the development community, while still collecting impact fees to support the infrastructure needs of the City. By incentivizing development of these greenfields, the City can generate property taxes, sales taxes and Transient Occupancy Taxes from these vacant properties, supporting the City's fiscal sustainability.

Fee Deferral Program Guidelines

In 2006, the City Council created a Sewer and Traffic Impact Fee Financing Program (also known as the Fee Deferral Program) to facilitate commercial and industrial development and assist with development impact fees. The City Council has provided the City Manager authority to approve fee financing agreements for up to \$99,999. Projects that request financing of \$100,000 or more require City Council approval. The Program requires a 20% down payment at the time of permit and allows the remaining 80% balance to be paid over five years in monthly installments. The Sewer and Traffic Impact Fee Financing Program calculates interest at Local Agency Investment Fund (LAIF) + ½ percent, allowing the City to recover the lost interest it would have earned if the payment was made all at one time, plus ½%. The Program has been used by commercial developments/businesses over the years, including Madrone Village and several of the retail center's commercial tenants, Cochrane Animal Hospital, The Granary, 76 Gas Station at Cochrane Commons, Shoe Palace, Applied Motion, Alara Cellars, and most recently, Giorgio's Italian Grill and Pizzeria.

The impact fees for traffic and sewer on the 114-room hotel project on APN 726-58-006 total \$581,528. The Fee Deferral Program requires 20% to be paid at the time of building permit issuance. A deposit of \$116,306 would be required and the remaining \$465,222 balance would be repaid via monthly installments over five years at an interest rate calculated using the most recent monthly LAIF + 1/2 percent. With City Council approval of the Resolution authorizing the City Manager to execute the Sewer and Traffic Impact Fee Financing and Security Agreement, the developer will be able to move more quickly and with more financial certainty to complete the project.

Conclusion:

Approving a Fee Freeze Agreement and Fee Financing Agreement with Cutina Morgan Hill, LLC is consistent with the Impact Fee Freeze Program, the 2035 General Plan Policy ED-4-9: To support the construction of a full range of new lodging facilities, 2017 Economic Blueprint Tourism Strategy, and the Hotel Incentive Policy (HIP) that was adopted by the City Council in June 2022.

COMMUNITY ENGAGEMENT:

Inform

The table below addresses the requirements set forth in State of California AB 562 (Government Code 53083) for publication of information related to an economic development subsidy and public hearings.

Name/address of the beneficiary of the subsidy:	Cutina Morgan Hill, LLC 2801 Ocean Park #193 Santa Monica, CA 90405
Start and end dates, schedule for the subsidy:	The Sewer and Traffic Impact Fee Financing Agreement to start no later than December 31, 2024. The financing agreement is for a term of five years for \$465,222. The beneficiary will pay monthly payments over the course of five years.
Describe the subsidy, estimated total amount of expenditure of public funds or revenue lost:	The Sewer and Traffic Impact Fee Financing Agreement allows the beneficiary to make a 20% down payment on the Sewer and Traffic Impact fees and finance the balance over five years. The City charges the beneficiary an interest rate of the Local Agency Investment Fund (LAIF) + ½ percent. If the Sewer and Traffic Impact fees are not paid by the beneficiary, the City will collect pledged collateral to cover the balance of the sewer and traffic impact fees. In addition, future building permits will not be issued until all impact fees are paid. No anticipated expenditure of public funds or revenue lost as interest will be collected over the term of the financing agreement.
State of public purpose:	Expand and enhance economic opportunities for businesses in the City, continue to expand the City's employment base, enhance tourism and tourism opportunities, and continue to generate the hereinafter defined Property Tax, Sales Tax and Transient Occupancy Tax that the City can utilize to fund general governmental services such as police, fire, street maintenance, and parks and recreation programs.
Projected tax revenue:	The projected increase in property tax collected from improvements to this site is approximately \$30,000 annually. In addition, a new 114-room hotel could generate approximately \$400,000 in

Estimated number of jobs created by subsidy:

new Transient Occupancy Tax (TOT) annually. The hotel construction will generate approximately 100 temporary construction jobs and approximately 30 new full-time hospitality related jobs.

ALTERNATIVE ACTIONS:

The City Council could choose not to enter into a Fee Freeze Agreement with Cutina Morgan Hill, LLC. This option could potentially save the City at minimum \$307,473 in impact fee revenue, but it also puts the 114-room hotel project at risk of not being completed.

The City of Morgan Hill could choose to use a different fee schedule other than the FY 2016/17 Fee Schedule for the Fee Freeze Agreement with Cutina Morgan Hill, LLC.

The City Council could choose not to approve the Sewer/Traffic Fee Financing Agreement which would require the developer to pay the proposed financing balance of \$581,528 immediately in order to receive building permits.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In February 2006, the City Council created the Fee Financing (Deferral) Program to stimulate commercial/industrial development. The existing program was modified in July 2009 to provide additional enhancements to projects both inside as well as outside the former Redevelopment Project Area

In June 2017, the City Council approved the Citywide Impact Fee Freeze Program establishing FY 2016-17 Development Impact Fees as the basis for the three-year term for any new commercial/industrial development project that enters into a Development Agreement for an Impact Fee Freeze approved by City Council.

In October 2018, the City Council approved a three-year Fee Freeze Agreement with Evergreen Devco on the 20- acre Evergreen Villages commercial center at the corner of Butterfield Blvd and Cochrane Road. Due to the COVID-19 pandemic, the City manager approved two one-year extensions of the Fee Freeze Agreement pursuant to City policy.

In June 2020, City Council reviewed the Impact Fee Freeze Program and established FY 2017-18 Development Impact Fees as the basis for the three-year term for any new commercial/industrial development project that enters into a Development Agreement for an Impact Fee Freeze approved by City Council.

In May 2022, City Council received an update on the Impact Fee Freeze Program. At

this time, the City Council established and locked City's Impact Fees to the Impact Fees at the time of the executed agreement for up to three years for new industrial and commercial development provided the prospective development secures entitlements and submits for building permits within three years of the date of the agreement.

In June 2022, the City Council approved the Hotel Incentive Policy in alignment with Morgan Hill's 2035 General Plan and 2017 Economic Blueprint which identify Tourism as a targeted industry and defines specific strategies and actions that should be taken to support, nurture, and advance this industry sector.

FISCAL AND RESOURCE IMPACT:

While the potential loss of revenue to the City from entering into this Impact Fee Freeze Agreement is expected to range between \$307,473 to \$349,167, securing the hotel development will yield multiple benefits for the city. The City expects to receive a one-time construction benefit of construction jobs and ancillary economic impact in the form of sales tax from local spending. Once operational, the City may receive an ongoing annual benefit of approximately \$30,000 in Property Tax collections and over \$400,000 in Transient Occupancy Tax (TOT) to the City's General Fund.

CEQA (California Environmental Quality Act):

Not a Project

An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, which included the General Plan Update, was prepared in accordance with the California Environmental Quality Act (CEQA) and certified by the Morgan Hill City Council on July 27, 2016. Commercial and industrial development as discussed above is consistent with the general plan policies for which the EIR was certified. There is no substantial evidence that freezing impact fees will have a significant effect on the environment beyond that already analyzed in the certified EIR; therefore, no further environmental analysis is required.

Any project specific development that occurs in the future will undergo an independent analysis pursuant to the requirements of CEQA.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN IMPACT FEE FREEZE AGREEMENT WITH CUTINA MORGAN HILL FREEZING THE IMPACT FEES AT THE LEVEL SET IN 2016-2017 FEE SCHEDULE AND A SEWER/TRAFFIC IMPACT FEE SECURED FINANCING AGREEMENT WITH CUTINA MORGAN HILL, LLC IN THE AMOUNT OF \$581,528 FOR THE DEVELOPMENT OF AN APPROXIMATELY 64,854 SQUARE FOOT HOTEL LOCATED ON 2.21 ACRES ON APN#726-58-006 IN THE CITY OF MORGAN HILL

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California (“City”), is authorized to enter into contracts and agreements for the benefit of the City; and

WHEREAS, the reasons supporting the entrance of the City into that certain agreement described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report submitted for the City Council meeting scheduled for June 21, 2023, submitted to the City Council by the City Manager (the “Staff Report”), the contents of which Staff Report are incorporated herein by this reference; and

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

WHEREAS, existing law generally allows local governments to make their own decisions regarding local economic development matters; and

WHEREAS, the loss of redevelopment has left the City, as well as all cities within the State, with a loss of local resources to encourage economic development; and

WHEREAS, the City Council has made findings consistent with Section 53083 of the California Government Code Assembly Bill 562 (“AB 562”). AB 562, titled “Economic Development Subsidies: Review by Local Agencies”, which was codified on October 13, 2013 and went into effect on January 1, 2014, require each local agency, as defined, to provide specified information to the public before approving an economic development subsidy or assistance of \$100,000 or more, as defined, within its jurisdiction, and to review, hold hearings, and provide reports at specified intervals. Based upon the decision to terminate redevelopment statewide, the Governor and State Legislature recognized the necessity for local governments to encourage

employment and retain jobs and businesses by giving economic assistance to businesses and the importance of facilitating public input; and

WHEREAS, encouraging and developing other businesses in the City that are, or can be, key sources of transient occupancy tax revenue would diversify and increase revenue sources for the City's general fund, which supports public services provided by the City to its residents and local businesses; and

WHEREAS, the City Council determines that the Sewer and Traffic Impact Fee Financing Agreement is consistent with the City's Sewer and Traffic Impact Fee Deferral Program adopted in July 2007 to stimulate commercial development and is necessary for the preservation and protection of the public health, safety or welfare of the community, and is in accord with the public purposes and provisions of applicable State and local laws and requirements.

WHEREAS, Cutina Morgan Hill, LLC has obtained approval to construct a 114-room hotel, proposed to be a Holiday Inn Express ("Project").

WHEREAS, the City Council determines that adoption of this Resolution is in the public interest due to the municipal tax revenue that would be generated by the Project.

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

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

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

- a. That the Impact Fee Freeze Agreement with Cutina Morgan Hill, LLC, a California Limited Liability Corporation which will freeze impact fees at the level set in the FY2016-2017 Fee Schedule for new Commercial/industrial construction substantially in the form attached hereto as Exhibit A and incorporated herein by this reference, is hereby approved.
- b. That the Sewer/Traffic Impact Fee Secured Financing Agreement dated June 21, 2023 with Cutina Morgan Hill, LLC, a California Limited Liability Corporation, for the development of a new approximately 64,854 square foot hotel, proposed to be a Holiday Inn Express located on 2.21 acres on APN #726-58-006, Morgan Hill in substantially in the form attached hereto as Exhibit B and incorporated herein by this reference (the "Sewer/Traffic Impact Fee Secured Financing Agreement"), is hereby approved.
- c. That the Deed of Trust and Assignment of Rents to be executed by Cutina Morgan Hill, LLC, a California Limited Liability Corporation substantially in the form attached hereto as Exhibit C and incorporated herein by this reference, is hereby approved.

- d. That the Secured Promissory Note to be executed by to be executed by Cutina Morgan Hill, LLC, a California Limited Liability Corporation substantially in the form attached hereto as Exhibit D and incorporated herein by this reference, is hereby approved.
- e. That the City Manager is hereby delegated authority to and is authorized and directed to do everything necessary and appropriate to execute, if required, the Agreements substantially in the form attached hereto as Exhibits A, B, C and D.

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

PASSED AND ADOPTED by the City Council of Morgan Hill at the meeting held on this 21st day of June, 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. xx-xxx, adopted by the City Council at a Regular Meeting held on June 21, 2023.

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

DATE

MICHELLE BIGELOW, City Clerk

IMPACT FEE FREEZE AGREEMENT

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

CUTINA MORGAN HILL, LLC

**IMPACT FEE FREEZE AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
CUTINA MORGAN HILL, LLC**

This Impact Fee Freeze Agreement (the "Agreement") is entered into as of June 21, 2023, by and between Cutina Morgan Hill, LLC, a California Limited Liability Corporation (the "Developer") and the City of Morgan Hill, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), with reference to the following facts and purposes:

RECITALS

The following recitals are a substantive portion of this Agreement:

A. Pursuant to the authority of Morgan Hill Municipal Code Sections 3.56.095, 12.02.115, and Resolution Number _23-0_, the City has established an Impact Fee Freeze Program (the "Program") to freeze Development Impact Fees to the Fiscal Year 2016-17 Fee Schedule for new commercial/industrial construction.

B. Developer owns or leases certain real property in the City described in the attached Exhibit A (the "Subject Property") upon which improvements are to be made for a new hotel, anticipated to be a Holiday Inn Express (the "Project").

C. The purpose of this Agreement is to lock in the Development Impact Fees for the Project. The Project's Development Impact Fees will be locked in at the rate set in the Fiscal Year 2016-17 Impact Fee Schedule attached hereto and incorporated herein as Exhibit B.

D. Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in annual changes to Development Impact Fees, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Impact Fee Program was adopted.

E. When constructed and open the Project will generate Transient Occupancy Tax ("TOT") for the City creating a public benefit which is required in order to enter into this Agreement.

ARTICLE 1
ADMINISTRATION

1.01 Definitions.

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

(1) **"Impact Fees"** shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 et seq.

(2) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

(3) **"New City Laws"** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes **"Legal Effect"** after the Effective Date of this Agreement, and that applies City wide. **"Effective Date"** shall mean the date this Agreement is fully executed by both parties following approval of the Agreement by the City Council.

(4) **"Project Approvals"** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.

(5) **"Property"** shall mean that certain real property consisting of approximately __ acres located within the City, as more particularly described and shown on *Exhibit A* to this Agreement with APN #726-58-006.

(6) **"Subsequent Approvals" and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law.

1.02 Term.

The term (**"Term"**) of this Agreement shall commence on the Effective Date, and then shall continue until December 31, 2024 or the issuance of all building permits and commencement of construction for the Project, whichever occurs first.

ARTICLE 2

APPLICABLE LAW

2.01 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Project (and the Developer who is the owner of same). Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use.

(b) Impact Fees. As part of the Project's exclusive obligation (and the Developer's as the owner of same) to cover Project Mitigation, Developer shall pay all Impact Fees as described in Exhibit B at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code, except as otherwise described and reduced by this Agreement. The Project's Impact Fees are frozen at the level set in the Impact Fee Schedule for Fiscal Year 2016-2017 Impact Fee Schedule in the attached Exhibit B, as long as all the building permits are obtained, and construction commenced on or before December 31, 2024 and a hotel project is constructed on the site.

(c) Processing Fees. The Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, environmental studies required under CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Project (including Developer as owner of same). Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City

may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use an additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.02 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.03 Timing of Development.

Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes, as these exist on the Effective Date. In the event Developer fails to comply with the above permit issuance and commence construction no later than December 31, 2024 this Agreement shall expire. The deadline may be extended at the sole discretion of the City Manager should Developer face unreasonable delays beyond its control.

2.04 New City Laws.

(a) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level) , or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(b) City shall not be precluded from adopting new Impact or Development Fees that are not included in the Fiscal Year 2016-17 Impact Fee Schedule. These fees include but are not limited to those fees which were adopted or implemented after the 2016-2017 Impact Fee Schedule up to the date of building permit issuance for the Project.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized

in the Existing Approvals. For any Subsequent Approvals necessary for the Project, this Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, if and only if such Subsequent Approvals are compliant with all controlling California law (including proper Planning and Zoning Law and CEQA compliance), have secured approval of the Parties, and are adopted/approved by City, which shall retain all lawful discretion in this regard. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law.

3.02 Significant Actions by Third Parties Necessary to Implement the Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Resolution of Disputes.

(a) In the event either Party is in default under the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action under this Agreement, any City Council determination under this Agreement shall be deemed a final agency action.

(c) The Parties agree to meet and confer regarding any dispute, in an effort to agree on utilizing Judicial Arbitration Mediation Services ("**JAMS**") for Alternative Dispute Resolution ("**ADR**"). However, no party shall be required to use JAMS or ADR.

4.02 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.03 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review under CEQA ("**Third Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge. Third Party Challenge shall include all City legal fees, costs including but not limited to staff costs should a local initiative which results in blocking or slowing the Project be approved by the voters and City in its reasonable discretion determines that a judicial action should be filed concerning the initiative or City is sued concerning the initiative.

(b) City shall have the option to defend such Third Party Challenge or to tender the complete defense of such Third Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City's attorneys' fees and costs (including related court costs).

(c) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorneys' fees and costs (including related court costs) and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys' fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against

any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.04 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

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

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

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within thirty(30) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the thirty (30) day period, as provided for in Section 4.04(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.05 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.02, or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

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

(b) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced under or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(c) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private property and the owners of such private property.

(d) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the Project. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(e) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this

Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(f) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective Party as follows:

If to City: City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7259
Fax: (408) 779-3117

With a Copy To: City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7271
Fax: (408) 779-1592

If to Developer: Cutina Morgan Hill LLC
2801 Ocean Park #193
Santa Monica, CA 90405

With a Copy To:

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(g) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(h) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California.

(i) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(j) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(k) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(l) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Lot on Which Project is to be Located.

Exhibit B 2016-17 Impact Fee Schedule

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

CITY OF MORGAN HILL:

DEVELOPER:

s/ _____

Christina J. Turner
City Manager

s/ _____

Michelle Della Penna
Managing Partner

Date: _____

*Corporate entities must provide a
second signature:*

Attest:

s/ _____

s/ _____

Deputy City Clerk

Cosme Fagundo
Managing Partner

Date: _____

Approved as to Form:

s/ _____

Donald A. Larkin

City Attorney

Date: _____

EXHIBIT A

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

For conveyancing purposes only: APN 726-58-006

PARCEL ONE: PARCEL 6 AS SHOWN ON THAT CERTAIN MAP ENTITLED AS "PARCEL MAP EVERGREEN VILLAGE" RECORDED ON JULY 17, 2019 IN BOOK 924, PAGES 45-47, SANTA CLARA COUNTY RECORDS.

PARCEL TWO: NON-EXCLUSIVE 60 FOOT WIDE ACCESS EASEMENT AS RETAINED IN THAT CERTAIN GRANT OF RECIPROCAL EASEMENTS, RECORDED JUNE 16, 1989, IN BOOK K988 AT PAGE 1623, OFFICIAL RECORDS, AND AS AMENDED BY THAT CERTAIN AMENDMENT TO GRANT OF RECIPROCAL EASEMENTS RECORDED DECEMBER 16, 1998 AS INSTRUMENT NO. 14554697, OFFICIAL RECORDS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND AS AMENDED BY THAT CERTAIN SECOND AMENDMENT TO GRANT OF RECIPROCAL EASEMENTS RECORDED FEBRUARY 7, 2008 AS INSTRUMENT NO. 19736430, OFFICIAL RECORDS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

PARCEL THREE: NON-EXCLUSIVE EASEMENTS FOR DRAINAGE, ACCESS, INGRESS AND EGRESS, PARKING, AND UTILITIES, ENCROACHMENTS OF CERTAIN IMPROVEMENTS, LANDSCAPING AND CONSTRUCTION OF IMPROVEMENTS, STORM WATER AND DRAINAGE FACILITIES, AND SIGNAGE CONTAINED IN COMMON OPERATION AND RECIPROCAL EASEMENT AGREEMENT, DATED DECEMBER 5, 2018, RECORDED DECEMBER 5, 2018 AS INSTRUMENT NO. 24076332, AS AFFECTED BY FIRST AMENDMENT TO COMMON OPERATION AND RECIPROCAL EASEMENT AGREEMENT, DATED JULY 17, 2019, RECORDED JULY 18, 2019 AS INSTRUMENT NO. 24228167.

For conveyancing purposes only: APN 726-58-006

EXHIBIT B
2016-17 Impact Fee Schedule



**PRELIMINARY
DRAFT**

CITY OF MORGAN HILL PUBLIC WORKS DEPARTMENT

17575 Peak Avenue Morgan Hill CA 95037 - Office (408)778-6480 Fax (408)779-7236

6/8/2023 DATE 726-58-006 TRACT / APN 18595 Cochrane Road ADDRESS / LOT Holiday Inn Express - Evergreen Village PROJECT DESCRIPTION	FEE SCHEDULE: 07.01.2016 PER RESOLUTION 5902, EFFECTIVE JULY 1, 2006 AND PER RESOLUTION 5592, INCREASED JANUARY 15, 2009 AND PER RESOLUTION 6082, EFFECTIVE FEBRUARY 5, 2007 **SEE BACK PAGE FOR ADDITIONAL FEE RESOLUTIONS DRAFT FEE SCHEDULE EXPIRATION DATE	NAME MAILING ADDRESS CITY, STATE, ZIP CODE PHONE NUMBER
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NOTES:

1. PRESSURE REGULATORS ARE REQUIRED ON ALL WATER SERVICES.
2. BACKFLOW PREVENTORS ARE REQUIRED ON ALL NON-RESIDENTIAL WATER SERVICES & FIRE SPRINKLER SERVICES. BACKFLOW INSPECTION FEE SHALL BE PAID PRIOR TO INSPECTION.
3. **MULTI-FAMILY** IS DEFINED AS ANY UNIT WITH TWO BEDROOMS OR LESS.
SINGLE FAMILY IS DEFINED AS ANY UNIT WITH 3 BEDROOMS OR MORE.

☒ **THIS FEE SCHEDULE IS ESTIMATE ONLY**

IF BOX ABOVE CHECKED: FEE SCHEDULE IS ONLY FOR ESTIMATE PURPOSES. FEE SCHEDULE CALCULATED BASED ON INFORMATION PROVIDED TO CITY BY APPLICANT. FINAL FEE SCHEDULE MAY DIFFER BASED UPON CHANGE IN SCOPE OF PROJECT.

SEWER IMPACT FEES WITHIN RDA BOUNDARY

CHECK APPLICABLE SCENARIO BELOW

☒ **COMMERCIAL OR INDUSTRIAL WITHIN RDA BOUNDARY**

SEWER IMPACT FOR COMMERCIAL & INDUSTRIAL PROJECTS
TEMPORARILY ADJUSTED TO \$0 EFFECTIVE 02/05/07 PER RES# 6082.

☐ **RESIDENTIAL PROJECTS WITHIN RDCA DOWNTOWN AREA**

SEWER IMPACT FOR SINGLE-FAMILY AND MULTI-FAMILY RESIDENTIAL
TEMPORARILY ADJUSTED TO \$0 EFFECTIVE 02/05/07.

☐ **NOT IN RDA AREA BOUNDARY**

** BOTH NORMAL FEES AND ADJUSTED FEES ARE SUBJECT
TO ANNUAL CPI INCREASES.

☐ **COMMERCIAL OR INDUSTRIAL SHELL**

MA

CALCULATED BY

CHECKED BY

N/A

BUILDING PERMIT #

DATE BLD PERMIT ISSUED

**RDA SEWER ALLOCATION
COMPLETED BY:**

(write Initials below)

version 07.01.16 std

WATER FEES:**1. METER DEPOSIT: 650-37672**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1"	\$468	x	1	=	\$468
1 1/2"	\$1,434	x	1	=	\$1,434
2"	\$1,619	x	1	=	\$1,619
3" or larger-Time & Material + Meter Cost				=	\$0

METER CREDITS

\$0 x 0 = \$0

SUBTOTAL = \$3,521**2. BACKFLOW CONST. INSPECTION: 650-37859**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

\$62 x 3 Each = \$186

3. WATER FRONTAGE CHARGE: 650-37663

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$66	x	0	LF	=	\$0
2 Sides	\$37	x	0	LF	=	\$0

4. WATER IMPACT FEE: 651-37648

(Auth: Res. #5592 approved 08.21.02, Increased 01.15.16)

a) Residential						
\$3,624 /DU	x	0	DU	=	\$0	
(Single Family)						
\$3,269 /DU	x	0	DU	=	\$0	
(Multi Family)						

b) Commercial & Industrial						
(Includes Landscape Service)						
\$10,288 /AC	x	2.209	AC	=	\$22,726	

WATER CREDITS

\$0 x 0 = \$0

SUBTOTAL = \$22,726**WATER FEE TOTALS = \$26,433****5. ENGINEERING & INSPECTION FEE: 206-38734**

(Minimum \$500.00):

(Authority: Res. #5902 approved 05.04.05, Updated 07.01.09)

ENGINEERING ESTIMATE: \$15,000

DATE ENGINEERING EST. SUBMITTED: (City estimate)

% APPLIES TO ENGINEER'S ESTIMATE

13.3%	\$1	to	\$100,000	=	\$1,995
11.8%	\$100,001	to	\$200,000	=	\$0
10.3%	\$200,001	to	\$500,000	=	\$0
8.8%	OVER		\$500,000	=	\$0

ENGINEERING FEE = \$1,995

DEPOSIT PAID = \$0

ENGINEERING FEE TOTAL = \$1,995**5A. LONG RANGE PLANNING FEE: 207-37912**

LONG RANGE PLANNING FEE (15% of E&I) = \$299

SEWER FEES:**6. SEWER FRONTAGE CHARGE: 640-37663**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$66	/LF	x	0	LF	=	\$0
2 Sides	\$37	/LF	x	0	LF	=	\$0

7. SEWER IMPACT FEE: 641-37648

(Auth: Res. #6082 approved 02.05.07 & Res. #5592 approved 08.21.02, Increased 01.15.16).

a) Residential						
\$14,183 /DU	x	0	DU	=	\$0	
(Single Family)						
\$12,004 /DU	x	0	DU	=	\$0	
(Multi Family)						
b) Commercial & Industrial						
\$48.56 /GPD	x	9,405	GPD	=	\$456,707	
\$48.56 /GPD	x	0	GPD	=	\$0	

SEWER CREDITS

\$0 x 0 = \$0

RDA ASSUMED SEWER OBLIGATION

\$14,183 /DU	x	0	DU	=	\$0	
(Single Family)						
\$12,004 /DU	x	0	DU	=	\$0	
(Multi Family)						
\$48.56 /GPD	x	0	GPD	=	\$0	
(Commercial & Industrial)						

SUBTOTAL = \$456,707**SEWER FEE TOTALS = \$456,707****STORM DRAIN FEES:****8. STORM DRAIN FRONTAGE CHARGE: 304-37663**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$108	/LF	x	0	LF	=	\$0
2 Sides	\$53	/LF	x	0	LF	=	\$0

9. STORM DRAIN IMPACT FEE: 303-37648

(Auth: Res. #5592 approved 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)

\$3,847 /DU	x	0	DU	=	\$0	
(Single Family)						
\$2,001 /DU	x	0	DU	=	\$0	
(Multi Family)						
\$41,897 /ACRE	x	2.209	AC	=	\$92,550	
(Commercial & Office)						
\$30,505 /ACRE	x	0	AC	=	\$0	
(Industrial)						

STORM CREDITS

\$0 x 0 = \$0

ASSUMING NO CREDIT IF REFUND PROVIDED TO MASTER DEVELOPER

SUBTOTAL = \$92,550**STORM DRAIN FEE TOTALS = \$92,550**

10. UNDERGROUNDING UTILITIES: 350-37649					
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)					
1 Side	\$681	x	0	LF	= \$0
2 Sides	\$343	x	0	LF	= \$0

11a. PARK IMPACT FEE: 301-37648					
(Auth: Res. #5592 appr'd 8.21.02, Amd'd by Res. 6326 4.28.10, Increased 01.15.16)					
\$5,378 /DU	x	0	DU	=	\$0
(Single Family - Sub)					
\$3,910 /DU	x	0	DU	=	\$0
(Single Family - No Sub)					
\$5,181 /DU	x	0	DU	=	\$0
(Multi Family - Sub)					
\$3,771 /DU	x	0	DU	=	\$0
(Multi Family - No Sub)					

11b. PARK MAINTENANCE DEV. FEE: 302-37649					
\$0	x	0	EA	=	\$0

PARK CREDITS					
\$0	x	0		=	\$0

PARK FEE TOTAL = \$0					
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12. TRAFFIC IMPACT FEE: 309-37648					
(Auth: Res. #15-152 approved 06.17.15 & Res. #5592 approved 08.21.02, Increased 01.15.16)					
\$1,863 /DU	x	0	DU	=	\$0
(Single Family)					
\$1,155 /DU	x	0	DU	=	\$0
(Multi Family)					
\$1,863 /PHT	x	67	PHT	=	\$124,821
(Commercial)					
\$1,863 /PHT	x	0	PHT	=	\$0
(Industrial)					

TRAFFIC CREDITS					
\$0	x	0		=	\$0

TRAFFIC FEE TOTAL = \$124,821					
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13. LIBRARY IMPACT FEE: 348-37648					
(Auth: Res. #5837 appr'd 09.01.04, Amd'd by Res. 6326 4.28.10, Increased 01.15.16)					
\$1,974 /DU	x	0	DU	=	\$0
(Single Family)					
\$1,902 /DU	x	0	DU	=	\$0
(Multi Family)					

LIBRARY CREDITS					
\$0	x	0		=	\$0

LIBRARY FEE TOTAL = \$0					
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14. BURROWING OWL MITIGATION: 232-38145					
(Authority: Res. #5765 approved 01.21.04, Increased 07.01.16)					
\$200 /DU		0	DU	=	\$0
(Residential)					
\$1,395 /AC		0	AC	=	\$0
(Commercial/Industrial)					

BURROWING OWL CREDITS					
\$0	x	0		=	\$0

CREDITED UNDER GRADING & SITE PERMIT (GRD2021-0005)					
BURROWING OWL FEE TOTAL = \$0					

15a. MAP CHECK FEE: 206-38716					
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)					
PARCEL MAP:	\$3,805	=			\$0
TRACT MAP:	\$5,667	=			\$0

16. POLICE IMPACT FEE: 311-37648					
(Auth: Res. #5686 appr'd 06.18.03, Amd'd by Res. 6326 4.28.10, Increased 01.15.16)					
\$767 /DU	x	0	DU	=	\$0
(Single Family)					
\$741 /DU	x	0	DU	=	\$0
(Multi Family)					
\$1,666 /ACRE	x	2.209	AC	=	\$3,680
(Commercial)					
\$2,333 /ACRE	x	0	AC	=	\$0
(Industrial)					

POLICE CREDITS					
\$0	x	0		=	\$0

POLICE FEE TOTAL = \$3,680					
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17. FIRE IMPACT FEE: 313-37648					
(Auth: Res. #6671 approved 07.17.13, Increased 01.15.16)					
\$118 /DU	x	0	DU	=	\$0
(Single Family)					
\$112 /DU	x	0	DU	=	\$0
(Multi Family)					
\$1,550 /ACRE	x	2.209	AC	=	\$3,424
(Commercial)					
\$1,550 /ACRE	x	0	AC	=	\$0
(Industrial)					

FIRE CREDITS					
\$0	x	0		=	\$0

FIRE FEE TOTAL = \$3,424					
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18. PUBLIC FACILITIES IMPACT FEE: 347-37648					
(Auth: Res. #5592 appr'd 8.21.02, Amd'd by Res. 6326 4.28.10, Increased 01.15.16)					
\$512 /DU	x	0	DU	=	\$0
(Single Family)					
\$493 /DU	x	0	DU	=	\$0
(Multi Family)					
\$1,128 /ACRE	x	2.209	AC	=	\$2,492
(Commercial)					
\$1,579 /ACRE	x	0	AC	=	\$0
(Industrial)					

PUBLIC FACILITIES CREDITS					
\$0	x	0		=	\$0

PUBLIC FACILITIES FEE TOTAL = \$2,492					
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20. COMMNTY/REC CTRS IMPACT FEE: 360-37648					
(Auth: Res. #15-152 appr'd 8.17.15, increased 01.15.16)					
\$3,663 /DU	x	0	DU	=	\$0
(Single Family)					
\$3,213 /DU	x	0	DU	=	\$0
(Multi Family)					

PUBLIC FACILITIES CREDITS					
\$0	x	0		=	\$0

PUBLIC FACILITIES FEE TOTAL = \$0					
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19		
BMP Initial Set-up	=	\$660
Additonal BMPs	=	\$792
Stormwater O&M Agreement (139)	=	\$2,070
	=	
SUB-TOTAL OF ABOVE FEES = <u><u>\$3,522</u></u>		

OTHER:	
SWRMP Tier 3 Project	\$9,892
ESC Type 1	\$8,200
Type 1 & 2 Projects: +1 Acre Soil Dist	\$863
TOTAL FEES DUE = <u><u>\$734,879</u></u>	

Notes & Comments:

THE IMPACT FEES FOR THIS PROJECT IS LOCKED TO THE FISCAL YEAR 2016-2017 FEE SCHEDULE.
THIS IS DUE TO THE IMPACT FEE FREEZE AGREEMENT BETWEEN THE CITY AND EVERGREEN-BUTTERFIELD
& COCHRANE LLC (MASTER DEVELOPER/LANDLORD), WHICH WAS AMENDED, AND HAVE BEEN EXTENDED
PER CITY COUNCIL RESOLUTION 21-004 THROUGH JUNE 30, 2023.

THE STORM DRAIN IMPACT FEE AND BURROWING OWL FEE WERE PREVIOUSLY PAID BY THE MASTER
DEVELOPER/LANDLORD. THE AMOUNT OF APPLICABLE FEE CREDITS WILL BE NOTED IN FINAL FEE SCHEDULE.
NO FRONTAGE FEES APPLY TO THIS PROJECT.

New 114-room hotel (67,060 sq. ft building).

Site (APN): 726-58-006

Site Acreage (per Recorded Evergreen Village Parcel Map): 2.209 AC

Traffic:

Hotel Traffic Coefficient: 0.59 PHT per room *PHT = Peak Hour Trip*

(ITE 11th Edition - #310 Hotel; Weekday Peak Hour of Adjacent Street Traffic - PM peak)

Total PHT = 0.59 x 114 = **67 PHT**

Sewer:

Hotel Sewer Coefficient: 82.5 gpd per room

Sewer fee = 82.5 x 114 = **9,405 gpd**

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO**

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

TO BE RECORDED WITHOUT FEE
PER GOVERNMENT CODE 27383 and 6103

(SPACE ABOVE LINE FOR RECORDER'S USE)

SEWER/TRAFFIC FEE SECURED FINANCING AGREEMENT

This Sewer/Traffic Fee Secured Financing Agreement (the "Agreement") is entered into as of _____, 2023, by and between CUTINA MORGAN HILL, LLC, a California Limited Liability Corporation company (the "Borrower") and the City of Morgan Hill, a municipal corporation duly organized and existing under the laws of the State of California, California, ("City") with reference to the following facts and purposes:

RECITALS

The following recitals are a substantive portion of this Agreement:

- A. The City has established a Sewer/Traffic Fee Financing Program (the "Program") to defer sewer and traffic fees for new and expanding industrial and commercial businesses.
- B. Borrower owns certain real property in the City described in the attached Exhibit "1" (the "Subject Property") upon which improvements are to be made for a new hotel, anticipated to be a Holiday Inn Express (the "Project").
- C. The purpose of this Agreement is provide a financing mechanism for the Sewer/Traffic Impact Fees for the Project.
- D. On June 21, 2023, the City granted a request of the Borrower to be a Program participant with respect to CUTINA MORGAN HILL, LLC Sewer and Traffic Fees in the aggregate amount of Five Hundred Eighty-One Thousand, Five Hundred Twenty-Eight Dollars and Zero Cents (\$581,528.00) (the "Fees"), payable by the Borrower in connection with Improvements on the Property.
- E. Borrower and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will assist Borrower in developing the Project by providing a financing mechanism for the Sewer/Traffic Impact Fees for the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Sewer/Traffic Fee Financing Program was adopted.
- F. When constructed and open the Project will generate Transient Occupancy Tax ("TOT") for the City creating a public benefit which is required in order to enter into this Agreement.

G. As a condition of participation in the Program and in consideration of the City's agreement to defer payment of the Fees as specified herein, the Borrower is required to execute this Agreement and the documents specified setting forth the terms and conditions for payment of the Fees by the Borrower to the City and establishing security for such payment.

NOW, THEREFORE, the City and the Borrower agree as follows:

1. Financing of Fee. Upon satisfaction of the conditions set forth in Section 3 below but not later than the date the Borrower is required to pay a minimum of twenty percent (20%) of the Sewer/Traffic Fees for the Improvements on the Property, before December 31, 2024 or the issuance of the first building permit for the Project, whichever is earlier ("Initial Payment Date"), in accordance with applicable City ordinances and regulations, the Borrower shall be granted the right to pay the Fees pursuant to the Program in accordance with the payment terms set forth in Section 2 below. If the conditions set forth in Section 4 below are not satisfied in full, the Borrower shall pay the Fees in their entirety on the Initial Payment Date or on such other date(s) as provided in the applicable City ordinances and regulations, and this Agreement shall terminate and be of no further force and effect.

2. Payment of Fees. The Fees shall be paid as follows:

(a) Twenty percent (20%) of the Sewer and Traffic Impact Fees, One Hundred Sixteen Three Hundred Six Dollars, and Zero Cents (\$116,306), shall be paid to the City on the Initial Payment Date as the "Down Payment". Additionally, all other impact fees in the amount of One Hundred Fifty-Three, Three Hundred Fifty-One Dollars and Zero Cents (\$153,351.00) shall be paid by the Initial Payment Date, for a total of Two Hundred Sixty-Nine, Six Hundred Fifty-Seven Dollars and Zero Cents (\$269,657.00).

(b) The remaining balance of the Fees (total fees minus the Down Payment) of Four Hundred Sixty-Five Thousand, Two Hundred Twenty-Two Dollars and Zero Cents (\$465,222.00) ("Financed Fees") shall be paid in sixty (60) equal monthly installments and shall bear fixed interest at the PMIA Average Monthly Effective Yield as determined by the most recent PMIA/LAIF Performance Report rate plus 0.5% as determined on the Initial Payment Date of XXX and XXX hundredth percent (X.XX%) per annum compounded monthly. The monthly installment shall be \$XXX per month which shall commence on the date of the issuance of the Certificate of Occupancy, or no later than December 31, 2025 whichever occurs first continuing on the first day of each month thereafter until full principal amount and all interest thereon has been paid. Maturity date is five years after the first payment is made or December 31, 2030, whichever occurs first.. Borrower may prepay the balance without penalty.

3. Promissory Note and Deed of Trust. In order to secure and perfect Borrowers' obligation to repay the Financed fees, Borrower agrees to execute a promissory note in the form provided by City (the "Promissory Note") attached hereto and incorporated herein as Exhibit "2", which shall be secured by a Deed of Trust, attached hereto and incorporated herein as Exhibit "3". This Agreement, the Promissory Note and the Deed of Trust shall be collectively referred to herein as the "Loan Documents." Borrower agrees to apply for and receive building permits for and commence construction of a hotel on the Subject Property on or before December 31, 2024. City and the Borrower agree that the Loan Documents shall create and perfect the City's security interest in the real property set forth in Exhibit A as security) for the payment of the Financed Fees.

4. Conditions to Financing of Fees. As conditions to the Borrower's right to finance payment of the Fees in the manner set forth in Sections 1, 2 and 3 the representations set forth in Section 7 must remain true and correct as of the Initial Payment Date, and the following actions must be completed by not later than the Initial Payment Date (unless waived in writing by the City):

(a) Delivery to the City of the Down Payment;

- (b) Execution by the Borrower and delivery to the City of the appropriate Loan Documents;
and
 - (c) Recordation of the Deed of Trust.
5. Events of Default. Each of the following shall constitute a "Default" by the Borrower under the Agreement and the other Loan Documents:
- (a) Failure by the Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents (including, without limitation, the obligation to repay the Financed Fees as provided in Section 2(b) of this Agreement), if such failure remains uncured fifteen (15) days after written notice of such failure is mailed by the City to the Borrower; provided, however, that if a lesser period or notice requirement is allowed before a Default occurs under any of the following subsections or under any other Loan Document, such lesser requirement shall control in this Agreement.
 - (b) Any representation or warranty contained in any Loan Document proves to have been incorrect in any material respect when made or on the Initial Payment Date.
 - (c) A court having jurisdiction shall have made or entered any decree or order (1) adjudging the Borrower to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Borrower or seeking any arrangement for the Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Borrower in bankruptcy or insolvency or for any of their properties, or (4) directing the winding up or liquidation of the Borrower, if any such decree or order described in clauses (1) to (4), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other lien on the Collateral, in which event such lesser time period will apply under this subsection (c) as well; or the Borrower shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (1) to (4), inclusive. The occurrence of any Default in this subsection shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.
 - (d) The Borrower shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure under any other lien on the Collateral, in which event such lesser time period shall apply under this subsection (d) as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution. The occurrence of any Default in this subsection shall act to accelerate automatically, without the need for any action by the Agency, the indebtedness evidenced by the Note.
 - (e) The Borrower shall have voluntarily suspended its business or, if the Borrower is a partnership, the partnership shall have been dissolved or terminated.
 - (f) The condemnation, seizure, or appropriation of all or, in the opinion of the City, a substantial part of the Collateral, except for a condemnation initiated by the City.
 - (g) There shall not take place any default declared by any lender under any loan document related to any other loans secured by a deed of trust or lien on the Collateral. The occurrence of Default under this subsection (g) shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.
 - (h) Failure to obtain permits for and diligently construct the Project and open the Project to paying guests and to collect Transient Occupancy Tax as required by City ordinance.

6. Remedies. The occurrence of any Default will, either at the option of the City or automatically, where so specified, give the City the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

(a) The City shall have the right to cause all indebtedness of the Borrower to the City under this Agreement, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The City may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the City as a creditor and secured party under the law.. The Borrower shall be liable to pay the City on demand all expenses, costs and fees (including, without limitation, attorney's fees and expenses) paid or incurred by the City in connection with the collection of the Financed Fees.

(b) The City shall have the right to mandamus or other suit, action or proceeding at law or in equity to require the Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

(c) The City shall maintain all rights to foreclose upon the Subject Property for a default under the terms of the Promissory Note or the Deed of Trust.

(d) No right, power, or remedy given to the City by the terms of this Agreement, or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such instrument, or by any statute or otherwise against the Borrower and any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

7 Representations and Warranties. The Borrower hereby represents and warrants to the City as follows:

(a) The Borrower is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) The Borrower and the Guarantor, as applicable, have full power and authority to execute and deliver this Agreement and to make and accept the obligations contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the Borrower and the Guarantor, as applicable, and all actions required under the Borrower's and the Guarantor's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) This Agreement and the Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Borrower, as applicable, enforceable against them in accordance with their respective terms.

(e) The Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or the Property, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Borrower, materially affect the Borrower's ability to meet its obligation or impair the security to be given to the City pursuant hereto.

(f) To the best knowledge of the Borrower:

(1) The Property is not and has not been a site for the use, generation, treatment, manufacture, storage, disposal or transportation of any hazardous materials and there are no hazardous materials located in, on or under the Property;

(2) The Property is presently in compliance with all hazardous materials laws, including, without limitation, those relating to soil and ground water conditions;

(3) There have been no investigations, inquiries, notices, orders, hearings, actions, or other proceedings by or before any governmental agency are pending or threatened against the Borrower and/or the Property pertaining in any way to (A) the use, generation, treatment, manufacture, storage, presence, disposal or transportation of hazardous materials from, under, into or on the Property or any portion thereof and/or (B) the violation or alleged violation of, or the noncompliance or alleged noncompliance with, any hazardous materials law; and

(4) No underground storage tanks are presently located, or in the past have been located, in, on or under the Property.

8. Indemnification. Borrower shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Borrower's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Borrower or by any Borrower's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Borrower or any of Borrower's contractors or subcontractors. Borrower shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Borrower shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Borrower which it may have by reason of the aforesaid hold-harmless requirement of Borrower because of the acceptance of improvements by City, or the deposit of security with City by Borrower. The aforesaid hold-harmless requirement of Borrower shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the Project. Notwithstanding anything herein to the contrary, Borrower's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

9. General Provisions.

(a) Time is of the essence in the performance of all obligations under this Agreement and the Other Loan Documents.

(b) Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

Borrower:

CUTINA MORGAN HILL, LLC
Attn: Michelle Della Penna

2801 Ocean Park #193
Santa Monica, CA 90405

City: City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attention: Finance Director

Copy to: City Clerk
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Such addresses may be changed by notice to the other party given in the same manner as provided above.

(c) If either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder or under any of the Loan Documents, the prevailing party shall be entitled to recover from the other party its costs of suit and reasonable attorneys' fees which shall be fixed by the court.

(d) If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.

(e) This Agreement and the Loan Documents and other instruments given pursuant to this Agreement shall be construed in accordance with and be governed by the laws of the State of California. Any action commenced about this Agreement or any of the Loan Documents shall be filed in the central branch of the Santa Clara County Superior Court.

(f) This Agreement may not be changed orally, but only by agreement in writing signed by the Borrower and the City.

(g) The Loan Documents together embody the agreement between the City and the Borrower for the payment of the Fee. No verbal agreements or conversations with any officer, agent or employee of the City prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in the Loan Documents. Any such verbal agreement shall be considered unofficial information and in no way binding upon the City.

(h) This Agreement and its terms and conditions shall be binding on the successor in interest to Borrower's Project or the Property.

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

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

(k) The Borrower shall comply with all applicable laws ordinances, codes, and regulations of the federal, state, and local governments.

(l) The Borrower shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

(m) Whenever any approval, notice, direction, consent, request, waiver of condition or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager, or by any person who shall have been designated in writing to the Borrower by the City Manager, without further approval by the City Council, and any such action shall be in writing.

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(n) The following exhibits are attached to and incorporated by reference in this Agreement:

Exhibit A	Real Property
Exhibit B	Promissory Note
Exhibit C	Deed of Trust

If any term or provision of any Loan Document conflicts with any term or provision of this Agreement, the term or provision of this Agreement shall control to the extent of such conflict.

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

BORROWER: CUTINA MORGAN HILL, LLC a Limited Liability California Corporation

CITY: CITY OF MORGAN HILL a municipal corporation

Michelle Della Penna, Managing Partner

Date: _____

Cosme Fagundo, Managing Partner

Date: _____

Christina Turner, City Manager

Date: _____

Approved as to Form:

Donald A. Larkin, City Attorney

Date: _____

Attest:

Michelle Bigelow City Clerk
Date: _____

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

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

On _____, 2023, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

On _____, 2023, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

On _____, 2023, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT 1
LEGAL DESCRIPTION OF REAL PROPERTY

For conveyancing purposes only: APN 726-58-006

PARCEL ONE: PARCEL 6 AS SHOWN ON THAT CERTAIN MAP ENTITLED AS "PARCEL MAP EVERGREEN VILLAGE" RECORDED ON JULY 17, 2019 IN BOOK 924, PAGES 45-47, SANTA CLARA COUNTY RECORDS.

PARCEL TWO: NON-EXCLUSIVE 60 FOOT WIDE ACCESS EASEMENT AS RETAINED IN THAT CERTAIN GRANT OF RECIPROCAL EASEMENTS, RECORDED JUNE 16, 1989, IN BOOK K988 AT PAGE 1623, OFFICIAL RECORDS, AND AS AMENDED BY THAT CERTAIN AMENDMENT TO GRANT OF RECIPROCAL EASEMENTS RECORDED DECEMBER 16, 1998 AS INSTRUMENT NO. 14554697, OFFICIAL RECORDS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND AS AMENDED BY THAT CERTAIN SECOND AMENDMENT TO GRANT OF RECIPROCAL EASEMENTS RECORDED FEBRUARY 7, 2008 AS INSTRUMENT NO. 19736430, OFFICIAL RECORDS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

PARCEL THREE: NON-EXCLUSIVE EASEMENTS FOR DRAINAGE, ACCESS, INGRESS AND EGRESS, PARKING, AND UTILITIES, ENCROACHMENTS OF CERTAIN IMPROVEMENTS, LANDSCAPING AND CONSTRUCTION OF IMPROVEMENTS, STORM WATER AND DRAINAGE FACILITIES, AND SIGNAGE CONTAINED IN COMMON OPERATION AND RECIPROCAL EASEMENT AGREEMENT, DATED DECEMBER 5, 2018, RECORDED DECEMBER 5, 2018 AS INSTRUMENT NO. 24076332, AS AFFECTED BY FIRST AMENDMENT TO COMMON OPERATION AND RECIPROCAL EASEMENT AGREEMENT, DATED JULY 17, 2019, RECORDED JULY 18, 2019 AS INSTRUMENT NO. 24228167.

EXHIBIT 2
PROMISSORY NOTE

SECURED PROMISSORY NOTE

Cutina Morgan Hill, LLC
Attn: Michelle Della Penna
2801 Ocean Park #193
Santa Monica, CA 90405

Morgan Hill, CA
_____, 2023

\$ ____ AMOUNT _____ \$465,222.00

1. BORROWER'S PROMISE TO PAY

FOR VALUE RECEIVED, Cutina Morgan Hill, LLC ("BORROWER") hereby promises to timely pay to the CITY OF MORGAN HILL, a municipal corporation ("CITY" or "NOTE HOLDER") in lawful money of the United States of America, the principal sum of

(\$ _____) (the "PRINCIPAL"), together with interest on the outstanding PRINCIPAL amount, all in accordance with the terms and conditions set forth in this Secured Promissory Note ("NOTE").

The loan evidenced by this SECURED PROMISSORY NOTE ("NOTE") is to secure performance by BORROWER for the payment of fees due to the CITY pursuant to the SEWER/TRAFFIC FEE SECURED FINANCING AGREEMENT (the "Agreement") dated on or about the same date herewith by and between BORROWER and CITY, which is incorporated herein by this reference, and evidences the obligation to repay the Loan. The Sewer/Traffic Fees financed under the Agreement constitute a loan CITY to BORROWER ("LOAN)." The obligations under this NOTE are secured by a Deed of Trust and Assignment of Rents executed by BORROWER and CITY, as Trustor, in favor of that certain Lender identified in said Deed of Trust, as beneficiary (the "DEED OF TRUST") dated substantially concurrently herewith encumbering real property more particularly described in the DEED OF TRUST (the "PROPERTY")..

2. INTEREST RATE AND PAYMENT COMMENCEMENT

A. Payment and Interest Rate.

Payments shall be due under this Note as follows: Beginning the first of the month following the issuance of the Certificate of Occupancy or December 31, 2025, whichever shall occur first, Maker shall make sixty (60) equal monthly payments of Four Hundred Sixty-Five, Two Hundred Twenty-Two **Dollars and 00/100 Dollars (\$465,222.00)** which shall bear fixed interest at the PMIA Average Monthly Effective Yield as determined by the most recent PMIA/LAIF Performance Report rate plus 0.5% as determined on the Initial Payment Date of **XXX and XXX hundredth percent (X.XX%)**, per annum compounded monthly. The monthly installment shall be **\$XXX per month**. The monthly installment payments shall commence on the first of the month following the issuance of the Certificate of Occupancy or December 31, 2025, whichever shall occur first and continuing on the first day of each month thereafter with the remaining balance of

principal due and payable on the first day of the sixty first (61st) month following the date of the issuance of the Certificate of Occupancy or December 31, 2025, whichever shall occur first provided, however, that Maker's obligation to repay this Note may be accelerated in accordance with the Agreement or the terms of this Note. Monthly payments are due on the first day of the month and considered delinquent on the fifth day of the month. BORROWER SHOULD CONSULT WITH BORROWER'S OWN TAX ADVISOR(s) REGARDING ANY TAX EFFECTS ON BORROWER OF THE INTEREST RATE.

B. Acceleration.

Should any sum due hereunder not be paid by the **fifth (5th)** day after written notice of such default is given by the Holder to the Maker, then all sums of unpaid principal and accrued interest may immediately be deemed due and payable and shall thereafter bear interest at the rate of ten percent (10%) per annum, until paid.

3. MATURITY DATE; PAYMENTS

Maturity date is five years after the first payment is made or December 31, 2030, whichever occurs first.

4. BORROWER'S RIGHT TO HAVE THIS NOTE CANCELED UPON PERFORMANCE

BORROWER has an absolute right to have this NOTE cancelled and a Full Reconveyance filed by the CITY immediately following full payment of all principal and all interest due under this NOTE and the Agreement.

5. BORROWER'S FAILURE TO PAY AS REQUIRED

A. Late Charge for Overdue Payments.

Subject to NOTE HOLDER'S compliance with California Civil Code Section 2954.5, as amended or restated from time to time, if NOTE HOLDER has not received the full amount of any payment due under within 5 (five) calendar days after the date it is due, NOTE HOLDER may require BORROWER to pay a late charge to NOTE HOLDER. The amount of the charge will be five percent (5%) of the overdue payment of PRINCIPAL and interest, and the late charge must be paid within ten (10) days after written demand therefor.

B. Default.

If there is a failure to comply with the provisions of this NOTE or the DEED OF TRUST securing this NOTE, and such default is not cured within ten (10) days after written notice from NOTE HOLDER (an "Event of Default"), then NOTE HOLDER may demand that BORROWER pay all outstanding PRINCIPAL and accrued interest. Failure to pay accrued interest and outstanding PRINCIPAL on the Maturity Date shall also be an Event of Default. Upon the occurrence of an Event of Default, NOTE HOLDER may exercise its rights and remedies at law and in equity, including, without limitation, non-judicial foreclosure.

C. No Waiver By NOTE HOLDER.

Even if, at a time when there is an Event of Default, NOTE HOLDER does not require payment immediately in full as described above, NOTE HOLDER will still have the right to require a full payment at a later time.

D. Payment of NOTE HOLDER'S Costs and Expenses.

If NOTE HOLDER has required payment immediately in full as described above, NOTE HOLDER will have the right to be paid by BORROWER for all of its costs and expenses in enforcing this NOTE to the extent not prohibited by applicable law (i.e., BORROWER shall be responsible for collection costs with respect to collection from BORROWER). Those expenses include, for example, attorneys' fees actually incurred by NOTE HOLDER in connection with enforcing this NOTE.

E. Venue.

This Note shall be governed by and construed in accordance with the laws of the State of California. Any action brought to enforce this note shall be brought in the Superior Court of Santa Clara County.

F. Successor and Assigns.

Subject to the foregoing, the terms of this Note shall be binding upon and inure to the benefit of the respective heirs, successors in interest and assigns of BORROWER and NOTE HOLDER.

G. Time is of the Essence.

Time is of the essence with respect to each and every provision hereof. If any provision hereof is found to be invalid or unenforceable by a court of competent jurisdiction, the invalidity thereof shall not affect the enforceability of the remaining provisions of this Note.

6. GIVING OF NOTICES

All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and personally delivered, sent by first class certified mail, postage prepaid, return receipt requested, or sent overnight by a nationally recognized courier service such as Federal Express, addressed to the parties as follows:

CITY:	City Clerk City of Morgan Hill 17575 Peak Avenue Morgan Hill, CA 95037-4128
BORROWER:	Cutina Morgan Hill, LLC Attn: Michelle Della Penna 2801 Ocean Park #193 Santa Monica, CA 90405

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Delivery of any notice or other communication hereunder shall be deemed made on the date of actual delivery thereof to the address of the addressee, if personally delivered, and on the date indicated in the return receipt or courier's records as the date of delivery or as the day after the day of mailing, if sent by first class or certified mail. Any party may change its address for purposes of this Section by giving notice to the other party.

7. SECURED RECOURSE LOAN

Notwithstanding anything to the contrary in this NOTE, the DEED OF TRUST or any other document relating to the LOAN, NOTE HOLDER'S recourse for repayment of the sums owed under this NOTE or under the DEED OF TRUST or any other document relating to the LOAN shall not be limited to the collateral described in the DEED OF TRUST, and BORROWER agrees that NOTE HOLDER may seek or obtain any appropriate relief or remedy, including a deficiency judgment against BORROWER.

8. WAIVERS

BORROWER and any other person who has obligations under this NOTE hereby waive the rights of "presentment" and "notice of dishonor." "Presentment" means the right to require NOTE HOLDER to demand payment of amounts due. "Notice of dishonor" means the right to require NOTE HOLDER to give notice to other persons that amounts due have not been paid.

BORROWER:

[Name and Title]

Date: _____

[Name and Title]

Date: _____

CITY:

By: Mark Turner, Mayor

Date: _____

APPROVED AS TO FORM:

Donald A. Larkin
City Attorney

Date: _____

EXHIBIT 3
Deed of Trust

**RECORDING REQUESTED BY:
AND AFTER RECORDING MAIL TO:**

CITY OF MORGAN HILL
CITY CLERK'S OFFICE
17575 Peak Avenue
Morgan Hill, CA 95037

ATTN: City Clerk

TO BE RECORDED WITHOUT FEE
AS PER GOVERNMENT CODE 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SITUS: [Address] Morgan Hill, CA 95037

APN: [726-58-006]

DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST, made this day of _____, 2023, between Cutina Morgan Hill, LLC., a California Limited Liability Corporation, herein called TRUSTOR, whose address is 2801 Ocean Park #193, Santa Monica, CA 90405 and City of Morgan Hill, herein called TRUSTEE, and the City of Morgan Hill, a municipal corporation, herein called BENEFICIARY, Witnessed: That TRUSTOR IRREVOCABLY GRANTS, TRANSFERS, AND ASSIGNS TO TRUSTEE, IN TRUST, WITH POWER OF SALE, that property in the City of Morgan Hill, County of Santa Clara, California, described as: SEE ATTACHED EXHIBIT "A"

In the event Trustor, without the prior consent of the Beneficiary, sells, agrees to sell, transfers or conveys their interest in the real property or any part thereof or any interest therein, Beneficiary may at its option declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require such consent to future or successive transactions. The terms "Trustor" and "Beneficiary" include their successors.

TOGETHER WITH the rents, issues and profits thereof, SUBJECT HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph (10) of the provisions incorporated herein by reference to collect and enforce the same by any lawful means in the name of any party hereto.

For the purpose of securing: (1) Performance of each agreement of TRUSTOR incorporated by reference or contained herein; (2) Payment of the sum of [\$465,222.00] Four Hundred Thousand Sixty-Five, Two Hundred Twenty-Two Dollars and 00/100s) with interest thereon according to the terms of a promissory note or notes of even date herewith made by Trustors, payable to order of Beneficiary, and extensions or renewals thereof; (3) Payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or their successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To Protect the Security of This Deed of Trust, TRUSTOR Agrees: By the execution and delivery of this Deed of Trust and the note secured hereby, that provisions (1) to (14), inclusive, of the fictitious deeds of trust recorded in the office of County Recorders of the Counties of the State of California on October 25, 1973, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, viz.:

COUNTY	Book	Page	COUNTY	Book	Page	COUNTY	Book	Page	COUNTY	Book
Alameda	3540	89	Kings	1018	394	Placer	1528	440	Sierra	59
Alpine	439		Lake	743	552	Plumas	227	443	Siskiyou	697
	18	753								
Amador	407		Lassen	271	367	Riverside	1973	139405	Solano	1860
	250	243								
	581		Los Angeles	T8512	751	Sacramento	731025	59	Sonoma	2810
Butte	1870	678								
	973		Madera	1176	234	San Benito	386	94	Stanislaus	2587
Calaveras	368	92								

Colusa	332 409 182	347	Marin	2736	463	San Bernardino	8292	877	Sutter	817
Contra Costa	7077 522	178	Mariposa	143	717	San Francisco	B820	585	Tehama	630
Del Norte	174 393	526	Mendocino	942	242	San Joaquin	3813	6	Trinity	161
El Dorado	1229 567	594	Merced	1940	361	San Luis Obispo	1750	491	Tulare	3137
Fresno	6227 309	411	Modoc	225	668	San Mateo	6491	600	Tuolumne	396
Glenn	565 662	290	Mono	160	215	Santa Barbara	2486	1244	Ventura	4182
Humboldt	1213 335	31	Monterey	877	243	Santa Clara	0623	713	Yolo	1081
Imperial	1355 163	801	Napa	922	303	Santa Cruz	2358	744	Yuba	564
Inyo	205	660	Nevada	665	303	Shasta	1195	293		
Kern	4809	2351	Orange	10961	398	San Diego	Series 2		Book 1961,	Page 1838

(which provisions, identical in all counties) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that he will observe and perform said provisions; and that the reference to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

To protect the security of this Deed of Trust, TRUSTOR agrees:

CONDITION OF PROPERTY – To keep the property in good condition and repair; not to remove or demolish any building; to complete and restore any building which may be constructed, damaged or destroyed; to comply with all laws affecting the property or requiring any alterations or improvements to be made; not to commit or permit waste; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of the property may be reasonably necessary.

HAZARD INSURANCE – TRUSTOR will continuously maintain hazard insurance against loss by fire, hazards included within the term “extended coverage,” and any other hazards for which BENEFICIARY requires insurance. The insurance will be maintained in the amounts and for the periods BENEFICIARY requires. The insurance carrier providing the insurance will be chosen by TRUSTOR, subject to BENEFICIARY’s approval, which will not be unreasonably withheld. All insurance policies will be acceptable to BENEFICIARY and contain loss payable clauses acceptable to BENEFICIARY. BENEFICIARY will have the right to hold policies and renewals. In the event of loss, TRUSTOR will give prompt notice to the insurance carrier and BENEFICIARY. BENEFICIARY may make proof of loss if not made promptly by TRUSTOR. BENEFICIARY may place the proceeds in a non-interest bearing account to be used for the cost of reconstruction of the damaged improvements. If TRUSTOR fails to reconstruct, BENEFICIARY may receive and apply the loan proceeds to the principal debt hereby secured, without a showing of impairment.

ATTORNEY FEES – To appear in and defend any action or proceeding purporting to affect the security, or the rights and powers of BENEFICIARY or Trustee; and to pay all costs and expenses, including cost of evidencing title and attorney fees in a reasonable sum, in any such action or proceeding in which BENEFICIARY or Trustee may appear.

TAXES AND SENIOR ENCUMBERANCES – To pay before delinquency: all taxes and assessments affecting the property, including water stock assessments when due, all encumbrances, charges and liens, with interest, on the property which are or appear to be senior to this Deed of Trust; and all expenses of this Deed of Trust. To at its sole expense, retain a tax service and pay property taxes when due for the property. TRUSTOR shall provide BENEFICIARY with proof of payment through the tax service or separately if notice to BENEFICIARY is not provided through the tax service.

ACTS AND ADVANCES TO PROTECT THE SECURITY – If TRUSTOR fails to make any payment or to perform any act provided for in this Deed of Trust, then BENEFICIARY or Trustee may, without obligation to do so, and with or without notice or demand upon TRUSTOR, and without releasing TRUSTOR from any obligation under this Deed of Trust:

- a) Make or do the same to the extent either deems necessary to protect the security, BENEFICIARY or Trustee being authorized to enter upon the property to do so;

- b) Appear in or commence any action or proceeding purporting to affect the security, or the rights or powers of BENEFICIARY or Trustee;
- c) Pay, purchase, contest or settle any encumbrance, charge or lien that appears to be senior to this Deed of Trust. In exercising the power of this provision, BENEFICIARY or Trustee may incur necessary expenses, including reasonable attorney fees. TRUSTOR to immediately pay all sums expended by BENEFICIARY or Trustee provided for in this Deed of Trust, with interest from date of expenditure at the same rate as the principal debt hereby secured.

It is further mutually agreed that:

ASSIGNMENT OF DAMAGES –Any award of damages made in connection with:

- a) Condemnation for use of or injury to the property by the public, or conveyance in lieu of condemnation; or
- b) Injury to the property by any third party; is assigned to BENEFICIARY, who may apply or release the proceeds of such an award in the same manner and with the same effect as above provided for the disposition of hazard insurance proceeds.

WAIVER – By accepting payment of any sum due after its due date, BENEFICIARY does not waive BENEFICIARY's right to either require prompt payment when due of all other sums or to declare a default for failure to pay. BENEFICIARY may waive a default of any agreement of this Deed of Trust, by consent or acquiescence, without waiving any prior or subsequent default.

DUE-ON-SALE – If TRUSTOR sells, transfer or convey any interest in the property, either voluntarily or by operation of law, then BENEFICIARY may, at BENEFICIARY's option, declare all sums secured by this Deed of Trust immediately due and payable. A lease of all or part of the real property by TRUSTOR shall not be deemed to be a sale, transfer or conveyance, under this section.

ASSIGNMENT OF RENTS – TRUSTOR hereby assigns and transfers to BENEFICIARY all right, title and interest in rents generated by the property, including rents now due, past due, or to become due under any use of the property, to be applied to the obligations secured by this Deed of Trust.

- a) Prior to a default on this Deed of Trust by TRUSTOR, TRUSTOR will collect and retain the rents
- b) On default by TRUSTOR, BENEFICIARY will immediately be entitled to possession of all unpaid rents.

SUBORDINATION – TRUSTOR is prohibited from further encumbering the property and may not subordinate this Deed of Trust to any other Deed of Trust or lien, without the prior written consent of BENEFICIARY.

ACCELERATION – If payment of any indebtedness or performance of any agreement secured by this Deed of Trust is in default, BENEFICIARY may at BENEFICIARY's option, with or without notice to TRUSTOR, declare all sums secured immediately due and payable by:

- a) Commencing suit for their recovery or for foreclosure of this Deed of Trust
- b) Delivering to Trustee a written notice declaring a default with demand for sale; a written Notice of Default and election to sell to be recorded by Trustee.

TRUSTEE'S SALE – On default of any obligation secured by this Deed of Trust and acceleration of all sums due, BENEFICIARY may instruct Trustee to proceed with a sale of the secured property under the power of sale granted herein, noticed and held in accordance with California Civil Code §2924 et seq.

TRUSTOR'S OFFSET STATEMENT - Within 10 days of TRUSTOR's receipt of a written request by BENEFICIARY, TRUSTOR will execute a written estoppel affidavit identifying for the benefit of any assignee or successor in interest of BENEFICIARY: the then owner of the secured property; the terms of the secured note, including its remaining principal balance; any taxes or assessments due on the secured property; that the secured note is valid and the TRUSTOR received full and valid consideration for it; and that TRUSTOR understands the note and this Deed of Trust are being assigned.

RECONVEYANCE – Upon written request from BENEFICIARY stating that all sums secured by this Deed of Trust have been paid, surrender of this Deed of Trust and the Promissory Note to Trustee for cancellation, and payment of Trustee's fees, Trustee will reconvey the property held under this Deed of Trust.

SUCCESSORS, ASSIGNS AND PLEDGEEES – This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term BENEFICIARY will mean the holders and owner of the secured note, or, if the note has been pledged, the pledgee.

TRUSTEE’S FORECLOSURE NOTICES – The undersigned TRUSTOR(s) requests a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to TRUSTOR at the address herein set forth.

The undersigned TRUSTOR requests that a copy of any Notice of Default and any Notice of Sale hereunder be mailed to TRUSTOR at the address hereinabove set forth, being the address designated for the purpose of receiving such notice.

The undersigned TRUSTOR requests that a copy of any Notice of Default and any Notice of Sale hereunder be mailed to TRUSTOR at the address hereinabove set forth, being the address designated for the purpose of receiving such notice.

Signatures of Trustor(s)

Cutina Morgan Hill, LLC, a California Limited Liability Corporation
By: _____ Date: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of **CALIFORNIA**)

County of **SANTA CLARA**)

On _____, before me, _____ a
Notary Public in and for said County and State, personally appeared _____

_____,
proved to me on the basis of satisfactory evidence to be the person/s whose name/s is/are subscribed
to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity/ies, and that by his/her/their signature/s on the instrument the person/s, or the
entity upon behalf of which the person/s acted, executed the instrument.

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

Place Notary Seal Above

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

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Signer's Name: _____

Signer Is Representing: Himself/Herself/Themselves

Signer Is Representing: Himself/Herself/Themselves

Signer/s other than listed above: __

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): [726-58-006]

PARCEL ONE: PARCEL 6 AS SHOWN ON THAT CERTAIN MAP ENTITLED AS "PARCEL MAP EVERGREEN VILLAGE" RECORDED ON JULY 17, 2019 IN BOOK 924, PAGES 45-47, SANTA CLARA COUNTY RECORDS.

PARCEL TWO: NON-EXCLUSIVE 60 FOOT WIDE ACCESS EASEMENT AS RETAINED IN THAT CERTAIN GRANT OF RECIPROCAL EASEMENTS, RECORDED JUNE 16, 1989, IN BOOK K988 AT PAGE 1623, OFFICIAL RECORDS, AND AS AMENDED BY THAT CERTAIN AMENDMENT TO GRANT OF RECIPROCAL EASEMENTS RECORDED DECEMBER 16, 1998 AS INSTRUMENT NO. 14554697, OFFICIAL RECORDS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND AS AMENDED BY THAT CERTAIN SECOND AMENDMENT TO GRANT OF RECIPROCAL EASEMENTS RECORDED FEBRUARY 7, 2008 AS INSTRUMENT NO. 19736430, OFFICIAL RECORDS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

PARCEL THREE: NON-EXCLUSIVE EASEMENTS FOR DRAINAGE, ACCESS, INGRESS AND EGRESS, PARKING, AND UTILITIES, ENCROACHMENTS OF CERTAIN IMPROVEMENTS, LANDSCAPING AND CONSTRUCTION OF IMPROVEMENTS, STORM WATER AND DRAINAGE FACILITIES, AND SIGNAGE CONTAINED IN COMMON OPERATION AND RECIPROCAL EASEMENT AGREEMENT, DATED DECEMBER 5, 2018, RECORDED DECEMBER 5, 2018 AS INSTRUMENT NO. 24076332, AS AFFECTED BY FIRST AMENDMENT TO COMMON OPERATION AND RECIPROCAL EASEMENT AGREEMENT, DATED JULY 17, 2019, RECORDED JULY 18, 2019 AS INSTRUMENT NO. 24228167.

SECURED PROMISSORY NOTE

Cutina Morgan Hill, LLC
2801 Ocean Park #193
Santa Monica, CA 90405

Morgan Hill, CA
_____, 2023

\$ ____ AMOUNT _____ 465,222.00

1. **BORROWER'S PROMISE TO PAY**

FOR VALUE RECEIVED, Cutina Morgan Hill, LLC ("BORROWER") hereby promises to timely pay to the CITY OF MORGAN HILL, a municipal corporation ("CITY" or "NOTE HOLDER") in lawful money of the United States of America, the principal sum of Four Hundred Thousand Sixty-Five Two Hundred Twenty-Two Dollars and 00/100s (\$465,222.00) (the "PRINCIPAL"), together with interest on the outstanding PRINCIPAL amount, all in accordance with the terms and conditions set forth in this Secured Promissory Note ("NOTE").

The loan evidenced by this SECURED PROMISSORY NOTE ("NOTE") is to secure performance by BORROWER for the payment of fees due to the CITY pursuant to the SEWER/TRAFFIC FEE SECURED FINANCING AGREEMENT (the "Agreement") dated on or about the same date herewith by and between BORROWER and CITY, which is incorporated herein by this reference, and evidences the obligation to repay the Loan. The Sewer/Traffic Fees financed under the Agreement constitute a loan CITY to BORROWER ("LOAN)." The obligations under this NOTE are secured by a Deed of Trust and Assignment of Rents executed by BORROWER and CITY, as Trustor, in favor of that certain Lender identified in said Deed of Trust, as beneficiary (the "DEED OF TRUST") dated substantially concurrently herewith encumbering real property more particularly described in the DEED OF TRUST (the "PROPERTY")..

2. **INTEREST RATE AND PAYMENT COMMENCEMENT**

A. **Payment and Interest Rate.**

Payments shall be due under this Note as follows: Beginning the first of the month following the issuance of the Certificate of Occupancy or December 31, 2025, whichever shall occur first, Maker shall make sixty (60) equal monthly payments of One **Dollars and One 00/100 Dollars (\$1.00)** which shall bear fixed interest at the PMIA Average Monthly Effective Yield as determined by the most recent PMIA/LAIF Performance Report rate plus 0.5% as determined on the Initial Payment Date of **XXX and XXX hundredth percent (X.XX%)**, per annum compounded monthly. The monthly installment shall **be \$XXX per month**. The monthly installment payments shall commence on the first of the month following the issuance of the Certificate of Occupancy or December 31, 2025, whichever shall occur first and continuing on the first day of each month thereafter with the remaining balance of principal due and payable on the first day of the sixty first (61st) month following the date of the issuance of the Certificate of Occupancy or December 31, 2025, whichever shall occur first provided, however, that Maker's obligation to repay this Note may be accelerated in accordance with the Agreement or the terms of this Note. Monthly payments are due on the first day of the month and considered delinquent on the fifth day of the month.

BORROWER SHOULD CONSULT WITH BORROWER'S OWN TAX ADVISOR(s) REGARDING ANY TAX EFFECTS ON BORROWER OF THE INTEREST RATE.

B. Acceleration.

Should any sum due hereunder not be paid by the **fifth (5th)** day after written notice of such default is given by the Note Holder to the Borrower, then all sums of unpaid principal and accrued interest may immediately be deemed due and payable and shall thereafter bear interest at the rate of ten percent (10%) per annum, until paid.

3. MATURITY DATE; PAYMENTS

Maturity date is five years after the first payment is made or December 31, 2030, whichever occurs first.

4. BORROWER'S RIGHT TO HAVE THIS NOTE CANCELED UPON PERFORMANCE

BORROWER has an absolute right to have this NOTE cancelled and a Full Reconveyance filed by the CITY immediately following full payment of all principal and all interest due under this NOTE and the Agreement.

5. BORROWER'S FAILURE TO PAY AS REQUIRED

A. Late Charge for Overdue Payments.

Subject to NOTE HOLDER'S compliance with California Civil Code Section 2954.5, as amended or restated from time to time, if NOTE HOLDER has not received the full amount of any payment due under within 5 (five) calendar days after the date it is due, NOTE HOLDER may require BORROWER to pay a late charge to NOTE HOLDER. The amount of the charge will be five percent (5%) of the overdue payment of PRINCIPAL and interest, and the late charge must be paid within ten (10) days after written demand therefor.

B. Default.

If there is a failure to comply with the provisions of this NOTE or the DEED OF TRUST securing this NOTE, and such default is not cured within ten (10) days after written notice from NOTE HOLDER (an "Event of Default"), then NOTE HOLDER may demand that BORROWER pay all outstanding PRINCIPAL and accrued interest. Failure to pay accrued interest and outstanding PRINCIPAL on the Maturity Date shall also be an Event of Default. Upon the occurrence of an Event of Default, NOTE HOLDER may exercise its rights and remedies at law and in equity, including, without limitation, non-judicial foreclosure.

C. No Waiver By NOTE HOLDER.

Even if, at a time when there is an Event of Default, NOTE HOLDER does not require payment

immediately in full as described above, NOTE HOLDER will still have the right to require a full payment at a later time.

D. Payment of NOTE HOLDER'S Costs and Expenses.

If NOTE HOLDER has required payment immediately in full as described above, NOTE HOLDER will have the right to be paid by BORROWER for all of its costs and expenses in enforcing this NOTE to the extent not prohibited by applicable law (i.e., BORROWER shall be responsible for collection costs with respect to collection from BORROWER). Those expenses include, for example, attorneys' fees actually incurred by NOTE HOLDER in connection with enforcing this NOTE.

E. Venue.

This Note shall be governed by and construed in accordance with the laws of the State of California. Any action brought to enforce this note shall be brought in the Superior Court of Santa Clara County.

F. Successor and Assigns.

Subject to the foregoing, the terms of this Note shall be binding upon and inure to the benefit of the respective heirs, successors in interest and assigns of BORROWER and NOTE HOLDER.

G. Time is of the Essence.

Time is of the essence with respect to each and every provision hereof. If any provision hereof is found to be invalid or unenforceable by a court of competent jurisdiction, the invalidity thereof shall not affect the enforceability of the remaining provisions of this Note.

6. GIVING OF NOTICES

All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and personally delivered, sent by first class certified mail, postage prepaid, return receipt requested, or sent overnight by a nationally recognized courier service such as Federal Express, addressed to the parties as follows:

CITY:	City Clerk City of Morgan Hill 17575 Peak Avenue Morgan Hill, CA 95037-4128
BORROWER:	Cutina Morgan Hill, LLC 2801 Ocean Park #193 Santa Monica, CA 90405

Delivery of any notice or other communication hereunder shall be deemed made on the date of actual delivery thereof to the address of the addressee, if personally delivered, and on the date indicated in the return receipt or courier's records as the date of delivery or as the day after the day of mailing, if sent by first class or certified mail. Any party may change its address for purposes of this Section by giving notice to the other party.

7. SECURED RECOURSE LOAN

Notwithstanding anything to the contrary in this NOTE, the DEED OF TRUST or any other document relating to the LOAN, NOTE HOLDER'S recourse for repayment of the sums owed under this NOTE or under the DEED OF TRUST or any other document relating to the LOAN shall not be limited to the collateral described in the DEED OF TRUST, and BORROWER agrees that NOTE HOLDER may seek or obtain any appropriate relief or remedy, including a deficiency judgment against BORROWER.

8. WAIVERS

BORROWER and any other person who has obligations under this NOTE hereby waive the rights of "presentment" and "notice of dishonor." "Presentment" means the right to require NOTE HOLDER to demand payment of amounts due. "Notice of dishonor" means the right to require NOTE HOLDER to give notice to other persons that amounts due have not been paid.

BORROWER:

[Name and Title]

[Name and Title]

Date: _____

Date: _____

CITY:

By: Mark Turner, Mayor

Date: _____

APPROVED AS TO FORM:

Donald A. Larkin
City Attorney

Date: _____

CITY COUNCIL STAFF REPORT

MEETING DATE: June 21, 2023

PREPARED BY:

Matthew Mahood, Economic Development Director

APPROVED BY: City Manager

APPROVE AN IMPACT FEE FREEZE AGREEMENT WITH MERSHO INVESTMENTS, LLC AND CLAYTON PLAZA, LLC FOR INDUSTRIAL DEVELOPMENTS ON 6 PARCELS TOTALING 20.14 ACRES IDENTIFIED BY ASSESSOR PARCEL NUMBERS 726-31-038, APN 726-31-025, APN 726-33-026, APN 726-33-025, APN 726-25-026 , AND APN 726-32-025

RECOMMENDATION(S)

1. Approve an Impact Fee Freeze Agreement with Mersho Investments, LLC and Clayton Plaza, LLC for the development of six (6) separate industrial/commercial facilities located throughout Morgan Hill Ranch and Madrone Business Park; and
2. Authorize the City Manager to execute the Impact Fee Freeze Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

Economic Development

Guiding Documents

Economic Blueprint

REPORT NARRATIVE:

On June 21, 2017, the City Council adopted a Development Impact Fee Freeze Program. This program locks the impact fee to a specific date for a period of three years, giving the developer increased certainty as to the costs they will incur and creating an incentive to help offset the ever-increasing cost of new development. In return, the developer agrees to develop and apply for building permits within the three-year period.

Most recently, in May 2022, City Council received an update on the Impact Fee Freeze Program. At this time, the City Council established and locked City's Impact Fees to the

Impact Fees at the time of the executed agreement for up to three years for new commercial and industrial development provided the prospective development secures entitlements and submits for building permits within three years of the date of the agreement.

Details and Analysis:

Mersho Investments LLC and Clayton Plaza LLC, (the Developer) whose principals are the founding family of Shoe Palace and have made other significant investments in our community, are proposing to develop approximately 407,323 square feet of new speculative commercial/industrial facilities across six (6) parcels totaling 22.54 acres located throughout the Morgan Hill Ranch and Madrone Business Parks. The specific locations and detail are:

Address	Application #	APN	Acres	Proposed Building Square Footage
760 Jarvis	BCOM2022-0013	726-31-038	2.4	43,900
645- 741 Jarvis Dr - Mersho #1	SR2022-004	726-31-025	2.40	42,578
850 LightPost Way - Mersho #2	SR2022-005	726-33-026	3.39	54,299
18635 Madrone Pkwy - Mersho #3	SR2022-006	726-33-025	5.03	92,260
887-895 Jarvis Dr- Mersho #4	SR2022-007	726-25-026	7.00	132,270
626-666 Jarvis Dr - Mersho #5	SR2022-008	726-32-025	2.32	42,000
		Totals	22.54	407,323

The Mersho family has submitted plans to the City and is currently seeking entitlements to the above-mentioned projects with the anticipation that they will submit building plans once their sites have been approved. The proposed Impact Fee Agreement will utilize the most recent development impact fee schedule, updated May 15, 2023 (Attachment 2). The developer will have until June 30, 2026, to apply for, and receive building permits, to benefit from the impact fee freeze. The estimated impact fees using the most recent Fee Schedule are \$5,420,249.

Once completed and operational, it is estimated the new 407,323 square feet of commercial/industrial space could generate in excess of \$81,000 in new property tax, assuming a Santa Clara County assessment rate of approximately \$200 per square foot. In addition, depending upon the buildings' specific end users, sales tax revenue may be generated as well. Both sales tax and property tax contribute to the City's General Fund. If the Developer applies for building permits before July 2024, the estimated benefit received to the developer from the impact freeze is \$216,810. If the developer applies for building permits after July 2024, but before July 2025, the estimated benefit of the impact freeze is estimated at \$442,292. If the developer applies for building permits after July 2025, but before July 2026, the estimated benefit of the impact freeze is estimated at \$676,794. The estimates assume that the City's Impact Fees will increase at a rate of 4% per year. While the developer receives cost savings for each year the project is deferred, it is very likely that the cost of construction will

continue to escalate in the coming years and therefore continued delays on building permit submittal will likely cost the developer more than the savings received from an impact fee freeze.

Year	Agreement Base Year	2024*	2025*	2026*
Impact Fee Schedule	05/15/2023	2023/2024	2024/2025	2025/2026
Impact Fee Estimate	\$ 5,420,249	\$ 5,637,059	\$ 5,862,541	\$ 6,098,842
Potential Savings to Development		\$ (216,810)	\$ (442,292)	\$ (676,794)
*Estimated fee escalation of 4% per year				

Conclusion

Approving a Fee Freeze Agreement with Mersho Investments, LLC is consistent with the Impact Fee Freeze Program and aligns with the Economic Blueprint Strategy #3 “Attract New Development,” Action #5, “Explore Incentive Programs to Attract Industry Specific Development.”

COMMUNITY ENGAGEMENT:

Inform

The table below addresses the requirements set forth in State of California AB 562 (Government Code 53083) for publication of information related to an economic development subsidy and public hearings.

Name/address of the beneficiary of the subsidy: Mersho Investments, LLC
Clayton Plaza, LLC
5752 Country Club Pkwy
San Jose, CA 95138

Start and end dates, schedule for the subsidy: The Fee Freeze Agreement is for a period of three years, starting June 30, 2023 and ending June 30, 2026.

Describe the subsidy, estimated total amount of expenditure of public funds or revenue lost: The Impact Fee Freeze Agreement allows the beneficiary to lock-down the project impact fees at the current year's Impact Fee Schedule for a period of up to three years. Impact Fees must be paid by the beneficiary prior to receiving building permits. The potential revenue lost ranges from \$216,810 in year 1, \$442,292 in year 2 and \$676,794 in year three.

State of public purpose: Expand and enhance economic opportunities for businesses in the City, continue to expand the City's employment base, and continue to generate the hereinafter defined Property Tax and Sales Tax that the City can utilize to fund general governmental services such as police, fire, street maintenance, and parks and recreation programs.

Projected tax revenue: The projected increase in property tax collected

Estimated number of jobs created by subsidy:

from improvements to these sites is approximately \$81,000 annually. The construction of these six projects will generate approximately 200 temporary construction jobs. When the projects are completed and occupied, they could generate hundreds of new full-time jobs of varying skills levels and educational requirements.

ALTERNATIVE ACTIONS:

The City of Morgan Hill could choose not to enter into a Fee Freeze Agreement with Mersho Investments and Clayton Plaza to freeze impact fees. This option potentially saves the City at minimum \$216,810 in impact fee revenue, but it also puts the project at risk of not being completed.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In June 2017, City Council approved the Citywide Impact Fee Freeze Program establishing FY 2016-17 Development Impact Fees as the basis for the three-year term for any new commercial/industrial development project that enters into a Development Agreement for an Impact Fee Freeze approved by City Council.

In June 2020, City Council reviewed the Impact Fee Freeze Program and established FY 2017-18 Development Impact Fees as the basis for the three-year term for any new commercial/industrial development project that enters into a Development Agreement for an Impact Fee Freeze approved by City Council.

In May 2022, City Council received an update on the Impact Fee Freeze Program. At this time, the City Council established and locked City's Impact Fees to the Impact Fees at the time of the executed agreement for up to three years for new commercial and industrial development provided the prospective development secures entitlements and submits for building permits within three years of the date of the agreement.

FISCAL AND RESOURCE IMPACT:

The potential loss of revenue to the City from entering into this Impact Fee Freeze Agreement is expected to range between \$216,810 to \$676,794. On the other hand, the City expects to receive one-time construction benefit of construction jobs and ancillary economic impact in the form of sales tax from local spending. Once operational, the City could receive an ongoing additional property tax revenue of approximately \$81,000 per year to the City's General Fund.

CEQA (California Environmental Quality Act):

Not a Project

An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, which included the General Plan Update, was prepared in accordance with the California

Environmental Quality Act (CEQA) and certified by the Morgan Hill City Council on July 27, 2016. Commercial and industrial development as discussed above is consistent with the general plan policies for which the EIR was certified. There is no substantial evidence that freezing impact fees will have a significant effect on the environment beyond that already analyzed in the certified EIR; therefore, no further environmental analysis is required.

Any project specific development that occurs in the future will undergo an independent analysis pursuant to the requirements of CEQA.

IMPACT FEE FREEZE AGREEMENT

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

MERSHO INVESTMENTS LLC, AND

CLAYTON PLAZA LLC

**IMPACT FEE FREEZE AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
MERSHO INVESTMENTS LLC, AND
CLAYTON PLAZA, LLC**

This Impact Fee Freeze Agreement (the "Agreement") is entered into as of June 21, 2023, by and between Mersho Investments LLC, a California Limited Liability Corporation and Clayton Plaza LLC, a California Limited Liability Corporation (the "Developer") and the City of Morgan Hill, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), with reference to the following facts and purposes:

RECITALS

The following recitals are a substantive portion of this Agreement:

- A. Pursuant to the authority of Morgan Hill Municipal Code Sections 3.56.095, 12.02.115, and Resolution Numbers 17-052 and 18-013, and as amended by City Council action on May 18, 2022, the City has established an Impact Fee Freeze Program (the "Program") to freeze Development Impact Fees to the time of the executed agreement for up to three years for new commercial/industrial construction.
- B. Developer owns or leases certain real property in the City described in the attached Exhibit A (the "Subject Property") upon which improvements are to be made for new industrial/commercial projects (the "Projects").
- C. The purpose of this Agreement is to lock in the Development Impact Fees for the Project. The Project's Development Impact Fees will be locked in at the rate set in the Fiscal Year 2022-23 Impact Fee Schedule (dated 05-15-2023) attached hereto and incorporated herein as Exhibit B.
- D. Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in annual changes to Development Impact Fees, provide for the orderly development of the Projects consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Impact Fee Program was adopted.
- E. When constructed and open the Projects will generate Property Tax and Sales Tax for the City creating a public benefit which is required in order to enter into this Agreement.

ARTICLE 1
ADMINISTRATION

1.01 Definitions.

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

(1) **"Impact Fees"** shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 et seq.

(2) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

(3) **"New City Laws"** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes **"Legal Effect"** after the Effective Date of this Agreement, and that applies City wide. **"Effective Date"** shall mean the date this Agreement is fully executed by both parties following approval of the Agreement by the City Council.

(4) **"Project Approvals"** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.

(5) **"Property"** shall mean that certain real property consisting of approximately 22.54 acres located within the City, as more particularly described and shown on ***Exhibit A*** to this Agreement with Assessor Parcel Numbers (APN) 72631038, APN 72631025, APN 72633026, APN 72633025, APN 72625026, and APN 72632025.

(6) **"Subsequent Approvals" and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law.

1.02 Term.

The term ("**Term**") of this Agreement shall commence on the Effective Date, and then shall continue until June 30, 2026, or the issuance of all building permits and commencement of construction for the Project, whichever occurs first.

ARTICLE 2

APPLICABLE LAW

2.01 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Project (and the Developer who is the owner of same). Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use.

(b) Impact Fees. As part of the Project's exclusive obligation (and the Developer's as the owner of same) to cover Project Mitigation, Developer shall pay all Impact Fees as described in Exhibit B at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code, except as otherwise described and reduced by this Agreement. The Project's Impact Fees are frozen at the level set in the Impact Fee Schedule for Fiscal Year 2022-23 (dated 05-15-2023) Impact Fee Schedule in the attached Exhibit B, as long as all the building permits are obtained, and construction commenced on or before June 30, 2026 on each of the proposed sites.

(c) Processing Fees. The Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, environmental studies

required under CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Project (including Developer as owner of same). Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use an additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.02 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.03 Timing of Development.

Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes, as these exist on the Effective Date. In the event Developer fails to comply with the above permit issuance and commence construction no later than June 30, 2026 this Agreement shall expire. The deadline may be extended at the sole discretion of the City Manager should Developer face unreasonable delays beyond its control.

2.04 New City Laws.

(a) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level) , or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(b) City shall not be precluded from adopting new Impact or Development Fees that are not included in the Fiscal Year 2022-23 Impact Fee Schedule. These fees include but are not limited to those fees which were adopted or implemented after the 2022-23 Impact Fee Schedule up to the date of building permit issuance for the Project.

ARTICLE 3
PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. For any Subsequent Approvals necessary for the Project, this Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, if and only if such Subsequent Approvals are compliant with all controlling California law (including proper Planning and Zoning Law and CEQA compliance), have secured approval of the Parties, and are adopted/approved by City, which shall retain all lawful discretion in this regard. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law.

3.02 Significant Actions by Third Parties Necessary to Implement the Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

ARTICLE 4
DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Resolution of Disputes.

(a) In the event either Party is in default under the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action

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

(c) The Parties agree to meet and confer regarding any dispute, in an effort to agree on utilizing Judicial Arbitration Mediation Services ("**JAMS**") for Alternative Dispute Resolution ("**ADR**"). However, no party shall be required to use JAMS or ADR.

4.02 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.03 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review under CEQA ("**Third Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge. Third Party Challenge shall include all City legal fees, costs including but not limited to staff costs should a local initiative which results in blocking or slowing the Project be approved by the voters and City in its reasonable discretion determines that a judicial action should be filed concerning the initiative or City is sued concerning the initiative.

(b) City shall have the option to defend such Third Party Challenge or to tender the complete defense of such Third Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City's attorneys' fees and costs (including related court costs).

(c) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorneys' fees and costs (including related court costs) and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys' fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.04 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

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

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

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within thirty(30) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the thirty (30) day period, as provided for in Section 4.04(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute

conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.05 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.02, or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

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

(b) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced under or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(c) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private property and the owners of such private property.

(d) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of

whether or not City has prepared, supplied or approved of, plans and/or specifications for the Project. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(e) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(f) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective Party as follows:

<u>If to City:</u>	City Clerk 17575 Peak Avenue Morgan Hill, CA 95037 Tel: (408) 779-7259 Fax: (408) 779-3117
<u>With a Copy To:</u>	City Attorney 17575 Peak Avenue Morgan Hill, CA 95037 Tel: (408) 779-7271 Fax: (408) 779-1592
<u>If to Developer:</u>	Mersho Investments LLC 5752 Country Club Pkwy San Jose, CA 95138 Clayton Plaza LLC 5752 Country Club Pkwy San Jose, CA 95138

With a Copy To:

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(g) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(h) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California.

(i) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(j) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(k) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(l) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Lots on Which Projects are to be Located.

Exhibit B 2022-23 Impact Fee Schedule (dated 05-15-2023)

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

CITY OF MORGAN HILL:

s/_____

Christina J. Turner
City Manager

Date: _____

Attest:

DEVELOPER:

s/_____

George Mersho
Managing Member

*Corporate entities must provide a
second signature:*

s/_____

Ralph Mersho
Managing Member

s/ _____

Date: _____

Deputy City Clerk

Approved as to Form:

s/ _____

Donald A. Larkin
City Attorney

Date: _____

EXHIBIT A

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

APN: 726-31-038

Real property in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL ONE:.

PARCEL 2 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JULY 29, 1997, IN BOOK 691 OF MAPS, PAGE 46 AND 47.

PARCEL TWO:

RECIPROCAL RIGHTS OF INGRESS AND EGRESS, AS AN APPURTENANCE TO PARCEL ONE ABOVE, OVER THOSE PORTIONS OF PARCEL 3 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED JULY 29, 1997, IN BOOK 691 OF MAPS, PAGES 46 AND 47, SHOWN AS "30' PRIVATE ACCESS ESMT".

APN: 726-31-025

Real property in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL 2, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON FEBRUARY 7, 1997, IN BOOK 686 OF MAPS AT PAGES 1 AND 2.

APN: 726-33-026

Real property in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL O, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA RECORDED ON OCTOBER 13, 2000, IN BOOK 733 OF MAPS PAGES 11 AND 12.

APN: 726-33-025

Real property in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL N, AS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED, "PARCEL MAP", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON OCTOBER 13, 2000 IN BOOK 733 OF MAPS, AT PAGES 11 AND 12.

APN: 726-25-026

Real property in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL 3 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 3, 1998, IN BOOK 700 OF MAPS, PAGES 30, 31 AND 32.

APN: 726-32-025

Real property in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL ONE: PARCEL 2 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON MAY 4, 1998, IN BOOK 701 OF MAPS, PAGE(S) 39 AND 40.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT, APPURTENANT TO PARCEL ONE ABOVE, FOR VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS OVER THE DRIVEWAY PORTION OF SAID LAND BEING THE SOUTHEASTERLY 17 FEET OF PARCEL 1, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP BEING A SUBDIVISION OF PARCEL 3-A AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN BOOK 584 OF MAPS, PAGES 5 AND 6, SANTA CLARA COUNTY RECORDS," WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON MAY 4, 1998 IN BOOK 701 OF MAPS, PAGES 39 AND 40, AS GRANTED IN THAT CERTAIN INSTRUMENT ENTITLED "RECIPROCAL EASEMENT AND OPERATION AGREEMENT RECORDED MAY 15, 1998 UNDER SERIES NO. 14185906, OFFICIAL RECORDS.

EXHIBIT B
2022-23 (05-15-2023) Impact Fee Schedule



CITY OF MORGAN HILL PUBLIC WORKS DEPARTMENT
17575 Peak Avenue Morgan Hill CA 95037 - Office (408) 778-6480 Fax (408) 779-7236

FEE SCHEDULE: 05.15.2023

PROJECT INFO

TRACT # / APN: _____
ADDRESS / LOT: _____
PROJECT DESC: _____

DATE PREPARED: _____

EXPIRATION DATE: _____

CALCULATED BY: _____

CHECKED BY: _____

APPLICANT INFO

APPLICANT NAME: _____
MAILING ADDRESS: _____
CITY, STATE, ZIP: _____
PHONE NUMBER: _____

BUILDING PERMIT #: _____

BLD PERMIT DATE: _____

☐ THIS FEE SCHEDULE IS ESTIMATE ONLY

MULTI-FAMILY IS DEFINED AS ANY UNIT WITH TWO BEDROOMS OR LESS.
SINGLE FAMILY IS DEFINED AS ANY UNIT WITH 3 BEDROOMS OR MORE.

1. METER DEPOSIT (149): **650-37672** Subtotal: \$0

1"	\$573	x	0	=	\$0
1 1/2"	\$1,782	x	0	=	\$0
2"	\$2,010	x	0	=	\$0
* 4"	\$3,999	x	0	=	\$0
* 6"	\$12,218	x	0	=	\$0
* 8"	\$18,163	x	0	=	\$0
* For meters 3" and greater, arrangements shall be made for the meters to be picked up at the City Corporation Yard located at 100 Edes Court.					
** 5/8"	-\$277	x	0	=	\$0
** 3/4"	-\$322	x	0	=	\$0

** Credit for 5/8" and 3/4" existing meter (if applicable)

2. BACKFLOW CONST. INSPECTION (154): **650-37859** Subtotal: \$0

\$76 x 0 Each = \$0

3a. WATER FRONTAGE CHARGE (146): **650-37663** Subtotal: \$0

1 Side	\$82	x	0	LF	=	\$0
2 Sides	\$45	x	0	LF	=	\$0

3b. SEWER FRONTAGE CHARGE (146): **640-37663** Subtotal: \$0

1 Side	\$82	x	0	LF	=	\$0
2 Sides	\$45	x	0	LF	=	\$0

3c. STORM FRONTAGE CHARGE (135): **304-37663** Subtotal: \$0

1 Side	\$134	x	0	LF	=	\$0
2 Sides	\$65	x	0	LF	=	\$0

3d. UNDERGROUNDING UTILITIES (145): **350-37649** Subtotal: \$0

1 Side	\$845	x	0	LF	=	\$0
2 Sides	\$427	x	0	LF	=	\$0

4. WATER CAPACITY FEE:					651-37648	Subtotal:	\$0
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5/8-1 inch meter	\$11,692	x	0	=	\$0
1.5-inch meter	\$23,385	x	0	=	\$0
2-inch meter	\$37,415	x	0	=	\$0
3-inch meter	\$74,830	x	0	=	\$0
4-inch meter	\$116,923	x	0	=	\$0
6-inch meter	\$233,845	x	0	=	\$0
8-inch meter	\$374,152	x	0	=	\$0

WATER CREDITS	\$0	/	x	0	/	=	\$0
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5. SEWER IMPACT FEE:					641-37648	Subtotal:	\$0.00
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Single Family	\$19,206	/DU	x	0	DU	=	\$0
Multi Family	\$16,255	/DU	x	0	DU	=	\$0
Senior/Downtown	\$16,255	/DU	x	0	DU	=	\$0
Commercial	\$63.25	/GPD	x	0	GPD	=	\$0
Industrial	\$63.25	/GPD	x	0	GPD	=	\$0
Office	\$63.25	/GPD	x	0	GPD	=	\$0
Auto Dealership	\$63.25	/GPD	x	0	GPD	=	\$0
Hotel	\$63.25	/GPD	x	0	GPD	=	\$0
Secondary DU	TBD	/DU	x	0	DU	=	\$0

SEWER CREDITS	\$0	/	x	0	/	=	\$0
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6. STORM DRAIN IMPACT FEE:					303-37648	Subtotal:	\$0
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Single Family	\$2,434	/DU	x	0	DU	=	\$0
>1,200 SF Multi Family	\$1,386	/DU	x	0	DU	=	\$0
< 1,200 SF Multi Family	\$645	/DU	x	0	DU	=	\$0
>1,200 SF Senior/Downtown	\$1,386	/DU	x	0	DU	=	\$0
< 1,200 SF Senior/Downtown	\$645	/DU	x	0	DU	=	\$0
Commercial	\$26,359	/ACRE	x	0	AC	=	\$0
Industrial	\$19,407	/ACRE	x	0	AC	=	\$0
Office	\$26,359	/ACRE	x	0	AC	=	\$0
Auto Dealership	\$26,359	/ACRE	x	0	AC	=	\$0
Hotel	\$390	/ROOM	x	0	RM	=	\$0
Secondary DU	TBD	/DU	x	0	DU	=	\$0

STORM CREDITS	\$0	/	x	0	/	=	\$0
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7. TRAFFIC IMPACT FEE:					309-37648	Subtotal:	\$0.00
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Single Family	\$4,230	/DU	x	0	DU	=	\$0
>1,200 SF Multi Family	\$2,621	/DU	x	0	DU	=	\$0
< 1,200 SF Multi Family	\$1,650	/DU	x	0	DU	=	\$0
>1,200 SF Senior/Downtown	\$2,621	/DU	x	0	DU	=	\$0
< 1,200 SF Senior/Downtown	\$1,650	/DU	x	0	DU	=	\$0
Secondary DU	TBD	/DU	x	0	DU	=	\$0
Commercial	\$4,230	/PHT	x	0	PHT	=	\$0
Industrial	\$4,230	/PHT	x	0	PHT	=	\$0
Office	\$4,230	/PHT	x	0	PHT	=	\$0
Auto Dealership	\$4,230	/PHT	x	0	PHT	=	\$0
Hotel	\$4,230	/PHT	x	0	PHT	=	\$0

TRAFFIC CREDITS	\$0	/PHT	x	0	PHT	=	\$0
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8a. PARK IMPACT FEE:					301-37648	Subtotal:	\$0
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Subdivision: Single Family	\$7,283	/DU	x	0	DU	=	\$0
Multi Family	\$7,017	/DU	x	0	DU	=	\$0
Senior/Downtown	\$4,806	/DU	x	0	DU	=	\$0
Secondary DU	TBD	/DU	x	0	DU	=	\$0
No Subdivision Single Family	\$5,295	/DU	x	0	DU	=	\$0
Multi Family	\$5,107	/DU	x	0	DU	=	\$0
Senior/Downtown	\$3,495	/DU	x	0	DU	=	\$0
Secondary DU	TBD	/DU	x	0	DU	=	\$0

PARK CREDITS	\$0	/	x	0	/	=	\$0
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8b. QUIMBY / PARKLAND IN-LIEU FEE					375-37648	Subtotal:	\$0.00
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\$0	/	x	0	EA	=	\$0
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8c. PARK MAINTENANCE DEV. FEE:					302-37649	Subtotal:	\$0
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\$0	/	x	0	EAC	=	\$0
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9. PUBLIC FACILITIES IMPACT FEE:						347-37648	Subtotal:	\$0
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Single Family	\$693	/DU	x	0	DU	=	\$0
Multi Family	\$667	/DU	x	0	DU	=	\$0
Senior/Downtown	\$458	/DU	x	0	DU	=	\$0
Secondary DU	TBD	/DU	x	0	DU	=	\$0
Commercial	\$1,527	/ACRE	x	0	AC	=	\$0
Industrial	\$2,138	/ACRE	x	0	AC	=	\$0
Office	\$1,815	/ACRE	x	0	AC	=	\$0
Auto Dealership	\$612	/ACRE	x	0	AC	=	\$0
Hotel	\$18	/ROOM	x	0	RM	=	\$0

PUBLIC FACILITIES CREDITS	\$0	/	x	0	/	=	\$0
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10. LIBRARY IMPACT FEE:						348-37648	Subtotal:	\$0
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Single Family	\$2,674	/DU	x	0	DU	=	\$0
Multi Family	\$2,576	/DU	x	0	DU	=	\$0
Senior/Downtown/SDU	\$1,764	/DU	x	0	DU	=	\$0
Secondary DU	TBD	/DU	x	0	DU	=	\$0

LIBRARY CREDITS	\$0	/	x	0	/	=	\$0
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11. COMMNTY/REC CNTRS IMPACT FEE:						360-37648	Subtotal:	\$0
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Single Family	\$4,960	/DU	x	0	DU	=	\$0
Multi Family	\$4,352	/DU	x	0	DU	=	\$0
Senior/Downtown	\$3,284	/DU	x	0	DU	=	\$0
Secondary DU	TBD	/DU	x	0	DU	=	\$0

COMMNTY/REC CNTRS CREDITS	\$0	/	x	0	/	=	\$0
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12. PUBLIC SAFETY FACILITIES IMPACT FEE:						315-37648	Subtotal:	\$0
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Single Family	\$2,434	/DU	x	0	DU	=	\$0
>1,200 SF Multi Family	\$2,152	/DU	x	0	DU	=	\$0
< 1,200 SF Multi Family	\$1,612	/DU	x	0	DU	=	\$0
>1,200 SF Senior/Downtown	\$2,152	/DU	x	0	DU	=	\$0
< 1,200 SF Senior/Downtown	\$1,612	/DU	x	0	DU	=	\$0
Secondary DU	TBD	/DU	x	0	DU	=	\$0
Commercial	\$13,602	/ACRE	x	0	AC	=	\$0
Industrial	\$16,326	/ACRE	x	0	AC	=	\$0
Office	\$16,307	/ACRE	x	0	AC	=	\$0
Auto Dealership	\$6,524	/ACRE	x	0	AC	=	\$0
Hotel	\$75	/ROOM	x	0	RM	=	\$0

PUBLIC SAFETY FACILITIES CREDITS	\$0	/	x	0	/	=	\$0
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13. ENGINEERING & INSPECTION FEE (112):						206-38734	Subtotal:	\$0
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ENGR ESTIMATE:	\$0	35.29%	\$1	to	\$100,000	=	\$0
ENGR EST. DATE:		18.16%	\$100,001	to	\$200,000	=	\$0
		13.74%	\$200,001	to	\$500,000	=	\$0
		11.56%	\$500,001	to	\$1,000,000	=	\$0
		1.98%	\$1,000,001	to	\$5,000,000	=	\$0
		4.63%	over		\$5,000,000	=	\$0
DEPOSIT PAID						=	\$0

14. LONG RANGE PLANNING FEE (127):						207-37912	Subtotal:	\$0
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LONG RANGE PLANNING FEE (15% of E&I)	=	\$0
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15. GIS/TECHNOLOGY FEE (128):						206-37913	Subtotal:	\$0
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GIS/TECHNOLOGY FEE (5% of E&I)	=	\$0
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16. MAP CHECKING FEE (101):						206-38716	Subtotal:	\$0
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PARCEL MAP:	\$8,725	=	\$0
TRACT/SUBD. MAP:	\$10,309	=	\$0

17. OTHER FEES:

 Subtotal: \$0

Cert. of Compliance - LLA /Merger (94)	\$ 6,875	206-38712	=	\$0
Parcel Map - LLA /Merger (100)	\$ 7,396	206-38712	=	\$0
Additional Plan Review (105)	\$ 230 /hr	206-38734	=	\$0
- 4th submittal and up, at \$230/hr with 2-hour min. charge, OT at \$265/hr				
Plan Revisions (114)	\$ 230 /hr	206-38719	=	\$0
- Revision after approval of public improvement plans, at \$230/hr with 2-hour min. charge, OT at \$265/hr				
Engineering Services:				
- Consultation (102)	\$ 230 /hr	206-38719	=	\$0
* Consultation at fully burdened rate at \$230/hr, OT at \$265/hr				
- Preliminary Review (103)	\$ 2,300	206-38719	=	\$0
- Preliminary Fee Estimate (104)	\$ 345	206-38719	=	\$0
- Complexity Fee (106)	\$ 2,760	206-38719	=	\$0
- Re-inspection Fee (107)	\$ 230 /hr	206-38734	=	\$0
* Re-inspection fee at \$230/hr with 4-hour min. charge, OT at \$265/hr				
Public Easement Review (113)	\$ 3,106	206-38737	=	\$0
Street Vacation Review (115)	\$ 8,972	206-38737	=	\$0
Easement Abandonment (116)	\$ 8,972	206-38737	=	\$0
Reimbursement Agreement (119)	\$ 4,946	206-38741	=	\$0
FEMA Compliance (110)				
New Structure Application	\$ 965	206-38725	=	\$0
New Acc. Struct. or ADU Application	\$ 735	206-38725	=	\$0
Improvement of Existing Structure				
Non-substantial Imp w/o detailed revie	\$ 549 /structure	206-38725	=	\$0
Non-substantial Imp w/ detailed review	\$ 779 /structure	206-38725	=	\$0
Substantial Imp (except Acc. Struct.)	\$ 1,252 /structure	206-38725	=	\$0
Substantial Imp of Acc. Struct.	\$ 850 /structure	206-38725	=	\$0
FEMA Elevation Certificate Review	\$ 633 /structure	206-38725	=	\$0
FEMA Flood Field Inspection	\$ 575	206-38725	=	\$0
FEMA Flood Study Valley Water Coord.	\$ 1,495	206-38725	=	\$0
Review of CLOMR/F, LOMR/F	\$ 920	206-38725	=	\$0
FEMA Pub. Outreach LOMR/F	\$ 1,380	206-38725	=	\$0
BFE Determination (Zone A w/o BFE or Zone D)	\$ 460	206-38725	=	\$0
Stormwater Runoff Management Plan (SWRMP) Review (111)				
Tier 1 Project	\$ 2,645	206-38734	=	\$0
Tier 2 Project	\$ 6,901	206-38734	=	\$0
Tier 3 Project	\$ 9,892	206-38734	=	\$0
Tier 4 Project	\$ 11,962	206-38734	=	\$0
Erosion & Sediment Control/SWPPP Document Review (129)				
Type 1 & 2 Projects: <1 Acre Soil Dist	\$ 518	206-37687	=	\$0
Type 1 & 2 Projects: >1 Acre Soil Dist	\$ 863	206-37687	=	\$0
Type 3 Projects	\$ 403	206-37687	=	\$0
Type 4 Projects	\$ 288	206-37687	=	\$0
Stormwater Construction Inspections (130)				
Type 1 & 2 Projects: <1 Acre Soil Dist	\$ 9,179	206-37688	=	\$0
Type 1 & 2 Projects: >1 Acre Soil Dist	\$ 16,367	206-37688	=	\$0
Type 3 & 4 Projects	\$ 93	206-37688	=	\$0
Stormwater Post-Construction BMP Initial Setup (140)				
Base Fee & 1st BMP	\$ 660	206-38734	=	\$0
Each Additional BMP	\$ 132 /BMP	206-38734	=	\$0
Assessment District Reapportionment (137), see separate appl. with fee				
Private Sanitary Agreement (138)	\$ 2,645	206-38719	=	\$0
Stormwater O&M Agreement (139)	\$ 2,070	206-38719	=	\$0
Agreement Extensions/Amendments (143)				
With City Manager Approval	\$ 2,876	206-38719	=	\$0
With City Council Approval	\$ 4,371	206-38719	=	\$0
RDCS School Pedestrian Safety	\$	355-37655	=	\$0
RDCS Public Facilities	\$	346-37649	=	\$0
RDCS Park Development	\$	302-37649	=	\$0
RDCS Public Facilities Circulation	\$	346-37649	=	\$0
RDCS LED Streetlight Fund	\$	010-37722	=	\$0

TOTAL FEES DUE: \$0.00
TOTAL FEES DUE: (with 2% Credit Card Fee) \$0.00

CITY COUNCIL STAFF REPORT

MEETING DATE: June 21, 2023

PREPARED BY:

Lynette Kong, Associate Engineer

APPROVED BY: City Manager

ADOPT A RESOLUTION OF LOCAL SUPPORT AND AUTHORIZE THE FILING OF AN OBAG 3 FUNDING APPLICATION FOR THE MONTEREY ROAD TRAFFIC, BICYCLE, AND PEDESTRIAN IMPROVEMENTS PROJECT

RECOMMENDATION(S)

Adopt a Resolution of Local Support and authorize the filing of an application for funding assigned to the Metropolitan Transportation Commission (MTC) and committing any necessary matching funds and stating assurance to complete the project.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

Transportation

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

Morgan Hill 2035 General Plan

Vision Zero

REPORT NARRATIVE:

The Metropolitan Transportation Commission (MTC) created the One Bay Area Grant program (OBAG) in May 2012 to incorporate the region's discretionary transportation funding from the Federal Highway Administration (FHWA) with Plan Bay Area 2050 goals. There have been two previous OBAG program cycles where the City received grant funding from both cycles for the following projects: Monterey Road Preservation (OBAG Cycle 1) and East Dunne Avenue Rehabilitation Project (OBAG Cycle 2). MTC adopted the program's third round of funding (OBAG 3) in January 2022 and includes over \$750 million in federal funding for projects to be funded from 2023 through 2026. The OBAG 3 program is divided into a Regional Program, managed by MTC, and a County and Local Program, managed by MTC in partnership with the nine Bay Area County Transportation Agencies (CTAs). The Santa Clara Valley Transportation

Authority (VTA) is the CTA for Santa Clara County. The City's current funding application filing request is for the County and Local Program.

MTC adopted the final OBAG 3 program guidelines for the County and Local Program on March 23, 2022 with program changes from previous program cycles. One significant change is that MTC will no longer provide guaranteed fund amounts for each county, but MTC will provide fund targets for the OBAG 3 County and Local Programs. The fund target for Santa Clara County is \$91 million. Another significant change is that MTC will no longer allow guaranteed funding amounts for the local streets and roads rehabilitation program and all project types will have to compete on both the local and regional levels for funding.

In 2022, staff submitted an OBAG 3 competitive grant funding application for \$3,921,000 for the construction phase of the Monterey Road Traffic, Bicycle, and Pedestrian Improvements Project. The project's location is on Monterey Road from Cochrane Road to East Middle Avenue and will consist of the following improvements: slurry sealing; buffered bicycle lane treatments; green colored bicycle lane striping enhancements for bicycle facilities at intersections, conflict points, and their approaches; sidewalk gap closures; replace portions of striped center medians with raised concrete medians at specific locations; new and/or upgraded curb ramp improvements; and bicycle and pedestrian signage improvements.

The City's project was adopted into MTC's OBAG 3 grant programming through a two-step competitive grant application process:

1. Staff submitted the grant application to VTA on July 25, 2022 for review and scoring for VTA's prioritized project list. The City's project application scored well and was included on VTA's prioritized project list, which was adopted by VTA's Board on October 6, 2022.
2. MTC reviewed VTA's prioritized project list for Santa Clara County and MTC's Board adopted the final selection of projects on January 25, 2023.

In order to receive the OBAG 3 funding, the City must adopt a Resolution of Local Support and authorize the filing of this OBAG 3 funding application for the Monterey Road Traffic, Bicycle, and Pedestrian Improvements Project. The proposed Resolution (Attachment 1), that is based on a resolution template received from MTC, includes provisions stating the fixed grant amount of \$3,921,000 (which will cover a maximum of 88.53% of project costs), the City's commitment to provide the minimum 11.47% (\$508,007) local match for the project's costs, and timely delivery of the project in accordance with MTC's Regional Project Funding Delivery Policy.

Upon adoption of this resolution, staff will submit a copy of this resolution to MTC as part of the funding requirements. The estimated project schedule consists of the design phase to start this fall 2023; processing of the federal project authorization during summer/fall 2024; and commencement of construction in summer 2025.

COMMUNITY ENGAGEMENT:**Inform**

Affected businesses and/or property owners will be notified of the roadway improvement work that is funded with this grant money prior to the start of construction activities.

ALTERNATIVE ACTIONS:

Not applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On September 13, 2013, City Council adopted a Resolution of Local Support for MTC Discretionary Funding Program (OBAG Cycle 1).

FISCAL AND RESOURCE IMPACT:

The OBAG 3 grant funding of \$3,921,000 will be included as a revenue source for Fund 308 (Street CIP) in the City's Capital Improvement Program under the Pavement Rehabilitation Program (Project No. 519000) as part of the FY 2025-26 project budget to fund the construction phase of the Monterey Road Traffic, Bicycle, and Pedestrian Improvements Project. The minimum required local match of 11.47% or \$508,007 will be funded by Fund 308.

The OBAG 3 grant funding will be reimbursed to the City by Caltrans (Fund Administrator) upon incurring project construction expenditures.

CEQA (California Environmental Quality Act):**Categorical Exemption**

The execution of this funding agreement will fund pavement project activities which are categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance, or minor alteration of existing City facilities involving negligible or no expansion of use of those facilities.

RESOLUTION NO. 23-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PROVIDING LOCAL SUPPORT AND AUTHORIZING THE FILING OF AN APPLICATION FOR FUNDING ASSIGNED TO THE METROPOLITAN TRANSPORTATION COMMISSION AND COMMITTING ANY NECESSARY MATCHING FUNDS AND STATING ASSURANCE TO COMPLETE THE PROJECT

WHEREAS, City of Morgan Hill (herein referred to as APPLICANT) is submitting an application to the Metropolitan Transportation Commission (MTC) for Three Million Nine Hundred Twenty-One Thousand Dollars (\$3,921,000) in funding assigned to MTC for programming discretion, which includes federal funding administered by the Federal Highway Administration (FHWA) and federal or state funding administered by the California Transportation Commission (CTC) such as Surface Transportation Block Grant Program (STP) funding, Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding, Transportation Alternatives (TA) set-aside/Active Transportation Program (ATP) funding, and Regional Transportation Improvement Program (RTIP) funding (herein collectively referred to as REGIONAL DISCRETIONARY FUNDING) for the Monterey Road Traffic, Bicycle, and Pedestrian Improvements Project (herein referred to as PROJECT) for the One Bay Area Grant Program Cycle 3 (OBAG 3) (herein referred to as PROGRAM); and

WHEREAS, the United States Congress from time to time enacts and amends legislation to provide funding for various transportation needs and programs, (collectively, the FEDERAL TRANSPORTATION ACT) including, but not limited to the Surface Transportation Block Grant Program (STP) (23 U.S.C. § 133), the Congestion Mitigation and Air Quality Improvement Program (CMAQ) (23 U.S.C. § 149) and the Transportation Alternatives (TA) set-aside (23 U.S.C. § 133); and

WHEREAS, state statutes, including California Streets and Highways Code §182.6, §182.7, and §2381(a)(1), and California Government Code §14527, provide various funding programs for the programming discretion of the Metropolitan Planning Organization (MPO) and the Regional Transportation Planning Agency (RTPA); and

WHEREAS, pursuant to the FEDERAL TRANSPORTATION ACT, and any regulations promulgated thereunder, eligible project sponsors wishing to receive federal or state funds for a regionally-significant project shall submit an application first with the appropriate MPO, or RTPA, as applicable, for review and inclusion in the federal Transportation Improvement Program (TIP); and

WHEREAS, MTC is the MPO and RTPA for the nine counties of the San Francisco Bay region; and

WHEREAS, MTC has adopted a Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) that sets out procedures governing the application and use of REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, APPLICANT is an eligible sponsor for REGIONAL DISCRETIONARY

FUNDING; and

WHEREAS, as part of the application for REGIONAL DISCRETIONARY FUNDING, MTC requires a resolution adopted by the responsible implementing agency stating the following:

- the commitment of any required matching funds; and
- that the sponsor understands that the REGIONAL DISCRETIONARY FUNDING is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with additional REGIONAL DISCRETIONARY FUNDING; and
- that the PROJECT will comply with the procedures, delivery milestones and funding deadlines specified in the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised); and
- the assurance of the sponsor to complete the PROJECT as described in the application, subject to environmental clearance, and if approved, as included in MTC's federal Transportation Improvement Program (TIP); and
- that the PROJECT will have adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and
- that the PROJECT will comply with all project-specific requirements as set forth in the PROGRAM; and
- that APPLICANT has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective Congestion Management Agency (CMA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and
- in the case of a transit project, the PROJECT will comply with MTC Resolution No. 3866, revised, which sets forth the requirements of MTC's Transit Coordination Implementation Plan to more efficiently deliver transit projects in the region; and
- in the case of a highway project, the PROJECT will comply with MTC Resolution No. 4104, which sets forth MTC's Traffic Operations System (TOS) Policy to install and activate TOS elements on new major freeway projects; and
- in the case of an RTIP project, state law requires PROJECT be included in a local congestion management plan, or be consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the countywide transportation agency; and

WHEREAS, that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and

WHEREAS, there is no legal impediment to APPLICANT making applications for the funds; and

WHEREAS, there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and

WHEREAS, APPLICANT authorizes its Executive Director, General Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and

WHEREAS, MTC requires that a copy of this resolution be transmitted to the MTC in conjunction with the filing of the application.

NOW, THEREFORE, BE IT RESOLVED that the APPLICANT is authorized to execute and file an application for funding for the PROJECT for REGIONAL DISCRETIONARY FUNDING under the FEDERAL TRANSPORTATION ACT or continued funding; and be it further

RESOLVED that APPLICANT will provide any required matching funds; and be it further

RESOLVED that APPLICANT understands that the REGIONAL DISCRETIONARY FUNDING for the project is fixed at the MTC approved programmed amount, and that any cost increases must be funded by the APPLICANT from other funds, and that APPLICANT does not expect any cost increases to be funded with additional REGIONAL DISCRETIONARY FUNDING; and be it further

RESOLVED that APPLICANT understands the funding deadlines associated with these funds and will comply with the provisions and requirements of the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) and APPLICANT has, and will retain the expertise, knowledge and resources necessary to deliver federally-funded transportation and transit projects, and has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective Congestion Management Agency (CMA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and be it further

RESOLVED that PROJECT will be implemented as described in the complete application and in this resolution, subject to environmental clearance, and, if approved, for the amount approved by MTC and programmed in the federal TIP; and be it further

RESOLVED that APPLICANT has reviewed the PROJECT and has adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and be it further

RESOLVED that PROJECT will comply with the requirements as set forth in MTC programming guidelines and project selection procedures for the PROGRAM; and be it further

RESOLVED that, in the case of a transit project, APPLICANT agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution No. 3866, revised; and be it further

RESOLVED that, in the case of a highway project, APPLICANT agrees to comply with the requirements of MTC's Traffic Operations System (TOS) Policy as set forth in MTC Resolution No. 4104; and be it further

RESOLVED that, in the case of an RTIP project, PROJECT is included in a local

congestion management plan, or is consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the countywide transportation agency; and be it further

RESOLVED that APPLICANT is an eligible sponsor of REGIONAL DISCRETIONARY FUNDING funded projects; and be it further

RESOLVED that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and be it further

RESOLVED that there is no legal impediment to APPLICANT making applications for the funds; and be it further

RESOLVED that there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and be it further

RESOLVED that APPLICANT authorizes its Executive Director, General Manager, City Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and be it further

RESOLVED that a copy of this resolution will be transmitted to the MTC in conjunction with the filing of the application; and be it further

RESOLVED that the MTC is requested to support the application for the PROJECT described in the resolution, and if approved, to include the PROJECT in MTC's federal TIP upon submittal by the project sponsor for TIP programming.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 21st day of June, 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-XXX, adopted by the City Council at a Regular Meeting held on June 21, 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: June 21, 2023

PREPARED BY:

Lynette Kong, Associate Engineer

APPROVED BY: City Manager

ADOPT A RESOLUTION APPROVING FISCAL YEAR (FY) 2023-24 LIST OF STREET REHABILITATION PROJECTS FUNDED BY SENATE BILL (SB) 1: THE ROAD REPAIR AND ACCOUNTABILITY ACT

RECOMMENDATION(S)

Adopt a resolution approving a list of street rehabilitation projects for Fiscal Year 2023-24 funded by SB 1, The Road Repair and Accountability Act of 2017.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Fiscal Sustainability

Transportation

REPORT NARRATIVE:

The 2023 Pavement Rehabilitation Project construction contract was awarded by the City Council on June 7th to McKim Corporation in the amount of \$3,948,023. The project is scheduled to begin work in July and will involve the pavement rehabilitation of the following city streets:

- La Crosse Drive
- La Rena Court
- La Roda Court
- La Mirada Court
- La Porte Court
- La Prenda Court
- La Escuela Court
- Descansa Court
- El Pajaro Court
- La Mesa Court
- La Sierra Court

- La Honda Court
- La Jolla Court
- La Mar Court
- La Bella Court
- East Middle Avenue between Monterey Road and Union Pacific Railroad Tracks
- East Main Avenue between Monterey Road and Butterfield Boulevard
- Oak View Circle
- Oak View Court

This is the seventh year in a row that the City has received SB 1 funding allocation for the rehabilitation of the City's roadway system. The funds have primarily been used for the repair and maintenance of the City's arterial and collector streets. However, this year the majority of the funds will be used to repair a number of residential streets that are in poor condition.

SB 1, which is known as the Road Repair and Accountability Act of 2017, established a tax that formed the Road Maintenance and Rehabilitation Account (RMRA). The RMRA is intended to fund basic road maintenance and rehabilitation needs on the local streets and roadway systems within the state. Prior to receiving RMRA funds for the FY 2023-24, the City must submit a list of projects proposed to be funded with RMRA funds, adopted by resolution, to the California Transportation Commission (CTC) by July 1, 2023. The list of projects proposed to be funded must include a description and the location of each proposed project, a proposed project schedule, and the estimated useful life of the improvement (Streets and Highways Code Section 2034(a)).

To ensure that the City is eligible for FY 2023-24 SB 1 RMRA funding, the proposed resolution (Attachment 1) identifies the City street locations proposed to be funded by FY 2023-24 SB 1 RMRA funds. These streets include all of the project streets for the 2023 Pavement Rehabilitation Project to ensure full utilization of the FY 2023-24 funding. The proposed resolution is expected to fulfill the CTC's requirement that the City Council adopt, by resolution, a list of projects proposed for the next fiscal year's SB 1 RMRA funds and meets the intention of prioritizing these funds for basic road maintenance and rehabilitation projects, and on critical safety projects.

COMMUNITY ENGAGEMENT:

Inform

City staff are working on a significant communication planning effort to be implemented ahead of the pavement work, which is planned to occur during the summer months.

ALTERNATIVE ACTIONS:

The City Council could direct staff to submit a funding request for an alternative project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On June 7, 2023, City Council awarded the 2023 Pavement Rehabilitation Project to McKim Corporation.
- On April 19, 2023, City Council received an update regarding pavement rehabilitation planning for calendar years 2021 through 2027.
- On June 15, 2022, City Council adopted the FY 2022-23 through 2027-28 Capital Improvement Budget.
- On April 20, 2022, City Council passed Resolution No. 22-022 adopting a list of street rehabilitation projects for FY 2022-23 funded by SB 1.

FISCAL AND RESOURCE IMPACT:

The FY 2023-24 SB 1 RMRA projected revenue of \$1,125,581 will be included as a revenue source for Fund 308 (Street CIP) in the City's CIP under the Pavement Rehabilitation Program (Project No. 519000) as part of the FY 2023-24 project budget.

CEQA (California Environmental Quality Act):

Categorical Exemption

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance, or minor alteration of existing City facilities involving negligible or no expansion of use of those facilities.

RESOLUTION NO. 23-XXX

RESOLUTION ADOPTING A LIST OF PROJECTS FOR FISCAL YEAR 2023-24 FUNDED BY SB 1: THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017

WHEREAS, Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB 1 includes accountability and transparency provisions that will ensure the residents of our City are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

WHEREAS, the City must adopt by resolution a list of projects proposed to receive fiscal year funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

WHEREAS, the City, will receive an estimated \$1,125,581 in RMRA funding in Fiscal Year 2023-24 from SB 1; and

WHEREAS, this is the seventh year in which the City is receiving SB 1 funding and will enable the City to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging bridges, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB 1; and

WHEREAS, the City has undergone a robust public process to ensure public input into our community's transportation priorities/the project list; and

WHEREAS, the City used a Pavement Management System to develop the SB 1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the communities priorities for transportation investment; and

WHEREAS, the funding from SB 1 will help the City maintain and rehabilitate portions of East Main Avenue, one of the City's arterial streets; La Crosse Drive and East Middle Avenue, two of the City's collector streets; and La Rena Court, La Roda Court, La Mirada Court, La Porte Court, La Prenda Court, La Escuela Court, Descansa Court, El Pajaro Court, La Mesa Court, La Sierra Court, La Honda Court, La Jolla Court, La Mar Court, La Bella Court, Oak View Circle,

and Oak View Court, multiple residential/local streets throughout the City this year and multiple similar projects into the future; and

WHEREAS, the 2018 California Statewide Local Streets and Roads Needs Assessment found that the City’s streets and roads are in an “at-risk” condition and this revenue will help us increase the overall quality of our road system and over the next decade will bring our streets and roads into a “good” condition; and

WHEREAS, the SB 1 project list and overall investment in our local streets and roads infrastructure with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using cutting-edge technology, materials and practices, will have significant positive co-benefits statewide.

NOW, THEREFORE IT IS HEREBY RESOLVED, ORDERED AND FOUND BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL, STATE OF CALIFORNIA, AS FOLLOWS:

1. The foregoing recitals are true and correct.
2. The following list of newly proposed projects will be funded in-part or solely with Fiscal Year 2023-24 Road Maintenance and Rehabilitation Account revenues:

1) Project Title: 2023 Pavement Rehabilitation Project

Project Description: Pavement Milling and Filling, Full Depth Asphalt Concrete Pavement Repairs, Crack Sealing, Detector Loops, Replacement of all Existing Traffic Delineation and Markings, Utility Adjustments, and all related work on various streets within the City Limits.

Project Locations: 1) La Crosse Drive; 2) La Rena Court; 3) La Roda Court; 4) La Mirada Court; 5) La Porte Court; 6) La Prenda Court; 7) La Escuela Court; 8) Descansa Court; 9) El Pajaro Court; 10) La Mesa Court; 11) La Sierra Court; 12) La Honda Court; 13) La Jolla Court; 14) La Mar Court; 15) La Bella Court; 16) East Middle Avenue between Monterey Road to Union Pacific Railroad (UPRR) tracks; 17) East Main Avenue between Monterey Road to Butterfield Boulevard; 18) Oak View Circle; and 19) Oak View Court.

Estimated Project Schedule: Start (July 2023)– Completion (October 2023) based on the component being funded with RMRA funds

Estimated Project Useful Life: The City’s Pavement Management System calculates a new useful life of 20 years for these roadways.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill, State of California this 21st day of June, 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-xxx, adopted by the City Council at a Regular Meeting held on June 21, 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: June 21, 2023

PREPARED BY:

Yat Cho, Senior Project Manager

APPROVED BY: City Manager

APPROVE CONSULTANT AGREEMENTS WITH ENGEO, INC. IN THE AMOUNT OF \$400,000 AND TWINING, INC. IN THE AMOUNT OF \$200,000, FOR GENERAL COMPACTION TESTING AND SPECIAL INSPECTION

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer agreements with contingencies to provide general compaction testing and special inspection for various Capital Improvement Program Projects: Enggeo, Inc. in the amount of \$400,000 and Twining, Inc. in the amount of \$200,000.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

Transportation

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

Economic Blueprint

Morgan Hill 2035 General Plan

Storm Drain Master Plan

Water System Master Plan

Wastewater System Master Plan

REPORT NARRATIVE:

On June 15, 2022, the City Council adopted the FY 2022-23 through 2027-28 Capital Improvement Program (CIP). Many of these CIP projects require on-call compaction testing and/or special inspection to ensure construction standards are met and the proper oversight is provided throughout the course of a project.

On March 23, 2023, staff sent out a Request for Proposal to provide compaction testing services and special inspection on an as-needed basis for the City's CIP Projects. Five

proposals were received by May 3, 2023. The proposals were evaluated by a two-member selection committee using three evaluation criteria: qualifications, ability to perform tasks, and familiarity and understanding of the City's needs.

While all five proposals showed qualifications in this field, two of the proposals stood out and demonstrated the expertise in the field of compaction testing and special inspection to handle this work, especially for work previously performed within the City of Morgan Hill. Staff recommends the approval of a City Services agreement with Engeo, Inc. in the amount of \$400,000, and Twining, Inc. in the amount of \$200,000. The scores for all proposals are listed in the table below.

	Engeo, Inc.	Twining, Inc.	Quality Assurance Engineering, Inc.	Ninyo & Moore	Apex Testing Laboratories, Inc.
Qualification and Experience (40 Maximum Points)	36.5	36.5	32.5	32	30
Ability to Perform Tasks (30 Maximum Points)	30	28	28	27	28
Familiarity with City (30 Maximum Points)	30	28	26.5	26	26
(Total - 100 Maximum Points)	96.5	92.5	87	85	84

Engeo, Inc. has provided quality services previously to the City of Morgan Hill. Staff is recommending entering into an agreement with a second company, Twining, Inc. to provide an alternative option for redundancy in service during times of heavy needs and a backup if one company is unable to provide immediate service.

COMMUNITY ENGAGEMENT:

Compaction testing and special inspections are necessary components of the City's Capital Improvement Program. While there have been no specific engagement activities

that were conducted during the RFQ process, individual CIP projects that affects residents and businesses will be notified through media, social media, and city website.

ALTERNATIVE ACTIONS:

City Council may limit the approval of the agreement for general compaction testing and special inspection to one consultant only or may direct staff to perform another RFQ for this service.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 15, 2022, the City Council adopted the FY2022-23 through 2027-28 Capital Improvement Program Budget.

FISCAL AND RESOURCE IMPACT:

Funding for these agreements will be from various capital improvement projects as included in the adopted Capital Improvement Program Budget.

CEQA (California Environmental Quality Act):

Not a Project

The agreements are not considered as projects and any individual projects in the Capital Improvement Program shall be reviewed under CEQA.

CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS ENGEO INCORPORATED

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

1. **City Authority**. This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.

2. **Term of Agreement**. This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2025 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.

3. **Scope of Service**. The services to be performed by CONSULTANT shall be compaction testing and special inspections as further described in **Exhibit A**.

4. **Compensation**. CONSULTANT shall be compensated as follows:

4.1. **Amount**. \$400,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Four Hundred Thousand Dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed for the term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.

4.2. **Billing**. CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

5. **Termination**. CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which

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

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

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

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

7.1. **Insurance Types and Amounts.**

- 7.1.1. **Commercial General Liability (CGL).** CONSULTANT shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 7.1.2. Automobile Liability. CONSULTANT shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if CONSULTANT does not own automobiles, then CONSULTANT shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.3. Workers' Compensation Insurance and Employer's Liability. CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- 7.1.4. Pollution (Environmental) Liability. If the performance of CONSULTANT'S work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, CONSULTANT shall procure and maintain Pollution Liability covering the CONSULTANT'S liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.5. Professional Liability.
- 7.1.5.1. If the performance of CONSULTANT'S work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), CONSULTANT shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CONSULTANT maintains a claims-made policy, CONSULTANT shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.
- 7.1.5.2. If the performance of CONSULTANT'S work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers,

hardware engineers, or other systems consultants), CONSULTANT shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

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

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

7.2.1.2. "Waiver of Rights of Subrogation" - The insurer waives the right of subrogation against the City of Morgan Hill and CITY'S elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and

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

7.2.2. Workers Compensation.

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

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

7.4. **Certificates**. CONSULTANT shall furnish CITY of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to the CONSULTANT'S

agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. A "material change" is a change that results in non-compliance with any insurance requirements in this section 7. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

9. **Compliance with Law.**

9.1. CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon any basis prohibited by State or Federal law, including but not limited to, race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

Engeo Incorporated
6399 San Ignacio Avenue Suite 150
San Jose, CA
95119

Address of CITY is as follows:

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

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

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

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

16. **Maintenance of Records.**

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

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

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

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

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

19. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be

void and, at CITY'S option, shall terminate this Agreement effective as of the date of such attempted assignment.

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

21. **Defense and Indemnification.**

- 21.1. **Defense and Indemnification for Design Professional Services.** Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, 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 negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM") to the extent of CONSULTANT'S proportionate percentage of fault.
- 21.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 21.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 21.3. **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, active negligence, or willful misconduct of the CITY.
- 21.4. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 21.5. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT'S failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT'S failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

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

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

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

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

[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow
Print Name

Christina J. Turner
Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

ENGEO INCORPORATED

City Attorney

By:

Donald A. Larkin
Print Name

Theodore P. Bayham, on behalf of Chairman of the
~~Board~~

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice
President

Date: _____

Date: 06 / 01 / 2023

Macy Tong

By:

Macy Tong, Assistant Treasurer

Print Name and Title of Signer.

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

Date: 05 / 30 / 2023

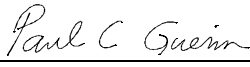
CERTIFIED CORPORATE RESOLUTION

Effective January 1, 2023, officers of ENGEO Incorporated Uri Eliahu, President, Paul Guerin, Chief Financial Officer and Brian Flaherty, Corporate Secretary hereby acknowledge that Theodore Bayham, Neel Neelakantan, Steve Harris, Mark Gilbert, Shawn Munger, and Jeffrey Fippin are authorized to co-execute client agreements and change orders on behalf of the Chairman of the Board of ENGEO Incorporated and Macy Tong, Robert Boeche, Julia Moriarty and Valerie Davis are authorized to co-execute client agreements and change orders as Assistant Treasurers of ENGEO Incorporated.

Dated: January 1, 2023


Uri Eliahu

Dated: January 1, 2023


Paul Guerin

Dated: January 1, 2023


Brian Flaherty

EXHIBIT A SCOPE OF SERVICES

The consultant shall provide construction testing services on an on-call basis in support of the construction of municipal infrastructure in the public right-of-way at various locations in the City of Morgan Hill. Typical municipal infrastructure includes trenching, backfill, asphalt and concrete paving, water lines and services, sanitary storm and sewer lines, manholes. Curb, gutter, sidewalks, landscaping, streetlights, underground conduits and vaults. Typical testing services including soils testing, field compaction testing asphalt and concrete quality control and performance testing.

The consultant shall perform the following tasks in carrying out these services:

TASK – CONSTRUCTION TESTING SERVICES

The Consultant shall provide, develop, and implement a construction testing system which will ensure that the contractor complies with construction documents.

A. Response Time and Job Presence:

The consultant shall provide construction testing services within 48 hours of request by the City Project Manager or designated representatives. Technicians will be expected to remain at the jobsite for as long as needed to perform the testing or as directed by City Project Manager.

B. List of Tasks and Special Inspection Services:

All services shown below for the Contract Inspector shall provide fully typed reports (2 copies min) verifying and detailing results of inspections and/or tests.

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

PREFERRED CLIENT FEE SCHEDULE PROFESSIONAL SERVICES Effective February 2023

President.....	\$465.00 per hour
Principal	\$365.00 per hour
Associate	\$305.00 per hour
Subject Matter Expert.....	\$400.00 per hour
Senior.....	\$265.00 per hour
Project.....	\$235.00 per hour
Staff.....	\$205.00 per hour
Assistant	\$165.00 per hour
Construction Services Manager II	\$210.00 per hour*
Construction Services Manager I.....	\$200.00 per hour*
Senior Field Representative II	\$176.00 per hour**
Senior Field Representative I	\$157.00 per hour**
Field Representative.....	\$145.00 per hour**
Senior Laboratory Technician	\$180.00 per hour
Laboratory Technician	\$160.00 per hour
Senior GIS Developer.....	\$190.00 per hour
Senior GIS Analyst	\$185.00 per hour
GIS Analyst.....	\$175.00 per hour
Senior CAD Specialist	\$175.00 per hour
CAD Specialist.....	\$160.00 per hour
Network Administrator	\$250.00 per hour
Project Assistant.....	\$145.00 per hour

* Two-hour minimum portal to portal and cancellations within 24 hours.

* **OVERTIME RATES:** Rates increased by factor of 1.5 for all hours worked in excess of eight (8) Monday through Friday, and the first eight (8) hours worked on Saturday. Rates increased by factor of 2.0 for all hours worked in excess of twelve (12) Monday through Friday, all hours worked in excess of eight (8) on Saturday and all hours worked on Sunday and holidays.

** For Prevailing Wage projects, increase the hourly rate by \$19.

** Rates increased by factor of 1.25 for night shift hours (hours commencing after 4:00 p.m. or before 4:00 a.m.); rates increased by factor of 1.875 (an additional factor of 1.5) for all night shift hours in excess of eight (8); rates increased by factor 2.5 for all night shift hours worked in excess of twelve (12).

ADDITIONAL SERVICES OFFERED

In addition to our core services of geotechnical, hydrologic and environmental engineering, including construction-phase testing and observation, ENGEO provides clients with services for establishment and management of Geologic Hazard Abatement Districts (GHAD) and for Entitlement and Permitting Support (EPS). For more information about these services and associated pricing, please contact ENGEO at (925) 866-9000.

OTHER FEES

- Equipment and materials will be charged in addition to the above hourly rates.
- Outside Consultants, Subcontracted Services and Equipment Rental Cost plus 25%
- Expert Witness, Deposition, Mediation, Arbitration, or Court Appearance (Minimum Charge) \$2,400.00 half day, \$4,800.00 full day

TERMS

Invoices will be submitted at completion of work or at approximately four week intervals and are due and payable upon receipt. Statements will be issued at monthly intervals. Charges not paid within 30 days of invoice date will accrue a late charge at a rate of 1.5 percent per month. In the event it becomes necessary to commence suit to collect amount due, Client agrees to pay attorney's fees and costs, as the court may deem reasonable until amount is paid. Fees will be applicable for one year from the effective date above; thereafter, fees will be adjusted annually. Our fees will be billed using an invoice format produced by a standardized accounting software package. A more customized itemization of charges and backup data will be provided upon Client's requests, but at additional fees. Final reports may be withheld until outstanding invoices are paid in full.

Many risks potentially affect ENGEO by virtue of entering into this agreement to perform services on behalf of client. A principal risk is the potential for human error by ENGEO. For client to obtain the benefit of a fee that includes a nominal allowance for dealing with our liability, client agree to limit ENGEO's liability to Client and all other parties for claims arising out of our performance of the services described in the agreement. The aggregate liability will not exceed \$50,000 (or ENGEO's fee, whichever is greater, but not more than \$1,000,000) for professional acts, errors, or omissions, including attorney's fees and costs that may be awarded to the prevailing party and client agrees to indemnify and hold harmless ENGEO from and against all liabilities in excess of the monetary limit established above.

EQUIPMENT AND MATERIALS CHARGES

DESCRIPTION	COST PER UNIT (\$)	UNIT
Air Content Meter	7.00	hour
Bailers (Disposable)	10.00	each
Coatings Thickness Kit (eg. Fireproofing, Protective Paint)	30.00	hour
Concrete Crack Monitor	20.00	each
Coring Machine	30.00	hour
Double-Ring Infiltrometer	50.00	hour
Electronic Water Level Indicator	5.00	hour
Engineering Analysis Software	45.00	hour
Equipment Transport(er)	100.00	hour
Exploration Equipment (Electric Auger)	50.00	hour
Floor Flatness/Floor Level Equipment	40.00	hour
Generator	15.00	hour
GIS Website Portal Subscriptions	50.00	month
GPS Handheld Device	10.00	hour
Drone Equipment	210.00	hour
Hand Auger and Soil Sampler	15.00	hour
Hydraulic Pull-Test Equipment	25.00	hour
Interface Probe	2.00	hour
Magnetic Particle Test Equipment	25.00	hour
Moisture Content Test Equipment	6.00	hour
Multi-Parameter Water Meter	15.00	hour
pH Meter/Turbidity Meter	10.00	hour
Photo Ionization Detector	20.00	hour
Reinforcing Bar Locator	100.00	hour
Sampling Tubes	10.00	each
Sand Cone Equipment and Material	5.00	hour
Schmidt Hammer	20.00	hour
Seisometer	50.00	hour
Skidmore Wilhelm Bolt Tension Calib.	40.00	hour
Slope Inclinator/Settlement Indicator/VW Readout	50.00	hour
Torque Wrench	15.00	hour
Transfer Pump	3.00	hour
Ultrasonic Equipment	50.00	hour
Vapor Emission Test Kit	40.00	kit
Vector Conversion	60.00	conversion
Vehicle, nuclear gauge, equipment, wireless communication. *Add \$5.00/hr. for RTK enabled autotesting equipment.	33.00*	hour
Vehicle, equipment, wireless communication	23.00	hour
Vibration Monitor	1800.00	month
Water Sampling Pumps	20.00	hour
Bridge Toll	actual	actual
Mileage	.98	mile
Parking	actual	actual
AutoCAD, Civil 3D, GIS, Drone Data Processing	29.00	hour
Photocopies Black & White	0.25	each
Photocopies Color 11 x 17	1.50	each
Photocopies Color 8½ x 11	1.00	each
Plot - Black & White	3.00	square foot
Plot - Color	4.00	square foot
Postage	actual	actual
Scan - Black & White	1.50	each
Scan - Color	3.75	each
Telephone	0.50	minute

EXHIBIT C SCHEDULE OF PERFORMANCE

Performance schedules for work to be performed will be determined on a project by project basis and approved by the City Manager's designated project manager prior to work on each specific project commencing

Signature Certificate

Reference number: XJQPH-H3KJD-F3MS4-KW3PL

Signer

Timestamp

Signature

Macy Tong

Email: mtong@engeo.com

Sent:

30 May 2023 22:41:26 UTC

Viewed:

30 May 2023 22:55:10 UTC

Signed:

30 May 2023 22:55:34 UTC

Recipient Verification:

✓ Email verified

30 May 2023 22:55:10 UTC

IP address: 66.7.228.252

Location: San Ramon, United States

Macy Tong

Ted Bayham

Email: tbayham@engeo.com

Sent:

30 May 2023 22:41:26 UTC

Viewed:

01 Jun 2023 20:59:36 UTC

Signed:

01 Jun 2023 21:14:46 UTC

Recipient Verification:

✓ Email verified

01 Jun 2023 20:59:36 UTC

IP address: 66.7.228.252

Location: San Ramon, United States

Theodore P Bayham

Document completed by all parties on:

01 Jun 2023 21:14:46 UTC

Page 1 of 1



Signed with PandaDoc

PandaDoc is a document workflow and certified eSignature solution trusted by 40,000+ companies worldwide.



CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS TWINING, INC.

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

1. **City Authority**. This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement**. This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2025 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service**. The services to be performed by CONSULTANT shall be compaction testing and special inspections as further described in **Exhibit A**.
4. **Compensation**. CONSULTANT shall be compensated as follows:
 - 4.1. **Amount**. \$200,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred Thousand Dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed for the term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing**. CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination**. CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which

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

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

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

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

7.1. **Insurance Types and Amounts.**

- 7.1.1. **Commercial General Liability (CGL).** CONSULTANT shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 7.1.2. Automobile Liability. CONSULTANT shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if CONSULTANT does not own automobiles, then CONSULTANT shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.3. Workers' Compensation Insurance and Employer's Liability. CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- 7.1.4. Pollution (Environmental) Liability. If the performance of CONSULTANT'S work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, CONSULTANT shall procure and maintain Pollution Liability covering the CONSULTANT'S liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.5. Professional Liability.
- 7.1.5.1. If the performance of CONSULTANT'S work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), CONSULTANT shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CONSULTANT maintains a claims-made policy, CONSULTANT shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.
- 7.1.5.2. If the performance of CONSULTANT'S work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers,

hardware engineers, or other systems consultants), CONSULTANT shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

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

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

7.2.1.2. "Waiver of Rights of Subrogation" - The insurer waives the right of subrogation against the City of Morgan Hill and CITY'S elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and

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

7.2.2. Workers Compensation.

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

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

7.4. **Certificates**. CONSULTANT shall furnish CITY of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to the CONSULTANT'S

agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. A "material change" is a change that results in non-compliance with any insurance requirements in this section 7. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

9. **Compliance with Law.**

9.1. CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon any basis prohibited by State or Federal law, including but not limited to, race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

Twining, Inc.
5027 Commercial Circle, Suite G
Concord, CA
94520

Address of CITY is as follows:

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

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

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

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

16. **Maintenance of Records.**

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

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

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

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

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

19. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be

void and, at CITY'S option, shall terminate this Agreement effective as of the date of such attempted assignment.

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

21. **Defense and Indemnification.**

- 21.1. **Defense and Indemnification for Design Professional Services.** Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, 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 negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM") to the extent of CONSULTANT'S proportionate percentage of fault.
- 21.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 21.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 21.3. **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, active negligence, or willful misconduct of the CITY.
- 21.4. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 21.5. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT'S failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT'S failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

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

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

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

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

[Signatures on Next Page]

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

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow

Christina J. Turner

Print Name

Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

TWINING, INC.

City Attorney

By: 

Donald A. Larkin

Steve Schiffer

Print Name

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: June 09, 2023

By: 

Amy Owens

Print Name and Title of Signer.

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

Date: June 12, 2023

EXHIBIT A SCOPE OF SERVICES

The consultant shall provide construction testing services on an on-call basis in support of the construction of municipal infrastructure in the public right-of-way at various locations in the City of Morgan Hill. Typical municipal infrastructure includes trenching, backfill, asphalt and concrete paving, water lines and services, sanitary storm and sewer lines, manholes. Curb, gutter, sidewalks, landscaping, streetlights, underground conduits and vaults. Typical testing services including soils testing, field compaction testing asphalt and concrete quality control and performance testing.

The consultant shall perform the following tasks in carrying out these services:

TASK – CONSTRUCTION TESTING SERVICES

The Consultant shall provide, develop, and implement a construction testing system which will ensure that the contractor complies with construction documents.

A. Response Time and Job Presence:

The consultant shall provide construction testing services within 48 hours of request by the City Project Manager or designated representatives. Technicians will be expected to remain at the jobsite for as long as needed to perform the testing or as directed by City Project Manager.

B. List of Tasks and Special Inspection Services:

All services shown below for the Contract Inspector shall provide fully typed reports (2 copies min) verifying and detailing results of inspections and/or tests.

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

C. CONSULTANT FEE

Construction Testing Services Understanding

Response Time and Job Presence:

Twining shall provide construction testing services within 48 hours of request by the City Project Manager or designated representatives. Technicians will be expected to remain at the job-site for as long as needed to perform the testing or as directed by City Project Manager.

Twining will response to testing and site requests shall be within 24 hours of scheduling.

List of Tasks and Special Inspection Services:

All services shown below for the Contract Inspector shall provide fully typed reports (2 copies minimum) verifying and detailing results of inspections and/or tests.

Rates are based on State of California Prevailing Wage Rates, these rates are subject to change in accordance with the annual cost of living adjustment each July.

Service / Test Title	Rate	Unit
Inspection including compaction testing A/C and Soil/ Sampling, A/C Placement	\$130.00	Per Hour
Steel Inspection	\$140.00	Per Hour
Concrete Inspection	\$130.00	Per Hour
Welding Inspection	\$140.00	Per Hour
Moisture Density Curve per ASTM	\$220.00	Each
Sieve Analysis	\$175.00	Each
R Value	\$530.00	Each
A/C Unit Wt.	\$185.00	Each
Concrete Cylinders/Compression Test *4X8'S Require 5 Cylinders	\$185.00	Each



C . CONSULTANT FEE

Personnel Rates: Per Hour Unless Otherwise Noted

Task Code	Engineering and Consulting Personnel	Rate
10026	Senior Principal Advisor/Consultant	\$ 350.00
10001	Principal Engineer/Geologist	\$ 250.00
10017	Metallurgical Engineer	\$ 360.00
70000	Registered Geotechnical Engineer	\$ 240.00
10010	Technical Advisor	\$ 235.00
10011	Material Scientist, Welding/NDT Consultant	\$ 250.00
70003	Registered Geologist/Certified Engineering Geologist	\$ 240.00
10003	Senior Engineer/Geologist	\$ 220.00
10009	Registered Civil Engineer	\$ 210.00
60003	Roofing/Waterproofing Consultant	\$ 235.00
10013	Project Engineer/Manager	\$ 210.00
30000	Quality Control Manager	\$ 200.00
10005	Senior Staff Engineer/Geologist	\$ 190.00
10007	Staff Engineer/Geologist	\$ 185.00
10015	Quality Control Administrator	\$ 175.00
10019	Metallurgical Technician	\$ 150.00
90001	CADD Operator/Draftsperson	\$ 140.00
95103	Administrative Support	\$ 95.00
70107	Field Supervisor	\$ 170.00
91030	Safety Supervisor	\$ 170.00
20000	Laboratory Manager	\$ 160.00
98000	Laboratory Technician	\$ 135.00
90005	Expert Witness Testimony	\$ 580.00
91010	Qualified SWPPP Developer	\$ 195.00
91000	Qualified SWPPP Practitioner	\$ 180.00
30001	Vibration Engineer	\$ 220.00

Task Code	Field Inspection Personnel	Rate
10101	Concrete/Reinforced Steel Inspector	\$ 136.00
10103	Prestressed/Post Tensioned Inspector	\$ 136.00
10105	Concrete ICC Inspector	\$ 136.00
10109	Drilled-In-Anchor Inspector	\$ 136.00
10111	Gunitite/Shotcrete Inspector	\$ 136.00
10113	Masonry Inspector	\$ 136.00
10201	Structural Steel/Welding Inspector	\$ 140.00
10203	AWS Certified Welding Inspector	\$ 140.00
10207	Fireproofing Inspector	\$ 136.00
10501	Lead Inspector	\$ 136.00
10115	Firestop Special Inspector - IFC Premier	\$ 190.00
10117	Firestop Special Inspector - IQP	\$ 210.00
75001	Asphalt Field and Plant Inspector/Technician	\$ 136.00
70103	Pile Driving Inspector	\$ 136.00
70101	Soils Technician	\$ 130.00
10107	Concrete Quality Control (ACI/Caltrans Technician)	\$ 130.00
10122	Wood Framing Inspector	\$ 136.00
60001	Roofing/Waterproofing Inspector	Quotation
10500	Public Works Inspector	\$ 155.00
10515	Mechanical Inspector	\$ 180.00
10519	Electrical Inspector	\$ 180.00
10521	Plumbing Inspector	\$ 180.00
10523	Building Inspector	\$ 180.00
30002	Vibration Monitoring Technician	\$ 150.00
50003	Field Engineering Technician	\$ 136.00

Task Code	Shop Inspection Personnel	Rate
10301	Structural Steel Fabrication Inspector	\$ 136.00
10309	Batch Plant Quality Control Technician/Inspector	\$ 136.00
10325	Glue-Laminated Fabrication Inspector	Quotation
10328	Pre-Cast Concrete/Pipe Fabrication Inspector	\$ 136.00

Task Code	Nondestructive Testing Personnel	Rate
10401	NDE Ultrasonic Testing Technician	\$ 140.00
10403	NDE Magnetic Particle Testing Technician	\$ 140.00
10405	NDE Dye Penetrant Testing Technician	\$ 140.00
10305	Combination NDE Technician/Welding Inspector	\$ 140.00
10409	Radiographic Testing (Crew of 2)	\$ 380.00
10020	NDE Engineer	\$ 225.00

Task Code	Equipment Usage (Daily Unless Otherwise Noted)	Rate
95318	Skidmore	\$ 42.00
95309	Torque Wrench, Small	\$ 16.00
95312	Torque Wrench, Large	\$ 27.00
95315	Torque Multiplier	\$ 42.00
95321	Air Meter	\$ 21.00
95322	Unit Weight Bucket	\$ 32.00
95323	Field Concrete Scale	\$ 32.00
95324	Brass Mold	\$ 21.00

Task Code	Equipment Usage (Daily Unless Otherwise Noted), Continued	Rate
95343	Nuclear Gauge (Per Hour)	\$ 11.00
95319	Sand Cone Density Test Equipment	\$ 53.00
95333	Pull Test Equipment	\$ 63.00
95348	Concrete/Asphalt Coring Equipment	\$ 630.00
95327	Pachometer	\$ 58.00
95336	Floor Flatness (Dipstick)	\$ 54.00
95330	Schmidt Hammer	\$ 32.00
95341	Vapor Emission Test Kits	\$ 32.00
95342	Relative Humidity Probe	\$ 65.00
95339	UPV (Ultrasonic Pulse Velocity) Meter	\$ 368.00
95351	Fireproofing Adhesion/Cohesion (Per Test)	\$ 37.00
95300	A Scan Ultrasonic Equipment and Consumables	\$ 80.00
95303	Magnetic Particle Equipment and Consumables	\$ 42.00
95306	Liquid Penetrant Consumables	\$ 38.00
95307	Phased Array Ultrasonic Equipment (Per Hour)	\$ 65.00
95347	Ground Penetrating Radar	\$ 315.00
95345	Impact Echo	\$ 368.00
95362	Ultrasonic Tomography	\$ 473.00
95349	Inertial Profiler (Per Hour)	Quotation
95357	Project Dedicated Vehicle	\$ 126.00
95364	Roller Compacted Concrete Vibrating Hammer/Tamplng Plate	\$ 75.00
95367	Half-Cell Potential Equipment Set	\$ 368.00
95368	Concrete Electrical Resistivity Meter	\$ 168.00
95369	Field Hardness (Steel)	\$ 105.00
95370	Coating Thickness Gauge	\$ 105.00
95373	Wood Curing Box (One-Time Fee/Per Box)	\$ 630.00
95371	Temperature Control Curing Box (Per Month)	\$ 475.00
95372	Temperature Matching Curing Box (Per Month)	\$ 545.00

Task Code	Specimen Pick-Up	Rate
20102	Standard Sample: Concrete Cylinders (Each)	\$ 26.00
20101	Standard Sample: Mortar/Grout Cubes and Cores, Fireproofing, Rebar, and Epoxy Prisms (Each)	\$ 26.00
20103	Oversize Sample: Masonry Prisms and Shotcrete Panels (Each)	\$ 63.00
20104	Oversize Sample: Flexural Beams (Each)	
20107	Technician for Specimen Pick-Up Not Listed Above (Per Hour, 2-Hour Minimum)	\$ 100.00
20109	Technician for Specimen Pick-Up Before 5:00 a.m. or After 5:00 p.m. Monday thru Friday, or All Day Saturday (Per Hour, 2-Hour Minimum Plus Mileage)	\$ 126.00

Task Code	Jobsite Trailer, Mobile or On-site Laboratory	Rate
95360	Mobile Laboratory for Rapid Strength Concrete (Per Shift Not Exceeding 12 Hours) All Others by Quotation	\$ 525.00

Task Code	Concrete Tests (Field Made Specimens)	Rate
20201	6" x 12" Cylinder: Compression Strength (ASTM C39)	\$ 47.00
20202	4" x 8" Cylinder: Compression Strength (ASTM C39)	\$ 37.00
20203	Density of Structural Lightweight Concrete Equilibrium Oven Dry Method (ASTM C567)	\$ 95.00
20205	Core Compression including Trimming (ASTM C42)	\$ 79.00
20207	6" x 6" x 18" Flexural Beams Not Exceeding Referenced Size (ASTM C78, C293 or CTM 523)	\$ 105.00
20209	Splitting Tensile Strength (ASTM C496)	\$ 105.00
20211	Modulus of Elasticity Test (ASTM C469)	\$ 299.00
80003	Rapid Chloride Permeability Test: Cylinders or Cores (ASTM C1202)	\$ 578.00
80006	Density, Absorption, and Voids in Hardened Concrete (ASTM C642)	\$ 578.00
40005	Flexural Toughness (ASTM C1609, Formerly ASTM C1018)	\$ 924.00
40007	Flexural Toughness (ASTM C1550)	\$ 578.00
40006	Double Punch Strength of Fiber Reinforced Concrete	\$ 578.00
40009	Coefficient of Thermal Expansion of Concrete (CRD 39, AASHTO T336)	\$ 635.00
40012	Bulk Electrical Resistivity (ASTM C1876)	\$ 142.00

Task Code	Concrete Specimen Preparation	Rate
20151	Sawing of Specimens (Each)	\$ 42.00
20157	Coring of Specimens in Lab (Each)	\$ 42.00
20159	Grinding of Concrete Below 6000 psi Strength (Each)	\$ 58.00
20160	Grinding of Concrete 6000 psi Strength and Above (Each)	\$ 89.00

Task Code	Laboratory Trial Batch: Concrete, Cement and Mortar	Rate
30216	Compression Test 4"x8" Cylinders Made and Tested in Laboratory (ASTM C192, C35)	\$ 58.00
30217	Compression Test 6"x12" Cylinders Made and Tested in Laboratory (ASTM C192, C35)	\$ 69.00

C . CONSULTANT FEE

Task Code	Laboratory Trial Batch: Concrete, Cement and Mortar, Continued	Rate
30219	6" x 6" x 18" Flexural Beams Made and Tested in Laboratory (ASTM C192, C78)	\$ 110.00
30223	Splitting Tensile Strength Cylinders Made and Tested in Laboratory (ASTM C192, C496)	\$ 126.00
30225	Modulus of Elasticity Test Cylinders Made and Tested in Laboratory (ASTM C192, C469)	\$ 320.00
30227	Density of Structural Lightweight Concrete Made in the Laboratory, Equilibrium or Oven Dry Method (ASTM C567)	\$ 116.00
30237	Bulk Electrical Resistivity (ASTM C1876)	\$ 165.00
30201	Laboratory Trial Batch (ASTM C192/Lab Procedure Performance)	\$ 575.00
30203	Concrete Mixture Design for Preconstruction Evaluation and Backup Data Development	\$ 260.00
30205	Drying Shrinkage Up to 28 Days: Three 3" x 3" or 4" x 4" Bars, Five Readings Up to 28 Dry Days (ASTM C157)	\$ 565.00
30230	Additional Reading, Per Set of Three Bars	\$ 52.00
30231	Storage over Ninety (90) Days, Per Set of Three Bars, Per Month	\$ 38.00
30207	Setting Time Up to 7 Hours (ASTM C403)	\$ 175.00
30209	Bleeding (ASTM C232)	\$ 175.00
30229	Concrete Restrained Expansion (ASTM C878)	\$ 635.00
20263	Non-Shrink Grout: Height Change after Final Set (ASTM C1090)	\$ 575.00
20265	Non-Shrink Grout: Height Change at Early Age (ASTM C827)	\$ 925.00
30232	Cracking Resistance, Set of Three Rings, Laboratory Trial Batching, Test Until Cracking or Up to 28 Days (ASTM 1581)	\$ 5,775.00
30233	Evaluation of Pre-Packaged Masonry Mortars (ASTM C270)	\$ 1,270.00
30234	Creep (ASTM C512) (One Age of Loading, 12 Months Duration of Testing)	\$ 9,240.00

Task Code	Chemical Analysis and Petrographic Examination of Concrete	Rate
80123	Chemical Analysis for Acid Soluble Chlorides (ASTM C1152) (includes sample prep)	\$ 290.00
80126	Chemical Analysis for Water Soluble Chlorides (ASTM C1218) (includes sample prep)	\$ 180.00
80193	Chloride Diffusion Coefficient of Cementitious Mixtures by Bulk Diffusion (ASTM C1556)	\$ 2,890.00
80129	Petrographic Examination of Hardened Concrete, Level II (ASTM 856) (Comprehensive)	
	Each, One Sample	\$ 2,775.00
	Each, Two or More Samples	\$ 2,425.00

Task Code	Physical and Chemical Analysis of Cement	Rate
80195	Physical Testing and Chemical Analysis of Portland Cement per Standard Requirements (ASTM C150)	\$ 1,385.00
80100	Chemical Analysis of Portland Cement per Standard Requirements (ASTM C150)	\$ 750.00
80103	Physical Testing of Portland Cement per Standard Requirements (ASTM C150)	\$ 750.00
80194	Physical Testing of Type K Cement, Mortar Expansion (ASTM C806)	\$ 750.00
80106	Partial Analysis or Specific Physical Tests	Quotation
80110	Sulfates Resistance of Hydraulic Cement (ASTM C1012), 6 Months	\$ 3,120.00
80111	Sulfates Resistance of Hydraulic Cement (ASTM C1012), 12 months	\$ 3,465.00

Task Code	Physical and Chemical Analysis of Fly Ash	Rate
80140	Chemical Analysis of Fly Ash per Standard Requirements (ASTM C618)	\$ 750.00
80143	Physical Testing of Fly Ash per Standard Requirements (ASTM C618)	\$ 750.00
80146	Partial Analysis or Specific Physical Tests	Quotation
80147	Chemical Analysis and Physical Testing of Fly Ash per Standard Requirements (ASTM C1618)	\$ 1,386.00
80149	Type 1L Cement (ASTM C595; Excludes Special Properties)	\$ 1,350.00

Task Code	Physical Testing of Chemical Admixtures for Concrete	Rate
80196	Qualification of Admixture (ASTM C494)	Quotation

Task Code	Soils and Aggregate Tests	Rate
30503	Abrasion: LA Rattler (ASTM C131)	\$ 230.00
30505	Abrasion: LA Rattler (ASTM C535)	\$ 240.00
70301	Atterberg Limits/Plasticity Index (ASTM D4318, CTM 204)	\$ 185.00
70303	California Bearing Ratio Excluding Maximum Density (ASTM D1883): Soil	\$ 635.00
70304	California Bearing Ratio Excluding Maximum Density (ASTM D1883): Cement-Treated Soil	\$ 750.00
70344	Cement-Treated Soil/Base Mix Design: Includes Three Trial Cement Contents with Three Unconfined Compressive Strength Specimens per Cement Content	\$ 4,040.00
70305	Chloride and Sulfate Content (CTM 417, CTM 422)	\$ 205.00
30403	Clay Lumps and Friable Particles (ASTM C142)	\$ 230.00
30321	Cleaness Value: 1" x #4 (CTM 227)	\$ 205.00
30322	Cleaness Value: 1.5" x .75" (CTM 227)	\$ 320.00
70393	Collapse Potential/Index (ASTM D5333)	\$ 265.00

Task Code	Soils and Aggregate Tests, Continued	Rate
70396	Compressive Strength of Molded Soil-Cement Cylinders (ASTM D1633)	\$ 120.00
70309	Consolidation Test: Full Cycle (ASTM 2435, CTM 219)	\$ 226.00
70311	Consolidation Test: Time Rate per Load Increment (ASTM D2435, CTM 219)	\$ 55.00
70313	Corrosivity Series: Sulfate, Cl, pH, Resistivity (CTM 643, 417, and 422)	\$ 285.00
70315	Crushed/Fractured Particles (ASTM D5821, CTM 205)	\$ 205.00
70317	Direct Shear Test: Remolded and/or Residual (ASTM D3080)	\$ 284.00
70319	Direct Shear Test: Undisturbed - Slow [CD] (ASTM D3080)	\$ 263.00
70321	Direct Shear Test: Undisturbed - Fast [CU] (ASTM D3080)	\$ 226.00
70378	Durability Index: Per Method - A,B,C, or D (ASTM D3744, CTM 229)	\$ 242.00
70325	Expansion Index (ASTM D4829, UBC 18-2)	\$ 200.00
75004	Fine Aggregate Angularity (ASTM C1252, CTM 234, AASHTO T304)	\$ 220.00
30507	Flat and Elongated Particle (ASTM D4791)	\$ 265.00
30508	Flat or Elongated Particle (ASTM D4791)	\$ 242.00
70331	Maximum Density: Methods A/B/C (ASTM D1557, D698, CTM 216)	\$ 220.00
70333	Maximum Density: Check Point (ASTM D1557, D698)	\$ 80.00
70335	Maximum Density: AASHTO C [Modified] (AASHTO T-180)	\$ 226.00
70336	Maximum Index Density: Vibratory Table (ASTM D4253)	\$ 400.00
70337	Moisture Content (ASTM D2216, CTM 226)	\$ 32.00
70339	Moisture and Density: Ring Sample (ASTM D2937)	\$ 38.00
70341	Moisture and Density: Shelby Tube Sample (ASTM D2937)	\$ 45.00
70340	Moisture-Density Relations of Soil-Cement Mixtures Premixed in the Field (ASTM D558)	\$ 320.00
70342	Moisture-Density Relations of Soil-Cement Mixtures Mixed in the Lab (ASTM D558)	\$ 320.00
70328	pH of Soils (ASTM D4972)	\$ 60.00
70330	Organic Content of Soils (ASTM D2974, Method A Only)	\$ 85.00
30401	Organic Impurities (ASTM C40, CTM 213)	\$ 105.00
70343	Permeability (ASTM D5084)	Quotation
80001	Potential Reactivity: Chemical Method (ASTM C289 - Discontinued Method)	\$ 610.00
70394	Potential Reactivity: Mortar Bar Expansion Method, 14-Day Exposure (ASTM C1260)	\$ 958.00
70391	Potential Reactivity: Mortar Bar Expansion Method, 28-Day Exposure (ASTM C1260)	\$ 1,015.00
70398	Potential Reactivity: Concrete Bar Expansion Method (ASTM C1293), 12 month	\$ 3,120.00
70399	Potential Reactivity: Concrete Bar Expansion Method (ASTM C1293), 24 month	\$ 3,350.00
70397	Potential Reactivity of Aggregate Combination, Non-Standard Method; 14-Day Exposure, Mortar (After ASTM C1567)	\$ 1,098.00
70392	Potential Reactivity of Aggregate Combination, Non-Standard Method; 28-Day Exposure, Mortar (After ASTM C1567)	\$ 1,155.00
70345	R-Value: Soil (ASTM 2844, CTM 301)	\$ 530.00
70347	R-Value: Aggregate Base (ASTM D2844, CTM 301)	\$ 530.00
70349	Sand Equivalent (ASTM D2419, CTM 217)	\$ 148.00
70351	Sieve #200 Wash Only (ASTM D1140, CTM 202)	\$ 105.00
70353	Sieve with Hydrometer: 3/4" Gravel to Clay (ASTM D422, D7928, CTM 203)	\$ 290.00
70355	Sieve with Hydrometer: Sand to Clay (ASTM D422, D7928, CTM 203)	\$ 278.00
70357	Sieve Analysis Including Wash (ASTM C136, CTM 202)	\$ 175.00
70359	Sieve Analysis Without Wash (ASTM C136, CTM 202)	\$ 142.00
70360	Sieve Analysis: Split Sieve (ASTM C136, CTM 202)	\$ 278.00
70361	Sieve Analysis Without Wash: With Cobbles (ASTM C136, CTM 202)	\$ 275.00
70363	Soundness: Sodium or Magnesium Sulfate, 5 Cycles (ASTM C88)	\$ 205.00
70365	Specific Gravity and Absorption: Coarse (ASTM C127, CTM 206)	\$ 115.00
70367	Specific Gravity and Absorption: Fine (ASTM C128, CTM 207)	\$ 190.00
70369	Swell/Settlement Potential: One Dimensional (ASTM D4546)	\$ 175.00
70371	Triaxial	Quotation
70373	Unconfined Compression (ASTM D2166, CTM 221)	\$ 220.00
30317	Unit Weight Per Cubic Foot (ASTM C29, CTM 212)	\$ 148.00
30319	Void in Aggregate with Known Specific Gravity (ASTM C29, CTM 212)	\$ 148.00
30411	Lightweight Particles: Coarse, with Two Solutions (ASTM C123)	\$ 475.00
30412	Lightweight Particles: Fine, with One Solution (ASTM C123)	\$ 236.00

Task Code	Asphalt Concrete Tests	Rate
75031	HMA Mixing and Preparation	\$ 148.00
75032	HMA Mixing and Preparation with Aggregate Treatment	\$ 205.00
75033	Bulk Specific Gravity of Compacted Sample or Core: SSD (ASTM D2726, CTM 308C)	\$ 65.00
75036	Bulk Specific Gravity of Compacted Sample or Core: Paraffin Coated (ASTM D1188 and CTM 308A)	\$ 95.00
75040	Emulsion Residue, Evaporation (ASTM D244)	\$ 185.00
75024	Extraction: % Bitumen (ASTM D6307, CTM 382)	\$ 185.00
75027	Extraction: % Bitumen and Gradation (ASTM D5444, D6307, CTM 202, 382)	\$ 250.00
75028	Extraction: % Bitumen, Correction Factor (ASTM D6307, CTM 382)	\$ 405.00

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Task Code	Asphalt Concrete Tests, Continued	Rate
75030	Chemical Extraction: % Bitumen and Sieve Analysis (ASTM D2172 Method A or B, ASTM D5444)	\$ 285.00
75042	Lab Tested Maximum Density: Hveem, 3 briquettes (ASTM D1561, D1188, CTM 304, 308)	\$ 250.00
75057	Hveem Stabilometer Test, Premixed, 3 briquettes (ASTM D1560, D1561, CTM 304, 366)	\$ 250.00
75048	Lab Tested Maximum Density: Marshall, 3 Briquettes (ASTM D6926, D2726)	\$ 240.00
75049	Lab Tested Maximum Density: Marshall 6" Specimen, 3 Briquettes (ASTM D5581, D2726)	\$ 250.00
75050	Lab Tested Maximum Density: Superpave Gyrotory Compacted Briquette, SSD, 1 Briquette (ASTM D6925, D2726)	\$ 105.00
75052	Lab Tested Maximum Density: Superpave Gyrotory Compacted Briquette, Parafin, 1 Briquette (ASTM D1188, D6925)	\$ 105.00
75051	Maximum Theoretical Specific Gravity [RICE] (ASTM D2041, CTM 309)	\$ 185.00
75066	Marshall Stability and Flow, Cored Sample, Each (ASTM D6927)	\$ 90.00
75069	Marshall Stability and Flow, Premixed, 3 Briquettes (ASTM D6926, D6927)	\$ 265.00
75106	Marshall Stability and Flow, Gyrotory Compacted Specimen Pre-Mixed, 3 Briquettes (ASTM D5581, D6925)	\$ 270.00
75107	Marshall Stability and Flow 6" Specimen, Premixed, 3 Briquettes (ASTM D5581)	\$ 270.00
75063	Moisture Content (CTM 370)	\$ 100.00
75005	Wet Track Abrasion Test (ASTM D3910)	\$ 190.00
75093	Hveem Mix Design (Excluding Aggregate Quality Tests)	\$ 5,460.00
75096	Hveem Mix Design, with RAP (Excluding Aggregate Quality Tests, RAP Qualification)	\$ 5,927.00
75099	Hveem Mix Design, with Lime (Excluding Aggregate Quality Tests)	\$ 6,300.00
75094	Hveem Mix Design Caltrans Untreated Mix (Including Aggregate Quality Tests)	\$ 6,510.00
75095	Hveem Mix Design Caltrans Lime Treated Mix (Including Aggregate Quality Tests)	\$ 7,560.00
75084	Marshall Mix Design (Excluding Aggregate Quality Tests)	\$ 5,460.00
75087	Marshall Mix Design with RAP (Excluding Aggregate Quality Tests)	\$ 5,925.00
75090	Marshall Mix Design with Lime (Excluding Aggregate Quality Tests)	\$ 6,510.00
75083	Open Grade Asphalt Concrete Mix Design (ASTM D7064, CTM 368)	\$ 3,150.00
75109	Superpave Mix Design (Excluding Aggregate Quality Tests)	\$ 11,130.00
75113	Superpave Mix Design, with RAP (Excluding Aggregate Quality Tests)	\$ 11,760.00
75114	Superpave Mix Design, with Rubber (Excluding Aggregate Quality Tests)	\$ 11,760.00
75115	Superpave Mix Design, with Additives (Excluding Aggregate Quality Tests)	\$ 12,075.00
75075	Effect of Moisture on Asphalt Paving Mixtures, Pre-Mixed (ASTM D4867, AASHTO T283)	\$ 1,155.00
75111	Hamburg Wheel Track Test, 20,000 Passes, 4 Briquettes (AASHTO T324)	\$ 1,270.00
75039	Raveling Test of Cold Mixed Emulsified Asphalt (ASTM D7196)	\$ 230.00
75067	Marshall Stability, Wet Set, 3 Replicates (AASHTO T245)	\$ 405.00
75068	Marshall Stability, Dry Set, 3 Replicates (AASHTO T245)	\$ 350.00
75070	Cold Recycled Asphalt Mix Design: 2 Gradings Each, 3 Emulsion Content (Caltrans LP-8)	\$ 11,025.00
Task Code	Brick Masonry Tests, ASTM C67	Rate
20301	Modulus of Rupture: Flexural	\$ 105.00
20303	Compression Strength	\$ 63.00
20305	Absorption: 5 Hour or 24 Hour	\$ 68.00
20307	Absorption (Boil): 1, 2 or 5 Hours	\$ 105.00
20309	Initial Rate of Absorption	\$ 58.00
20311	Efflorescence	\$ 79.00
20313	Cores: Compression	\$ 74.00
20315	Shear Test on Brick Cores: 2 Faces	\$ 105.00
Task Code	Concrete Block, ASTM C140	Rate
20321	Compression	\$ 100.00
20323	Absorption/Moisture Content/Oven Dry Density	\$ 100.00
20327	Linear Shrinkage (ASTM C426)	\$ 257.00
20335	Web and Face Shell Measurements	\$ 53.00
20329	Tension Test	\$ 179.00
20331	Core Compression	\$ 74.00
20333	Shear Test of Masonry Cores: 2 Faces	\$ 105.00
20339	Efflorescence Tests	\$ 79.00
Task Code	Masonry Prisms, ASTM C1314	Rate
20341	Compression Test: Composite Masonry Prisms Up to 8" x 16"	\$ 220.00
20343	Compression Test: Composite Masonry Prisms Up to 8" x 16"	\$ 290.00
20346	Prism Cord Modulus of Elasticity	\$ 625.00
20347	Prism Cord Modulus of Elasticity with Transverse Strain (for Double-Wythe Specimen)	\$ 765.00

Task Code	Mortar and Grout	Rate
20351	Compression: 2" x 4" Mortar Cylinders (ASTM C780)	\$ 62.00
20353	Compression: 3" x 3" x 6" Grout Prisms, Includes Trimming (ASTM C1019)	\$ 48.00
20355	Compression: 2" Cubes (ASTM C109)	\$ 65.00
20357	Compression: Cores Includes Trimming (ASTM C42)	\$ 75.00
Task Code	Masonry Specimen Preparation	Rate
20155	Cutting of Cubes or Prisms	\$ 75.00
Task Code	Fireproofing Tests	Rate
20401	Oven Dry Density (ASTM E605)	\$ 80.00
Task Code	Gunite and Shotcrete Tests	Rate
20361	Core Compression Including Trimming (ASTM C42)	\$ 75.00
20365	Compression: Cubes (Includes Saw Cutting)	\$ 100.00
Task Code	Concrete Roof Fill: Gypsum, Vermiculite, Perlite, Lightweight Insulating Concrete, Etc.	Rate
20371	Compression Test (ASTM C495 and C472)	\$ 65.00
20373	Air Dry Density (ASTM C472)	\$ 48.00
20379	Oven Dry Density (ASTM C495)	\$ 75.00
Task Code	Reinforcing Steel, ASTM A615, A706	Rate
20501	Tensile Test: # 11 or Smaller	\$ 68.00
20503	Bend Test: # 11 or Smaller	\$ 65.00
20504	Bend Test #14 or #18	\$ 405.00
20505	Tensile Test: # 14	\$ 278.00
20507	Tensile Test: # 18	\$ 395.00
Task Code	Reinforcing Steel - Welded or Coupled Specimens	Rate
20521	Tensile Test: Welded/Coupled #11 and Smaller	\$ 80.00
20523	Tensile Test: Welded/Coupled #14	\$ 290.00
20525	Tensile Test: Welded/Coupled #18	\$ 435.00
20529	Weld: Macroetch	\$ 90.00
20531	Slippage Test - Caltrans (CTM 670)	\$ 230.00
20532	Tensile Test: Welded Hoops #11 and Smaller	\$ 168.00
Task Code	Metal and Steel Testing	Rate
20601	Tensile Strength: Up to 100K Pounds (Each)	\$ 75.00
20603	Tensile Strength: Up to 200K Pounds (Each)	\$ 90.00
20605	Tensile Strength: Up to 300K Pounds (Each)	\$ 105.00
20607	Tensile Strength: Up to 400K Pounds (Each)	\$ 163.00
20609	Tensile Strength: 400K to 600K Pounds (Each)	\$ 405.00
20611	Tensile Strength: Stress-Strain Percent Offset	\$ 205.00
20545	Weld: Macroetch	\$ 90.00
20547	Weld: Fracture	\$ 48.00
20615	Bend Test	\$ 65.00
20617	Flattening Test	\$ 80.00
20619	Hardness Test (ASTM E18)	\$ 95.00
20630	Bolt: Axial Tensile Test (Up to 7/8" diameter)	\$ 58.00
20631	Bolt: Wedge Tensile Test (Up to 7/8" diameter)	\$ 74.00
20632	Bolt: Axial Tensile Test (Greater than 7/8" Up to 1" diameter)	\$ 80.00
20633	Bolt: Wedge Tensile Test (Greater than 7/8" Up to 1" diameter)	\$ 105.00
20634	Bolt: Axial Tensile Test (Greater than 1" diameter)	\$ 120.00
20635	Bolt: Wedge Tensile Test (Greater than 1" diameter)	\$ 130.00
20636	Bolt: Proof Load Test (Up to 7/8")	\$ 90.00
20637	Bolt: Proof Load Test (Greater than 7/8" Up to 1" diameter)	\$ 110.00
20638	Bolt: Proof Load Test (Greater than 1")	\$ 126.00
20639	Nut: Proof Load Test (Up to 7/8")	\$ 63.00
20640	Nut: Proof Load Test (Greater than 7/8" Up to 1" diameter)	\$ 90.00
20641	Nut: Proof Load Test (Greater than 1")	\$ 95.00
Task Code	Chemical Testing of Metal and Steel	Rate
80170	Steel Chemical Analysis	\$ 185.00
80173	Weight of Galvanized Coating (ASTM A90)	\$ 90.00
80176	Epoxy Coating Thickness	\$ 90.00
80177	Coating Thickness	\$ 90.00
Task Code	Machining and Preparation of Tensile and Bend Sample: Carbon Steel	Rate
20751	Machinist: Initial Preparation from Mock-Up, Etc. (Per Hour)	\$ 110.00
20753	Sawcut to Overall Width (Per 0.5" Thickness or Fraction Thereof)	\$ 63.00
20755	Machine to Test Configuration: Milled Specimens	\$ 80.00
20757	Machine to Test Configuration: Turned Specimens (Per 0.5" Thickness or Fraction Thereof)	\$ 158.00
20759	Prepare Subsize Specimens (Per 0.5" Thickness or Fraction Thereof)	\$ 100.00

EXHIBIT C
SCHEDULE OF PERFORMANCE

Performance schedules for work to be performed will be determined on a project by project basis and approved by the City Manager's designated project manager prior to work on each specific project commencing

CITY COUNCIL STAFF REPORT

MEETING DATE: June 21, 2023

PREPARED BY:

Inga Alonzo, Management Analyst

APPROVED BY: City Manager

APPROVE A THREE-YEAR MAINTENANCE SERVICE AGREEMENT WITH PETERSON POWER SYSTEMS FOR GENERATOR MAINTENANCE AND REPAIR SERVICES

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer a three year agreement with Peterson Power Systems in the not-to-exceed amount of \$295,195 for annual and preventive maintenance, repair, emergency repair, and rentals for the City's 28 standby generators.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Water System Master Plan

Wastewater System Master Plan

REPORT NARRATIVE:

The City's fleet of generators are required to provide electrical power back-up for well sites, booster stations, water storage tanks, sewer lift stations, 911 dispatching towers, and other City facilities in the event of a power outage. It is crucial to maintain the constant readiness of these generators through annual servicing, ongoing repair, parts (as needed), rentals for equipment downtime, and preventive maintenance on a three-year rotational servicing schedule. These generators are also permitted through the state of California and must meet the emissions and reporting requirements in order to continue the units when needed.

A detailed Request for Proposals (RFP) was posted in March 2023 to select a highly experienced and capable contractor for maintenance, repair, and emergency servicing for the City's 28 standby generators. The contractor is responsible for furnishing all the labor, machine shop work, field work, shop and field welding, miscellaneous repair, travel time, and expenses necessary to provide generator routine annual service, preventive maintenance,

emergency repair, and rentals for generator downtime. The contractor must also provide three reports annually for each unit including a service report, a load test report, and an oil analysis report with all of their findings. The RFP was advertised in the Morgan Hill Times, posted to the City's website and Public Purchase website. A mandatory pre-bid meeting was held to convey to all potential bidders the details and full expectations of the City with this contract.

The City received four proposals, but one was a day late and thus was not accepted. Another was deemed non-responsive as it did not fulfill the requirements of the full requirements of the RFP. The remaining two were thoroughly reviewed by a four person evaluation panel. The resulting weighted scores from the panel are as follows:

Weighted Score Results		
Generator Maintenance Services FY24-26	PowerGen	Peterson Power
1. <u>Experience and Qualifications</u> of the contractor in general as well as the project manager and other key individuals. Provided safety program details and a statement of qualifications. POINTS 25	20.50	21.75
2. <u>Capability</u> to perform necessary tasks, resolve problems, provide good customer service, and provide timely repairs. Includes detailed electronic sample reports. Provided other information that is helpful in evaluating the company's ability to do the work. POINTS 30	22.50	27.75
3. <u>References and Quality</u> of proposal including compliance with proposal requirements. Feedback from multiple references was positive. POINTS 15	7.50	14.00
4. <u>Fee Schedule</u> forms. Cost breakdown makes sense. Lowest cost. Points as laid out in RFP. POINTS 30	30.00	20.15
OVERALL SCORE	80.50	83.65

Peterson Power received the highest weighted overall score. Evaluators found them to be highly capable and experienced and they have a local facility in San Martin with Morgan Hill based technicians. Their references gave very valuable feedback as to their service standards, reporting ability, reliability, and responsiveness in emergency situations. Therefore, staff recommends City Council's approval of a three-year agreement for Generator Maintenance Services with Peterson Power Corporation for the City's fleet of 28 standby generators.

COMMUNITY ENGAGEMENT:

Not Applicable

Since maintenance of the City's facility, water, and wastewater generators is a regular operational function of the City, no efforts were made to inform the community about this proposed project.

ALTERNATIVE ACTIONS:

City Council could choose to reject the proposals and reissue an RFP. This is not recommended as it would leave the City without service for a period of time and is not likely to result in a contract with added value. Generators are required to provide back-up power to water and wastewater facilities as well as City facilities in the event of a power outage and are necessary for the provision of essential services to the community. Ongoing maintenance and repair are crucial in assuring the generators are functioning properly at all times.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On December 2, 2020, City Council approved a three year agreement with Odyssey Power Corporation for generator maintenance services in the amount of \$225,000.

FISCAL AND RESOURCE IMPACT:

The three-year agreement with a not-to-exceed amount of \$295,195 is subject to future years appropriations, of which, \$194,075 is for routine annual services, \$81,120 is for 3-year rotational preventative maintenance, and remaining \$20,000 is for unforeseen emergency repairs and/or generator rentals. Funds for this agreement are budgeted for in the specific areas the generators service: Water Operations (48%, Fund 650), Sewer Operations (32%, Fund 640), Fire Operations (8%, Fund 010) and Building Maintenance (12%, Fund 740); no further appropriation of funds is necessary.

CEQA (California Environmental Quality Act):

Categorical Exemption

The planned maintenance and management of existing City infrastructure falls within the CEQA categorical exemption of Class 1, Existing Facilities.

**MAINTENANCE SERVICE AGREEMENT
PETERSON POWER SYSTEMS, INC.**

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2027 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be Generator Maintenance and Repair Services as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$295,195.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred Ninety-Five Thousand One Hundred Ninety-Five dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this Agreement, in whole or in part, on behalf of CITY.

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

6. **Performance of Work.** SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of SERVICE PROVIDER'S profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state, and local laws. SERVICE PROVIDER is liable for any property damage caused by SERVICE PROVIDER or its Subcontractors during performance of the services and shall notify the CITY of damage within 24 hours of the occurrence. SERVICE PROVIDER must promptly repair or replace any real or personal property damage and must promptly restore the property to its original or intended condition. CITY may repair or replace the real or personal property damage if SERVICE PROVIDER fails to do so, and the cost of the repairs or replacement may be deducted or offset from any compensation due to SERVICE PROVIDER.

6.1. **Schedule.** SERVICE PROVIDER shall perform all work and services under this Agreement in conformance with the time schedule set forth on **Exhibit C**, "Schedule of Performance," attached hereto and incorporated herein by this reference. The City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement.

6.2. **Storage of Service Provider's Equipment.** If SERVICE PROVIDER desires to leave or store any of SERVICE PROVIDER'S equipment at a CITY site while SERVICE PROVIDER is performing work or service pursuant to this Agreement, SERVICE PROVIDER will first obtain the consent of the City Manager, or his/her delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at SERVICE PROVIDER'S sole risk.

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

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

8.1. **Insurance Types and Amounts.**

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

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

8.1.5. Professional Liability.

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

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

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

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

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

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

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

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

8.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

10. Compliance with Law.

10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon any basis prohibited by State or Federal law, including but not limited to, race, color, creed, religion, gender, marital status, age, sexual

orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

- 10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- 10.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
- 10.4. Compliance with Wage and Hour Laws: SERVICE PROVIDER, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

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

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

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that SERVICE PROVIDER or any subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or SERVICE PROVIDER learns of such a judgment, decision, or order that was not previously disclosed, SERVICE PROVIDER shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes final or of learning of the final

judgment, decision or order. SERVICE PROVIDER and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. CITY reserves the right to require SERVICE PROVIDER to enter into an agreement with CITY regarding the manner in which any such final judgment, decision, or order will be satisfied.

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

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

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

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

Address of SERVICE PROVIDER is as follows:

Peterson Power Systems, Inc.
2828 Teagarden Street
San Leandro, CA 94577

Address of CITY is as follows:

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

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

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

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

17. **Maintenance of Records.**

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

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

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

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

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

20. **No Assignment.** Neither this Agreement nor any portion shall be assigned by SERVICE PROVIDER, without prior written consent of CITY. Any attempted assignment not first approved by

CITY shall be void and, at CITY'S option, shall terminate this Agreement effective as of the date of such attempted assignment.

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

22. **Defense and Indemnification.**

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

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

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

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

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

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

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

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

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

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

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

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[Signatures on Next Page]

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

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

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

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

ATTEST: CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

Michelle Bigelow
Print Name

Date: _____

APPROVED AS TO FORM:

City Attorney

Donald A. Larkin
Print Name

Date: _____

City Manager

Christina J. Turner
Print Name

Date: _____

Peterson Power Systems, Inc

By:

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

Date: _____

By:

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

Date: _____

507000
Contractor's License Number(s) (if applicable)

Expiration Date(s) 03/31/2025

Seal:

1000005682
Contractor's DIR Registration Number(s) (if applicable)

Expiration Date(s) 06/30/2025

EXHIBIT A SCOPE OF SERVICES

The scope of this contract is to provide routine, preventive, and emergency maintenance and repairs to the City of Morgan Hill's 28 generators at different location throughout the city. The contractor will be responsible for furnishing any and all necessary parts, labor, machine shop work, field work, shop and field welding, miscellaneous repair, travel time, expenses, and equipment necessary to do the work required.

Task 1 - Routine Annual Service

Routine annual service is performed once a year on every City generator listed in Attachment A, Task 1, and shall include the following services:

- 1. ENGINE LUBRICATING SYSTEM**
 - A. Check oil level and top off
 - B. Check oil pressure using unit mounted gauge
 - C. Check engine for unusual oil leaks
- 2. FUEL SYSTEM**
 - A. Check fuel pressure (if equipped)
 - B. Inspect fuel system for leaks
 - C. Check day tank fuel level & main tank (gage only)
- 3. INTAKE SYSTEM**
 - A. Check all hoses and connections
 - B. Visually check air cleaner
- 4. GOVERNOR**
 - A. Check all linkages & ball joints (if applicable)
 - B. Check oil in governor (if applicable)
 - C. Check any unusual oil/fuel leakage
- 5. COOLING SYSTEM**
 - A. Check coolant level & inhibitor content, top off
 - B. Check temperature of jacket water heater
 - C. Check condition of all belts, hoses and connections
- 6. ENGINE ELECTRICAL STARTING SYSTEM**
 - A. Check battery cap vents (lead acid only)
 - B. Check battery water levels & adj. (lead acid only)
 - C. Visually check batteries & connections
 - D. Check battery charging system for correct operation and adjust as needed
- 7. GENERATOR**
 - A. Check generator & instruments under bldg. load (if possible)
 - B. Check general appearance of air screen
- 8. ENGINE CONTROLS**
 - A. Check generator and instruments under bldg. load (if possible)
 - B. Check general appearance

9. GENERAL
 - A. Visually check engine mounts
 - B. Visually check complete unit
10. GENERATOR SWITCHGEAR & EMERGENCY SOURCE FEEDERS
 - A. Operate generator circuit breaker manually at time of visit (if possible)
11. RUNNING TEST
 - A. BEFORE STARTING ENGINE:
 - Check engine oil level and coolant level.
 - Check block heater-will maintain coolant temperature of about 90 degrees F in the block. Check fuel level in storage tank.
 - Check battery water level and top as necessary.
 - Check battery terminals for corrosion and connections for tightness (lead acid).
 - B. WITH ENGINE RUNNING:
 - Check oil pressure.
 - Check fuel pressure.
 - Check oil level and add oil as required. Check RPM (frequency).
 - Check generated voltage.
 - Check for leaks of unusual noises.
 - C. AFTER STOPPING ENGINE:
 - Check/verify all switches are in proper positions for automatic start. Check fuel level in tank.
 - Record battery charger volts, check for proper operation. Remove, clean and reinstall all battery connections (lead acid). Inspect generator for cleanliness.
 - Drain crankcase oil and replace with new oil. Remove and replace oil and fuel filters.
 - Inspect air filter(s) and replace as required.
 - Start engine and load with contractor supplied resistive load bank. Run under load for at least one hour.
 - Check generator output. Take oil sample for analysis.
12. REPORTING:
 - A. Provide the following reports for each generator to the Utilities Division in electronic form (Word, Excel, or PDF). Handwritten reports will not be accepted:
 - Service report – report must include the following:
 - a. Work order number, date, employee name
 - b. Generator City ID number, manufacturer, model, serial number, location
 - c. Status of all items and details on list 1-11 above
 - d. Any action items needed if status is not normal
 - Load test - with full interpretation of results
 - Oil Analysis – with full interpretation of results
 - B. Advise customer of any/all unusual situations or potential problems which will require further attention.
 - C. Advise when main fuel tank is below 3/4 full.

Routine annual services shall be performed on normal workdays defined as non-holiday Mondays through Thursdays, 6:30 AM through 4:00 PM and Fridays, 6:30 AM through 3:00 PM. These services shall be scheduled in the months of October through December. Invoices for

annual services shall not be sent to the City without the service, load test, and oil analysis reports completed and attached.

Task 2 - Preventive Maintenance Services

Preventive Maintenance Service is a three-year rotational program (PM-3) in which the contractor shall include the following services on City generators per the rotational schedule per Attachment A. Task 2:

1. Replacement of fan and alternator drive belts.
2. Replacement of engine cooling system hoses.
3. Block heater hoses replaced with high temperature silicone hoses.
4. Replacement of standard ethylene glycol coolant.
5. Replacement of the batteries.

PM-3 and routine annual service shall be performed concurrently on those generators that are due for PM-3 maintenance in that fiscal year. Preventive maintenance and repair services shall be performed on normal workday hours defined as non-holiday Mondays through Thursdays, 6:30 AM through 4:00 PM and Fridays, 6:30 AM through 3:00 PM. Preventive maintenance services shall be scheduled in the months of October through December.

Task 3 - On-Call Emergency and Non-Emergency Repair Services

Contractor shall provide on-call emergency and non-emergency repairs on a time and material basis. Hourly rates paid to under the agreement shall be only for actual productive hours on the job site. The City shall not be directly invoiced for the following:

- Travel and/or transportation of workers;
- Parts and materials acquisition including freight, handling, and delivery; and
- Movement of Contractor owned or rented equipment,

For purposes of the agreement, these are considered overhead, and the costs shall be included in the fixed hourly rates in Attachment A, Task 3. All invoices to the City for on-call emergency and non-emergency repair services must include a breakdown of number of hours for all fixed rates charged and the original cost and mark up price for all parts and materials charged. The City shall reserve the right to request backup documentation for the contractor's original cost on parts and materials.

The City will not consider any proposal with a parts and materials markup in excess of 25%.

A. Non-Emergency Repair Services

Contractor shall provide written, "not to exceed," estimates on all non-emergency repairs. These estimates shall include number of hours, hourly rate, number and type of employees required, estimated material costs, markup cost, and completion date. All work for non-emergency repairs shall be performed during regular operating hours and per the regular rates on Attachment A, Task 3. Contractor shall respond to email or phone requests for estimates within 24 hours and provide written estimates within three business days of the original request date. It shall be the Contractor's responsibility to ensure it has all information to prepare accurate estimates. No repair will be done without the written approval by the City's representative.

B. Emergency Repair/After Hours Services

Contractor shall provide a fixed hourly rate for emergency/after-hours services. Contractor shall have the ability to respond to emergency repairs twenty-four hours a day, seven days per week. The contractor shall provide the City with a current directory its emergency response personnel including phone numbers and emails and/or details on how to contact them on a 24 hour basis. The contractor shall keep the City informed of any changes in emergency response personnel and provide updated contact information. Once the City initiates a communication for emergency service, the Contractor must be able to reach the site of the emergency within 2 hours of the initial communication. It will be at the sole discretion of the City to determine if a situation is an emergency or not. It is possible to have instances where an initial service is an emergency or after hour event, and the rest of the service is non-emergency.

Per Addendum 1 to the project RFP documents, three of the existing generators have been bid for replacement. The City does not know exactly when they will be replaced. They are all being replaced with Kohler brand generators. Therefore, the instructions for the Schedule of Compensation Rates for Routine Annual Services were included in the Addendum as follows: For Routine Annual Services, the three affected line items are below. Contractor shall calculate the FY24 Service Cost for the manufacturer and model for the generator listed for that line on Page 16. For FY 25 and FY26 on those line items, Contractor shall calculate the routine annual cost for the replacement generator manufacturer and model listed below and record the cost in the appropriate field.

	Location	Address	Manufacturer	Model
Line 6	Jackson Booster	3482 White Oak Ct.	Kohler	200REOZJF
Line 14	C Lift Station	3272 Quail Lane	Kohler	80REOZJF
Line 16	I Lift Station	19160 Saffron Drive	Kohler	30REOZK

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Task 1 - Routine Annual Services – All Generators

As described in the scope of work, the annual services cost per unit must include all parts, materials, field work, shop work, welding, labor, travel, mileage, and any other expenses required to do the work.

	UNIT #	LOCATION	ADDRESS	MANUFACTURER	MODEL	SERIAL #	YEAR	KW	FY24 Routine Annual Service Cost	FY25 Routine Annual Service Cost	FY26 Routine Annual Service Cost	
1	W19016	PORTABLE TRAILER*	105 Edes Street Bus Yard*	Blue Star	VD150-02FT4	7008485967	2019	150	\$2295	2495	2595	
2	W17014	PORTABLE TRAILER*	1100 Diana Avenue Diana #3 Well*	Blue Star	VD150-02FT4	103507	2017	150	\$2295	\$2495	\$2595	
3	W16013	PORTABLE TRAILER*	1240 San Pedro Avenue San Pedro Well*	Blue Star	VD150-02FT4	L-10981	2016	150	\$2295	\$2495	\$2595	
4	W13007	PORTABLE TRAILER*	100 East Dunne Avenue Dunne # 1 & 2 Wells*	Doosan	G190	451800UCXE57	2013	190	\$2295	\$2495	\$2595	
5	W05020	HOLIDAY RESERVOIR	3100 Lakeview Court	Kohler	10ROZ	2037908	2005	10	\$1655	\$1795	\$1950	
6	W06022	JACKSON BOOSTER	3482 White Oak Ct	Katolight	D200FRJ 4T2	106704-0405	2006	200	\$2295	\$2495	\$2595	
7	W16005	JACKSON RESERVOIR	16360 Oak Canyon Drive	Kohler	150REOZIF	SGM32GT36	2016	150	\$2295	\$2495	\$2595	
8	W92008	E. DUNNE BOOSTER	2375 East Dunne Avenue	Catapillar	3412	81211841	1992	500	\$3615	\$3830	\$3995	
9	W15012	PORTABLE TRAILER*	200 Diana Avenue Diana #1 Well*	Magnum	6068HFG95A	PE6068R054060	2015	150	\$2295	\$2495	\$2595	
10	W09023	PORTABLE TRAILER*	490 Llagas Road LlagasBooster*	Kohler	150REOZJD	2259122	2009	150	\$2295	\$2495	\$2595	
11	W14011	PORTABLE TRAILER*	470 East Main Avenue Main Well*	Doosan	G190	461126UAYE57	2014	190	\$2295	\$2495	\$2595	
12	W19017	PORTABLE TRAILER*	17002 Murphy Avenue Nordstrom Well*	Blue Star	VD 150-02FT4	7008495531	2019	150	\$2295	\$2495	\$2595	
13	W19024	PORTABLE TRAILER*	105 Edes Street Bus Yard*	Blue Star	VD 150-02FT4	7008499277	2019	150	\$2295	\$2495	\$2595	
14	S03006	C LIFT STATION	3272 Quial Lane	Kohler	80REOZJB	0768962	2003	80	\$1955	\$2130	\$2295	
15	S03018	B LIFT STATION	17558 Holiday Drive	Kohler	40REOZIB	0761654	2003	40	\$1650	\$1795	\$1995	
16	S04019	I LIFT STATION	19160 Saffron Drive	Synergy	30JDA	00-210323-01	2004	30	\$1650	\$1795	\$1995	
17	S06021	G LIFT STATION	18615 Monterey Road	Olympian	DP40P2	OLY00000KNPF358	2006	40	\$1650	\$1795	\$1995	
18	S18025	J LIFT STATION	16035 Jackson Oaks Drive	Kohler	40REOZK4	33G3GMFN0007	2018	40	\$1650	\$1795	\$1995	
19	S14009	PORTABLE TRAILER*	105 Edes Street Bus Yard*	Generac	MMG75D	1409119	2014	75	\$1995	\$2195	\$2395	
20	S15010	PORTABLE TRAILER*	105 Edes Street Bus Yard*	Magnum	4045HFG92	PE4045R089480	2015	75	\$1995	\$2195	\$2395	
21	S17003	PORTABLE TRAILER*	17670 Racoon Court A Lift Station*	Grand Watts	TAD571VE	7005308517	2017	60	\$1995	\$2195	\$2395	
22	SG035	WOODLAND COMM SIT	2275 Rolling Hills Drive	Generac	SG0035AG035	3001737818	2017	32	\$1650	\$1795	\$1995	
23	B01002	EL TORO RESERVOIR	1305 West Dunne Avenue	Generac	1554330100	2062789	2001	45	\$1650	\$1795	\$1995	
24	B89004	CITY HALL	17555 Peak Avenue	Catapillar	3408	78203200	1989	400	\$2585	\$2745	\$2945	
25	B85001	SCHOOL DIST/ CORP Y	105 Edes Street	DMT	250 G CUMMINS	860280	1985	250	\$2450	\$2615	\$2795	
26	B99013	POLICE STATION	16200 Vineyard Boulevard	Generac	6063TK35R	06R0774364	1999	350	\$2585	\$2745	\$2945	
27	#813	FIRE STATION	2100 East Dunne Avenue	Generac	Engine# 67057 95A00415-S	2020473		50	\$1650	\$1795	\$1995	
28	#822	FIRE STATION	18300 Old Monterey Road	Generac	95A004133-S	2022956		50	\$1650	\$1795	\$1995	
* LOCATIONS CHANGE ON PORTABLE UNITS									Annual Total	\$59,275	\$64,250	\$68,615
										Three Year Total	\$194,075.00	

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

Task 2- Preventive Maintenance Services (PM-3)*

The Preventive Maintenance Service is a 3-year rotational program. PM-3 maintenance costs shall include all parts, materials, field work, welding, labor, travel, mileage, and any other expenses required to do the work. PM-3 services and routine annual services shall be performed concurrently on those generators that are due for PM-3 maintenance in that fiscal year.

	FY 23/24	PM-3 Cost/Unit	FY 24/25	PM-3 Cost/Unit	FY 25/26	PM-3 Cost/Unit
1	B01002	\$2055	B85001	\$4275	B89004	\$4210
2	S14009	\$2875	B99013	\$4225	S06021	\$2055
3	W17014	\$3145	S03018	\$2055	S15010	\$2850
4	W92008	\$4275	S17003	\$2850	W16013	\$3145
5	W13007	\$3310	S18025	\$2025	W19016	\$3145
6	W14011	\$3145	SG035	\$2025	W19017	\$3145
7	W15012	\$3145	W05020	\$1690	W19024	\$3145
8	Fire #813	\$1995	W06022	\$3145	S23006	\$2850
9	Fire #822	\$1995	W09023	\$3145	S23019	\$2055
10					W23022	\$3145
Total	FY23/24	\$25,940	FY24/25	\$25,435	FY25/26	\$29,745
				PM-3 Total Three years	\$81,120	

Generator manufacturer and model information is listed on Page 16 except for units S23006, S23019, and W23022. Manufacturer and Model for those units listed below:

S23006 - Kohler 80REOZJF

S23019 - Kohler 30REOZK

W23022 Kohler 200REOZJF

*This is a revised version of page 17 and shall be used in place of the original page 17.

Task 3 - On-Call Emergency and Non-Emergency Repairs

Time and material costs associated with emergency/after-hours and non-emergency generator repair services. The City shall not be directly invoiced for the following:

- Travel and/or transportation of workers;
- Parts and materials acquisition including freight, handling, and delivery; and
- Movement of Contractor owned or rented equipment.

For purposes of the agreement, these are considered overhead, and the costs shall be included in the fixed hourly labor rates on this page. All invoices to the City for on-call emergency and non-emergency repair services must include a breakdown of number of hours for all fixed rates charged and the original cost and mark up price for all parts and materials charged. The City shall reserve the right to request backup documentation for the contractor's original cost on parts and materials.

NON-EMERGENCY REPAIR SERVICE	FIXED HOURLY RATE
SUPERVISOR	\$ 251.75/HOUR
SERVICEPERSON	\$ 251.75/HOUR
SERVICEPERSON ASSISTANT	\$ 251.75/HOUR
SHOP WORK	
SHOP LABOR	\$ 251.75/HOUR
EMERGENCY/AFTER-HOURS REPAIRS	
MONDAY-FRIDAY AFTER HOURS	\$ 378/HOUR
SATURDAY	\$ 378/HOUR
HOLIDAY/Sunday	\$ 480/HOUR
PARTS AND MATERIALS	
MARK UP OVER COST on non CAT parts	%20

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

If needed - Generator Rentals

Weekly rates shall include all costs to transport to and from the site and labor and materials for setup. The contractor shall confirm equipment and connection compatibility of rental generators with City facilities.

Generator	Weekly Rates Through 2026
20 KW	\$ size not available
36 KW	\$ size not available
50 KW	\$ size not available
60 KW	\$995
70 KW	\$ size not available
80 KW	\$ size not available
100 KW	\$1125
150 KW	\$1200
200 KW	\$1795
250 KW	\$ size not available
300 KW	\$ size not available
350 KW	\$3175
400 KW	\$3300

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

EXHIBIT C
SCHEDULE OF PERFORMANCE

Routine annual services shall be performed on normal workdays defined as non-holiday Mondays through Thursdays, 6:30 AM through 4:00 PM and Fridays, 6:30 AM through 3:00 PM. These services shall be scheduled in the months of October through December. Invoices for annual services shall not be sent to the City without the service, load test, and oil analysis reports completed and attached.

PM-3 and routine annual service shall be performed concurrently on those generators that are due for PM-3 maintenance in that fiscal year. Preventive maintenance and repair services shall be performed on normal workday hours defined as non-holiday Mondays through Thursdays, 6:30 AM through 4:00 PM and Fridays, 6:30 AM through 3:00 PM. Preventive maintenance services shall be scheduled in the months of October through December.

Non-Emergency Repairs - Contractor shall respond to email or phone requests for estimates within 24 hours and provide written estimates within three business days of the original request date. It shall be the Contractor's responsibility to ensure it has all information to prepare accurate estimates. Emergency Repairs - Once the City initiates a communication for emergency service, the Contractor must be able to reach the site of the emergency within 2 hours of the initial communication.

CITY COUNCIL STAFF REPORT

MEETING DATE: June 21, 2023

PREPARED BY:

Juan Paulo Pausanos, Assistant Engineer

Charlie Ha, Supervising Civil Engineer

APPROVED BY: City Manager

APPROVE FINAL MAP FOR SAN SEBASTIAN PHASE 4A - TRACT NO. 10600 AND RELATED SUBDIVISION IMPROVEMENTS AGREEMENT

RECOMMENDATION(S)

1. Approve Final Map;
2. Authorize City Manager to execute the Subdivision Improvements Agreement with Toll CA XX, LP; and
3. Authorize the recordation of the Final Map and Subdivision Improvements Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2022-2023 Strategic Priorities

Economic Development

REPORT NARRATIVE:

San Sebastian Phase 4A – Tract No. 10600 is a 53-lot subdivision located on the west side of Cochrane Road and north of Half Road (see attached Site Map - Attachment 1). The developer, Toll CA XX, LP, has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map (SD-09-07) on February 12, 2013.

The City Council is required to approve the Final Map (Attachment 2) if it conforms to all the requirements of the Subdivision Map Act, and any conditions of approval for the Tentative Map.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provisions to provide the City with the required fees, security, and insurance prior to recordation of the Final Map. The Final Map conforms to the requirements of the Subdivision Map Act, and conditions of approval have been met. Staff recommends that City Council authorize the City Manager to sign the Subdivision Improvements Agreement (Attachment 3) pending review and approval by the City Attorney.

COMMUNITY ENGAGEMENT:

Inform

On February 12, 2013, the Planning Commission approved the Tentative Map. Residents within a 300 feet radius were informed of the Planning Commission's intent to approve the Tentative Map for the project, in which a public hearing was held to allow the public to be involved and voice their concerns over Tentative Map requirements.

ALTERNATIVE ACTIONS:

There are no feasible alternative actions on the approval of the Final Map and Subdivision Improvements Agreement as the Developer has met the requirements of the Tentative Map conditions approved by the Planning Commission to file for a Final Map approval and has furnished the necessary documents to complete the processing of the Subdivision Improvements Agreement.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

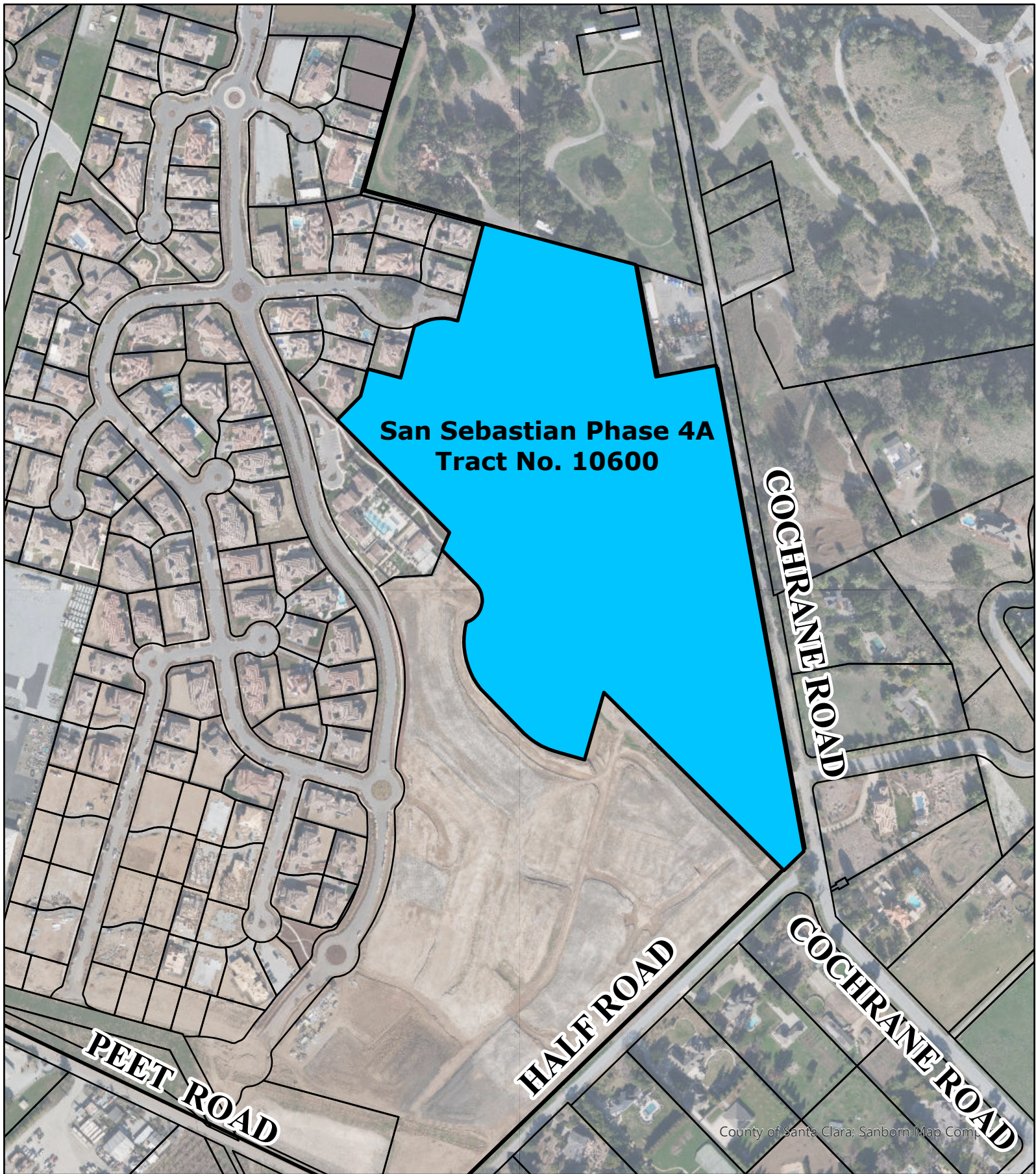
On March 2, 2022, the City Council approved the San Sebastian Phase 3A Final Map and related Subdivision Improvements Agreement.

FISCAL AND RESOURCE IMPACT:

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

**CEQA (California Environmental Quality Act):
Project**

An Environment Impact Report was adopted by the City Council on February 27, 2013.



County of Santa Clara: Sanborn Map Company



**Engineering and Utilities Department
Land Development Engineering Division**

**Site Map
San Sebastian Phase 4A
Tract No. 10600**



0 100 200 400 600 800 Feet Page 178 of 469

OWNERS' STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY SHOWN ON THE SUBDIVISION WITHIN THE DISTINCTIVE SYMBOL LINE OF THIS MAP ENTITLED "TRACT 10600, SAN SEBASTIAN PHASE 4A", CONSISTING OF TEN (10) SHEETS, THIS STATEMENT BEING ON SHEET ONE (1) THEREOF; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE HAVE CAUSED SAID MAP TO BE PREPARED FOR RECORD, AND DO CONSENT TO THE MAKING AND FILING OF SAID MAP.

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

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

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: EASEMENTS FOR NON-VEHICULAR PUBLIC ACCESS OVER THOSE CERTAIN AREAS DESIGNATED AS "PUBLIC ACCESS EASEMENT" (PAE).

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE LOTS AND PARCELS WITHIN THE "SAN SEBASTIAN" SUBDIVISIONS, EASEMENTS OVER THOSE CERTAIN AREAS DESIGNATED AS "INGRESS AND EGRESS EASEMENT" (IEE) FOR RECIPROCAL RIGHTS OF INGRESS AND EGRESS.

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

WE HEREBY RESERVE FOR THE BENEFIT OF THE "PARCEL C", EASEMENTS OVER, UNDER, OR UPON THOSE CERTAIN AREAS DESIGNATED AS "SUPPLEMENTAL PRIVATE STORM DRAIN EASEMENT" (SPSDE) FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE STORM WATER MANAGEMENT FACILITIES. SAID EASEMENT SHALL BE CONVEYED TO THE HOMEOWNERS ASSOCIATION CREATED FOR THE "SAN SEBASTIAN" SUBDIVISIONS, MAINTENANCE SHALL BE AS SPECIFIED IN THE COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs).

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE LOTS AND PARCELS WITHIN THE "SAN SEBASTIAN" SUBDIVISIONS, EASEMENTS OVER, UNDER, OR UPON THOSE CERTAIN AREAS DESIGNATED AS "PRIVATE SANITARY SEWER EASEMENT" (PSSE) FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE SANITARY SEWER FACILITIES. SAID EASEMENT SHALL BE CONVEYED TO AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION CREATED FOR THE "SAN SEBASTIAN" SUBDIVISIONS.

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE LOTS AND PARCELS WITHIN THE "SAN SEBASTIAN" SUBDIVISIONS, THEIR LICENSEES, VISITORS, AND TENANTS, FOR THE PURPOSES OF INGRESS, EGRESS, PARKING (WHERE DESIGNATED) AND FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE UTILITIES UNDER, UPON AND OVER THE STREETS DESIGNATED AS (PRIVATE), AND SHOWN AS "CORTE OBISPO" ("PARCEL F"), "VIA SANTA ELENA" ("PARCEL G"), "CORTE SARAVIA" ("PARCEL H"), "CORTE DAMIAN" ("PARCEL I"), AND "CORTE ZAPALA" ("PARCEL J"). SAID PARCELS SHALL BE CONVEYED TO, AND MAINTAINED BY, THE HOMEOWNERS ASSOCIATION CREATED FOR THE "SAN SEBASTIAN" SUBDIVISIONS, AS STATED IN THE COVENANTS, CONDITIONS, AND RESTRICTIONS.

WE HEREBY RESERVE FOR THE BENEFIT OF OWNERS OF LOTS CREATED BY THIS MAP AND THE PRESENT AND SUCCESSOR MEMBERS OF THE HOME OWNERS ASSOCIATION CREATED FOR THE "SAN SEBASTIAN" SUBDIVISIONS. "PARCEL A", "PARCEL B", "PARCEL C", AND "PARCEL D" DELINEATED AND DESIGNATED AS "OPEN SPACE" FOR THE PURPOSE OF LANDSCAPING, RECREATIONAL AMENITIES, STORM WATER MANAGEMENT AND ALL OTHER APPURTENANCES THERETO. SAID PARCELS SHALL BE CONVEYED TO, AND MAINTAINED BY, THE HOMEOWNERS ASSOCIATION CREATED FOR THE "SAN SEBASTIAN" SUBDIVISIONS. AS STATED IN THE COVENANTS, CONDITIONS AND RESTRICTIONS. NO FURTHER SUBDIVISIONS AND OR RESIDENTIAL DEVELOPMENT OF SAID PARCELS SHALL BE ALLOWED.

WE HEREBY STATE THAT "PARCEL E", MAY BE SUBDIVIDED FURTHER INTO BUILDABLE LOTS, SUBJECT TO THE PROVISIONS OF THE 'RESIDENTIAL DEVELOPMENT CONTROL SYSTEM' (R.D.C.S.) OF THE CITY OF MORGAN HILL.

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

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

OWNER: TOLL CA XX, L.P., A CALIFORNIA LIMITED PARTNERSHIP

BY: TOLL WEST COAST LLC,
A DELAWARE LIMITED LIABILITY COMPANY
GENERAL PARTNER

NAME: Steve Savage

ITS: Vice President

OWNER ACKNOWLEDGMENT

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

STATE OF CALIFORNIA }
COUNTY OF Alameda }ss.

ON June 07, 2023, BEFORE ME, Rosana Haydee Martinez Sedano A NOTARY PUBLIC, PERSONALLY APPEARED Steve Savage WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/HEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES); AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND.
NOTARY'S SIGNATURE: [Signature]
NAME OF NOTARY (PLEASE PRINT): Rosana Haydee Martinez Sedano
PRINCIPAL COUNTY OF BUSINESS: Alameda
MY COMMISSION NUMBER: 2404926
MY COMMISSION EXPIRES: May 20, 2026

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY, THAT IS TRUE AND COMPLETE AS SHOWN, IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF TOLL CA XX, L.P., A CALIFORNIA LIMITED PARTNERSHIP, COMPLETED AUGUST 03, 2022. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS BEFORE JUNE 2025, AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED FINAL MAP.

[Signature] 06/06/2023
BRYAN PIERCE, PLS 8859 DATE



CITY SURVEYOR'S STATEMENT

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

DATE: _____
JOHN K. KING
ACTING CITY SURVEYOR - HANNA & BRUNETTI
P.L.S. NO. 6809



NOTES:

- 1.) THE DISTINCTIVE SYMBOL LINE INDICATES THE BOUNDARIES OF THE LAND SUBDIVIDED BY THIS FINAL MAP.
- 2.) THE AREA WITHIN THE DISTINCTIVE SYMBOL LINE IS 27.48 ACRES, MORE OR LESS.
- 3.) THE PROPERTY OWNER IS PROVIDING CONSTRUCTIVE NOTICE HEREON THAT EACH LOT IS SUBJECT TO THE REQUIREMENTS OF A DEVELOPMENT AGREEMENT, AND THAT COMMITMENTS UNDER THE AGREEMENT, WHICH THE CITY HAS PERMITTED THE PROPERTY OWNER TO DELAY, MUST BE FULFILLED BY THE SUBSEQUENT PROPERTY OWNER(S).
- 4.) A GEOTECHNICAL INVESTIGATION REPORT WAS PREPARED BY ENGEO, INC. JOB NO. 9301.000.000 AND IS ON FILE WITH THE CITY OF MORGAN HILL

CITY ENGINEER'S STATEMENT

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

DATE: _____



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

STATEMENT OF THE PLANNING COMMISSION

I HEREBY STATE THAT THE TENTATIVE MAP FOR THE WITHIN FINAL MAP SHOWN HEREON WAS CONDITIONALLY APPROVED BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL ON FEBRUARY 12, 2013, BY RESOLUTION NUMBER 13-13, APPLICATION NUMBER SD-09-07.

DATE: _____
JENNIFER CARMAN
SECRETARY
CITY OF MORGAN HILL, CALIFORNIA

STATEMENT OF THE CITY CLERK

I HEREBY STATE THAT THIS FINAL MAP, CONSISTING OF TEN (10) SHEETS, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL AT A MEETING OF SAID COUNCIL HELD ON THE _____ DAY OF _____, 2023; AND THAT SAID COUNCIL DID ACCEPT, SUBJECT TO THEIR IMPROVEMENT IN ACCORDANCE WITH CITY STANDARDS, ON BEHALF OF THE PUBLIC, THE DEDICATION OF THE "PUBLIC SERVICE EASEMENT" (PSE), THE "EMERGENCY VEHICLE ACCESS EASEMENT" (EVAE), AND THE "PUBLIC ACCESS EASEMENT" (PAE) FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE DEDICATION, AS SHOWN ON THIS MAP.

DATE: _____
MICHELLE BIGELOW - CITY CLERK
OF THE CITY OF MORGAN HILL, CALIFORNIA

RECORDER'S STATEMENT

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

REGINA ALCOMENDRAS, RECORDER
SANTA CLARA COUNTY, CALIFORNIA BY _____ DEPUTY

TRACT 10600
SAN SEBASTIAN, PHASE 4A

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

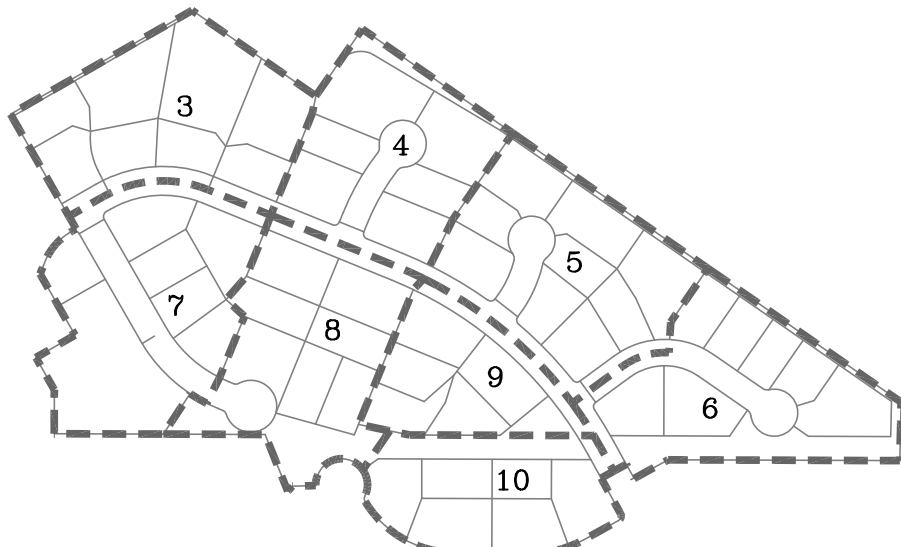
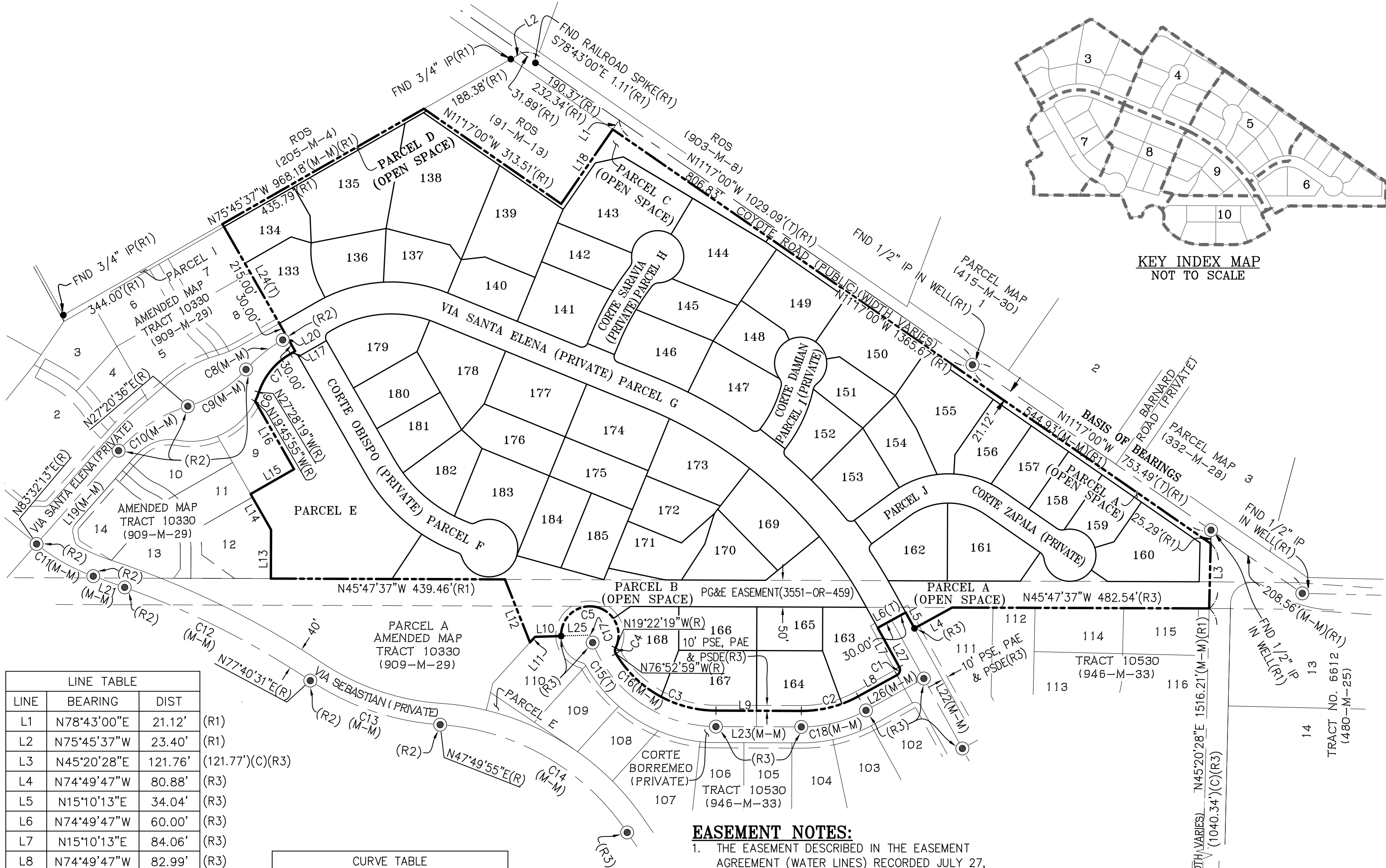
A SUBDIVISION OF "PARCEL A" AS SHOWN ON THE MAP ENTITLED "TRACT 10534, SAN SEBASTIAN, PHASE 3" FILED NOVEMBER 24, 2020, IN BOOK 934 OF MAPS, PAGES 31 THROUGH 34, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND "PARCEL A" AS SHOWN ON THE MAP ENTITLED "TRACT 10530, SAN SEBASTIAN, PHASE 3A" FILED APRIL 14, 2022 IN BOOK 946 OF MAPS, AT PAGES 33 THROUGH 43, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

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

JUNE 2023

JOB #092030

SHEET 1 OF 10 SHEETS



LEGEND	
---	BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
---	EXISTING LOT LINE
---	NEW LOT LINE
---	MONUMENT LINE/CENTERLINE
---	NEW EASEMENT LINE
---	EXISTING EASEMENT LINE
---	TIE LINE
●	FOUND MONUMENT IN WELL, AS NOTED
●	FOUND MONUMENT, AS NOTED
○	SET BRASS DISK IN WELL, TAGGED PLS 8859
○	SET IRON PIPE, TAGGED PLS 8859
○	BOUNDARY
○	EMERGENCY VEHICLE ACCESS EASEMENT
○	FOUND
○	IRON PIPE
○	PUBLIC SERVICE EASEMENT
○	PUBLIC ACCESS EASEMENT
○	PRIVATE SANITARY SEWER EASEMENT
○	INGRESS AND EGRESS EASEMENT
○	PRIVATE STORM DRAIN EASEMENT
○	SUPPLEMENTAL PRIVATE STORM DRAIN EASEMENT
○	PACIFIC GAS AND ELECTRIC COMPANY
(M-M)	MONUMENT TO MONUMENT
(T)	TOTAL DIMENSION
(R)	RADIAL BEARING
(C)	CALCULATED
()	RECORD DATA IF DIFFERENT FROM MEASURED

REFERENCES:	
(R1)	TRACT 10534 - 934-M-31
(R2)	AMENDED MAP, TRACT 10330 - 909-M-29
(R3)	TRACT 10530 - 946-M-33

- NOTES:**
- ALL MONUMENT TIES ARE 90° OR RADIAL TO MONUMENT LINES UNLESS OTHERWISE NOTED.
 - DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.

BASIS OF BEARINGS:
THE BEARING OF N11°17'00"W BETWEEN TWO FOUND MONUMENTS ALONG THE MONUMENT LINE OF COYOTE ROAD AS SHOWN ON THE MAP ENTITLED "TRACT 10534, SAN SEBASTIAN, PHASE 3", FILED NOVEMBER 24, 2020 IN BOOK 934 OF MAPS, AT PAGES 31 THROUGH 34, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.

LINE TABLE		
LINE	BEARING	DIST
L1	N78°43'00"E	21.12' (R1)
L2	N75°45'37"W	23.40' (R1)
L3	N45°20'28"E	121.76' (121.77')(C)(R3)
L4	N74°49'47"W	80.88' (R3)
L5	N15°10'13"E	34.04' (R3)
L6	N74°49'47"W	60.00' (R3)
L7	N15°10'13"E	84.06' (R3)
L8	N74°49'47"W	82.99' (R3)
L9	N45°47'37"W	160.37' (R3)
L10	N47°50'15"W	49.03' (R3)
L11	N86°15'28"E	14.04' (R3)
L12	N22°19'22"E	127.27' (R2)
L13	N44°12'23"E	91.67' (R1)
L14	N14°14'23"E	77.31' (R1)
L15	N75°45'37"W	93.94' (R1)
L16	N14°14'23"E	146.88' (R1)
L17	N75°45'37"W	10.33' (R1)
L18	N78°43'00"E	170.00' (R1)
L19	N85°19'13"E	233.14' (R2)
L20	N75°45'37"W	9.78' (R2)
L21	N26°19'39"W	62.51' (R2)
L22	N15°10'13"E	150.00' (R3)
L23	N45°47'37"W	160.37' (R3)
L24	N14°14'23"E	275.00' (R1)
L25	N47°50'15"W	54.00' (R3)
L26	N74°49'47"W	123.99' (R3)
L27	N15°10'13"E	125.06' (R3)

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	17.28'	11.00'	090°00'00" (R3)
C2	111.49'	220.00'	029°02'10" (R3)
C3	226.20'	220.00'	058°54'37" (R3)
C4	11.04'	11.00'	057°30'40" (R3)
C5	196.47'	54.00'	208°27'56" (R3)
C6	18.16'	135.00'	007°42'23" (R1)
C7	95.37'	131.00'	041°42'42" (R1)
C8	88.76'	280.00'	018°09'43" (R2)
C9	130.96'	240.00'	031°15'56" (R2)
C10	156.49'	280.00'	032°01'23" (R2)
C11	123.08'	355.00'	019°51'52" (R2)
C12	391.03'	1600.00'	014°00'10" (R2)
C13	260.43'	500.00'	029°50'36" (R2)
C14	419.57'	460.00'	052°15'36" (R1)
C15	312.32'	250.00'	071°34'44" (R3)
C16	297.32'	250.00'	068°08'26" (R3)
C17	15.00'	250.00'	003°26'18" (R3)
C18	126.69'	250.00'	029°02'10" (R3)

EASEMENT NOTES:

- THE EASEMENT DESCRIBED IN THE EASEMENT AGREEMENT (WATER LINES) RECORDED JULY 27, 2016 AS DOCUMENT NO. 23382281, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND IN THE FIRST AMENDMENT TO EASEMENT AND INFRASTRUCTURE IMPROVEMENT AGREEMENT RECORDED MAY 25, 2018 AS DOCUMENT NO. 23941928, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND THE FIRST AMENDMENT TO EASEMENT AND INFRASTRUCTURE IMPROVEMENT AGREEMENT RECORDED MAY 18, 2020 AS DOCUMENT NO. 24755853, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, CANNOT BE PLOTTED FROM RECORD INFORMATION, AND IS THEREFORE NOT SHOWN ON THIS MAP.



TRACT 10600 SAN SEBASTIAN, PHASE 4A

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

A SUBDIVISION OF "PARCEL A" AS SHOWN ON THE MAP ENTITLED "TRACT 10534, SAN SEBASTIAN, PHASE 3" FILED NOVEMBER 24, 2020, IN BOOK 934 OF MAPS, PAGES 31 THROUGH 34, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND "PARCEL A" AS SHOWN ON THE MAP ENTITLED "TRACT 10530, SAN SEBASTIAN, PHASE 3A" FILED APRIL 14, 2022 IN BOOK 946 OF MAPS, AT PAGES 33 THROUGH 43, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
MAY 2023

JOB #092030

SHEET 2 OF 10 SHEETS

LEGEND

- BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
--- EXISTING LOT LINE
--- NEW LOT LINE
--- MONUMENT LINE/CENTERLINE
--- NEW EASEMENT LINE
--- EXISTING EASEMENT LINE
--- TIE LINE
● FOUND MONUMENT IN WELL, AS NOTED
● FOUND MONUMENT, AS NOTED
○ SET BRASS DISK IN WELL, TAGGED PLS 8859
○ SET IRON PIPE, TAGGED PLS 8859
○ BNDRY
○ EVAE
○ FND
○ IP
○ PSE
○ PAE
○ PSSE
○ IEE
○ PSDE
○ SPSDE
○ PG&E
○ (M-M)
○ (T)
○ (R)
○ (C)
○ ()
- BOUNDARY
EMERGENCY VEHICLE ACCESS EASEMENT
FOUND
IRON PIPE
PUBLIC SERVICE EASEMENT
PUBLIC ACCESS EASEMENT
PRIVATE SANITARY SEWER EASEMENT
INGRESS AND EGRESS EASEMENT
PRIVATE STORM DRAIN EASEMENT
SUPPLEMENTAL PRIVATE STORM DRAIN EASEMENT
PACIFIC GAS AND ELECTRIC COMPANY
MONUMENT TO MONUMENT
TOTAL DIMENSION
RADIAL BEARING
CALCULATED
RECORD DATA IF DIFFERENT FROM MEASURED

REFERENCES:

- (R1) TRACT 10534 - 934-M-31
(R2) AMENDED MAP, TRACT 10330 - 909-M-29
(R3) TRACT 10530 - 946-M-33

NOTES:

1. ALL MONUMENT TIES ARE 90° OR RADIAL TO MONUMENT LINES UNLESS OTHERWISE NOTED.
2. DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.

BASIS OF BEARINGS:

THE BEARING OF N11°17'00"W BETWEEN TWO FOUND MONUMENTS ALONG THE MONUMENT LINE OF COYOTE ROAD AS SHOWN ON THE MAP ENTITLED "TRACT 10534, SAN SEBASTIAN, PHASE 3", FILED NOVEMBER 24, 2020 IN BOOK 934 OF MAPS, AT PAGES 31 THROUGH 34, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.

TRACT 10600
SAN SEBASTIAN, PHASE 4A

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

A SUBDIVISION OF "PARCEL A" AS SHOWN ON THE MAP ENTITLED "TRACT 10534, SAN SEBASTIAN, PHASE 3" FILED NOVEMBER 24, 2020, IN BOOK 934 OF MAPS, PAGES 31 THROUGH 34, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND "PARCEL A" AS SHOWN ON THE MAP ENTITLED "TRACT 10530, SAN SEBASTIAN, PHASE 3A" FILED APRIL 14, 2022 IN BOOK 946 OF MAPS, AT PAGES 33 THROUGH 43, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
MAY 2023

JOB #092030

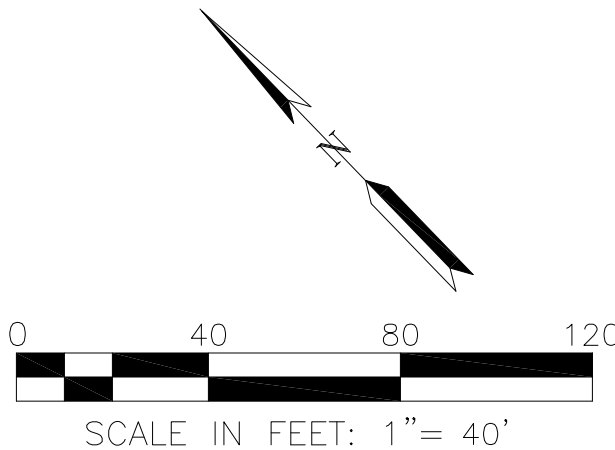
SHEET 6 OF 10 SHEETS

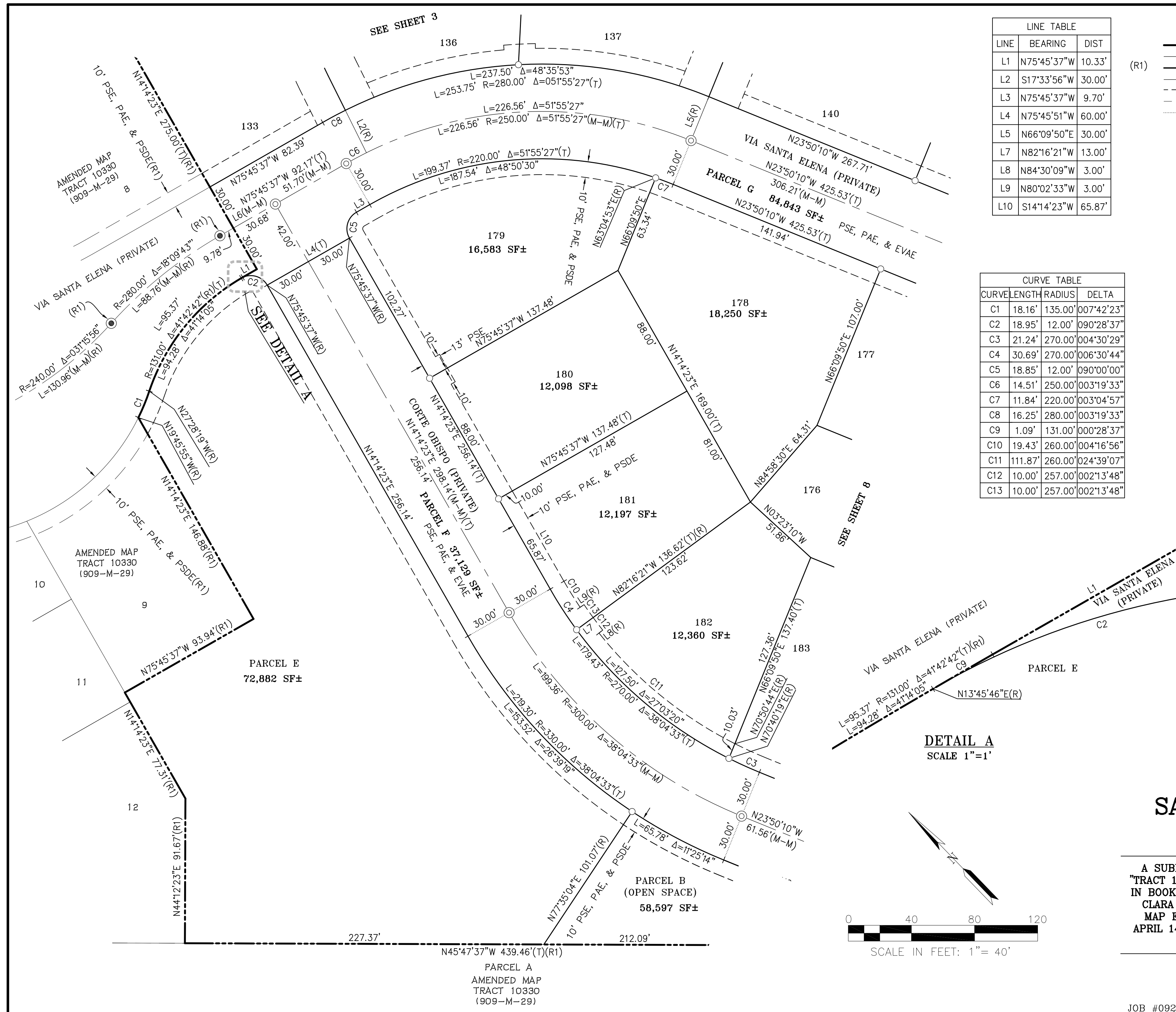
LINE TABLE		
LINE	BEARING	DIST
L1	N47°15'11"E	36.28'
L2	N62°53'16"W	37.60'
L3	N11°17'00"W	37.49'
L4	N15°10'13"E	34.04' (R3)
L5	N74°49'47"W	60.00' (R3)
L6	N15°10'13"E	55.68'
L7	N15°10'13"E	55.68'
L8	N07°43'45"E	55.00'
L9	S15°10'13"W	180.73'
L10	N48°22'26"E	3.83'

LINE TABLE		
LINE	BEARING	DIST
L11	N37°48'43"E	3.83'
L12	N78°43'00"E	10.00'
L13	S07°43'45"W	10.00'
L14	N44°12'23"E	13.84'
L15	N11°17'00"W	63.95'
L16	S50°33'09"W	3.00'
L17	S53°03'03"W	3.00'
L18	N78°43'00"E	17.31'

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	16.80'	11.00'	087°31'25"
C2	24.50'	177.50'	007°54'25"
C3	14.12'	17.00'	047°36'17"
C4	44.13'	49.00'	051°36'16"
C5	14.12'	17.00'	047°36'17"
C6	16.80'	11.00'	087°31'25"
C7	76.25'	880.00'	004°57'53"
C8	12.42'	880.00'	000°48'32"
C9	59.07'	112.50'	030°04'58"

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C10	59.58'	112.50'	030°20'34"
C11	10.01'	108.67'	005°16'35"
C12	10.03'	108.67'	005°17'09"
C13	3.44'	7.00'	028°09'51"
C14	1.36'	4.00'	019°26'25"
C15	12.87'	62.00'	011°53'46"
C16	10.87'	62.00'	010°02'33"
C17	65.97'	59.00'	064°03'42"





LINE TABLE		
LINE	BEARING	DIST
L1	N75°45'37"W	10.33'
L2	S17°33'56"W	30.00'
L3	N75°45'37"W	9.70'
L4	N75°45'51"W	60.00'
L5	N66°09'50"E	30.00'
L7	N82°16'21"W	13.00'
L8	N84°30'09"W	3.00'
L9	N80°02'33"W	3.00'
L10	S14°14'23"W	65.87'

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	18.16'	135.00'	007°42'23"
C2	18.95'	12.00'	090°28'37"
C3	21.24'	270.00'	004°30'29"
C4	30.69'	270.00'	006°30'44"
C5	18.85'	12.00'	090°00'00"
C6	14.51'	250.00'	003°19'33"
C7	11.84'	220.00'	003°04'57"
C8	16.25'	280.00'	003°19'33"
C9	1.09'	131.00'	000°28'37"
C10	19.43'	260.00'	004°16'56"
C11	111.87'	260.00'	024°39'07"
C12	10.00'	257.00'	002°13'48"
C13	10.00'	257.00'	002°13'48"

LEGEND

- | | | |
|------|-------|---|
| (R1) | ----- | BOUNDARY LINE (DISTINCTIVE SYMBOL LINE) |
| | ===== | EXISTING LOT LINE |
| | ===== | NEW LOT LINE |
| | ----- | MONUMENT LINE/CENTERLINE |
| | ----- | NEW EASEMENT LINE |
| | ----- | EXISTING EASEMENT LINE |
| | | TIE LINE |
| | ⊙ | FOUND MONUMENT IN WELL, AS NOTED |
| | ● | FOUND MONUMENT, AS NOTED |
| | ⊙ | SET BRASS DISK IN WELL, TAGGED PLS 8859 |
| | ○ | SET IRON PIPE, TAGGED PLS 8859 |
| | BNDRY | BOUNDARY |
| | EVAE | EMERGENCY VEHICLE ACCESS EASEMENT |
| | FND | FOUND |
| | IP | IRON PIPE |
| | PSE | PUBLIC SERVICE EASEMENT |
| | PAE | PUBLIC ACCESS EASEMENT |
| | PSSE | PRIVATE SANITARY SEWER EASEMENT |
| | IEE | INGRESS AND EGRESS EASEMENT |
| | PSDE | PRIVATE STORM DRAIN EASEMENT |
| | SPSDE | SUPPLEMENTAL PRIVATE STORM DRAIN EASEMENT |
| | PG&E | PACIFIC GAS AND ELECTRIC COMPANY |
| | (M-M) | MONUMENT TO MONUMENT |
| | (T) | TOTAL DIMENSION |
| | (R) | RADIAL BEARING |
| | (C) | CALCULATED |
| | () | RECORD DATA IF DIFFERENT FROM MEASURED |

REFERENCES:

- | | | | |
|------|--------------------------|---|----------|
| (R1) | TRACT 10534 | - | 934-M-31 |
| (R2) | AMENDED MAP, TRACT 10330 | - | 909-M-29 |
| (R3) | TRACT 10530 | - | 946-M-33 |

NOTES:

1. ALL MONUMENT TIES ARE 90° OR RADIAL TO MONUMENT LINES UNLESS OTHERWISE NOTED.
2. DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.

BASIS OF BEARINGS:

THE BEARING OF N11°17'00"W BETWEEN TWO FOUND MONUMENTS ALONG THE MONUMENT LINE OF COYOTE ROAD AS SHOWN ON THE MAP ENTITLED "TRACT 10534, SAN SEBASTIAN, PHASE 3", FILED NOVEMBER 24, 2020 IN BOOK 934 OF MAPS, AT PAGES 31 THROUGH 34, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.

TRACT 10600
SAN SEBASTIAN, PHASE 4A

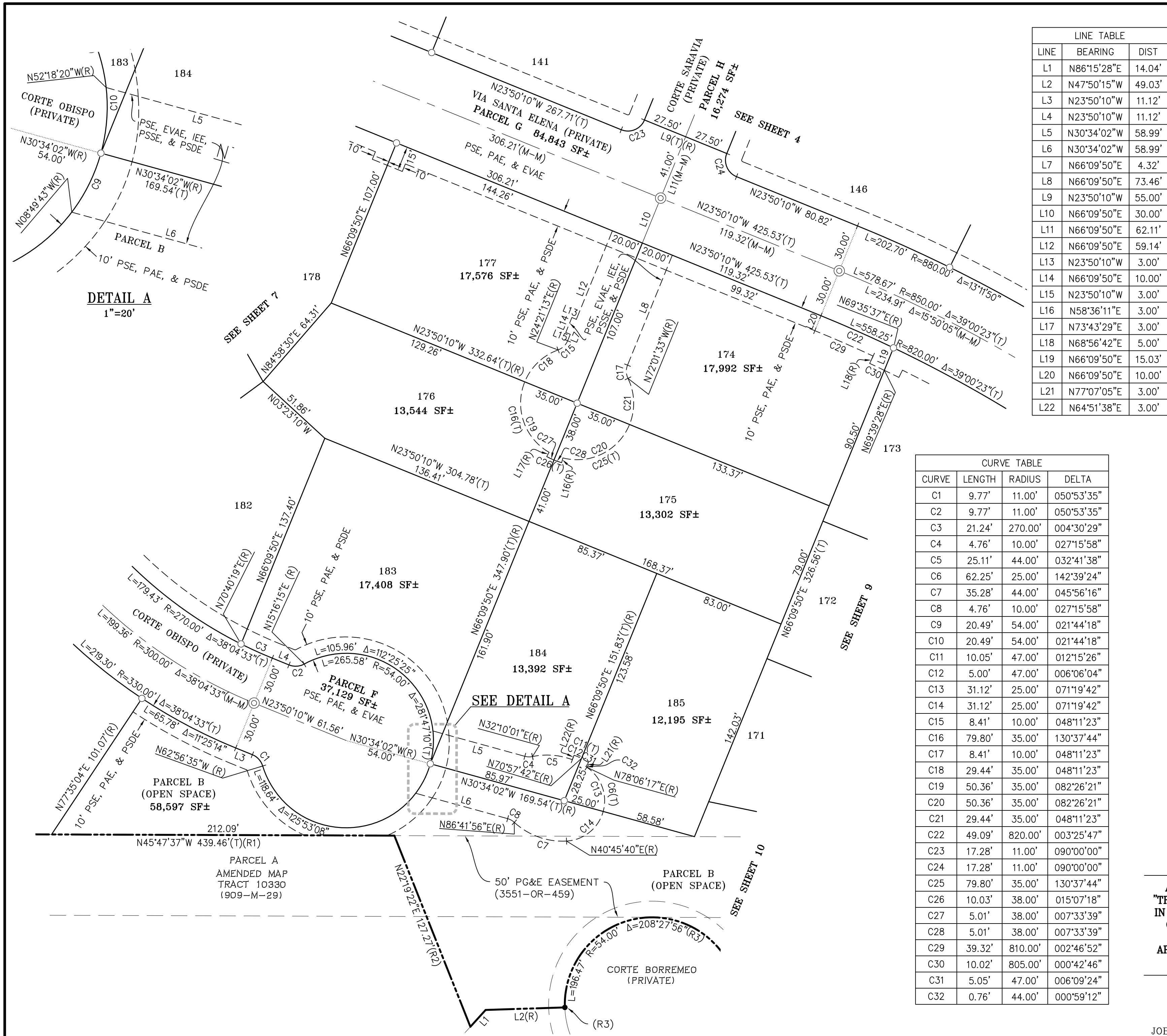
CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

A SUBDIVISION OF "PARCEL A" AS SHOWN ON THE MAP ENTITLED "TRACT 10534, SAN SEBASTIAN, PHASE 3" FILED NOVEMBER 24, 2020 IN BOOK 934 OF MAPS, PAGES 31 THROUGH 34, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND "PARCEL A" AS SHOWN ON THE MAP ENTITLED "TRACT 10530, SAN SEBASTIAN, PHASE 3A" FILED APRIL 14, 2022 IN BOOK 946 OF MAPS, AT PAGES 33 THROUGH 43, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
RUGGERI-JENSEN-AZAR
 8055 Camino Arroyo, Gilroy, CA 95020
 MAY 2023

JOB #092030

SHEET 7 OF 10 SHEETS



LINE TABLE		
LINE	BEARING	DIST
L1	N86°15'28"E	14.04' (R3)
L2	N47°50'15"W	49.03' (R3)
L3	N23°50'10"W	11.12'
L4	N23°50'10"W	11.12'
L5	N30°34'02"W	58.99'
L6	N30°34'02"W	58.99'
L7	N66°09'50"E	4.32'
L8	N66°09'50"E	73.46'
L9	N23°50'10"W	55.00'
L10	N66°09'50"E	30.00'
L11	N66°09'50"E	62.11'
L12	N66°09'50"E	59.14'
L13	N23°50'10"W	3.00'
L14	N66°09'50"E	10.00'
L15	N23°50'10"W	3.00'
L16	N58°36'11"E	3.00'
L17	N73°43'29"E	3.00'
L18	N68°56'42"E	5.00'
L19	N66°09'50"E	15.03'
L20	N66°09'50"E	10.00'
L21	N77°07'05"E	3.00'
L22	N64°51'38"E	3.00'

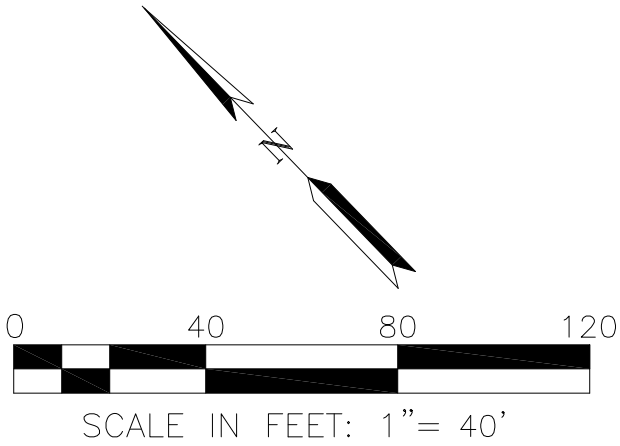
LEGEND	
---	BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
---	EXISTING LOT LINE
---	NEW LOT LINE
---	MONUMENT LINE/CENTERLINE
---	NEW EASEMENT LINE
---	EXISTING EASEMENT LINE
---	TIE LINE
●	FOUND MONUMENT IN WELL, AS NOTED
●	FOUND MONUMENT, AS NOTED
○	SET BRASS DISK IN WELL, TAGGED PLS 8859
○	SET IRON PIPE, TAGGED PLS 8859
○	BOUNDARY
○	EMERGENCY VEHICLE ACCESS EASEMENT
○	FOUND
○	IRON PIPE
○	PUBLIC SERVICE EASEMENT
○	PUBLIC ACCESS EASEMENT
○	PRIVATE SANITARY SEWER EASEMENT
○	INGRESS AND EGRESS EASEMENT
○	PRIVATE STORM DRAIN EASEMENT
○	SUPPLEMENTAL PRIVATE STORM DRAIN EASEMENT
○	PACIFIC GAS AND ELECTRIC COMPANY
○	MONUMENT TO MONUMENT
(T)	TOTAL DIMENSION
(R)	RADIAL BEARING
(C)	CALCULATED
()	RECORD DATA IF DIFFERENT FROM MEASURED

- REFERENCES:**
- (R1) TRACT 10534 - 934-M-31
 - (R2) AMENDED MAP, TRACT 10330 - 909-M-29
 - (R3) TRACT 10530 - 946-M-33

- NOTES:**
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BASIS OF BEARINGS:
THE BEARING OF N11°17'00"W BETWEEN TWO FOUND MONUMENTS ALONG THE MONUMENT LINE OF COYOTE ROAD AS SHOWN ON THE MAP ENTITLED "TRACT 10534, SAN SEBASTIAN, PHASE 3", FILED NOVEMBER 24, 2020 IN BOOK 934 OF MAPS, AT PAGES 31 THROUGH 34, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	9.77'	11.00'	050°53'35"
C2	9.77'	11.00'	050°53'35"
C3	21.24'	270.00'	004°30'29"
C4	4.76'	10.00'	027°15'58"
C5	25.11'	44.00'	032°41'38"
C6	62.25'	25.00'	142°39'24"
C7	35.28'	44.00'	045°56'16"
C8	4.76'	10.00'	027°15'58"
C9	20.49'	54.00'	021°44'18"
C10	20.49'	54.00'	021°44'18"
C11	10.05'	47.00'	012°15'26"
C12	5.00'	47.00'	006°06'04"
C13	31.12'	25.00'	071°19'42"
C14	31.12'	25.00'	071°19'42"
C15	8.41'	10.00'	048°11'23"
C16	79.80'	35.00'	130°37'44"
C17	8.41'	10.00'	048°11'23"
C18	29.44'	35.00'	048°11'23"
C19	50.36'	35.00'	082°26'21"
C20	50.36'	35.00'	082°26'21"
C21	29.44'	35.00'	048°11'23"
C22	49.09'	820.00'	003°25'47"
C23	17.28'	11.00'	090°00'00"
C24	17.28'	11.00'	090°00'00"
C25	79.80'	35.00'	130°37'44"
C26	10.03'	38.00'	015°07'18"
C27	5.01'	38.00'	007°33'39"
C28	5.01'	38.00'	007°33'39"
C29	39.32'	810.00'	002°46'52"
C30	10.02'	805.00'	000°42'46"
C31	5.05'	47.00'	006°09'24"
C32	0.76'	44.00'	000°59'12"

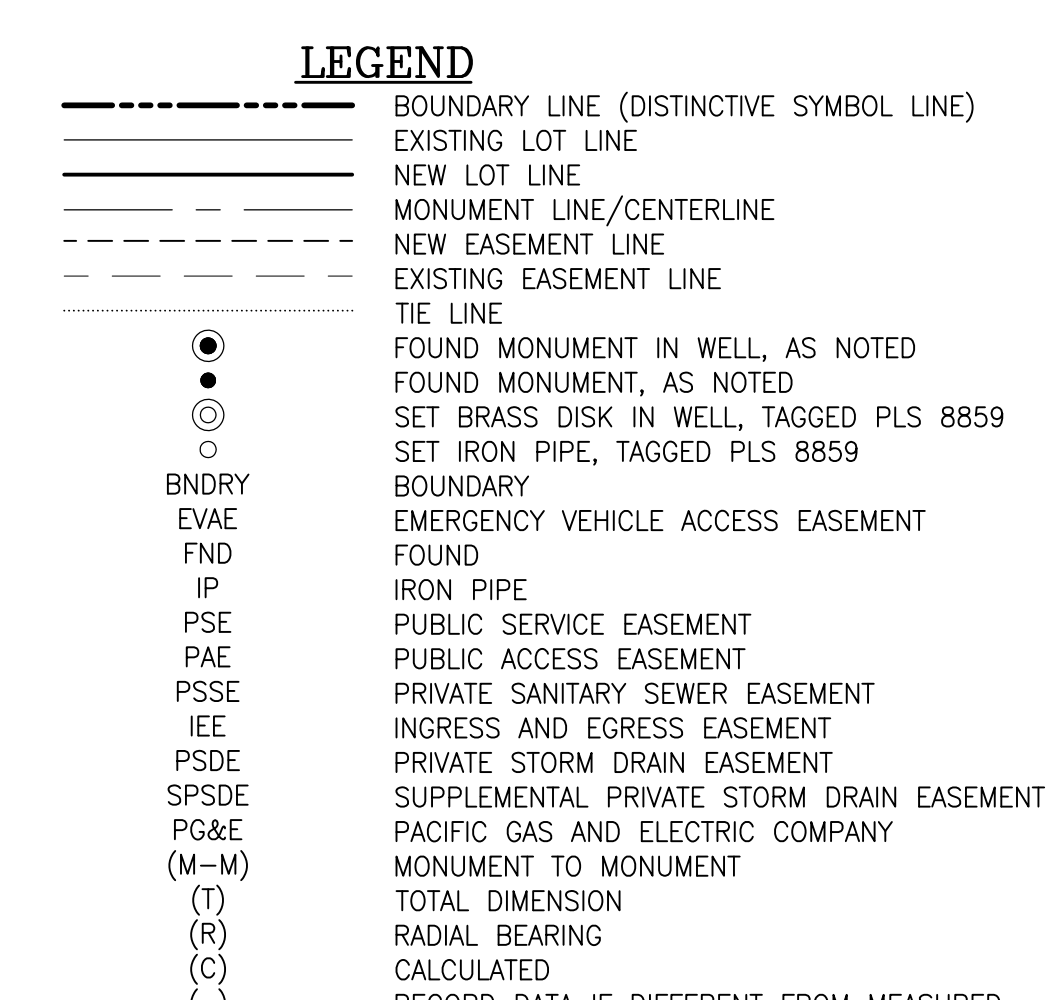


TRACT 10600 SAN SEBASTIAN, PHASE 4A

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

A SUBDIVISION OF "PARCEL A" AS SHOWN ON THE MAP ENTITLED "TRACT 10534, SAN SEBASTIAN, PHASE 3" FILED NOVEMBER 24, 2020, IN BOOK 934 OF MAPS, PAGES 31 THROUGH 34, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND "PARCEL A" AS SHOWN ON THE MAP ENTITLED "TRACT 10530, SAN SEBASTIAN, PHASE 3A" FILED APRIL 14, 2022 IN BOOK 946 OF MAPS, AT PAGES 33 THROUGH 43, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
MAY 2023



CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
MAY 2023

LINE TABLE		
LINE	BEARING	DIST
L1	N86°15'28"E	14.04'
L2	N81°09'12"W	39.31'
L3	N74°49'47"W	60.00'
L4	N15°10'13"E	34.04'
L5	N15°10'13"E	60.00'
L6	N15°10'16"E	89.71'
L7	N73°03'34"W	3.00'
L8	N55°44'36"E	3.00'
L9	N32°40'10"E	3.00'
L10	N44°12'23"E	6.58'
L11	N45°47'37"W	3.00'

CURVE TABLE				
CURVE	LENGTH	RADIUS	DELTA	
C1	11.04'	11.00'	057°30'40"	(R3)
C2	17.28'	11.00'	090°00'00"	(R3)
C3	11.28'	28.00'	023°04'26"	
C4	35.28'	44.00'	045°56'16"	
C5	5.64'	28.00'	011°32'13"	
C6	35.28'	44.00'	045°56'16"	
C7	4.76'	10.00'	027°15'58"	
C8	20.94'	44.00'	027°15'58"	
C9	14.34'	44.00'	018°40'18"	
C10	26.09'	25.00'	059°47'29"	
C11	26.09'	25.00'	059°47'29"	
C12	14.34'	44.00'	018°40'18"	
C13	20.94'	44.00'	027°15'58"	
C14	33.77'	220.00'	008°47'39"	
C15	5.64'	28.00'	011°32'13"	
C16	3.33'	7.00'	027°15'58"	

LEGEND	
	BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
	EXISTING LOT LINE
	NEW LOT LINE
	MONUMENT LINE/CENTERLINE
	NEW EASEMENT LINE
	EXISTING EASEMENT LINE
	TIE LINE
	FOUND MONUMENT IN WELL, AS NOTED
	FOUND MONUMENT, AS NOTED
	SET BRASS DISK IN WELL, TAGGED PLS 8859
	SET IRON PIPE, TAGGED PLS 8859
	BOUNDARY
	EMERGENCY VEHICLE ACCESS EASEMENT
	FOUND
	IRON PIPE
	PUBLIC SERVICE EASEMENT
	PUBLIC ACCESS EASEMENT
	PRIVATE SANITARY SEWER EASEMENT
	INGRESS AND EGRESS EASEMENT
	PRIVATE STORM DRAIN EASEMENT
	SUPPLEMENTAL PRIVATE STORM DRAIN EASEMENT
	PACIFIC GAS AND ELECTRIC COMPANY
	MONUMENT TO MONUMENT
	TOTAL DIMENSION
	RADIAL BEARING
	CALCULATED
	RECORD DATA IF DIFFERENT FROM MEASURED

REFERENCES:	
(R1)	TRACT 10534
(R2)	AMENDED MAP, TRACT 10330
(R3)	TRACT 10530

NOTES:	
1.	ALL MONUMENT TIES ARE 90° OR RADIAL TO MONUMENT LINES UNLESS OTHERWISE NOTED.
2.	DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.

BASIS OF BEARINGS:	
THE BEARING OF N11°17'00"W BETWEEN TWO FOUND MONUMENTS ALONG THE MONUMENT LINE OF COYOTE ROAD AS SHOWN ON THE MAP ENTITLED "TRACT 10534, SAN SEBASTIAN, PHASE 3", FILED NOVEMBER 24, 2020 IN BOOK 934 OF MAPS, AT PAGES 31 THROUGH 34, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.	

TRACT 10600 SAN SEBASTIAN, PHASE 4A

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

A SUBDIVISION OF "PARCEL A" AS SHOWN ON THE MAP ENTITLED "TRACT 10534, SAN SEBASTIAN, PHASE 3" FILED NOVEMBER 24, 2020, IN BOOK 934 OF MAPS, PAGES 31 THROUGH 34, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND "PARCEL A" AS SHOWN ON THE MAP ENTITLED "TRACT 10530, SAN SEBASTIAN, PHASE 3A" FILED APRIL 14, 2022 IN BOOK 946 OF MAPS, AT PAGES 33 THROUGH 43, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
MAY 2023

JOB #092030

SHEET 10 OF 10 SHEETS

RECORDING REQUESTED BY
WHEN RECORDED RETURN TO

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

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

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

SUBDIVISION IMPROVEMENTS AGREEMENT

TOLL CA XX, L.P.

SAN SEBASTIAN PHASE 4A – TRACT NO. 10600

This Subdivision Improvements Agreement ("Agreement") between the City of Morgan Hill, a municipal corporation ("City"), and **TOLL CA XX, L.P.**, a limited partnership ("Subdivider"), is entered into this ____ day of _____, 2023. City and Subdivider hereby acknowledge the following:

1. Subdivider has filed a Tentative Subdivision Map and supporting documents for **Tract No. 10600**, the subdivision known as **San Sebastian Phase 4A** ("Map").
2. City desires, as part of the conditions of approval ("Conditions") of the Final Tract Map or Parcel Map ("Final Map"), that certain improvements be installed by Subdivider ("Improvements") as shown on the City Engineer approved and signed Subdivision Improvement Plans entitled "Improvement Plans for **San Sebastian Phase 4A Tract No. 10600**" ("Plans").
3. Subdivider has been unable to complete, prior to filing of the Final Map, all of the improvements required by City to the satisfaction of the City Engineer.
4. Subdivider is required by the terms of the Morgan Hill Municipal Code ("Municipal Code"), to improve all streets, highways, or public areas which are part of the development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer and to post certain securities to secure the completion of the Improvements.
5. To assure City that Subdivider will construct, install and complete all Improvements required for the Subdivision, the parties have entered into this Agreement.

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

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

Section 1. Incorporation by Reference

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

Section 2. Construction of Improvements

(a) Subdivider shall construct, as provided for in the Conditions, the Improvements as shown fully executed in the Plans entitled "**Improvement Plans for San Sebastian 4A**" subject to the approval of City.

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

(c) Survey Monumentation:

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

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

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

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

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

Section 3. Modification of Plans

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

Section 4. Security

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5. Inspections

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

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

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

Section 6. Timing of Performance

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

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

Section 7. Work Performance and Warranty

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

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

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

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

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

(e) Subdivider warrants that: (1) it has investigated the work to be performed under this agreement, (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should Subdivider discover any conditions materially differing from those inherent in the Improvements or work or as represented by City, it shall immediately inform City and shall not proceed, except at Subdivider's risk, until written instructions are received from City.

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

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

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

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

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

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

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

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

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

Section 9. Indemnity

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

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

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

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

Section 10. Insurance

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

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

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

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

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

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

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

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

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

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

(4) Pollution (Environmental) Liability: The performance of Subdivider’s work or service under this Agreement involves handling of hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials. Subdivider shall procure and maintain Pollution Liability covering the Subdivider's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

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

(1) ALL Policies:

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

(2) ALL Policies except Workers Compensation:

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

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

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

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

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

Certificate Holder address:

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

Section 11. Permits and Requisite Fees

(a) Subdivider shall pay all current fee obligations in the total amount of **\$3,562,086** due under City Resolution No. 5592, as amended, in accordance with the Department of Public Work fee schedule, as follows:

(1) **\$348,626** payable at the time of recording of the Final Map, and

(2) **\$3,198,508** payable on a pro-rata basis for each individual lot in the Subdivision prior to final inspection of each and every residence.

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

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

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

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

Section 12. On-Site Supervision

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

Section 13. Waiver

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

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

- a. Address of Subdivider is as follows:

Rick Nelson
Toll Brothers – Northern California Division
6800 Koll Center Parkway, Suite 320
Pleasanton, CA 94566-7053

- b. Address of City is as follows:

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

With a copy to:

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

Section 15. Noncompliance

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

Section 16. Notice of Breach and/or Default

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

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

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

Section 17. Performance by Surety or City

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

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

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

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

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

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

Section 18. Successors in Interest

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

Section 19. Effective Date

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

Section 20. Amendment of Agreement

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

Section 21. Execution

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

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

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

Section 23. Law to Govern: Venue

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

Section 24. Limitations Upon Subcontracting and Assignment.

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

Section 25. Miscellaneous

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

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

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

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

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

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

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

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

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

CITY OF MORGAN HILL

By: _____

Christina J. Turner, City Manager

Date: _____

ATTEST:

By: _____

Michelle Bigelow, City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____

Donald A. Larkin, City Attorney

Date: _____

"Subdivider"

Toll CA XX, L.P.,

A California limited partnership

By: _____

Print Name and Title

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

Date: 6-14-23

By: _____

Print Name and Title

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

Date: 6-14-23

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT "A"

IMPROVEMENTS AND

ESTIMATED COSTS OF IMPROVEMENTS

AS OF SEPTEMBER 15, 2022

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
A.	PUBLIC WATER-(Domestic)				
1.	8" Water incl. valves, thrust blocks, etc.	615	LF	\$50.00	\$30,750
2.	10" Water incl. valves, thrust blocks, etc.	2,290	LF	\$75.00	\$171,750
3.	Fire Hydrant	13	EA	\$4,500.00	\$58,500
4.	Connect to existing	2	EA	\$5,000.00	\$10,000
5.	1.5" Service with 1" Meter	25	EA	\$1,600.00	\$40,000
6.	2" Water Service and 1" meter (2 Meter Cluster)	3	EA	\$3,200.00	\$9,600
7.	4" Water Service and 1" meter (3 Meter Cluster)	1	EA	\$4,800.00	\$4,800
8.	6" Water Service and 1" meter (4 Meter Cluster)	3	EA	\$6,400.00	\$19,200
9.	6" Water Service and 1" meter (5 Meter Cluster)	1	EA	\$8,000.00	\$8,000
Sub-Total Water:					\$352,600

ACKNOWLEDGMENT

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

State of California
County of Alameda

On June 14, 2023 before me, Rosana Haydee Martinez Sedano, Notary Public
(insert name and title of the officer)

personally appeared Benjamin C. Helber and Steve Savage,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are
subscribed to the within instrument and acknowledged to me that ~~he/she~~ they executed the same in
~~his/her~~ their authorized capacity(ies), and that by ~~his/her~~ their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature *Rosana Martinez Sedano* (Seal)



CITY COUNCIL STAFF REPORT

MEETING DATE: June 21, 2023

PREPARED BY:

Tanya Carothers, Environmental Services Administrator

APPROVED BY: City Manager

APPROVE FREEWIRE TECHNOLOGIES, INC., AGREEMENT FOR INSTALLATION AND OPERATION OF ELECTRIC VEHICLE CHARGING INFRASTRUCTURE

RECOMMENDATION(S)

Authorize the City Manager to enter into an Own and Operate License Agreement with FreeWire Technologies, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Transportation

Guiding Documents

Climate Action Plan

REPORT NARRATIVE:

The purpose of this agenda item is to consider entering into an Agreement with FreeWire Technologies, Inc., to allow for the installation of a Level 3 electric vehicle fast charging station in the City's 3rd Street Parking Garage, see Attachment A. For a description of electric vehicle charging infrastructure terminology, see Attachment B.

Background

In December 2021, the City adopted the Morgan Hill Climate Action Plan (CAP) which includes a main goal of reducing Morgan Hill's net CO2 emissions in the building and transportation sectors to thirty-five percent (35%) below the 2020 baseline level by 2030 and one-hundred percent (100%) below the 2020 baseline level by 2045. In August 2022, the Advanced Clean Cars Rule II was approved by the California Air Resources Board. This regulation establishes a year-by-year roadmap so that by 2035, 100% of new cars and light trucks sold in California will be zero-emission vehicles. In December 2022, the City approved an ordinance that requires electric vehicle charging infrastructure in all new construction and also as part of specified retrofit projects.

Over the next fifteen years, electric vehicle uptake will increase as new electric vehicle prices fall and used electric vehicles become more available. It is anticipated that nearly 12.9 million charge ports will be needed to support the projected 26.4 million electric vehicles that will be on U.S. roads by 2030. State and local policies as well as favorable market trends will make electric vehicle purchases an increasingly more attractive and viable option for car buyers in the coming years. A key to supporting this transition to electric vehicles will be the provision of convenient and fast charging ports throughout the community.

Project Description

Currently, the City's 3rd Street Parking Garage has two Level 2 electric vehicle chargers available for community use. Level 2 chargers charge at a rate of 10 to 20 miles per hour. The current Level 2 chargers are owned by the City and the significant amount of resources required to operate, upkeep, and repair the chargers is greater than the revenue the chargers bring in.

The proposed project will remove and replace the Level 2 City-owned chargers with a Level 3 charging station that includes two charging pods. The proposed Level 3 charging station will charge at a rate of approximately 150-200 miles per fifteen minutes. If two vehicles are plugged into the station at the same time, then the charge rate will be approximately 150-200 miles per half hour. The proposed Level 3 charging station will serve more people each day than the current Level 2 chargers, allowing electric vehicle owners to enjoy Downtown amenities and then leave with a fully charged vehicle. The station will be fully owned, operated, upkept and repaired by FreeWire Technologies, Inc. For the proposed Level 3 charging station specifications, see Attachment C.

COMMUNITY ENGAGEMENT:

Consult

The proposed agreement will add a fast charging opportunity to the Downtown Morgan Hill area, thereby supporting the transition to electric vehicles within the Morgan Hill community. Electrification of the transportation sector is a major goal of the City's adopted CAP. Development of the CAP goals and action items involved community outreach and engagement. The City held a Community Meeting on the CAP as a kick-off to the outreach effort. Community members were invited to participate in a Working Group. Once formed, the Working Group had substantial involvement in developing the CAP over several months. In addition, a Town Hall was dedicated to the CAP.

ALTERNATIVE ACTIONS:

The City could choose to not enter into an agreement with FreeWire Technologies, Inc. In this scenario, the current Level 2 chargers would remain in the City's 3rd Street Parking Garage and the City would continue to operate, maintain, and repair the chargers. The community would not have access to a local Level 3 ultra fast charging option.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

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

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

The Electric Vehicle Charging Infrastructure Ordinance was adopted in December 2022 and requires electric vehicle charging infrastructure in all new construction and also as part of specified retrofit projects.

FISCAL AND RESOURCE IMPACT:

The Agreement will allow for the installation of a Level 3 electric vehicle charging station on City property and does not include the exchange of any funds. FreeWire Technologies, Inc. will be required to pay for all electricity used, and will also install, operate, maintain, and repair the chargers as needed at no cost to the City. FreeWire Technologies, Inc. will retain 100 percent of the revenue derived from use of the chargers. Entering into the Agreement will not result in any negative fiscal impact to the City. The Agreement will relieve the City of expending resources on the current Level 2 chargers which will be removed from the 3rd Street Parking Garage as part of the project. This will relieve the Public Services Team of the growing administrative and maintenance responsibilities associated with the aging existing chargers, allowing work on other City priorities.

Managing the Own & Operate License Agreement with FreeWire Technologies, Inc., along with other electric vehicle charging infrastructure agreements, is part of the Work Plan of the Public Services Department.

CEQA (California Environmental Quality Act):

Categorical Exemption

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15308 of the CEQA Guidelines (Actions by Regulatory Agencies for Protection of the Environment) and 15302 (Replacement or Reconstruction). Entering into the proposed agreement will allow for replacement of existing Level 2 electric vehicle charging infrastructure with Level 3 electric vehicle charging infrastructure in an existing parking garage, which will help to encourage and support the transition to electric vehicles within the Morgan Hill Community and protect the environment from the impacts of climate change.



FREEWIRE OWN & OPERATE LICENSE AGREEMENT

This FREEWIRE OWN & OPERATE LICENSE AGREEMENT (this “Agreement”), dated as of _____, 2023 (the “Effective Date”), is entered into by and between the City of Morgan Hill, a California Municipal Corporation with a business address at 17575 Peak Avenue, Morgan Hill, California, 95037, (“Customer”) and FreeWire Technologies, Inc., a Delaware corporation with a business address at 7200 Gateway Boulevard, Newark, CA 94560 (“Licensee”). Customer and Licensee may be referred to herein individually as a “Party” and together as the “Parties”.

RECITALS

WHEREAS, Customer is the owner or lessee of one or more real property sites described on Exhibit A attached hereto (collectively, the “Customer Property”);

WHEREAS, Licensee provides electric vehicle service equipment (“EVSE”) and support services to owners of electric plug-in vehicles (each an “EV”);

WHEREAS, Customer believes that the Customer Property will benefit from the presence of certain proprietary EV charging stations provided by Licensee (each, a “Boost Charger™”), by attracting high-value customers, differentiating its location and promoting sustainable and environmentally-sound transportation; and

WHEREAS, Customer desires to participate in Licensee’s charging-as-service program, whereby Licensee (a) pays Customer for a license to access and use a portion of the Customer Property on which Licensee will install the Boost Charger(s)™ and certain ancillary items (as further described below), and (b) retains (i) ownership of the Boost Charger(s)™, (ii) relevant charging revenue, and (iii) any and all other benefits derived from the presence of the Boost Charger(s)™ on the Customer Property unless otherwise provided herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

Article 1

LICENSE; USE; SCOPE; EXCLUSIVITY

1.1 Grant of License. As of the Effective Date and thereafter for the duration of the Term (as defined below), Customer hereby grants to Licensee (a) an irrevocable (but subject to termination under Section 2.3) and exclusive license running with the Customer Property (the “License”) to use a portion of the Customer Property (such portion of the Customer Property as more particularly described on Exhibit A the “Premises”), and (b) any necessary easements for access and utilities, each consistent with the Purpose (as defined below).

1.2 Access. Access to the Customer Property and the Premises is depicted on Exhibit B. Licensee and its agents, employees, contractors, vendors, customers, guests, invitees, lenders and finance parties shall have access to and ability to use the Premises twenty-four (24) hours per day, seven (7) days per week and on every day of the year, to operate the Charging Stations (as defined below), which includes, without limitation, maintaining, inspecting, repairing, upgrading or replacing any portion of the Charging Stations. Notwithstanding the foregoing, Licensee acknowledges that Customer may need to close the Premises for maintenance, safety or other unforeseen reasons, in which case Customer shall use commercially reasonable efforts to notify Licensee at least forty-eight (48) hours in advance of such a closure.



1.3 Use of Premises. The Premises may be used by Licensee for any lawful activity in connection with the construction, installation, maintenance and operation of the Boost Charger(s)TM and ancillary items, including, without limitation, electrical equipment, hardware, software, signage and all supporting equipment and structures (which may include concrete pads and protective bollards) (collectively, the “Charging Stations”), together with any other uses permitted herein, on the terms and conditions set forth in this Agreement (the “Purpose”).

1.4 Scope of Services. Licensee shall supply, install, own and operate [1] Charging Station at the Premises. Charging stations shall be a minimum of Level 3 charging stations and shall meet the minimum requirements outlined in Exhibit D. Licensee shall, at its sole cost and expense, be responsible for all installation activities, as well as other activities as set forth in this Agreement, including furnishing all materials, equipment and labor required for the installation, maintenance, operation, any necessary replacement and removal of the Charging Stations. Following the installation, Licensee shall activate and test the Charging Stations. Licensee shall conduct technical meetings with Customer staff and install equipment according to the specifications outlined in permits obtained by the Licensee or Customer. With respect to installation activities, Licensee shall ensure that it or its designated contractor(s) and/or service providers perform installation activities only during times and days acceptable to Customer and in a manner so as not to unreasonably interfere with Customer’s business operations and public access to the Premises.

1.5 Exclusivity. Customer hereby grants Licensee the exclusive right to construct, install, maintain and operate the Charging Stations and engage in related services at the Customer Property as of the Effective Date and thereafter for the duration of the Term.

1.6 Quiet Enjoyment. Licensee shall have quiet enjoyment of the Premises as of the Effective Date and thereafter for the duration of the Term of this Agreement, *provided*, that Licensee acknowledges that others may have access to the Premises.

Article 2

TERM; FINANCIAL TERMS; TERMINATION

2.1 Term.

(a) **Initial Term.** This Agreement shall be effective on the Effective Date. Upon Licensee’s receipt of all necessary governmental authorizations (“Governmental Authorizations”), Licensee shall provide Customer with notice of such receipt within a reasonable period thereafter, and five (5) days after the delivery of such notice, subject to Section 3.3, Licensee may enter the Customer Property to install the Charging Stations. The initial term of the License shall commence on the date which the Charging Stations are first made available for use by consumers at the Premises and live within the relevant EV charging network (each an “EV Network” and such date, the “Commencement Date”) and, subject to Section 2.3, will continue for a period of five (5) years thereafter (the “Initial Term”). Licensee shall provide Customer notice of the Commencement Date within a reasonable period following the occurrence of such date.

(b) **Extension.** Prior to the expiration of the Initial Term, the Parties shall discuss an extension of the Agreement. The Parties may extend the Initial Term for an additional five (5) years (an “Extension”) on mutual written agreement entered into at any time prior to the expiration of the Initial Term. The Initial Term, together with any Extension(s) hereunder, shall be referred to herein as the “Term,” and starting on the Commencement Date, each twelve (12)-month period of the Term shall be referred to herein as a “Contract Year.”

2.2 Financial Terms.



(a) Charging Revenue. Licensee will have sole and absolute discretion to set the price to be charged to consumers within the parameter that rates shall not exceed a maximum of 20% above comparable market rates for the same service from similar providers within a 50 mile radius of the Morgan Hill charging station. Customer shall receive up to 10 RFID cards that will provide a 20% discount on charging sessions for up to 10 specified City vehicles, with no time restrictions, and not to be combined with any other offers or promotional discounts. Licensee shall retain One Hundred Percent (100%) of the revenue derived from use of the charging station.

(b) Environmental Attributes. Licensee shall retain all rights, obligations, liabilities and revenues associated with any Environmental Attributes associated with Charging Stations. “Environmental Attributes” are any emissions, air quality, compliance or other environmental attribute, aspect, characteristic, claim, credit, benefit, reduction, offset or allowance, howsoever entitled or designated, resulting from, attributable to or associated with the Charging Stations’ benefits to the environment, production of electrical energy and displacement of conventional energy generation or low carbon fuel supply that are capable of being measured, verified or calculated, and the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other person, including under any present or future federal, state or local law, regulation or bill or any international or foreign emissions trading program. Environmental Attributes include but are not limited to all Low Carbon Fuel Standard Credits, Renewable Energy Credits, emissions rate credits, carbon credits, portfolio credits, emissions allowances, green tags, tradable renewable credits, Green-e® products credits, environmental air quality credits and emissions reduction credits, offsets and allowances, howsoever entitled, associated with the carbon intensity of electricity used as a transportation fuel or the avoidance of the emission of any gas, chemical or other substance attributable to the generation of the energy by a renewable energy facility.

(c) Other Revenue. Except as expressly provided herein, as between the Parties, Customer shall retain One Hundred Percent (100%) of all in-store and other revenue generated at the Customer Property.

2.3 Termination.

(a) For Cause. Either Party may terminate this Agreement upon the occurrence of any of the following (each, an “Event of Default”):

i. Breach. The other Party breaches or fails to perform any of its obligations in any material respect, and such breach or failure continues uncured for thirty (30) business days after receipt of written notice; *provided, however*, if such breach is not capable of being cured within such thirty (30) day period, so long as the breaching Party commences and diligently pursues such cure throughout such thirty (30) day period and continues such cure until completion, such period shall be deemed extended up to an additional sixty (60) days.

ii. Insolvency. The other Party becomes insolvent or proceedings are instituted by or against it under any provision of any federal or state bankruptcy or insolvency laws.

(b) For Convenience by Licensee. Licensee may elect to terminate this Agreement at any time by providing at least thirty (30) days prior written notice to Customer.

(c) Restoration of Premises upon Termination. Promptly following the expiration or termination of this Agreement, Licensee shall remove the Charging Stations from the Premises and restore the affected area to its former condition, excluding ordinary wear and tear. Licensee shall only be required to cap off, and not to remove, any underground electrical wiring.

(d) No Further Obligations. Upon the expiration or termination of this Agreement, both Parties will be relieved of any further obligations under Agreement, except for those that by their nature survive expiration or termination.



Article 3 CHARGING STATIONS

3.1 General.

(a) Modifications. Exhibit B provides a general description of the Charging Stations solely for informational purposes. The Parties may modify the number of Charging Stations and/or their approximate locations by executing an amendment to this Agreement, the executed version of which shall be incorporated herein. Notwithstanding the foregoing, Licensee may, in its sole and absolute discretion, at any time and for any reason during the Term, without the need to obtain Customer's approval, modify, including, without limitation, upgrade or replace any portion of the Charging Stations. Licensee shall not be required to pay any charges or fees on account of any modification.

(b) Ancillary Facilities. Licensee may, with Customer's prior approval, include at the Premises other additional services, equipment or facilities for automobile upkeep that Licensee may elect to offer its customers from time to time during the Term.

3.2 Signage. With Customer's prior written consent (email being sufficient), which consent shall not be unreasonably delayed or withheld, Licensee may paint, place, erect or project signs, marks or advertising devices in, on or about the Customer Property or elsewhere on the Customer Property. Licensee shall indemnify Customer and save Customer harmless from all claims and damages resulting from any sign, mark or advertising device erected by Licensee at the Customer Property. Licensee shall, at its own cost and expense, obtain any and all permits necessary for the installation of its signs, and Licensee shall be solely responsible for all costs and expenses associated with such permitting, the erection of such sign(s), and the maintenance and operation thereof. Further, Licensee and Customer shall also place signage on or around the Charging Stations, designating the area as "Electric Vehicle Charging Only" (or something similar). Customer shall not place any signs, marks or advertising devices on any portion of the Premises without Licensee's prior written consent (which may be granted or denied in Licensee's discretion).

3.3 Installation.

(a) General. Licensee is solely responsible for the construction and installation of the Charging Stations, and has sole control over design, construction and installation, including, without limitation, scheduling, means, methods, techniques, sequences and procedures and coordination of all work.

(b) Construction. Before beginning activities to install the Charging Stations, Licensee shall give a copy of the tentative construction schedule and installation plans to Customer for its approval, which approval shall not be unreasonably delayed or withheld. Licensee shall not begin work until (i) Customer has provided its approval, and (ii) the Licensee has obtained all applicable Governmental Authorizations and Permits. Customer will cooperate in Licensee obtaining permits from the City. Once all authorizations and permits are approved, and on the Parties' respective demonstration that all insurance coverages required by this Agreement are in place, Licensee will oversee and manage the installation of the Charging Stations, including, without limitation, the hiring and coordination of all vendors and contractors; the installation of electrical equipment, utility lines, hardware and software; site preparation, trenching, repaving and landscaping; and installation of all Licensee-branded signage.

(c) Construction Time. Time is of the essence. Licensee shall have 1 year from the effective date of the agreement to complete the construction and installation of the Charging Stations. During construction Licensee shall not remove existing Customer owned charging stations until new Licensee owned Charging



Stations are ready to be installed. Licensee shall ensure that Premises has no more than 60 days without Charging Stations.

(d) Governmental Authorizations. Licensee shall obtain all Governmental Authorizations required to install the Charging Stations including, without limitation, all permitting, design and planning, project management and site prep/construction. Customer will cooperate in Licensee obtaining permits from the City.

(e) Right to Construct. Customer grants to Licensee and its employees and vendors the non-exclusive right to use and occupy the Premises and any necessary adjacent portions of the Customer Property for the construction and installation of the Charging Stations. Licensee shall only bring onto such property materials and equipment that will be used directly in the construction and installation of the Charging Stations. Licensee shall ensure that, subject to reasonable and unavoidable interruptions, all work is performed in a manner that affords continuous, reasonable access to the Customer Property.

(f) Liens. Licensee will not permit or suffer any mechanic's or materialmen's liens to attach to the Customer Property as a result of the installation of the Charging Stations. If, as a result of Licensee's activities, a lien attaches to the Customer Property, Licensee shall remove or bond over such lien at Licensee's sole cost and expense, within twenty (20) days of Licensee receiving written notice thereof from Customer.

(g) No Fixtures. In no event shall the Charging Stations or any of Licensee's property be deemed a fixture, nor shall Customer, nor anyone claiming by, through or under Customer (including, without limitation, any present or future mortgagee of the Customer Property) have any rights in or to Licensee's property at any time. Customer shall have no interest in the Charging Stations or other equipment or personal property of Licensee installed or located on the Customer Property, and Licensee may remove all or any portion of the Charging Stations or any other equipment or personal property of Licensee at any time. Without limiting the generality of the foregoing, Customer hereby waives any statutory or common law lien right that it might otherwise have in or to the Charging Stations and other equipment or personal property of Licensee. If Customer is the fee owner of the Premises, Customer consents to the filing of a disclaimer of the Charging Stations as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Customer Property is located. If Customer is not the fee owner, Customer shall obtain such consent from the fee owner. In either circumstance, Licensee has the right to file such disclaimer.

(h) Removal of Existing Charging Stations. Licensee shall be responsible for the removal of existing Customer owned charging stations located within areas of the Premises where the licensee charging stations are to be placed as further described in Exhibit B. During and following removal the Licensee shall be responsible to deliver the removed charging stations, in an undamaged condition, to the City Corporation Yard at 100 Edes Court, Morgan Hill, CA 95037.

3.4 Operation and Maintenance

(a) General. Except as otherwise provided in this Agreement and except for any repairs or maintenance resulting from Customer's negligence, willful misconduct or breach of this Agreement, Licensee will, at its sole cost and expense, maintain and operate the Charging Stations, including making all necessary repairs, arranging for appropriate remote monitoring and obtaining and installing appropriate software and hardware upgrades. Licensee shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper operation or maintenance of the Charging Station by anyone other than Licensee or Licensee's contractors. Licensee shall not be required to make any repairs to the Premises except for damage caused by Licensee. Additionally, Licensee may perform security assessments and install reasonable security features on the Premises including lighting and cameras, subject to approval by the City which will not be unreasonably withheld, conditioned or delayed.



(b) Network. Licensee will select, pay for and manage the EVSE service provider network (including, without limitation, providing 24/7 driver service during the Term) that is used to promote and operate the Boost Charger(s)TM, including without limitation, the supported payment terminal (e.g., Nayax).

(c) Energy. Pursuant to Section 3.6, Licensee will pay for the cost of input power needed to run the Boost Charger(s)TM.

(d) No Processing of Personally Identifiable Information. Customer and Licensee do not anticipate that any Personally Identifiable Information will be processed by Licensee on behalf of Customer under or as a result of this Agreement. Personally Identifiable Information means any data that can be used directly or indirectly, alone or in combination with other information, to identify an individual.

3.5 Customer Obligations. Customer shall, at its sole cost and expense, maintain the Premises in a clean, safe and orderly condition, to at least the same standard as it customarily maintains the common areas at the Customer Property, including, without limitation, parking lot sweeping, parking lot repaving and restriping and maintenance and repair of curbs, gutters and landscaping features within the Premises. In addition, Customer shall maintain existing security precautions within the parking garage. The Customer shall be under no obligation to maintain the Charging Stations, signage or any other equipment installed by Licensee within the Premises. To the extent Customer has actual knowledge of malfunction or damage to the Charging Stations which may include theft, graffiti, or vandalism, Customer shall promptly notify Licensee and, as appropriate, emergency response personnel. Customer shall not store any items in the Premises. Customer shall not be responsible for monitoring use of the spaces and Charging Stations. Customer retains right of access to the Premises and use of the spaces as needed to conduct normal business. Licensee may post signage on the Premises indicating that the spaces are only to be used during charging. If a Charging Station is vandalized more than four (4) times, Licensee reserves the right to remove the Charging Station upon reasonable consultation and discussion with Customer.

3.6 Utilities

(a) Utility Costs. Licensee shall be responsible for the actual energy use of the Charging Stations. Accordingly, Licensee will pay Customer on a quarterly basis for the electricity used by the Charging Stations at the then-existing per kWh rate as based on readouts of the Boost Charger(s)TM's internal utility-grade meter and the utility rate table for the Customer Property. If Licensee installs separate meters on the Premises used exclusively for Charging Stations, Licensee shall pay the applicable utility directly based on separately-metered electricity provided to the Boost Charger(s)TM at the Premises, where Licensee is the customer of record for such meter.

(b) Customer Cooperation. Customer shall cooperate with Licensee to obtain electricity and any other utilities necessary to operate the Charging Stations, including by granting appropriate easements to local utility providers.

3.7 Training, AMP; Reporting

(a) Training. To better facilitate the use of the Premises by the target customers, Licensee will provide initial training to Customer and its designated employees on the basic operation and maintenance of the Charging Stations at no cost to Customer. As appropriate thereafter, Customer may, at its sole cost, periodically train and retrain its employees on the use and maintenance of the Charging Stations, so that Customer employees who might provide any such support services have the requisite training to assist and answer questions from customers.



(b) **Access to AMP; Reporting.** Licensee will provide Customer with access to Licensee's Asset Management Platform ("**AMP**") (with the specific version to be reasonably specified by Licensee) to upload and manage screen content and to receive information relating to use of the Charging Stations. In addition, Customer shall have access to monthly reports relating to use of the Charging Stations via AMP (including time of day, session duration, total input power, and total output power).

3.8 Taxes. Licensee is solely responsible for personal property taxes imposed on the Charging Stations, and any other equipment installed by it, located on the Premises. The Customer is a government entity that does not pay real-estate taxes on the premises.

3.9 Relocation of Premises. Subject to Section 3.1(a), during the Term, Customer may not relocate the Premises without Licensee's prior written consent, which may be withheld in Licensee's discretion.

Article 4

INTELLECTUAL PROPERTY; PUBLICITY

4.1 Intellectual Property. As used in this Agreement, "**Intellectual Property**" means all trademarks and service marks, names, logos and designs (collectively, "**Marks**"), copyrights, patents, domain names, generic Top-Level Domain names, all registrations for Marks, copyrights, patents, domain names, generic Top-Level Domain names, trade secrets, know-how, and all unique concepts, information, data and knowledge that is eligible for legal protection under applicable laws as intellectual property, whether protected through confidentiality, registration or pending registration, regardless of form, whether disclosed in writing, electronically, orally or through visual means, whether learned or obtained orally, through observation, through the discharge of responsibilities under this Agreement, or through analysis of that information, data or knowledge.

(a) **Customer Intellectual Property.** Customer has and shall retain ownership of all of Customer's Intellectual Property, and except as set forth in Sections 4.3 and 4.4, Licensee has no right, and shall not obtain any right, in any Customer Intellectual Property.

(b) **Licensee Intellectual Property.** Licensee has and shall retain ownership of all of Licensee's Intellectual Property, and Customer has no right, and shall not obtain any right, in any Licensee Intellectual Property.

4.2 Ownership of Drawings and Other Documents. All documents and records prepared by or under the direction of Licensee pursuant to this Agreement, including, without limitation, drawings, specifications and other documents, including those in electronic format, are solely and exclusively Licensee Intellectual Property, and Licensee retains all common law, statutory and other reserved rights, including the copyright, thereto. Licensee shall provide final as-built drawings to Customer.

4.3 Marketing. The Parties will create a mutually-agreeable marketing plan, which may include (a) identifying the availability of Charging Stations at the Customer Property on websites and resources that provide consumers with information to locate charging stations, (b) identifying the availability of the Charging Stations at the Customer Property on Licensee's website and in its marketing materials, (c) performing outreach and engagement with EV user groups and local press, and (d) reasonably engaging with driver feedback posted on various social media platforms. In addition, the Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the Charging Stations and their use, and each Party may promptly review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Licensee shall have the right to use Customer's approved Marks in connection with marketing conducted pursuant to this Section 4.3.



4.4 Branding; On-Screen Content. The exterior of the Boost Charger(s)TM and the Boost Charger(s)TM's LED display screen (the "Display Screen") may be co-branded with the approved Marks of Customer and Licensee, the cost and allocation of which will be subject to mutual agreement of the Parties. In addition to the branding, Customer and Licensee will also mutually agree upon other content that will be published on the Display Screen (e.g., offers, loyalty QR code, etc.), which content will (among other things) support various marketing programs, including, without limitation, in-store sales and loyalty programs.

4.5 Restrictions. Except as expressly provided in this Article 4, neither Party may (a) make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable laws), or (b) use any of the other Party's Marks in any promotional or advertising material without the prior written consent of the other Party. Without limiting the foregoing, Customer shall strictly comply with all brand guidelines provided by Licensee to Customer in connection with Customer's use of the Licensee's Marks. All goodwill arising out of the use by a Party of the other Party's Marks pursuant to this Article 4 will inure to the sole benefit of the other Party.

4.6 Data License. "Collected Data" means data and information submitted by or for Customer to Licensee through any means, including any and all data or information collected by AMP, but excluding personal data. Customer hereby grants to Licensee a perpetual, irrevocable, royalty-free, fully-paid, non-exclusive license in (a) Collected Data, (b) all knowledge and insights resulting from Licensee's processing of Collected Data, whether by automated systems or personnel (which includes, without limitation, including any embedding in, modification to or enhancement of any machine learning system or process as a result thereof or in connection therewith), and (c) the content of any, feedback that Customer may provide to Licensee, whether in written or oral form: (i) to incorporate into, utilize in or with any Charging Stations or upgrades or modifications thereto, or any other services or other offering of Licensee, including future versions of Licensee Charging Stations; and (ii) for any other lawful purpose; *provided* that, in connection with the foregoing (ii), Licensee shall not (except as expressly set forth herein) use Collected Data in any manner that makes such Collected Data publicly available unless such Collected Data is aggregated and anonymized and cannot be used to identify Licensee or any of Licensee's customers. Customer further acknowledges and consents to Licensee's monitoring and collection of Collected Data by means of the Charging Stations.

Article 5 REPRESENTATIONS AND WARRANTIES; DISCLAIMER

5.1 Mutual Representations and Warranties. Each of Customer and Licensee hereby represents and warrants to the other as of the Effective Date that: (a) it has all necessary power and authority to execute, deliver and perform its obligations hereunder; (b) the execution, delivery and performance of this Agreement have been duly authorized by all necessary action and do not violate any of the terms or conditions of its governing documents, any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to it; (c) there is no pending or, to its knowledge, threatened litigation or administrative proceeding that may materially adversely affect its ability to perform this Agreement; (d) it is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing; (e) this Agreement constitutes a legal, valid and binding obligation of such Party, except as the enforceability of this Agreement may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity; and (f) at all times after the Effective Date and thereafter for the duration of the Term, it will comply with all federal, state and local laws, rules and regulations (including, without limitation, all zoning ordinances and building codes) in performing its obligations under this Agreement.



5.2 Customer Representations and Warranties.

(a) **Consents/Approvals.** Customer represents, warrants and covenants that it has obtained or it shall obtain any and all consents or approvals required in order for Customer to grant the License and other rights and perform its obligations under this Agreement, and for Licensee to take the actions with respect to the Premises contemplated in this Agreement, from any third parties (i) with an interest in the Customer Property (including, without limitation, any owner, lender, lessee, ground lessor, party with a right of first refusal (or right of first offer) or any party to any reciprocal easement agreement), or (ii) whose consent is otherwise required under conditions, covenants and restrictions documents, declarations or similar agreements affecting the Customer Property. When consent of a third party is required, upon Customer's reasonable request, Licensee shall provide reasonable assistance to Customer to educate applicable third parties of the terms, conditions and benefits of the activities proposed to be taken pursuant to this Agreement.

(b) **Other Agreements.** Neither the execution and delivery of this Agreement by Customer nor the performance by Licensee of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Customer is a party or by which Customer or the Premises is bound.

(c) **Title.** Customer represents and warrants that there are no liens, judgments, encumbrances or other impediments of title on the Customer Property that would adversely affect the use or occupancy of the Premises by Licensee pursuant to this Agreement, and during the Term, shall maintain the Customer Property free of any such liens, judgments, encumbrances or other impediments.

(d) **Hazardous Substances.** Customer represents and warrants that the Customer Property is and has at all times been in compliance with all applicable laws relating to the Customer Property, including, without limitation, laws relating to Hazardous Substances (as defined below) and to the knowledge of Customer, no fact or circumstance exists that reasonably could be expected to involve the Customer Property in any environmental litigation, proceeding, investigation or claim or impose any environmental liability upon Customer.

(e) **Accuracy of Information.** All information provided by Customer to Licensee, as it pertains to the physical configuration of the Premises, Licensee's planned use of the Premises and Licensee's estimated electricity requirements, is accurate in all material respects.

5.3 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, NEITHER LICENSEE NOR Customer MAKES ANY WARRANTIES OF ANY KIND AND BOTH CUSTOMER AND LICENSEE AFFIRMATIVELY DISCLAIM ALL WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING UNDER STATUTE, COURSE OF DEALING, CUSTOM, TRADE USAGE OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Article 6 INSURANCE; CASUALTY AND CONDEMNATION

6.1 Licensee Insurance. Commencing when Licensee begins construction but in no event later than the first day of the Term and continuing thereafter for the duration of the Term, Licensee, through itself or its contractors and/or vendors, shall maintain (or shall require its contractors and/or vendors to maintain)



insurance coverage consistent with the requirements set forth on Exhibit C-1. Licensee will name each of the Customer Parties (as defined below) as additional insureds under the applicable policies.

6.2 Customer Insurance. During the Term, Customer shall maintain insurance coverage consistent with the requirements set forth on Exhibit C-2. Customer will name each of the Licensee Parties (as defined below) as additional insureds under the applicable policies. For government entities, a certificate of self-insurance will suffice.

6.3 Policy Requirements. The insurance policies required under Sections 6.1 and 6.2 shall: (a) be issued by insurance companies licensed to do business in the state in which the Customer Property is located, with a general policyholder's ratings of at least "A-" and a financial rating of at least "Class VIII," in the most current Best's Insurance Reports available on the Commencement Date; if the Best's ratings are changed or discontinued, the Parties shall agree to a comparable method of rating insurance companies; and (b) contain provisions whereby each Party's insurers waive all rights of subrogation against the other Party on each of the coverages required herein.

6.4 Casualty and Condemnation.

(a) Damage. If any portion of the Premises, the Charging Stations or the Customer Property is damaged by fire or other casualty, then Licensee may, within thirty (30) days of the date of such fire or other casualty, elect to terminate this Agreement on written notice to Customer. If Licensee elects to repair its property, it shall restore, rebuild or replace those portions of the Charging Stations in the Premises and any other of its property damaged as a result of such fire or other casualty to its prior condition as necessary, and all property insurance proceeds of Customer applicable to the Premises shall be made available to Licensee in connection with such repair and restoration. If Licensee elects to terminate this Agreement, it shall remove all of Licensee's property from the Premises in accordance with Section 2.3(c). Any repair and restoration required by Licensee under this Section 6.4(a) shall commence within sixty (60) days of the date Licensee elects to repair and restore the Premises and shall be completed no later than one hundred twenty (120) days thereafter.

(b) Condemnation/Taking. If any portion of the Premises or Customer Property is condemned or taken in any manner for a public or quasi-public use that could adversely affect the use of the Charging Stations, then Licensee may elect to terminate this Agreement effective as of the date title to the condemned portion of the Customer Property is transferred to the condemning authority. If Licensee does not elect to terminate the Agreement upon such condemnation or taking, the Parties will use commercially reasonable efforts to find an alternate location for the Charging Stations elsewhere on Customer Property. The costs of the relocation of the Charging Stations shall be paid by Licensee. Licensee may file a separate claim to the condemning authority for any relocation award made as a result of such condemnation; *provided, however*, in no event shall such claim reduce Customer's award related to the condemnation or taking. Each Party waives any right to any award that may be prosecuted by the other Party, and shall reasonably cooperate with the other Party.

(c) Suspension of Term. During any time that the Charging Stations or any portion of the Premises is under repair or being relocated pursuant to this Section 6.4, the Term shall be temporarily suspended on a day-for-day basis.

**Article 7
INDEMNITY; LIMITATION OF LIABILITY**

7.1 General. Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "Indemnified Parties"), from and against any loss, damage,



expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") incurred in connection with any Liability asserted by a third party (a "Claim") for physical damage to or physical destruction of property, or death of or bodily injury to any person, but only to the extent caused by (i) the gross negligence, willful misconduct or more culpable behavior of Indemnifying Party or its agents or others under Indemnifying Party's control, or (ii) material violation of applicable law by the Indemnifying Party. This Section 7.1 does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 7.3.

7.2 [Reserved.]

7.3 Environmental Indemnification.

(a) Licensee Indemnity. Licensee shall indemnify, defend and hold harmless Customer and all of Customer's Indemnified Parties (collectively, the "Customer Parties") from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance to the extent deposited, spilled or otherwise caused by Licensee or any of its contractors, agents or employees.

(b) Customer Indemnity. Customer shall indemnify, defend and hold harmless Licensee and all of Licensee's Indemnified Parties (collectively, the "Licensee Parties") from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent such Hazardous Substance was (i) deposited, spilled or otherwise caused by Licensee or any of its contractors, agents or employees, or (ii) generated or released on another property by a third party and thereafter brought onto or released onto the Customer Property by diffusion, migration, the actions of such third party or other means not caused by any of the Customer Parties.

(c) Notification of Hazardous Substance. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. "Hazardous Substance" means any chemical, waste or other substance (i) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances" or words of similar import under any laws pertaining to the environment, health, safety or welfare, (ii) which is declared to be hazardous, toxic or polluting by any Governmental Authority, (iii) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (iv) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (v) for which remediation or cleanup is required by any Governmental Authority. "Governmental Authority" means any multinational, foreign, domestic, federal, territorial, state, provincial or local governmental or quasi-governmental authority, instrumentality, court, commission, bureau, tribunal or organization or any regulatory, administrative or other agency, or any political, judicial, legislative, executive or other subdivision, department or branch of any of the foregoing.

7.4 Limitation of Liability.

(a) LIMITATION. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY OR ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR LIMITATION OF LIABILITY, (I) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, LOST PROFITS OR REVENUE, OR LOST OR DAMAGED DATA, AND (II) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY IN CONNECTION WITH



THIS AGREEMENT IN AN AMOUNT IN EXCESS OF FIFTY THOUSAND DOLLARS (\$50,000.00); IN EACH CASE WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. SUBJECT TO THE FOREGOING, EACH PARTY'S TOTAL LIABILITY FOR DAMAGES TO THE OTHER PARTY WILL BE LIMITED TO DIRECT, PROXIMATELY CAUSED DAMAGES FORSEEABLY AND NATURALLY ARISING FROM A BREACH OF THIS AGREEMENT.

(b) EXCLUSIONS. THE LIMITATIONS IN SECTIONS 7.4(a) SHALL NOT APPLY TO EITHER PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD.

7.5 Procedure. Any Indemnified Party shall deliver to the Indemnifying Party a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; *provided, however*, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Article 7, except to the extent that such Indemnifying Party has been materially prejudiced by such failure. An Indemnified Party shall have the right to participate in the Indemnifying Party's defense of a claim and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Party, it being understood that the Indemnifying Party shall control such defense. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Article 7 unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

Article 8 MISCELLANEOUS

8.1 Brokers. Each Party hereby represents to the other Party that it has not dealt with any broker in connection with this Agreement. Each Party shall indemnify and hold the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees, harmless from all claims of any brokers claiming to have represented such Party in connection with this Agreement.

8.2 Survival. The obligations hereunder that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement to the extent necessary to give them full effect.

8.3 Notice. Any notice to be given under this Agreement will be in writing and addressed to the Party at the address stated below. Notices will be deemed given and effective (a) if personally delivered, upon delivery, or (b) if sent by an overnight service with tracking capabilities, upon receipt. Any such notice shall be delivered or addressed to the Parties at the addresses set forth below or at the most recent address specified by the addressee through written notice under this Section 8.3. Failure to give notice in accordance with any of the foregoing methods shall not defeat the effectiveness of notice actually received by the addressee:

If to Licensee:

FreeWire Technologies, Inc.
Attn: Legal Department
7200 Gateway Boulevard



Newark, CA 94560
 legal@freewiretech.com
If to Customer:

Attn: Mariah Dabel
 City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037
 Email: mariah.dabel@morganhill.ca.gov

Each Party may change its address for notice by giving notice thereof to the other Party pursuant to this Section 8.3.

8.4 Confidentiality. The Parties acknowledge that in connection with this Agreement, they will have access to and receive certain Confidential Information (as defined below) of the other Party (such Party disclosing Confidential Information the “Disclosing Party” and such Party receiving Confidential Information, the “Receiving Party”). During the Term and thereafter, Receiving Party: (i) shall only use such Confidential Information in connection with the performance of and the administration of this Agreement; (ii) shall not disclose Confidential Information to any other person, entity or third party without Disclosing Party’s prior written consent; and (iii) shall use the same means it uses to protect its own confidential proprietary information, but in any event no less than reasonable means, to prevent the disclosure and to protect the confidentiality of Disclosing Party’s Confidential Information. Receiving Party may disclose Confidential Information only to its employees and agents who need to know or use such Confidential Information to perform under the Agreement or in connection with the administration of Receiving Party’s obligations hereunder, so long as each such employee or agent is bound by confidentiality obligations at least as restrictive as those set forth in this Section 8.4. Additionally, Receiving Party may disclose Confidential Information as required by law or legal process, so long as Receiving Party notifies Disclosing Party as far in advance as is reasonably practicable in advance of such required disclosure, uses its best efforts to seek confidential treatment for such Confidential Information, and discloses only those portions of the Confidential Information required for compliance with such authority, to the extent permissible by law.

(a) “Confidential Information” means any non-public information disclosed to or otherwise learned by Receiving Party in connection with this Agreement, whether directly or indirectly, and whether disclosed orally, in writing or otherwise. Without limiting the foregoing, Confidential Information includes all information which should reasonably be considered confidential in light of its sensitive and/or proprietary nature or disclosed under circumstances reasonably indicating that it is confidential or proprietary, including, without limitation, software (including all constituent components, applicable source code, object code, build-scripts, configuration files, databases, their schema and contents, version-control repositories and their contents, access or account credentials, and bug or ticketing systems and their contents), trade secrets, design specifications, drawings, photographs or other visual representations, analyses and data compilations. Notwithstanding anything herein to the contrary, this Agreement is not the Confidential Information of either Party. Confidential Information made available hereunder may include information of third parties. Confidential Information shall not include any information, data or materials that: (i) are already known by Receiving Party prior to disclosure to, or being learned by, Receiving Party without an obligation of confidentiality; (ii) are publicly known or becomes publicly known through no unauthorized act of Receiving Party or any of its employees or agents; (iii) rightfully received by Receiving Party from a third party without confidentiality restriction; or (iv) independently developed by Receiving Party without use of Disclosing Party’s Confidential Information.



(c) Receiving Party acknowledges that it is granted only the limited right to use Confidential Information provided herein, and that such right is revocable at will by Disclosing Party and not coupled with any interest in the Confidential Information. Disclosing Party does not transfer to Receiving Party any right of ownership in or title to any Confidential Information or other intellectual property hereunder, either expressly or by implication, estoppel or otherwise. Upon Disclosing Party's request, Receiving Party shall discontinue all further use of Confidential Information, shall promptly return or destroy all Confidential Information and will certify in writing to Disclosing Party that such actions have been taken.

(d) Receiving Party's obligations under this Section 8.4 relating to the confidentiality of Confidential Information shall survive termination of this Agreement, and shall continue until such Confidential Information becomes publicly known or is made generally available through no action or inaction of Receiving Party. Receiving Party recognizes that its disclosure or use of Confidential Information in violation of this Section 8.4 may give rise to irreparable injury to Disclosing Party that may not be adequately compensable by monetary damages, and that, accordingly, Disclosing Party may seek and obtain injunctive relief against the breach of this Section 8.4, in addition to any other legal remedies which may be available.

8.5 Assignment. This Agreement is binding on and inures to the benefit of the Parties and their respective heirs, successors, assigns and personal representatives. Neither Party may assign its rights and obligations in and under this License without first obtaining prior written consent of the other Party, which shall not be unreasonably withheld; *provided, however*, that Licensee may assign this Agreement to a subsidiary without Customer's consent or approval so long as that subsidiary agrees in writing to be bound by the terms of this Agreement.

8.6 Independent Contractors. Licensee is an independent contractor and is not an employee or agent of Customer. Nothing in the Agreement shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the Parties for any purpose, and the employees of one Party shall not be deemed to be the employees of the other Party. Except as otherwise stated in this Agreement, neither Party has any right to act on behalf of the other, nor represent that it has such right or authority.

8.7 Governing Law. This Agreement shall be governed by and shall be construed by the internal laws of the State of California, without reference to any conflict of law doctrine, as if executed and fully performed therein.

8.8 Consent to Jurisdiction. Subject to Section 8.11, each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings brought with respect to any dispute arising out of this Agreement shall be brought in, and each Party submits to the exclusive jurisdiction and venue of the state and federal courts located in the County of Alameda, State of California, and by execution and delivery of this Agreement, each of the Parties hereby (a) accepts the non-exclusive jurisdiction of the foregoing courts, (b) irrevocably agrees to be bound by any final judgment (subject to any appeal) of any such court with respect thereto, and (c) irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venues of any suit, action or proceedings with respect hereto brought in any such court, and further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceedings brought in any such court has been brought in an inconvenient forum. Each of the Parties agrees that a final judgment in any such action or proceeding shall be conclusive (subject to any appeal) and may be enforced in other jurisdictions by suit on the judgment or in any other manner to the extent provided by law.

8.9 Remedies. The rights and remedies provided by this Agreement are cumulative, and the use of any right or remedy by any Party does not preclude or waive its right to use any or all other remedies. These rights



and remedies are given in addition to any other rights a Party may have under applicable law, in equity or otherwise.

8.10 Attorneys' Fees; Waiver of Right To Jury. THE PARTIES HEREBY WAIVE ANY AND ALL RIGHTS WHICH EITHER PARTY MAY HAVE TO REQUEST OR REQUIRE THAT A JURY DETERMINE ANY FACT, MATTER, CONTROVERSY, DISPUTE OR LITIGATION BETWEEN THEM, OR RENDER ANY JUDGMENT OR DECISION, IN ANY WAY CONCERNING THIS AGREEMENT, AND AGREE THAT ANY AND ALL LITIGATION BETWEEN THEM ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT SHALL BE DETERMINED BY A JUDGE SITTING WITHOUT A JURY.

8.11 Judicial Reference. To the extent allowed by law, any dispute, controversy or other claim arising out of or relating to this Agreement for the breach or interpretation hereof shall, at the written request of either Party, be resolved by general Judicial Reference pursuant to California Code of Civil Procedure Sections 638 and 641 through 645 or any successor statutes hereto. The Parties shall select a single neutral referee, who shall be a retired state or federal judge. In the event the Parties cannot agree upon a referee, the referee shall be appointed by the court. The referee shall determine all issues relating to the dispute, controversy or claim, and shall report a statement of decision to the court. The Parties shall equally bear the fees and expenses of the referee, unless the referee otherwise provides in the statement of decision. However, the prevailing party shall be entitled to reimbursement of attorney fees, costs and expenses incurred in connection with the reference pursuant to this Section 8.11. Each party shall have the right to cause an appeal to be taken from the referee's decision to a court of competent jurisdiction in the same manner as a judicial appeal arising out of an order or judgment from a California superior court in a civil action and all of the same rules, rights and remedies shall be applied to both Parties with respect to any such appeal including matters of fact, matters of law, standards for review and substantive and procedural laws. Judgment may be entered upon any such final decision in accordance with applicable law in any court having jurisdiction thereof. The referee (if permitted under applicable law) or such court may issue a writ of execution to enforce the referee's decision.

8.12 Specific Performance. Notwithstanding anything to the contrary set forth herein or elsewhere, the Parties acknowledge that irreparable damage could occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, the Parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement, without the necessity of proving the inadequacy of money damages as a remedy and without the necessity of posting any bond or other security, and to enforce specifically the terms and provisions of this Agreement in any state court or federal court of the United States of America or other tribunal of competent jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

8.13 Further Assurances. Each Party shall execute and deliver additional documents and instruments and perform additional acts as may be reasonably necessary, appropriate or requested to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement

8.14 Force Majeure. Neither Party is responsible for any delay or failure in performance of any part of this Agreement to the extent that delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, act or omission of carriers or other similar causes beyond its control, *provided* that the affected Party shall take reasonable steps to mitigate such causes and promptly return to performance hereunder thereafter. This Agreement may be terminated without any termination fee or other penalty by the Party whose performance has not been affected if non-performance continues for more than sixty (60) days. The provisions of this Section 8.14 shall not apply to pandemics except to the extent that a Party is prevented by applicable law, regulation or order from fulfilling its duties or obligations hereunder.



8.15 No Waiver. A waiver of any default hereunder or of any term or condition of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition, but shall apply solely to the instance to which such waiver is directed. No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. No waiver hereunder shall be binding unless executed in writing by a duly authorized representative of the Party to be bound thereby. Except as otherwise expressly set forth herein, all remedies, rights, undertakings, obligations and agreements contained in this Agreement will be cumulative and none of them, nor the exercise or failure to exercise any of them, will be in limitation of any other remedy, right, undertaking, obligation or agreement of either Party.

8.16 No Third Party Beneficiaries. This Agreement does not confer any rights or remedies on any person other than the Parties and their respective successors and permitted assigns, *provided* that nothing in this Section 8.16 shall prohibit an Indemnified Party from directly enforcing Article 7 against an Indemnifying Party.

8.17 Entire Agreement. This Agreement constitutes the entire and exclusive agreement between Licensee and Customer with regard to the subject matter hereof, and supersedes all prior and contemporaneous agreements, arrangements and understandings, regardless of whether or not written or oral, relating to the subject matter hereof. This Agreement will not be modified other than in a writing that specifies it is an amendment to this Agreement and which is duly executed by an authorized representative of each of the Parties. No legal provisions different from or in addition to the provisions of this Agreement, whether communicated orally or contained in any written documentation, or other communication, regardless of timing, shall form a part of the Agreement and such provisions shall be null and void. Further, no click-wrap, click-through, browse wrap or similar agreements or any course of dealing shall supersede or having any binding effect on this Agreement. No waiver hereunder shall be deemed to constitute an amendment hereto.

8.18 Severability. If any term of this Agreement is held by any court of competent jurisdiction to contravene, or to be invalid under, the laws of any political body having jurisdiction over this subject matter, that contravention or invalidity shall not invalidate the entire Agreement. Instead, this Agreement shall be construed as reformed to the extent necessary to render valid the particular provision or provisions held to be invalid, consistent with the original intent of that provision and the rights and obligations of the Parties shall be construed and enforced accordingly, and this Agreement shall remain in full force and effect as reformed.

8.19 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all the Parties had signed the same document; all counterparts shall be construed together and shall constitute one and the same instrument. The delivery of an executed counterpart to this Agreement by electronic means (including via email) shall be as effective as the delivery of a manually executed counterpart.

8.20 Drafting Presumption. This Agreement has been and shall be construed to have been drafted by all Parties to it so that the rule of construing ambiguities against the drafter shall have no force or effect. Each Party has had the opportunity to seek the advice of counsel with respect to this Agreement and has done so to the extent desired.

8.21 Construction. The headings in this Agreement are inserted for convenience and identification only. References to Sections and Exhibits are to Sections and Exhibits of this Agreement unless otherwise specified. All Exhibits annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. When the context requires, the number of all words shall include the singular and the plural. In this Agreement, words importing any gender include the other genders and the words including, includes and include shall be deemed to be followed by the words without limitation. All documents or items attached



to, or referred to in, this Agreement are incorporated into this Agreement as fully as if stated within the body of this Agreement.

8.22 Recording. Following execution of this Agreement, Licensee will have the right, but not the obligation, to record a memorandum of the License, in a form reasonably agreed between the Parties.

8.23 Compliance with Law. Licensee and its sub-contractors shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including but not limited to the California Fair Employment and Housing Act, the American with Disabilities Act, Cal/OSHA requirements, the Immigration Reform and Control Act of 1986, and all laws and regulations prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex and sexual orientation.

8.24 Equal Opportunity Employment. Licensee represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment on the basis of race, religion, color, national origin, ancestry, sex, age or other protected interests by the California State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

[Signature Page Follows]



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first shown above.

CITY OF MORGAN HILL

By:

Name:

Title

Approved as to Form

By:

Name:

Title

FREEWIRE TECHNOLOGIES, INC.

By:

Name:

Title:

EXHIBIT A

Description of the Customer Property

Address: 55-99 E 4th St, Morgan Hill, California 95037, US

Legal Description:

EXHIBIT B
Depiction of the Premises

Address: 55-99 E 4th St, Morgan Hill, California 95037, US



EXHIBIT C-1
Licensee Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
04/27/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Insurance Services West, Inc. San Francisco CA Office 425 Market Street Suite 2800 San Francisco CA 94105 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (800) 363-0105 E-MAIL ADDRESS:														
INSURED Freewire Technologies, Inc. 1999 Harrison St., Suite 2650 Oakland CA 94612 USA	<table><tr><td>INSURER(S) AFFORDING COVERAGE</td><td>NAIC #</td></tr><tr><td>INSURER A: Federal Insurance Company</td><td>20281</td></tr><tr><td>INSURER B:</td><td></td></tr><tr><td>INSURER C:</td><td></td></tr><tr><td>INSURER D:</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Federal Insurance Company	20281	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A: Federal Insurance Company	20281														
INSURER B:															
INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES **CERTIFICATE NUMBER:** 570099205203 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR		TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	Limits shown are as requested	
A	X	COMMERCIAL GENERAL LIABILITY			36075618	03/15/2023	03/15/2024	EACH OCCURRENCE	\$1,000,000
		CLAIMS-MADE ☒ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
								MED EXP (Any one person)	\$10,000
								PERSONAL & ADV INJURY	\$1,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$2,000,000
		X POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	\$2,000,000
		OTHER:							
A		AUTOMOBILE LIABILITY			7362-94-54	03/15/2023	03/15/2024	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	X	ANY AUTO						BODILY INJURY (Per person)	
		OWNED AUTOS ONLY	☐ SCHEDULED AUTOS					BODILY INJURY (Per accident)	
		HIRED AUTOS ONLY	☐ NON-OWNED AUTOS ONLY					PROPERTY DAMAGE (Per accident)	
		X Comp. Ded. \$1000	X Coll. Ded. \$1,000						
		UMBRELLA LIAB						EACH OCCURRENCE	
		EXCESS LIAB						AGGREGATE	
		DED							
		RETENTION							
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			71838984	03/15/2023	03/15/2024	X PER STATUTE	OTH-ER
		ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	☒ Y ☐ N	N/A				E.L. EACH ACCIDENT	\$1,000,000
		If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE-EA EMPLOYEE	\$1,000,000
								E.L. DISEASE-POLICY LIMIT	\$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees and volunteers are included as Additional Insured in accordance with the policy provisions of the General Liability policy. General Liability policy evidenced herein is Primary and Non-Contributory to other insurance available to Additional Insured, but only in accordance with the policy's provisions. A Waiver of Subrogation is granted in favor of The City of Morgan Hill, the CITY's elected or appointed officials, boards, agencies, officers, agents, employees and volunteers in accordance with the policy provisions of the General Liability and workers' Compensation policies.

CERTIFICATE HOLDER	CANCELLATION
City of Morgan Hill Attn: Risk Management 17575 Peak Avenue Morgan Hill CA 95037 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Aon Risk Insurance Services West, Inc.</i>

Endorsement

<i>Policy Period</i>	FEBRUARY 3, 2022 TO MARCH 15, 2023
<i>Effective Date</i>	FEBRUARY 3, 2022
<i>Policy Number</i>	3607-56-18 SEA
<i>Insured</i>	FREEWIRE TECHNOLOGIES, INC.
<i>Name of Company</i>	FEDERAL INSURANCE COMPANY
<i>Date Issued</i>	MARCH 1, 2022

This Endorsement applies to the following forms:

GENERAL LIABILITY

Under Who Is An Insured, the following provision is added.

Who Is An Insured**Additional Insured -
Scheduled Person
Or Organization**

Persons or organizations shown in the Schedule are **insureds**; but they are **insureds** only if you are obligated pursuant to a contract or agreement to provide them with such insurance as is afforded by this policy.

However, the person or organization is an **insured** only:

- if and then only to the extent the person or organization is described in the Schedule;
- to the extent such contract or agreement requires the person or organization to be afforded status as an **insured**;
- for activities that did not occur, in whole or in part, before the execution of the contract or agreement; and
- with respect to damages, loss, cost or expense for injury or damage to which this insurance applies.

No person or organization is an **insured** under this provision:

- that is more specifically identified under any other provision of the Who Is An Insured section (regardless of any limitation applicable thereto).
 - with respect to any assumption of liability (of another person or organization) by them in a contract or agreement. This limitation does not apply to the liability for damages, loss, cost or expense for injury or damage, to which this insurance applies, that the person or organization would have in the absence of such contract or agreement.
-

Liability Endorsement
(continued)

Under Conditions, the following provision is added to the condition titled Other Insurance.

Conditions

***Other Insurance –
Primary, Noncontributory
Insurance – Scheduled
Person Or Organization***

If you are obligated, pursuant to a contract or agreement, to provide the person or organization shown in the Schedule with primary insurance such as is afforded by this policy, then in such case this insurance is primary and we will not seek contribution from insurance available to such person or organization.

Schedule

Persons or organizations that you are obligated, pursuant to a contract or agreement, to provide with such insurance as is afforded by this policy.

All other terms and conditions remain unchanged.

Authorized Representative



Conditions

(continued)

Transfer Or Waiver Of Rights Of Recovery Against Others

We will waive the right of recovery we would otherwise have had against another person or organization, for loss to which this insurance applies, provided the **insured** has waived their rights of recovery against such person or organization in a contract or agreement that is executed before such loss.

To the extent that the **insured**'s rights to recover all or part of any payment made under this insurance have not been waived, those rights are transferred to us. The **insured** must do nothing after loss to impair them. At our request, the **insured** will bring **suit** or transfer those rights to us and help us enforce them.

This condition does not apply to **medical expenses**.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

ANY PERSON OR ORGANIZATION FOR WHOM THE
NAMED INSURED HAS AGREED BY WRITTEN
CONTRACT TO FURNISH THIS WAIVER

For policies or exposure in Missouri:

Any person or organization for which the employer has agreed by written contract, executed prior to loss, may execute a waiver of subrogation. However, for purposes of work performed by the employer in Missouri, this waiver of subrogation does not apply to any construction group of classifications as designated by the waiver of right to recover from others (subrogation) rule in our manual.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **03-15-23** Policy No. **71838984**

Insured **FREEWIRE TECHNOLOGIES INC**

Insurance Company **Federal Insurance Company**

Endorsement No.

Premium \$ **Incl.**

Countersigned By _____

EXHIBIT C-2
Customer Insurance

Boost Charger 200

Ultrafast EV Charging with Integrated Energy Storage

The Boost Charger™ 200 is an ultrafast and flexible DC fast charger for electric vehicles (EVs). The battery-integrated design enables Boost Charger to easily connect to existing electrical infrastructure without costly construction and complex permitting. Boost Charger has a 160 kWh battery capacity with 200 kW output and only 27 kW or less input, making it ready for all EVs including light to heavy duty models.



HEAVY-DUTY

Ultrafast Charging: adds up to 200 miles of range in 15 minutes

Dual Charging: provides simultaneous charging and customizable port configurations including CCS1/CCS2 and CHAdeMO

High Power: outputs up to 950 V for charging light to heavy-duty EVs

FLEXIBLE PLATFORM

Plug & Play: battery-integrated design connects to the existing low-voltage grid, enabling cost efficient installation in hours

Small Footprint: space efficient design means no unsightly and expensive electrical infrastructure

Flexible Deployment: easy to relocate depending on charging demand and site

FUTURE-PROOF

Smart & Connected: flexible management platform allows you to integrate charger with your business or any third party charging software

Lower Operating Costs: energy buffering technology limits input from the grid, reducing costly demand charges

ENERGY STORAGE

Energy Chemistry	Lithium-ion (NMC)
Energy Storage Capacity	160 kWh

ELECTRICAL SPECIFICATIONS (OUTPUT)

Supported Connector Types	CCS1 / CCS2 CHAdeMO
Charge Ports	2
Max Output Power (DC)	CCS: 200 kW CHAdeMO: 100 kW Combined: charge 2 vehicles simultaneously at up to 100 kW each
Voltage	200-1,000 Vdc

ELECTRICAL SPECIFICATIONS (INPUT)

Power (AC)	≤ 27 kW
Voltage (AC)	U.S./Canada: 208 Vac 3-phase, or 240 Vac single-phase U.K./E.U.: 400 Vac 3-phase
Current	U.S./Canada: 208 Vac: 80 amps continuous, or 240 Vac: 120 amps continuous U.K./E.U.: 400 Vac: 40 amps continuous
Frequency	50 / 60 Hz ± 1%

MECHANICAL SPECIFICATIONS

Dimensions	109 cm (43") L x 101 cm (40") W x 243 cm (96") H
Cable Length	340 cm (134")
Weight	1,810 kg (3,990 lbs)

ENVIRONMENTAL SPECIFICATIONS

Installation Location	Outdoor
Enclosure Protection Rating	IP 54
Operating & Storage Temperature	-20° C (-4° F) to +55° C (131° F)

NETWORK & USER INTERACTION

Network Connection	4G LTE, Ethernet
Communications	OCPP 1.6-J
User Interface Screen	61 cm (24") ruggedized LCD touchscreen
Credit Card Reader	Standard
Payment Methods Accepted	Credit cards, NFC, MIFARE, FeliCa
Access Control & Authentication	RFID: ISO 15693, ISO 14443, NFC
Safety & Compliance	USA/Canada: UL2202, UL2231-1, UL2231-2, UL991, CAN1973 (battery pack) Canada: CSA No 107.2 EU: EN/IEC 61851-1:2019, EN 61851-23:2014+AC:2015, EN62311:2008, EN 60950-1:2006+A11:2009+A10:2010+A12:2011+A2:2013, EN 62368-1:2014+AC:2015

EV Code Terminology



Speed

Level 1

3-4 miles per charging hour



Level 2

10-20 miles per charging hour



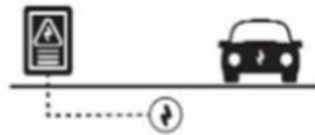
Level 3

150+ miles per charging hour



Readiness

EV Capable



EV Ready



EV Charging Station



DESCRIPTION OF EV READINESS LEVELS

EV Capable: parking spot has underground electrical infrastructure, but no outlet.

EV Ready: parking spot has underground electrical infrastructure and also an outlet. Vehicle owner must bring their own plug-in.

EV Charging Station (EVCS): parking spot has electrical infrastructure with charging equipment. Vehicle owner does not need to bring their own plug-in to charge.

SPECIFICATIONS

Boost Charger 200

Ultrafast EV Charging with Integrated Energy Storage

The Boost Charger™ 200 is an ultrafast and flexible DC fast charger for electric vehicles (EVs). The battery-integrated design enables Boost Charger to easily connect to existing electrical infrastructure without costly construction and complex permitting. Boost Charger has a 160 kWh battery capacity with 200 kW output and only 27 kW or less input, making it ready for all EVs including light to heavy duty models.



HEAVY-DUTY

Ultrafast Charging: adds up to 200 miles of range in 15 minutes

Dual Charging: provides simultaneous charging and customizable port configurations including CCS1/CCS2 and CHAdeMO

High Power: outputs up to 950 V for charging light to heavy-duty EVs

FLEXIBLE PLATFORM

Plug & Play: battery-integrated design connects to the existing low-voltage grid, enabling cost efficient installation in hours

Small Footprint: space efficient design means no unsightly and expensive electrical infrastructure

Flexible Deployment: easy to relocate depending on charging demand and site

FUTURE-PROOF

Smart & Connected: flexible management platform allows you to integrate charger with your business or any third party charging software

Lower Operating Costs: energy buffering technology limits input from the grid, reducing costly demand charges

ENERGY STORAGE

Energy Chemistry	Lithium-ion (NMC)
Energy Storage Capacity	160 kWh

ELECTRICAL SPECIFICATIONS (OUTPUT)

Supported Connector Types	CCS1 / CCS2 CHAdeMO
Charge Ports	2
Max Output Power (DC)	CCS: 200 kW CHAdeMO: 100 kW Combined: charge 2 vehicles simultaneously at up to 100 kW each
Voltage	200-1,000 Vdc

ELECTRICAL SPECIFICATIONS (INPUT)

Power (AC)	≤ 27 kW
Voltage (AC)	U.S./Canada: 208 Vac 3-phase, or 240 Vac single-phase U.K./E.U.: 400 Vac 3-phase
Current	U.S./Canada: 208 Vac: 80 amps continuous, or 240 Vac: 120 amps continuous U.K./E.U.: 400 Vac: 40 amps continuous
Frequency	50 / 60 Hz ± 1%

MECHANICAL SPECIFICATIONS

Dimensions	109 cm (43") L x 101 cm (40") W x 243 cm (96") H
Cable Length	340 cm (134")
Weight	1,810 kg (3,990 lbs)

ENVIRONMENTAL SPECIFICATIONS

Installation Location	Outdoor
Enclosure Protection Rating	IP 54
Operating & Storage Temperature	-20° C (-4° F) to +55° C (131° F)

NETWORK & USER INTERACTION

Network Connection	4G LTE, Ethernet
Communications	OCPP 1.6-J
User Interface Screen	61 cm (24") ruggedized LCD touchscreen
Credit Card Reader	Standard
Payment Methods Accepted	Credit cards, NFC, MIFARE, FeliCa
Access Control & Authentication	RFID: ISO 15693, ISO 14443, NFC
Safety & Compliance	USA/Canada: UL2202, UL2231-1, UL2231-2, UL991, CAN1973 (battery pack) Canada: CSA No 107.2 EU: EN/IEC 61851-1:2019, EN 61851-23:2014+AC:2015, EN62311:2008, EN 60950-1:2006+A11:2009+A10:2010+A12:2011+A2:2013, EN 62368-1:2014 +AC:2015

CITY COUNCIL STAFF REPORT

MEETING DATE: June 21, 2023

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

APPROVE LIBRARY, CULTURE AND ARTS COMMISSION WORK PLAN

RECOMMENDATION(S)

Approve the proposed Library, Culture and Arts Commission FY 2023-24 Work Plan.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

Preserving our Community History

Enhancing Diversity and Inclusiveness

2022-2023 Strategic Priorities

Community Outreach, Engagement, and Messaging

REPORT NARRATIVE:

Annually, the Library, Culture and Arts Commission (LCAC) submits its Work Plan for approval by the City Council. After approval by the Council, the Commission uses the Work Plan to guide its work over the next year. City staff believe that the proposed FY23/24 Work Plan for the LCAC is highly ambitious, but can be achieved with moderate impact on staff resources. As has been the case in past years, many Commissioners have volunteered to take on much of the legwork associated with the specific Work Plan items.

The Work Plan does include several items carried forward from the previous fiscal year. This is due to limitations on available City staff resources and aggressive Work Plan items established by the Commission. Many items are also multi-year in nature or are ongoing events that will not have a completion date.

COMMUNITY ENGAGEMENT:

Consult

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

ALTERNATIVE ACTIONS:

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

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The LCAC approved their Work Plan for City Council review on June 6, 2023.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Not a Project

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

FY 2023-2024 Work Plan

Draft Work Plan for Council Review

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

Project Area	City Council Goal Supported	Staff Resources Required	Specific Task / Commissioners Assigned
Community Outreach	Supporting our Youth, Seniors, and Entire Community Enhancing Diversity and Inclusiveness Community Outreach, Engagement, and Messaging	PS Director (minimal) CS Supervisor (moderate)	(1) Participate with other groups to support community outreach and support arts and culture in the community (including Valle del Sur, El Toro Arts, SV Creates, Poppy Jasper International Film Festival, Morgan Hill Diwali Festival, Coyote Creek Music Festival, SJMA Let's Look at Art, Movimiento de Arte y Cultura Latino Americana, Caribbean Meet and Greet, South Valley Civic Theater) (All) (2) Explore development of a calendar relating to library, culture and arts events and/or development of a publication plan for upcoming events (Khera/Borchers/Lyn) (3) Explore opportunities for arts programming in conjunction with the new Morgan Hill Magical Bridge Playground (Khera/Chabra/Santiago) (4) Use social media for promotion of Commission initiatives (Chabra/Borchers/Ganapathy) (5) Develop outreach program to the Latinx community through art programming (Santiago/Lyn) (6) Continue open art studio program (physical) (Blanton/Ganapathy/Borchers) (7) Create a Morgan Hill coloring book in partnership with local artists (Santiago/Ganapathy) (8) Explore opportunities for youth engagement in arts (Khera/Chabra/Ganapathy) (9) Develop a cultural calendar (Khera/Lyn/Chabra) (10) Continue the "Morgan Hill Stands United Against Hate" campaign (All) 11) Partner with City Staff and support the Fourth Saturday Downtown Street Closure Events (Ganapathy/Chabra are Leads, All Support)

Project Area	City Council Goal Supported	Staff Resources Required	Specific Task / Commissioners Assigned
Art and Culture Events	Supporting our Youth, Seniors, and Entire Community Enhancing Diversity and Inclusiveness	PS Director (minimal) CS Coordinator (minimal) CS Supervisor (minimal)	(1) Facilitate the Art a la Carte event (Lyn/Blanton are the leads/all members will support) (2) Partner with artists on a children's art show at the International Celebration (Khera/Chabra/Ganapathy) (3) Implement second annual International Celebration utilizing entertainment and food from various cultures (All)
Permanent and Proposed Public Art	Supporting our Youth, Seniors, and Entire Community Preserving Our Community History	PS Director (moderate) Maintenance Manager (minimal)	(1) Continue implementation of the utility box art program (Artists - Ganapathy/Blanton)/(Sponsors - Chabra/Borchers/Lyn) (2) Form subcommittees as needed to support specific art requests that come forward (All) (3) Review art inventory and complete updates to historical items list (Borchers/Lyn/Ganapathy) (4) Creating an artist registry (Khera/Borchers/Lyn) (5) Update google map of existing public art (Borchers) (6) Develop and recommend a plan for the use of Public Arts Funds (All) (7) Explore public art related to a homelessness outreach mural (Santiago/Chabra) (8) Partner with artist to complete a community mural (Santiago/Blanton/Ganapathy/Chabra/Lyn) (9) Complete an Art Master Plan (Santiago/Ganapathy are Leads, All Support)
Library Outreach and Support	Supporting our Youth, Seniors, and Entire Community Enhancing Diversity and Inclusiveness	Library Staff (minimal)	(1) Support Library outreach and advocacy as needed (All) (2) Submit digital recommendations on books to the Library (All interested participating) (3) Participate in annual Library Commissioners Forum (All) (4) Support incorporation of Children's art into the Library (Chabra/Lyn)
Support of Historical Resources	Preserving our Community History	PS Director (minimal)	(1) Explore opportunities for the Commission to support the Morgan Hill Historical Society partnership, including supporting the Black History Project (Ganapathy/Lyn) (2) Support outreach and advocacy for the Historical Society as needed (All) (3) Develop a Land Acknowledgement Statement for the Commission (Lyn/Ganapathy/Santiago)

Staff Resources Required:

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

Future Potential Items (Parking Lot)

- 1) Explore other opportunities for Library art contests in other media (examples: poetry, photography, literature).



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, June 7, 2023 5:00 PM

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

SPECIAL/REGULAR MEETING

A special meeting of the City Council was called at 5:00 pm for the purpose of conducting a closed session.

SPECIAL MEETING

5:00 pm closed session

CALL TO ORDER

Mayor Turner called the City Council meeting to order at 5:00 pm.

ROLL CALL ATTENDANCE

Deputy City Clerk Kim Mancera called the roll.

PRESENT	Rene Spring, Gino Borgioli, Yvonne Martinez Beltran, Mark Turner, Marilyn Librers
ABSENT	None

DECLARATION OF POSTING AGENDA

Deputy City Clerk Kim Mancera declared the posting of the agenda.

CLOSED SESSION

City Attorney Don Larkin announced the closed session item.

Conference with Labor Negotiators

Authority: Pursuant Government Code Section 54957.6

City Negotiators: Christina Turner, City Manager; Donald Larkin, City Attorney; Michael Horta, Human Resources Director; Dat Nguyen, Finance Director; Edith Ramirez, Assistant City Manager, Development Services

Employee Organization: Morgan Hill Police Officers Association; AFSCME Local 101 Morgan Hill; Community Service Officers Association; Employees Covered under Management Resolution #21-050

OPPORTUNITY FOR PUBLIC COMMENT

Public comment opened at 5:01 pm. There being no requests to speak, public comment closed.

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 5:01 pm.

REGULAR MEETING

The regular meeting convened at 6:00 pm.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

Proclaiming the month of June as LGBTQ+ Pride Month

RECOGNITIONS

Certificate of Recognition from Senator John Laird's office to the City of Morgan Hill for the City's efforts to support our LGBTQ+ community.

Certificate of Recognition awarded to Les Taylor for her volunteer efforts supporting the City's Youth Action Council.

Certificate of Recognition awarded to the Parent Family for their volunteer efforts maintaining the Magical Bridge of Morgan Hill Playground for all visitors.

CITY COUNCIL REPORTS

Council Member Spring provided an update on the Santa Clara Valley Habitat Agency. He shared that he attended the quarterly South County Regional Wastewater Authority meeting this morning and provided an update. He mentioned that he attended the Memorial Day Service and thanked Eddie Bowers and team for putting the event on. He also attended the Open Space Authority 30-year celebration at the Tilton Ranch. He concluded by speaking about the City's Pridefest event and Pride Flag raising ceremony which he attended and said that it was the best that we have had and there was a great turnout.

CITY MANAGER'S REPORT

City Manager Christina Turner spoke about the LAFCO 60th Anniversary celebration today, which she attended along with Mayor Turner. They recognized outgoing Commissioner Susan Vicklund Wilson for her 28 years of service to LAFCO. She announced that the City has received communication from the CEO of Caltrain announcing expanded Caltrain service (the addition of a fourth train) to south San Jose, Morgan Hill, and Gilroy beginning September 2023. She mentioned that our Spanish Community Police Academy (CPA) is being advertised on our website now. The webpage and online application for our upcoming Fall 2023 CPA session in Spanish are active. The first day of the session is September 11, 2023, and will be held at the Community and Cultural Center. She announced that Depot Street is now open through the Community and Cultural Center and full access to the parking lot is now available. Additionally, the spray pad at the Community and Cultural Center is now open and the Aquatics Center opens this Saturday. Lastly, she announced that our Bay Area Panthers are in 1st place in their division and the next home game is July 10, 2023 at 7:05 pm and it will be Morgan Hill Fan appreciation night at the SAP Center.

CITY ATTORNEY'S REPORT

City Attorney Don Larkin announced that there was no reportable action from the closed session item. He also announced that he attended the Cal Cities City Attorney Conference from May 17-20, 2023 and provided an update.

OTHER REPORTS

Council Member Martinez Beltran mentioned that she attended the Cal-cca conference as a member of the Silicon Valley Clean Energy Board and provided an update. She also shared that she recently spoke with the Latino Coalition leadership group. She attended the City employee Oath of Office, a wildfire drill with Cal Fire and she will be attending a Housing Policy Committee meeting, and the Latino Caucus for the League of Cities in the coming weeks.

Council Member Librers announced that she attended the 1 year anniversary for the Magical Bridge Playground.

Mayor Turner announced that he is part of the Mobility Partnership which focuses on South County roads and transportation. He attended the VTA board meeting last week and provided an update. He is also part of the Santa Clara County Library District and provided information regarding training that the library is providing. He also noted that he is a LAFCO alternate and he attended the meeting today.

PUBLIC COMMENT

Public comment opened at 6:17 pm. The following people were called to speak:

Doug Muirhead
Michael Burchfield
Jorge Sanchez

Brian Sullivan
Joe Baranowski (zoom)
Jessica Garcia-Kohl (zoom)
Jake Thompson (zoom)
There being no further requests to speak, public comment closed.

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

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, Council Member Libers
NAYS:	None
ABSTAIN:	None
ABSENT:	None

CONSENT CALENDAR

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

MOTION:

Approving consent calendar items 1 through 5, 7, 8, and 10 through 13.

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, Council Member Libers
NAYS:	None
ABSTAIN:	None
ABSENT:	None

1. **ACCEPT GALVAN PARK RESTROOM REPLACEMENT PROJECT IN THE AMOUNT OF \$143,604**

Recommendation:

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

2. **ADOPT ORDINANCE NO. 2346, NEW SERIES ENACTING SECTION 9.04.055 (CARRYING OF FIREARMS IN SENSITIVE PLACES) OF CHAPTER 9.04 (WEAPONS) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING THE PROHIBITION OF CARRYING FIREARMS IN SENSITIVE PLACES**

Recommendation:

Waive the reading, adopt Ordinance No. 2346, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

3. **ADOPT RESOLUTION ESTABLISHING THE GANN (PROPOSITION 4) APPROPRIATIONS LIMIT FOR FISCAL YEAR 2023-24**

Recommendation:

Adopt Resolution establishing the Gann (Proposition 4) appropriations limit for Fiscal Year 2023-24.

4. **APPROVE MICROSOFT ENTERPRISE AGREEMENT**

Recommendation:

1. Approve the purchase of three-year Microsoft Office 365, Windows Server, and SQL Database Licensing from Dell Marketing, LLP in the amount of \$411,126, plus a 10% contingency for any additional growth; and
2. Authorize the City Manager to execute and administer a Microsoft Enterprise Agreement for the licensing of Microsoft products and services with Dell through 2026 with subsequent renewal subject to budget appropriation.

5. **APPROVE PROFESSIONAL SERVICES AGREEMENT WITH KENNEDY/JENKS CONSULTANTS FOR THE EAST DUNNE AVENUE HILLSIDE WATER RESERVOIR PROJECT**

Recommendation:

1. Approve a professional services agreement with Kennedy/Jenks Consultants to complete the design for the East Dunne Avenue Hillside Water Reservoir project not to exceed \$240,187.
2. Authorize the City Manager to execute all documents and make minor modifications as necessary in order to consummate the transaction.

7. APPROVE THE MAY 3, 2023 CITY COUNCIL MEETING MINUTES

Recommendation:

Approve the May 3, 2023 City Council Meeting Minutes.

8. AWARD 2023 PAVEMENT REHABILITATION PROJECT TO MCKIM CORPORATION IN THE AMOUNT OF \$3,948,023

Recommendation:

1. Approve 2023 Pavement Rehabilitation Project plans and specifications;
2. Award contract to McKim Corporation for the 2023 Pavement Rehabilitation Project in the amount of \$3,948,023;
3. Authorize expenditure of construction contingency not to exceed \$394,802; and
4. Authorize the City Manager to execute and administer the construction contract with McKim Corporation.

10. AWARD FISHER BASIN EXPANSION PROJECT TO GALEB PAVING, INC. IN THE AMOUNT OF \$2,568,800

Recommendation:

1. Approve Fisher Basin Expansion Project plans and specifications;
2. Award contract to Galeb Paving Inc. for the Fisher Basin Expansion Project in the amount of \$2,568,800;
3. Authorize expenditure of construction contingency funds not to exceed \$385,320; and
4. Authorize the City Manager to execute and administer the construction contract with Galeb Paving Inc.

11. AWARD JACKSON OAKS WATER MAIN PROJECT TO SUBTERRA CONSTRUCTION, INC. IN THE AMOUNT OF \$642,100

Recommendation:

1. Approve the Jackson Oaks Water Main Project Plans and Specifications;
2. Award contract to SubTerra Construction, Inc. for the Jackson Oaks Water

Main Project in the amount of \$642,100;

3. Authorize the expenditure of construction contingency funds not to exceed \$96,315; and
4. Authorize the City Manager to execute and administer the construction contract with SubTerra Construction, Inc.

12. RATIFY CITY POSITIONS ON PENDING LEGISLATION

Recommendation:

1. Ratify the City's position on pending legislation, Assembly Bill 33 (Bains) Fentanyl Addiction and Overdose Prevention Task Force;
2. Ratify the City's position on pending legislation, Assembly Bill 367 (Maienschein) Controlled substances: enhancements;
3. Ratify the City's position on pending legislation, Assembly Bill 474 (Rodriguez) State Threat Assessment Center: transnational criminal organizations;
4. Ratify the City's position on pending legislation, Assembly Bill 955 (Petrie-Norris) Controlled substances; and
5. Ratify the City's position on pending legislation, Assembly Bill 742 (Jackson) Law enforcement: police canines.

13. RECEIVE MONTHLY BUDGET UPDATE AND APRIL 2023 FINANCIAL AND INVESTMENT REPORTS

Recommendation:

Accept and file report.

ITEMS PULLED FOR DISCUSSION

6. APPROVE REVISIONS TO CITY COUNCIL POLICY CP-94-04, THE CITY'S INVESTMENT POLICY

Recommendation:

Approve revisions to City Council Policy CP-94-04, the City's Investment Policy.

Finance Director Dat Nguyen provided a report.

Public comment opened at 6:36 pm. There being no requests to speak, public comment closed.

MOTION:

Approving the recommended action.

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

9. AWARD BUTTERFIELD FIRE STATION PROJECT TO LARRY S. KENT, INC. DBA KENT CONSTRUCTION IN THE AMOUNT OF \$7,956,553

Recommendation:

1. Adopt resolution amending the Fiscal Year 2022-23 Budget and appropriating an additional \$2,250,000 to fund the Butterfield Fire Station Project;
2. Authorizing an interfund loan to Public Safety Facilities Impact Fund (315) of \$7,750,000 from Local Drainage Impact Fund (303) (\$5,750,000), Park Maintenance Fund (302) (\$1,000,000), and Public Facilities Fund (347) (\$1,000,000);
3. Approve the Butterfield Fire Station Plans and Specifications;
4. Award contract to Larry S. Kent, Inc. DBA Kent Construction in the amount of \$7,956,553;
5. Authorize expenditures of construction contingency funds not to exceed \$795,655; and
6. Authorize the City Manager to execute and administer the construction contract with Larry S. Kent, Inc. DBA Kent Construction.

Senior Project Manager Yat Cho provided a report.

Public comment opened at 6:48 pm. There being no 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, Council Member Librers
NAYS:	None

ABSTAIN:	None
ABSENT:	None

PUBLIC HEARINGS

14. ADOPT RESOLUTION ORDERING ANNUAL ASSESSMENTS AND RELATED ACTIONS FOR CITY OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

Recommendation:

1. Open and close the Public Hearing; and
2. Adopt resolution confirming Fiscal Year (FY) 2023-24 annual assessments and ordering the levy of assessments for the District.

Maintenance Manager Keri Russell provided a report.

The public hearing opened at 6:49 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, Council Member Librers
NAYS:	None
ABSTAIN:	None
ABSENT:	None

OTHER BUSINESS

15. APPROVE VILLA MIRA MONTE CONCEPTUAL SITE MASTER PLAN

Recommendation:

Approve the Villa Mira Monte Conceptual Site Master Plan Design.

Public Services Director Chris Ghione provided a report.

Abe Jayson and Jody Janecki with Jayson Architecture provided a report and presentation.

Public comment opened at 7:48 pm. The following people were called to speak:
 Nick Gaich
 Roger Knopf
 Kathy Sullivan
 Brian Sullivan
 Peter Anderson
 There being no further requests to speak, public comment closed.

MOTION:

Approving the recommended action.

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

16. APPROVE AGREEMENT WITH HEXAGON TRANSPORTATION CONSULTANTS, INC. FOR DEVELOPMENT OF A TRANSPORTATION MASTER PLAN

Recommendation:

1. Authorize the City Manager to execute and administer an agreement with Hexagon Transportation Consultants, Inc. for the development of a Transportation Master Plan at a total cost of \$893,960; and
2. Adopt a resolution to amend the FY 2022-23 Budget to appropriate \$393,960 from Traffic Impact Fund (309), with the Long Range Planning Fund (207) contributing \$100,000 of that appropriation.

Public Services Director Chris Ghione provided a report.

Public comment opened at 8:48 pm. The following people were called to speak:
 Doug Muirhead
 Joe Baranowski (zoom)
 There being no further requests to speak, public comment closed.

MOTION:

Approving the recommended action.

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

17. APPROVE UPDATE TO THE CITY'S DONATION POLICY

Recommendation:

Accept changes to the City's Donation Policy

Finance Director Dat Nguyen provided a report.

Public comment opened at 9:25 pm. There being no requests to speak, public comment closed.

MOTION:

Modifying the current policy by limiting the donation to \$5,000 annually, adding the statement "City employees shall be responsible for consulting with the City Attorney's Office prior to acceptance of donations" and rewording section 3.5.

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

18. PROVIDE DIRECTION TO STAFF ON PROPOSED FUTURE COUNCIL INITIATED AGENDA ITEM

Recommendation:

Determine if the majority of the City Council wants the following item agendized at a future meeting for discussion:

Considering implementing term limits for City Council and/or Commission

members.

City Manager Christina Turner provided a report. Council Member Spring answered questions.

Public comment opened at 9:45 pm. The following people were called to speak:

Joe Baranowski (zoom)

Miguel Jimenez (zoom)

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

MOTION:

Directing staff to research and bring forth options for term limits for the City's elected positions.

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

FUTURE COUNCIL INITIATED AGENDA ITEMS

Mayor Turner would like to discuss an entertainment permit for adult cabaret shows and having them screened from public view. He would like to discuss fundraising or panhandling around our medians, mainly Monterey and Dunne. He would also like to discuss PG&E's response and the lack of service, and in addition, overturn the ban on natural gas in new construction.

Council Member Martinez Beltran would like to discuss longer time for agendas. She would also like to discuss local work hire.

ADJOURNMENT

There being no further business, Mayor Turner adjourned the meeting at 9:51 pm.

Minutes Prepared by:

Kim Mancera, Deputy City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: June 21, 2023

PREPARED BY:

James Sylvain, Deputy Director Utility Services

APPROVED BY: City Manager

APPROVE THE PURCHASE OF AN OFF-ROAD ALL-TERRAIN VEHICLE AND EQUIPMENT IN THE AMOUNT OF \$175,763 FROM ALLTRACK INC.

RECOMMENDATION(S)

Approve and authorize the City Manager to execute a purchase order to Alltrack Inc. in the amount of \$175,763 for the purchase of an off-road all-terrain vehicle and equipment, to provide access to utility infrastructure.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

Guiding Documents

Water System Master Plan

Wastewater System Master Plan

REPORT NARRATIVE:

The City of Morgan Hill has many sewer lines that are in areas that are very difficult to access. Many sewer pipes are located on steep hillsides, behind customers' homes and in their backyards. This is especially true in the hillside areas of the City. This makes it extremely difficult for field staff to access, maintain, and repair lines in these areas. Often times, repairs must be done by staff carrying heavy equipment on foot. This also makes it difficult to respond to emergencies such as Sanitary Sewer Overflows in a timely manner.

During the extreme storms of this past winter, staff were repeatedly tasked with attempting to access broken water lines in areas that were not accessible to normal vehicles. Due to the saturation of the ground, full repairs were impossible to make during the winter months. Staff were able to implement alternative measures to isolate the broken lines and ensure water service to residents was continued. However, the risk of the loss of water to residents was high. City staff is currently in the planning phases to improve access roads in these areas, but are many years away from having funding to complete these repairs. Following the storms, staff immediately began looking for alternative solutions to support staff during significant storm events. These efforts led

staff to identify a vehicle that could assist in making access to these remote areas safer, efficient, and effective in the short term.

An Invitation to Bid was posted in May 2023 to obtain pricing to build this specialized equipment. The bid was advertised in the Morgan Hill Times and on the Public Purchase website and was posted to the City website. It was also emailed to two vendors that staff found that do custom upfits of track vehicles. One bid was received. The bid received was carefully reviewed and complies to all of the specifications asked for in the bid documents. Therefore, staff recommends purchasing the all-terrain vehicle from Alltrack Inc. in the amount of \$175,763, which includes the customized vehicle and equipment, freight, and tax.

COMMUNITY ENGAGEMENT:

Not Applicable

The purchase of vehicles and equipment for the operations within the Utilities Division is a necessary function to support operations of the City and therefore no community engagement was performed.

ALTERNATIVE ACTIONS:

1. City Council could choose to reject the bid and reissue a new bid. This is not recommended as the type of vehicle the Utility Division is seeking is highly specialized and rebidding is not likely to result in a lower cost.
2. City Council could choose to reject the bid and not approve the purchase of this vehicle. This is not recommended as the inability to reach remote areas has greatly impacted the ability of staff to respond to repairs and emergency situations in a timely manner.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

There have been no prior Council actions.

FISCAL AND RESOURCE IMPACT:

Funds for this purchase will be reappropriated from the Capital Improvement Program (CIP) Wastewater Fund (643) and CIP Water Fund (653). The CIP currently has funds budgeted for the upgrade of access roads and for security enhancements. City staff is proposing the use of limited funds for each of these areas that were allocated to Projects 360022 and 630023. There is currently \$1.0 million available for the access roads project in FY 23-24, of which, \$131,822 would be used for this equipment purchase and there is currently \$200,000 allocated to the security enhancements project in FY 23-24, of which, \$43,941 would be used. Both projects are multi-year projects and neither would be severely impacted or delayed by the use of these funds.

CEQA (California Environmental Quality Act):

Not a Project

The purchase of a vehicle is an administrative action that will not result in a change to the physical environment. This action is not a project under the California Environmental

Quality Act.

City of Morgan Hill
BID
OFF-ROAD ALL TERRAIN VEHICLE

Alltrack Inc. _____ ("Contractor") hereby submits this Bid to the City of Morgan Hill ("City") for an **Off-Road All Terrain Vehicle** ("Project") in response to the Invitation for Bids and in accordance with the documents referenced therein.

1. **Bid Proposal.** Contractor proposes and will provide, if awarded, one Off-Road All Terrain Vehicle with upfit per the specifications laid out in the Invitation for Bid documents herein.

2. **Addenda.** Contractor acknowledges receipt of the following addenda:

Addendum: Date Received:

#01 _____

#02 _____

#03 _____

3. **Bid Warranties.** By signing and submitting this Bid, Contractor warrants the following:

3.1 Contractor has thoroughly examined the Bid Documents, and represents that, to the best of Contractor's knowledge there are no errors, omissions, or discrepancies in the Bid Documents.

3.2 Contractor is fully qualified to perform the Work.

3.3 Contractor has carefully reviewed this RFP Proposal and is solely responsible for any errors or omissions contained in their completed Proposal.

This Proposal is hereby submitted on May 19th, 2023 :

Alltrack Inc.	403-250-8856	Tyler@alltrack.ca	
Company Name	Contact Phone	Contact Email	
4281-23rd street ne	Calgary	AB	T2E 6Y2
Address	City	State	Zip
	Tyler Van Megen Sales Manager		
Authorized Signature	Name and Title [print]		

THIS PAGE MUST BE SUBMITTED WITH BID

SPECIFICATIONS

VEHICLE EQUIPMENT	YES	NO	DEVIATION
2.0L Industrial Turbo Charged Diesel, 74HP, Tier 4	X		
Enclosed roll over protection structure cab with heat and suspension seats Certified ISO 3471	X		
High Strength steel frame with skid plates and full fluid containment.	X		
Fully equipped two passenger cab (digital information display, interior lights)	X		
Console with storage and integrated Power inverter	X		
Tilting 5' x 5' heavy duty cargo deck	X		
Full instrumentation	X		
Sliding door windows with screen	X		
Side view mirrors	X		
Front mounted LED Light bar	X		
Brush guard over cab	X		
Heavy-Duty front Bumper	X		
Wheel motors with Integral Multi Disk parking brake	X		
Tandem Hydrostatic Pumps @5800PSI	X		
Urethane coated drive sprockets	X		
16" steel cleats on rubber belted track.	X		
Solid rubber bogey tires with steel wheels	X		
Independent rubber torsion axle suspension	X		

VEHICLE EQUIPMENT CONTINUED	YES	NO	DEVIATION
2" receiver for mounting Pintle hitch or other hitch mounted implements.	X		
Full hydrostatic drive	X		
Ergonomic, hydraulic piloted dual joystick controls	X		
60" x 60" cargo deck with 3500lb. payload capacity	X		
Low maintenance rubber torsion axle suspension	X		
Automated Track tension adjustment system (ATTS)	X		
18 Gallon Aluminum Fuel Tank	X		
5 Gallon vortex style hydraulic tank	X		
High ambient temperature hydraulic cooler	X		
LED Work and driving lights	X		
Back Up alarm/ Strobe light	X		
On board emergency brake release system for towing	X		
Seat belt anchorage to SAE J787	X		
Two operation and maintenance manuals	X		
*Warranty for base vehicle and equipment	X		1 YEAR OR 1000 HOURS, WHICHEVER IS FIRST
SPECIAL EQUIPMENT	YES	NO	DEVIATION
16" Wide environmental track in lieu of steel cleats	X		
Full rubber, rebuildable, and field serviceable track system	X		

SPECIAL EQUIPMENT CONTINUED	YES	NO	DEVIATION
• Rubber encapsulated high strength steel grouser bar design	X		
• Track will not mar hard surfaces such as concrete and asphalt	X		
Hydraulic pedestal crane corner mounted at front left corner of deck	X		
• 1250 capacity @ 10' extension	X		
• 10L hydraulic tank	X		
Auxiliary high pressure hydraulic system – 3000psi	X		
• Powers a selectable tool valve for hydraulic tools	X		
• Includes install and plumbing of auxiliary tool system	X		
• Adjustable flow rate controller with two selectable flow rates	X		
*Warranty for special equipment	X		1 YEAR, 1000 HOURS, WHICHEVER IS FIRST

*Please specify warranty term and details for Base Vehicle and Special Equipment here or provide full warranty details separately but with bid submittal:

Alltrack tracked carriers are warranted for a period of 1 year from date of deliver, or 1000 hours of operation whichever comes first.

Please provide pictures of the base vehicle that will be used for buildout.

Cost Schedule

Vehicle Equipment	\$	138,000.00
Special Equipment	\$	19,400.00
Freight and delivery fees	\$	4,000.00
Taxes	\$	0 14,370.62
Total Bid	\$	161,400.00 175,770.62

Non-Collusion Declaration

(To be executed by Contractor and submitted with bid)

The undersigned declares:

I am the Sales Manager [title] of Alltrack Inc. [business name],
the party making the foregoing bid.

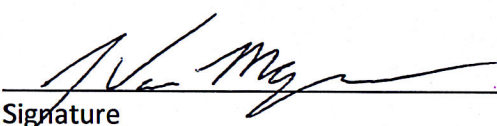
The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The Contractor has not directly or indirectly induced or solicited any other Contractor to put in a false or sham bid. The Contractor has not directly or indirectly colluded, conspired, connived, or agreed with any Contractor or anyone else to put in a sham bid, or to refrain from bidding. The Contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Contractor or any other Contractor, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Contractor. All statements contained in the bid are true. The Contractor has not, directly, or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has no paid and will not pay, any person or entity for such purpose.

This declaration is intended to comply with California Public Contract Code Section 7106 and Title 23 U.S.C Section 112.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and

correct, and that this declaration is executed on 5/19/2023 [date], at

Calgary [city], Alberta [state].


Signature

Tyler Van Megen
Name [print]

THIS PAGE MUST BE SUBMITTED WITH BID



2023 Alltrack AT-20HD





Quick Specs.	AT-20HD
Payload:	3500lbs.
Dry Weight:	5500lbs.
Gross:	9500lbs.
Suspension:	Independent torsion axle
Track Width:	16" or 22"
Speed:	14 mph
Drive:	Hydrostatic
Steering:	Dual Hydraulic Pilot operated joysticks
Fuel:	Diesel
Horsepower:	74 HP
Width:	61" with 16" track 73" with 22" track
Length:	162"
Height:	86"
Cab Seating:	2
Max Gradient:	Side 40% Front 60%

ALLTRACK INC.
 4281-23RD STREET N.E.
 CALGARY, ALBERTA
 1-800-583-8850 OR 403-250-8856
 WWW.ALLTRACK.CA



MODEL

2023 ALLTRACK AT-20HD

STANDARD FEATURES

Vehicle Overall Dimensions

Length: 162"

Width: 61" with 16" track, 73" with 22" track

Height: 86"

Deck Height: 31" from ground

Deck Area: 60" x 60"

Ground Clearance: 12"

Weights

GVWR: 9,500lbs.

Curb: 5,500 lbs. 16" track; 6,000 lbs. 22" track.

Payload: 3,500 lbs.

Ground Pressure

Unloaded @ 6" Penetration

16" WIDE TRACKS: 1.6 PSI

22" WIDE TRACKS: 1.3 PSI

At Capacity

16" WIDE TRACKS: 2.7 PSI

22" WIDE TRACKS: 2.0 PSI

CITY COUNCIL STAFF REPORT

MEETING DATE: June 21, 2023

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

AUTHORIZE WRITE-OFF OF CERTAIN UNCOLLECTIBLE RECEIVABLES IN ACCORDANCE WITH THE CITY'S WRITE-OFF POLICY

RECOMMENDATION(S)

Authorize write-off of certain uncollectible receivables in the amount of \$161,494 in accordance with the City's write-off policy.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2022-2023 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

While Finance staff make every effort to collect unpaid receivables, some inevitably become uncollectible and must be removed from the general ledger. It is the City's policy to actively pursue collections, regularly review the status of past due accounts, and write-off amounts determined to be uncollectible. It is also best practice to write-off (remove) uncollectible amounts from the general ledger account balances, so that the City does not overstate its assets.

A recent review identified certain receivables which were deemed uncollectible and all efforts to recover the amounts owed have been exhausted. As a result, staff is recommending the City Council authorize staff to write off \$161,494 in uncollectible receivables.

COMMUNITY ENGAGEMENT:

Inform

This staff report serves to inform the community of the proposed write-off of certain uncollectible receivables.

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 6, 2018, City Council authorized the write-off of an uncollectible housing rehabilitation loan in the amount of \$38,725.

FISCAL AND RESOURCE IMPACT:

The write-off amount of \$161,494 would decrease the receivables in the General Fund.

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.

Customer #	Last Name	First Name	Description	Current balance
12877	ARREDONDO	SAMANTHA	Damage to PD veh - 2/19/2022	\$7,835.29
12776	ELLINGSEN	CHRISTOPHER TAYLOR	Damage to fire hydrant - 6/13/2021	\$5,516.56
12774	PROFETA	JASON DEVIN	Property damage to light pole #2159 - 12/9/2021	\$5,932.00
12753	MOODY	KEVIN	Property damage to light pole #987 - 12/24/2021	\$8,566.69
12724	BALTAZAR DOMINGUEZ	ALFONSO	Damage to fire hydrant - 11/3/2020	\$6,040.03
12726	GRIGER	JACK	Damage to fire hydrant - 6/30/2020	\$6,483.54
12721	ANSALDO	CLINTON LEE	Damage to fire hydrant - 9/17/2021	\$6,339.02
12723	AGUILAR	JEROME FRANK	Damage to fire hydrant - 8/11/2021	\$5,174.80
12708	MCCUTCHEON	LAWRENCE	Property damage to light pole - 7/12/2021	\$6,964.53
12713	BUCIO-GUTIERREZ	JOSUE	Property damage to light pole and middle barriers - 6/25/2021	\$5,353.98
12677	MARTINEZ	JOSEPH	Property damage to light pole and middle barriers - 6/25/2021	\$8,316.85
12652	OZUNA	JORGE	Damage to PD veh - 8/19/2020	\$5,258.63
12648	BARAJAS	JULISSA	Property damage to solar panel pedestrian crosswalk pole - 10/29/2020	\$8,059.58

Customer #	Last Name	First Name	Description	Current balance
12600	REYES	ANDREW	Property damage to light pole - 8/5/2020	\$6,566.16
12588	MARTINI	NOLA ANNE	13 admin citations ranging from 2020-2022. All related to animal control issues.	\$5,800.00
12591	GALVAN	JUAN EDWARD	Damage to PD booking facility - 8/10/2019	\$16,880.00
12592	CHAVEZ	JOEL	Damage to PD veh 12/17/2019	\$6,420.79
12493	LARA VIVEROS	ALAN	Damage to two guard rails - 5/16/2022	\$8,227.03
12431	BEASLEY	EMILY	Damage to fire hydrant - 10/23/2019	\$8,764.26
12242	SMITH	JAMES V	3 admin Citation: fire codes - 2019	\$11,200.00
12192	OF ANTHONY GUERRERO	TO PARENTS/GUARDIAN	Damage to hydrant and surrounding city property - 4/29/2018	\$6,765.31
10561	MARTINEZ	MICHAEL ANTHONY	Damage to PD veh - 12/14/2011	\$5,028.79

TOTAL: \$161,493.84

CITY OF MORGAN HILL

FISCAL POLICIES AND PROCEDURES

SUBJECT: WRITE-OFF POLICY
EFFECTIVE DATE: June 7, 2017

PURPOSE

The purpose of this policy is to ensure that all reasonable diligence has been used to collect accounts receivable, improve measurement of the City's accounts receivable, and ensure the most efficient use of City revenue collection resources.

POLICY

It is the policy of the City of Morgan Hill to actively pursue collection of past-due accounts receivable, regularly review the status of past-due accounts, and write-off amounts determined to be uncollectible.

Approval Authority for Write-Off Request:

- a) The Director of Finance is authorized to approve the write-off of accounts with an outstanding balance of up to \$2,500;
- b) The City Manager is authorized to approve the write-off of accounts with an outstanding balance in excess of \$2,500 and up to \$5,000;
- c) Write-off of accounts with an outstanding balance in excess of \$5,000 must be approved by action of the City Council.

A write-off of uncollectible accounts receivable from the City's accounting records does not constitute forgiveness of the debt or gift of public funds. Subsequent collection of an account previously written-off will be treated as new revenue in the appropriate fund.

PROCEDURES

Collection procedures are established by the Finance Department and will vary depending on the nature of the receivable. Types of receivables covered by this approval authority include but are not limited to: business license tax; water and wastewater utility billings; fees for services; recovery for damage to City property; fines and penalties; and legal judgments.

I. Designation of an Account as Uncollectible

An account will be considered uncollectible after the appropriate collection procedures have been followed if it meets the three following criteria or the City Council has approved the action:

- The amount remains unpaid after one year;
- Finance Department has exhausted all collection efforts;
- The cost of further collection efforts will exceed the estimated recovery amount.

II. Preparation of Request for Write-Off of Accounts Receivable

At least annually, Finance staff, in conjunction with responsible departments, will identify any accounts receivable that meet the criteria for designation as an uncollectible account. A request for write-off of accounts receivable will be prepared by Finance staff, and submitted to the Director of Finance.

The request for write-off of accounts receivable must include an itemized list of the uncollectible accounts to be written off specifying the following:

- Debtor name;
- Account balance;
- Due date;
- Brief description of receivable type;
- Criteria under which the account was deemed uncollectible; and
- Account number of the receivable in the City's accounting system.

For each uncollectible account, documentation must be attached to the request to support the uncollectible account designation and substantiate that the responsible departments and/or Finance have followed its collection procedures and exercised due diligence in its collection efforts. Due diligence documentation could include:

- Invoices, reminder letters, or collection letters (and any documentation that are returned as undeliverable, no known forwarding address, etc.);
- Information from the California Department of Corporations;
- Referral to the City's collection agency;
- Bankruptcy claim and any related plan or discharge;
- Judgment awarded by a court or settlement agreement; and
- Notice of discontinuation of services.

CITY COUNCIL STAFF REPORT

MEETING DATE: June 21, 2023

PREPARED BY:

Hilary Holeman, Administrative Analyst

APPROVED BY: City Manager

RATIFY CITY POSITIONS ON PENDING LEGISLATION

RECOMMENDATION(S)

Ratify the City's position opposing pending legislation, Senate Bill 623 (Laird) Workers' compensation: post-traumatic stress disorder.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

Per Resolution No. 20-010 (Attachment 1), the City Council recognizes occasional situations arise where communication indicating support or opposition on pending State, County, or other regional boards' legislation or action that could be important and may occur prior to the next scheduled City Council meeting. Under these circumstances, the Mayor or City Manager is delegated the authority to prepare, execute and transmit written or verbal communications indicating a City's position when any of the following criteria are met: a) the League of California Cities, or a similar organization, has requested the City to comment or take a position, b) the timing to express a position occurs prior to the next scheduled Council meeting, and c) the pending State, County, or other regional boards' legislation or action clearly supports or clearly hinders the implementation or fulfillment of an adopted City Council Priority, Goal, or Strategy in a substantial manner such that it is in the best interest of the City to indicate its comment or position. When this occurs, a written report to the City Council for acceptance is required at the next possible meeting.

BACKGROUND

On May 24, 2023, the California Association of Joint Powers Authorities (CAJPA) sent a Legislative Alert (Attachment 2) for cities to sign onto the Oppose SB 623 Coalition letter to help strengthen efforts to educate legislators that the intent of this bill to extend post-traumatic stress injury (PTSI) is not based on actual experience or analysis and would drive up costs for public entities that provide emergency services.

BILL SUMMARY

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an

employee for injuries sustained in the course of employment. Existing law provides, until January 1, 2025, that, for certain state and local firefighting personnel and peace officers, the term “injury” includes post-traumatic stress that develops or manifests during a period in which the injured person is in the service of the department or unit. Existing law requires the compensation awarded pursuant to this provision to include full hospital, surgical, medical treatment, disability indemnity, and death benefits. This bill would instead repeal that provision on January 1, 2032, and for injuries occurring on or after January 1, 2024, expand its scope to apply to firefighting members of the State Department of State Hospitals, the State Department of Developmental Services, the Military Department, and the Department of Veterans Affairs, and to additional peace officers, including security officers of the Department of Justice when performing assigned duties as security officers, and the officers of a state hospital under the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services, among other officers. The bill would also make that provision applicable to public safety dispatchers, public safety telecommunicators, and emergency response communication employees, as defined.

On May 31, 2023, the City signed on to CAJPA's coalition letter by e-mail. The full SB 623 Bill Text is included as Attachment 3.

COMMUNITY ENGAGEMENT:

Inform - this report serves to inform the community on the City's position on pending legislation that directly impacts the City of Morgan Hill.

ALTERNATIVE ACTIONS:

The City Council could rescind the position taken.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

City Council periodically ratifies City positions on various pending State, County or other regional board legislation or actions that have a direct impact on the City of Morgan Hill.

FISCAL AND RESOURCE IMPACT:

Tracking legislation is an activity included in the annual workplan of the City Manager's Office.

CEQA (California Environmental Quality Act):

Not a Project - administrative action/activity without an impact.

RESOLUTION NO. 20-010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE MAYOR OR CITY MANAGER TO PREPARE, EXECUTE AND TRANSMIT COMMUNICATIONS INDICATING A POSITION ON PROPOSED STATE, COUNTY, OR OTHER REGIONAL BOARDS' LEGISLATION OR ACTION ON CERTAIN MATTERS THAT MAY HAVE IMPACTS UPON THE CITY IN CERTAIN CIRCUMSTANCES AND DIRECTING A REPORT BACK TO CITY COUNCIL ON ANY SUCH COMMUNICATIONS TRANSMITTED. (THIS RESOLUTION RESCINDS RESOLUTION NO. 6851)

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California ("City"), is authorized to indicate City's position on proposed legislation of the State of California and is sometimes requested to so indicate City's position on such legislation for the benefit of the City; and

WHEREAS, the reasons supporting the adoption of this Resolution are set forth in detail in that certain City Council Staff Report submitted for City Council consideration at its meeting of February 5, 2020, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

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

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

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

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

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

Section 2. Approval and Authorization. The City Council prefers, whenever possible, that determinations on whether to take a position on pending State, County, or other regional boards' legislation or action be brought before the City Council as a whole for consideration and action. However, the City Council recognizes that occasional, limited situations arise where communications indicating support or opposition on pending State, County, or other regional boards' legislation or action that could be important to City are requested from cities within timeframes that have deadlines occurring prior to the next scheduled meeting of the City Council as a whole at which the City Council could consider and determine City's position on such pending legislation. For these reasons, the City Council does further resolve, order and/or direct as follows:

- a. That the Mayor and/or the City Manager is delegated authority to and is authorized to prepare, execute and transmit written or verbal communications indicating a City position on proposed pending State, County or other regional boards' legislation or action that may have impacts upon City when any of the following criteria are met:
 - i. The League of California Cities, or a successor or similar organization, has requested City comment or position on a piece of pending legislation or action, or the City has otherwise become aware of such pending legislation or action;
 - ii. A public hearing and an opportunity for City to comment or take a position upon such pending legislation or action is occurring in a timeframe and with a deadline to comment or express a position that occurs prior to the next scheduled meeting of the City Council at which the City Council could consider and determine City's comment or position on such pending legislation or action; or
 - iii. The pending legislation or action clearly supports or clearly hinders the implementation or fulfillment of an adopted City Council Priority, Goal or Strategy in a substantial manner such that it is in the best interests of City to indicate its comment or position on such pending legislation or action.
- b. That the Mayor and/or City Manager is hereby directed to provide a written report to the City Council for the Council's comment and acceptance at the City Council's next possible meeting whenever the Mayor or City Manager prepares, executes and transmits a communication indicating a comment or position on pending legislation or action pursuant to the authority delegated under this Resolution, which report shall include a copy of such pending legislation or action, and the comment or position transmitted.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 5th day of February 2020 by the following vote:

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

APPROVED:



RICH CONSTANTINE, Mayor

ATTEST:



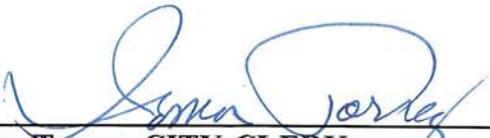
IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 20-010, adopted by the City Council at the meeting held on the 5th day of February 2020.

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

DATE: 3/3/2020



Irma Torrez, CITY CLERK



Hilary Holeman

Subject: FW: CAJPA Legislative Alert: Coalition Signers Needed to Oppose SB 623

From: CAJPA <info@cajpa.org>

Sent: Wednesday, May 24, 2023, 12:38 PM

Subject: Legislative Alert: Coalition Signers Needed to Oppose SB 623



LEGISLATIVE ALERT



CAJPA LEGISLATIVE ALERT
COALITION SIGNERS NEEDED TO OPPOSE SB 623



CAJPA and other public agency employer associations have been working diligently to oppose [SB 623 \(Laird\)](#). If signed into law, SB 623 would:

- Extend the existing workers' compensation presumption for specified peace officers that a diagnosis of post-traumatic stress injury (PTSI) is occupational to January 1, 2032 (from January 1, 2025)
- Expand the PTSI workers' compensation presumption to additional categories of peace officers including public investigators, public security officers, public safety dispatchers, public safety telecommunicators, and any peace officer employed by a K-12 public school district, and many more.

The coalition's opposition is based on the increased cost this expansion would impose on public employers without any evidence that the current workers' compensation system is failing these vital employees. There is no evidence that a presumption is warranted.

CAJPA is asking its members to sign onto the [Oppose SB 623 Coalition letter](#) to help strengthen efforts to educate legislators that the intent of this bill to extend PTSI is not based on actual experience or analysis and would drive up costs for struggling public entities that are trying to provide emergency services.

To add your organization's name to the coalition letter, please send an email to CAJPA Legislative Assistant Brett Moore at bmoore@cajpa.org with the following information:

- Expressed permission to add your pool's name to the letter
- A jpeg logo
- A signatory from the organization

Please respond no later than May 31, 2023 to be added to the coalition letter. If you need any additional information to consider this request, please email CAJPA's Legislative Advocate Faith Borges at fborges@caladvocates.com.

Thank you for strengthening the voice of California's public agency employers.



CAJPA | 808 R Street, Suite 209, Sacramento, CA 95811

[Unsubscribe jacquelyn.miller@sedgwick.com](mailto:jacquelyn.miller@sedgwick.com)

[Update Profile](#) | [Constant Contact Data Notice](#)

Sent by info@cajpa.org powered by



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AMENDED IN SENATE MARCH 20, 2023

SENATE BILL

No. 623

**Introduced by Senator Laird
(Principal coauthor: Senator Stern)**

February 15, 2023

An act to amend Section 3212.15 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 623, as amended, Laird. Workers' compensation: post-traumatic stress disorder.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of employment. Existing law provides, until January 1, 2025, that, for certain state and local firefighting personnel and peace officers, the term "injury" includes post-traumatic stress that develops or manifests during a period in which the injured person is in the service of the department or unit. Existing law requires the compensation awarded pursuant to this provision to include full hospital, surgical, medical treatment, disability indemnity, and death benefits.

This bill would instead repeal that provision on January 1, 2032, and for injuries occurring on or after January 1, 2024, expand its scope to apply to firefighting members of the State Department of State Hospitals, the State Department of Developmental Services, the Military Department, and the Department of Veterans Affairs, and to additional peace officers, including security officers of the Department of Justice when performing assigned duties as security officers, and the officers of a state hospital under the jurisdiction of the State Department of

State Hospitals or the State Department of Developmental Services, among other officers. The bill would also make that provision applicable to public safety dispatchers, public safety telecommunicators, and emergency response communication employees, as defined.

~~This bill would make technical, nonsubstantive conforming changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3212.15 of the Labor Code is amended
2 to read:
3 3212.15. (a) This section applies to all of the following:
4 (1) Active firefighting members, whether volunteers, partly
5 paid, or fully paid, of all of the following fire departments:
6 (A) A fire department of a city, county, city and county, district,
7 or other public or municipal corporation or political subdivision.
8 (B) A fire department of the University of California and the
9 California State University.
10 (C) The Department of Forestry and Fire Protection.
11 (D) A county forestry or firefighting department or unit.
12 (E) *The State Department of State Hospitals.*
13 (F) *The State Department of Developmental Services.*
14 (G) *The Military Department.*
15 (H) *The Department of Veterans Affairs.*
16 (2) Active firefighting members of a fire department that serves
17 a United States Department of Defense installation and who are
18 certified by the Department of Defense as meeting its standards
19 for firefighters.
20 (3) Active firefighting members of a fire department that serves
21 a National Aeronautics and Space Administration installation and
22 who adhere to training standards established in accordance with
23 Article 4 (commencing with Section 13155) of Chapter 1 of Part
24 2 of Division 12 of the Health and Safety Code.
25 (4) Peace officers, as defined in ~~Section 830.1, subdivisions (a),~~
26 ~~(b), and (c) of Section 830.2, Section 830.32, subdivisions (a) and~~
27 ~~(b) of Section 830.37, Sections 830.1, 830.2, 830.3, 830.32, 830.37,~~
28 ~~and 830.38, subdivision (b) of Section 830.4, and Sections 830.5~~

1 and 830.55 of the Penal Code, who are primarily engaged in active
2 law enforcement activities.

3 (5) (A) Fire and rescue services coordinators who work for the
4 Office of Emergency Services.

5 (B) For purposes of this paragraph, “fire and rescue services
6 coordinators” means coordinators with any of the following job
7 classifications: coordinator, senior coordinator, or chief
8 coordinator.

9 (6) (A) *Public safety dispatchers, public safety*
10 *telecommunicators, and emergency response communication*
11 *employees.*

12 (B) *For the purposes of this paragraph, a “public safety*
13 *dispatcher,” “public safety telecommunicator,” or “emergency*
14 *response communication employee” means an individual employed*
15 *by a public safety agency whose primary responsibility is to*
16 *receive, process, transmit, or dispatch emergency and*
17 *nonemergency calls for law enforcement, fire, emergency medical,*
18 *and other public safety services by telephone, radio, or other*
19 *communication device, and includes an individual who supervises*
20 *other individuals who perform these functions.*

21 (b) In the case of a person described in subdivision (a), the term
22 “injury,” as used in this division, includes “post-traumatic stress
23 disorder,” as diagnosed according to the most recent edition of the
24 Diagnostic and Statistical Manual of Mental Disorders published
25 by the American Psychiatric Association and that develops or
26 manifests itself during a period in which any ~~member person~~
27 described in subdivision (a) is in the service of the ~~department or~~
28 ~~unit.~~ *department, unit, office, or agency.*

29 (c) For an injury that is diagnosed as specified in subdivision
30 (b):

31 (1) The compensation that is awarded shall include full hospital,
32 surgical, medical treatment, disability indemnity, and death
33 benefits, as provided by this division.

34 (2) The injury so developing or manifesting itself in these cases
35 shall be presumed to arise out of and in the course of the
36 employment. This presumption is disputable and may be
37 controverted by other evidence, but unless so controverted, the
38 appeals board is bound to find in accordance with the presumption.
39 This presumption shall be extended to a person *described in*
40 *subdivision (a)* following termination of service for a period of 3

1 calendar months for each full year of the requisite service, but not
2 to exceed 60 months in any circumstance, commencing with the
3 last date actually worked in the specified capacity.

4 (d) Compensation shall not be paid pursuant to this section for
5 a claim of injury unless the person has performed services for the
6 ~~department or unit~~ *department, unit, office, or agency* for at least
7 six months. The six months of employment need not be continuous.
8 This subdivision does not apply if the injury is caused by a sudden
9 and extraordinary employment condition.

10 (e) ~~This section—~~*(1) This section, as added by Section 2 of*
11 *Chapter 390 of the Statutes of 2019, applies to injuries occurring*
12 *on or after January 1, 2020.*

13 *(2) The amendments to this section made by Senate Bill 623 of*
14 *the 2023–24 Regular Session apply to injuries occurring on or*
15 *after January 1, 2024.*

16 (f) This section shall remain in effect only until January 1, ~~2025,~~
17 ~~2032,~~ and as of that date is repealed.

O

CITY COUNCIL STAFF REPORT

MEETING DATE: June 21, 2023

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

RECEIVE MONTHLY BUDGET UPDATE AND MAY 2023 FINANCIAL AND INVESTMENT REPORTS

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Fiscal Sustainability

Community Outreach, Engagement, and Messaging

REPORT NARRATIVE:

As part of the City Council's expectation to maintain a high level of transparency and to be responsible stewards of public funds, staff is providing this monthly budget update, along with the May 2023 financial and investment reports.

May 2023 Financial Report

The Revenue and Expense Summary through May 2023 is included on the first page of the monthly financial report. Overall, General Fund revenues total \$40.8 million or about 79% of the budget. Expenditures, including encumbrances, amounted to \$49.5 million or 85% of the budget, compared to prior year to date expenditures, including encumbrances, of \$42.3 million. This represents an increase of \$7.2 million in total year to date expenditures, including encumbrances, compared to the prior year to date.

Excluding the encumbrances, year to date expenditures increased by about \$6.1 million mainly due to new programs launched this year, such as Innovative Transit and County Solid Waste Program, the gradual recovery in Recreation Services, as well as additional staffing programmed in the current year along with better staff recruitment and retention efforts citywide.

Budget Update

There has been no material change to the City's revenue since the last budget update to the Council on June 7, 2023. Recreation Services revenues continue to recover from the pandemic and are on target with budget. For water revenue, Morgan Hill residents

consumed about 17% less water through May compared to the prior three-year average. As such, the 15% revenue stabilization water rate has been implemented.

COMMUNITY ENGAGEMENT:

Inform

Finance staff prepares these financial reports to inform City officials, the Council, the community, and various lenders and stakeholders about the financial health of the organization, which assists each one of the interested parties in making sound financial and investment decisions.

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is a monthly financial report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the financial and investment report for each month. At the September 16, 2015 meeting, City Council recommended monthly financial and investment reports be agendaized under the Consent Agenda, and quarterly financial and investment reports be presented to City Council as an “Other Business” item.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Not a Project

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

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
May 31, 2023 - 92% of Year Complete



CITY OF MORGAN HILL

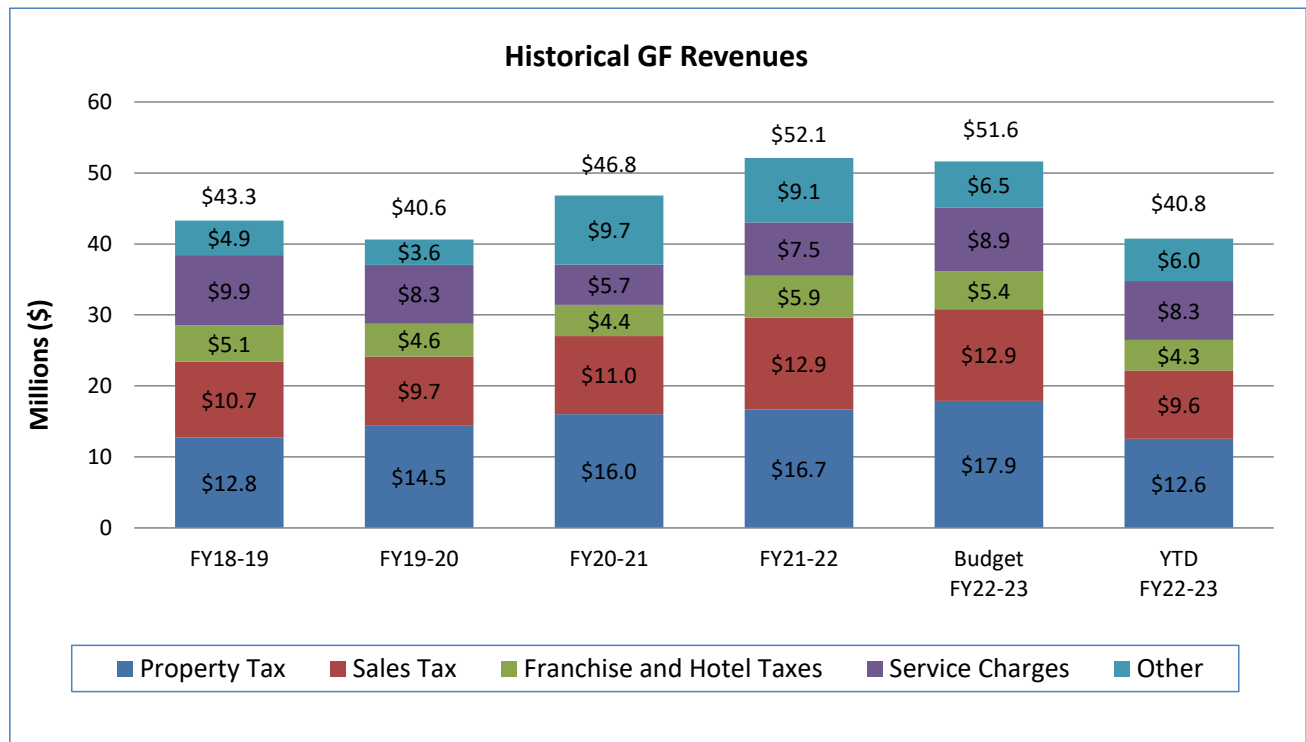
Prepared by:
FINANCE DEPARTMENT



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2022-23
FOR THE MONTH ENDED MAY 2023 – 92% OF YEAR COMPLETE

- **General Fund** – Revenues through May totaled \$40.8 million, or about 79% of the budgeted revenues. For the property tax revenue, the County estimated the City will receive approximately \$17.9 million for the current fiscal year versus \$17.4 million budgeted. As for sales tax, HdL, the City's sales tax consultant raised the City's current fiscal year sales tax revenue estimate to \$12.5 million, an increase of approximately \$0.5 million from the prior estimate in its most recent projection.

The chart below shows historical General Fund revenues by major revenue category from FY18-19 through FY21-22 Actual, FY22-23 Budget, and YTD as of May 31, 2023.



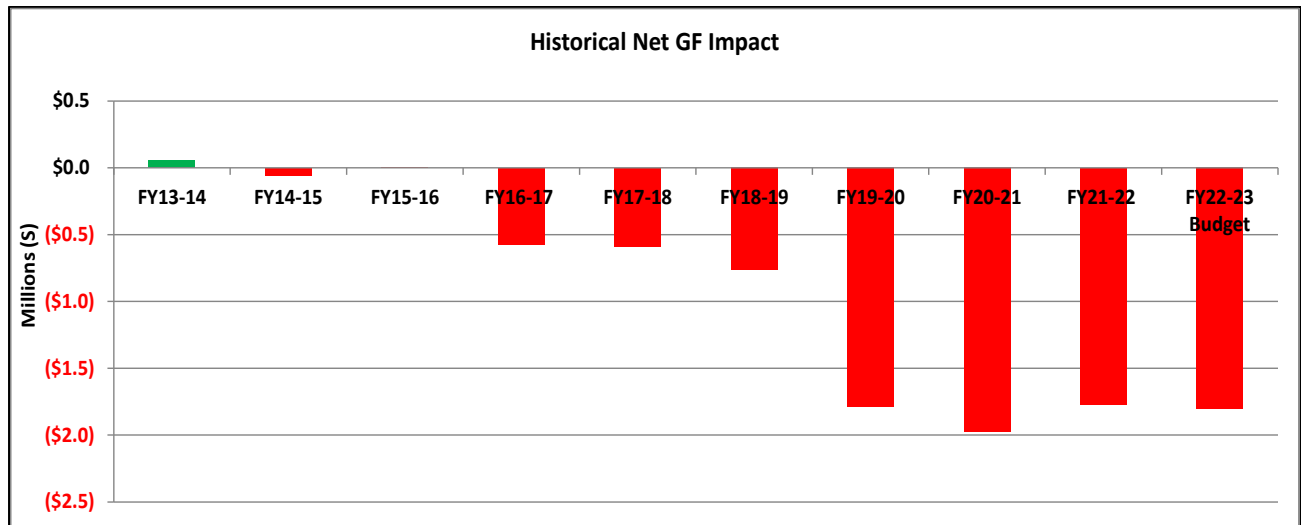
General Fund expenditures and encumbrances as of May 31, 2023 totaled \$49.5 million, of which approximately \$2.3 million is attributable to outstanding encumbrances, compared to prior year to date expenditures, including encumbrances, of \$42.3 million. This represents an increase of \$7.2 million in total year to date expenditures, including encumbrances, compared to the prior year to date. Excluding the encumbrances, year to date expenditures increased by about \$6.1 million mainly due to new programs launched this year, such as Innovative Transit and County Solid Waste Program, the gradual recovery in Recreation Services, as well as additional staffing programmed in the current year along with better staff recruitment and retention efforts citywide.

- **Community Services** – The Community Services Department’s recreation operations, as reflected in the schedule presented on page 7 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$1.1 million as of May 31, 2023. Recreation Services revenues continue to recover from the pandemic and are on target with budget.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2022-23
FOR THE MONTH ENDED MAY 2023 – 92% OF YEAR COMPLETE

The chart below shows the historical net impact of Recreation Operations to the general fund.



Due to longstanding governmental accounting and budgeting convention, the City’s recreation operations are not charged for indirect costs (known in Morgan Hill as “General Fund Administration”) from the central services departments of City Attorney, City Manager, and Administrative Services. The City’s other governmental funds, such as Development Services, and the proprietary funds, such as Water and Wastewater, and the Information Services Fund, are assessed such charges through the City’s indirect cost allocation plan, prepared in compliance with the guidelines set forth in the Code of Federal Regulations Title 2, Chapter II, Part 200 (formerly OMB Circular No. A-87), which mandates certain calculation and cost allocation practices that must be followed in order to qualify for Federal grant funding, but which also represents best practice for non-grant funded City operations like utilities and information services.

- **Development Services Fund** – Revenues through May totaled \$5.3 million compared to prior year to date amount of approximately \$4.7 million, partially due to a result of the fees increase approved by the City Council on January 19, 2022. Expenditures, including encumbrances, totaled \$5.3 million.
- **Debt Service Funds** – Expenditures through May totaled \$0.7 million. The debt service for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued and are budgeted for in the months delineated in the underlying bond documents. The General Fund’s portion of the annual debt service payments is approximately \$200,000, less than one percent of the General Fund’s budgeted revenues.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2022-23
FOR THE MONTH ENDED MAY 2023 – 92% OF YEAR COMPLETE

- **Wastewater Operations** – Revenues from Sewer Operations through May totaled \$12.8 million. Expenditures and outstanding encumbrances totaled \$14.2 million or 87% of the budget. The table below shows historical Sewer Operations revenues and expenditures from FY18-19 through FY21-22 Actual, FY22-23 Budget, and YTD as of May 31, 2023.

(amount in millions)	FY18-19	FY19-20	FY20-21	FY21-22	Budget FY22-23	YTD FY22-23
Revenues	11.4	11.9	13.3	14.9	14.8	12.8
Expenditures	11.4	12.3	13.3	14.8	16.3	14.2
Operating Margin	-	(0.4)	-	0.1	(1.5)	(1.4)
Operating Margin without Encumbrances	0.4	(0.1)	-	0.1	(1.5)	(1.3)

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through May totaled \$14.8 million. Water Operations expenditures, including outstanding encumbrances, totaled \$14.4 million. Morgan Hill residents consumed about 17% less water through May compared to the prior three-year average. As such, the 15% revenue stabilization water rate has been implemented. The table below shows Water Operations revenues and expenditures from FY18-19 through FY21-22 Actual, FY22-23 Budget, and YTD as of May 31, 2023.

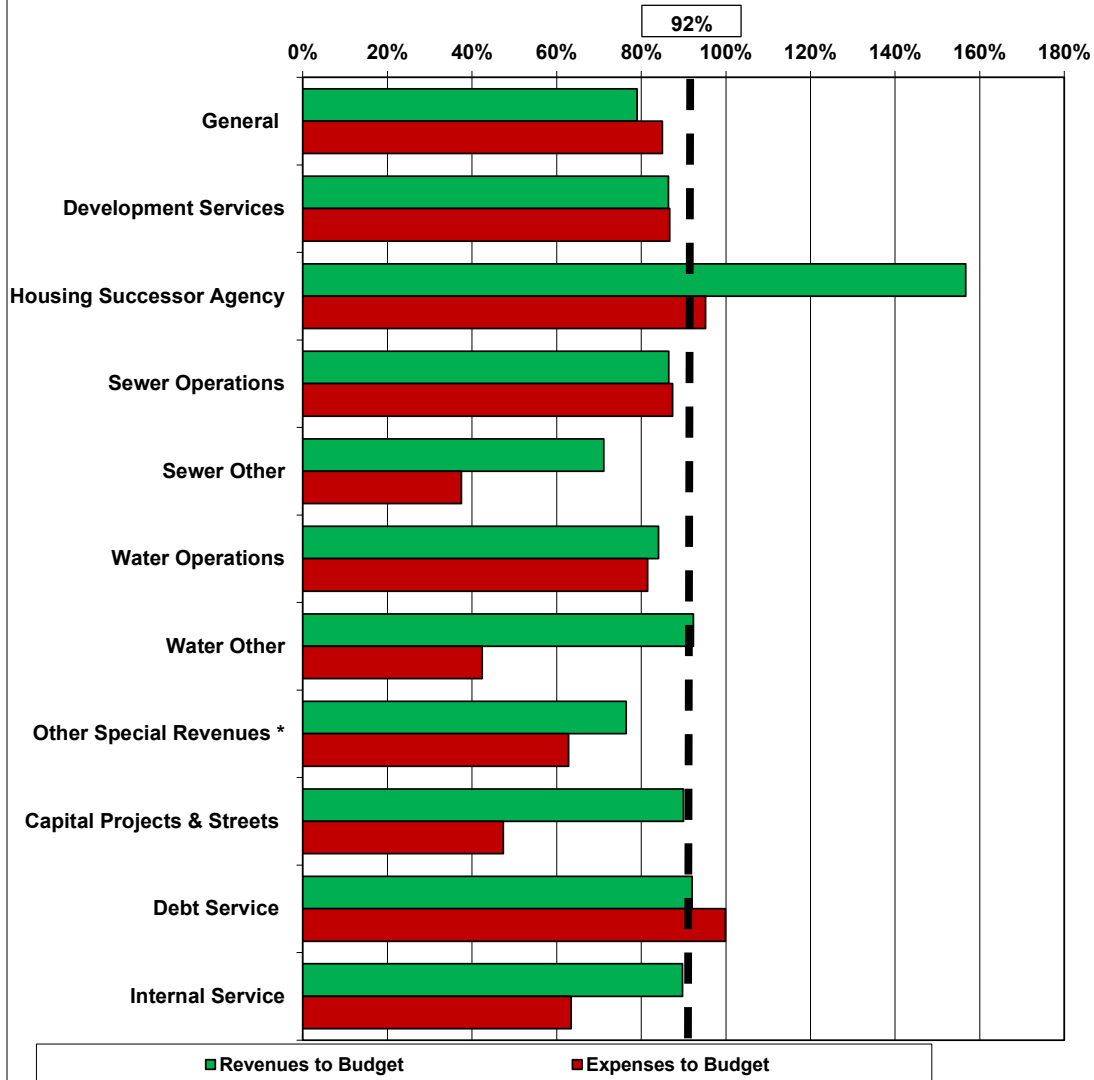
(amount in millions)	FY18-19	FY19-20	FY20-21	FY21-22	Budget FY22-23	YTD FY22-23
Revenues	14.2	15.3	16.5	16.0	17.6	14.8
Expenditures	14.3	16.4	16.5	15.2	17.6	14.4
Operating Margin	(0.1)	(1.1)	-	0.8	-	0.4
Operating Margin without Encumbrances	0.8	(0.1)	-	0.8	-	1.0

- **Investments** – One security were called, and five new securities, including one CD at the FDIC insured amount of \$250,000, were purchased. Total interest earnings received on investments were \$247,000 during the month.



Morgan Hill YTD Revenue & Expense Summary May 31, 2023 - 92% of Year Complete

Percentage of Actual to Budget



FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 40,766,778	79%	\$ 49,505,582	85%
Development Services	5,341,186	86%	5,317,529	87%
Housing Successor Agency	366,133	157%	1,088,413	95%
Sewer Operations	12,760,839	86%	14,241,049	87%
Sewer Other	17,413,118	71%	20,940,655	37%
Water Operations	14,838,251	84%	14,374,658	82%
Water Other	5,601,578	92%	2,759,336	42%
Other Special Revenues *	3,953,045	76%	4,120,319	63%
Capital Projects & Streets	21,959,142	90%	25,489,509	47%
Debt Service	625,449	92%	679,065	100%
Internal Service	11,161,059	90%	9,342,094	63%
TOTAL FOR ALL FUNDS	\$ 134,786,579	82%	\$ 147,858,209	62%

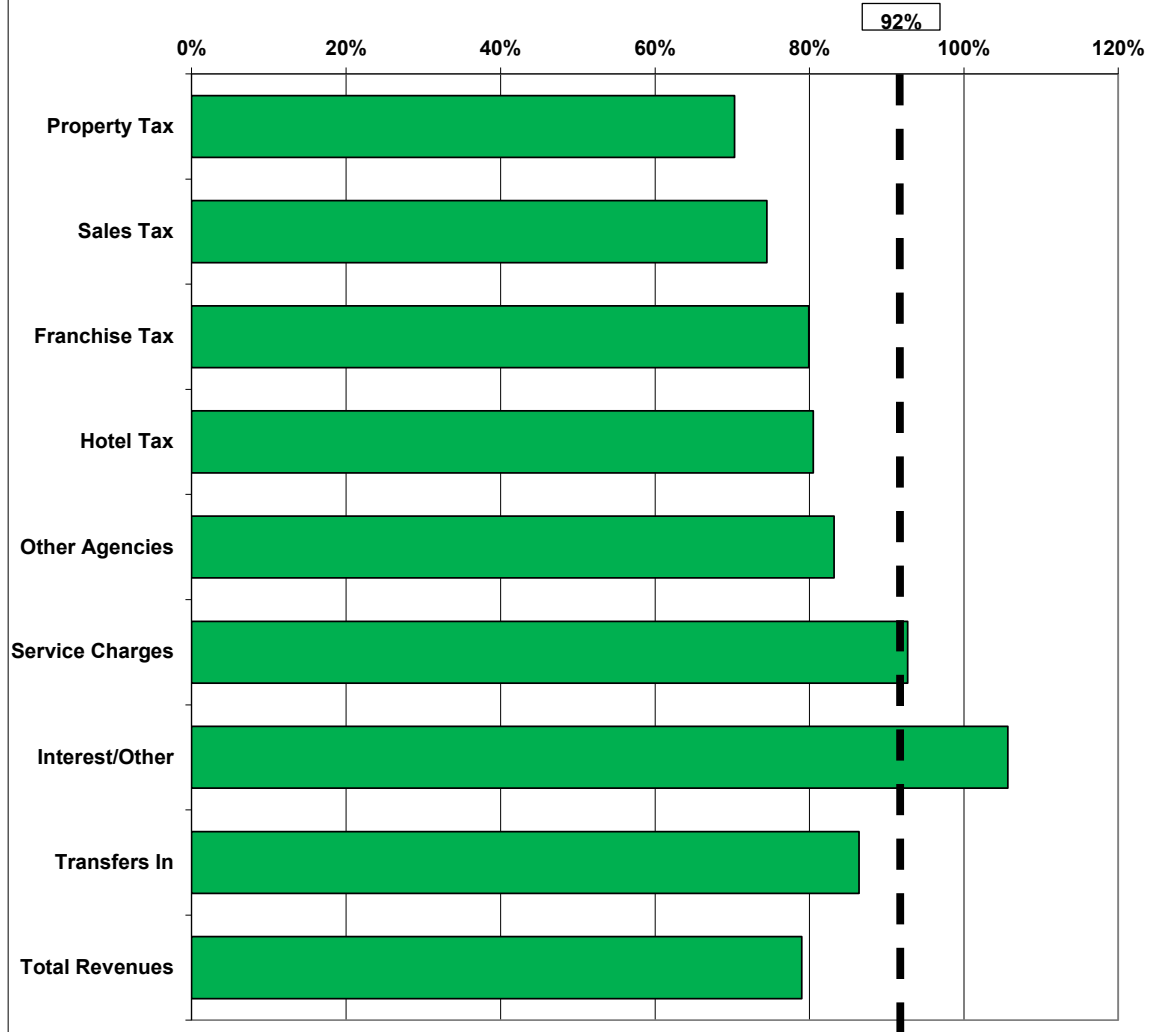
* Includes all Special Revenue Funds except Development Services Fund, Street Funds, and Housing Successor Agency.



Morgan Hill YTD General Fund Revenues

May 31, 2023 - 92% of Year Complete

Percent of Actual to Budget



REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$ 17,883,705	\$ 12,566,200	70%	\$ 11,367,849	11%
Sales Tax	12,895,413	9,603,643	75%	9,719,790	-1%
Franchise Tax	2,760,000	2,204,302	80%	2,056,454	7%
Hotel Tax	2,600,000	2,094,179	81%	1,971,611	6%
Other Agencies	1,304,130	1,085,449	83%	478,018	127%
Service Charges	8,953,658	8,296,744	93%	6,975,593	19%
Interest/Other	2,080,126	2,199,403	106%	1,894,037	16%
Transfers In	3,145,538	2,716,858	86%	2,229,242	22%
TOTAL REVENUES	\$ 51,622,570	\$ 40,766,778	79%	\$ 36,692,594	11%

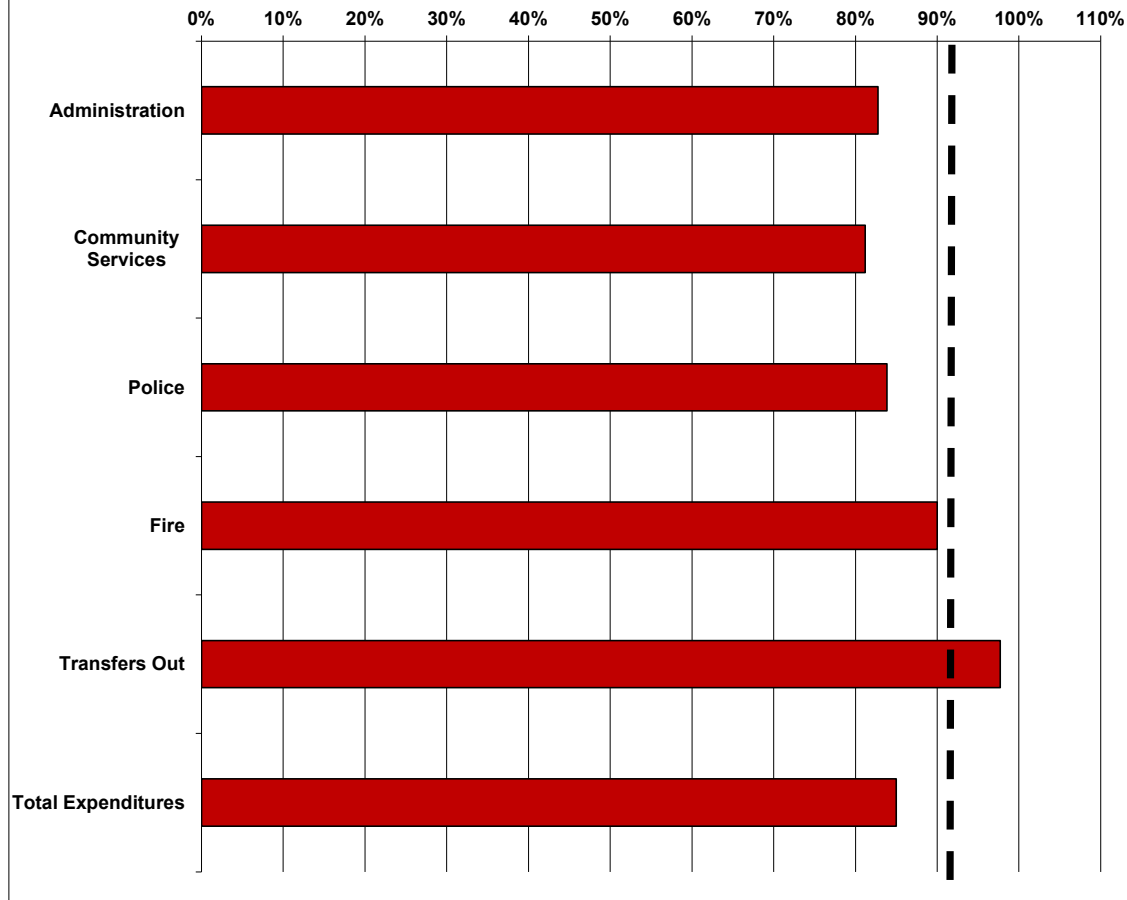


Morgan Hill YTD General Fund Expenditures

May 31, 2023 - 92% of Year Complete

Percent of Actual to Budget

92%



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 6,720,240	\$ 5,562,482	83%	\$ 4,302,382	29%
Community Services	16,259,209	13,202,069	81%	11,270,989	17%
Police	21,962,279	18,413,327	84%	16,501,115	12%
Fire	8,653,847	7,787,666	90%	6,767,608	15%
Transfers Out	4,647,315	4,540,039	98%	3,488,361	30%
TOTAL EXPENDITURES	\$ 58,242,889	\$ 49,505,582	85%	\$ 42,330,455	17%

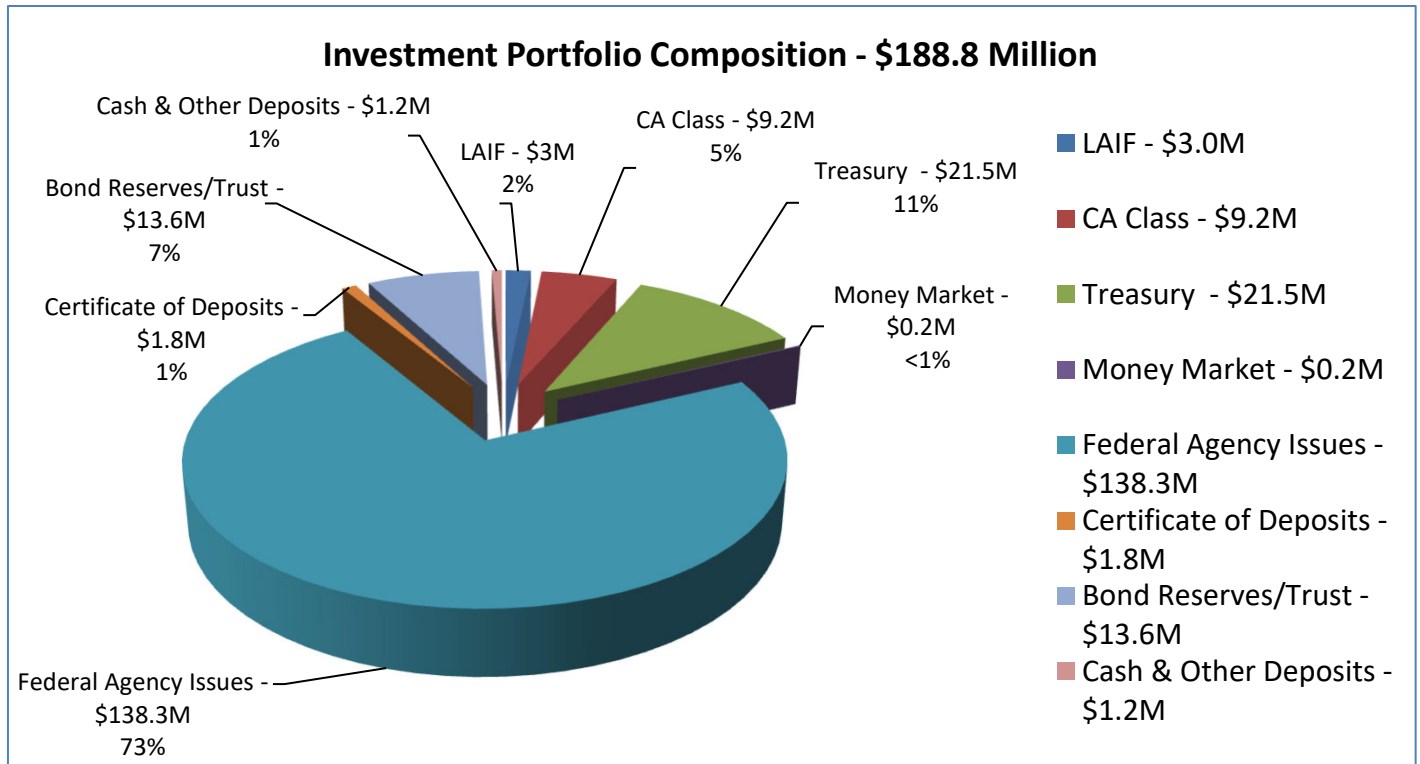


City of Morgan Hill
Recreation Report - Fiscal Year 2022-23
For the Month Ended May 31, 2023
92% of Year Complete

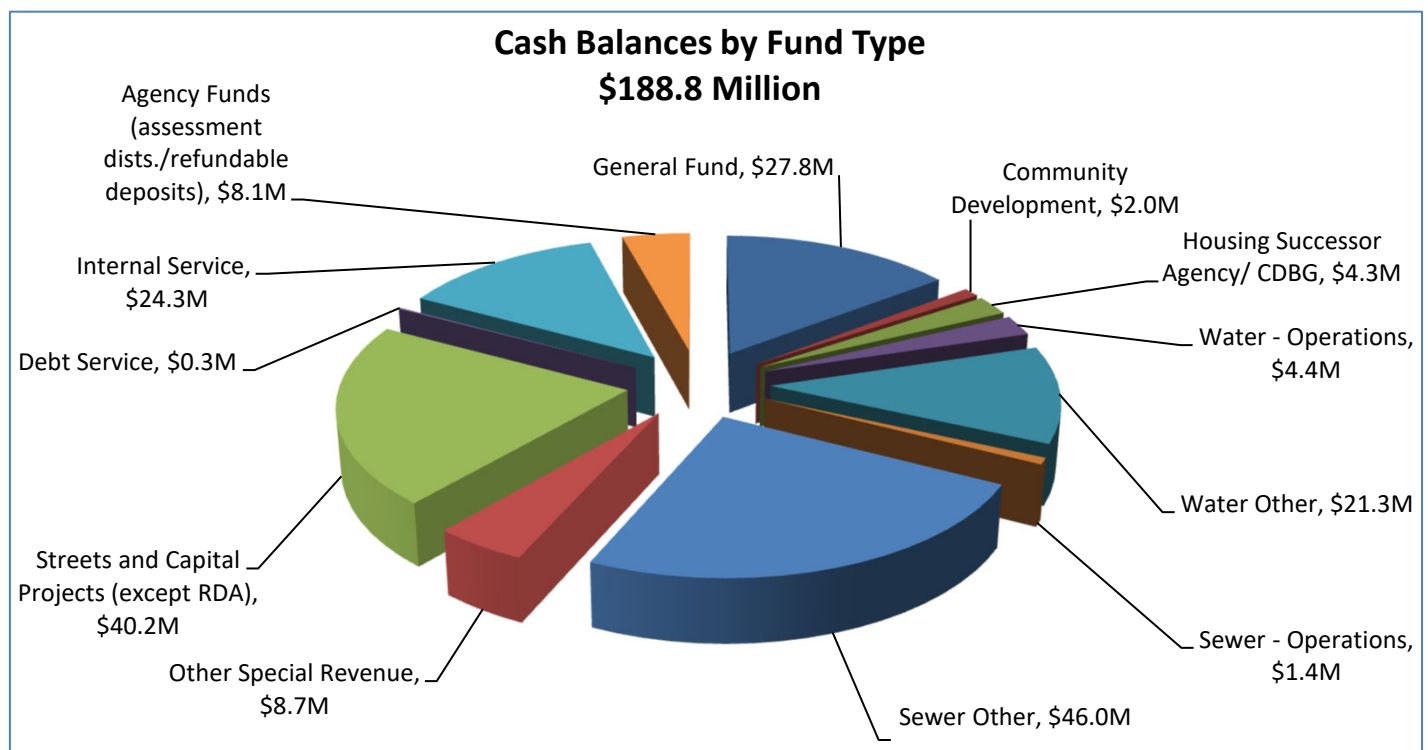
	<u>Budget</u>	<u>May 2023</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 5,136,869	\$ 448,759	\$ 4,773,647	
Facility Rentals	830,459	83,364	1,117,155	
Community Services	127,498	4,197	53,682	
Transfers in	75,000	6,250	68,750	
Total Revenues	\$ 6,169,826	\$ 542,569	\$ 6,013,234	97%
Less: Expenditures				
Membership & Program Services	\$ 6,772,195	\$ 452,276	\$ 5,582,821	
Facility Rentals	546,870	41,491	431,705	
Community Services	644,107	46,463	508,822	
Total Expenditures	\$ 7,963,173	\$ 540,228	\$ 6,523,348	82%
Net Impact without encumbrances	<u>\$ (1,793,347)</u>	<u>\$ 2,341</u>	<u>\$ (510,114)</u>	
Encumbrances	-	-	623,044	
Net Impact with encumbrances	<u>\$ (1,793,347)</u>	<u>\$ 2,341</u>	<u>\$(1,133,159)</u>	

City of Morgan Hill Monthly Investment Report - May 31, 2023

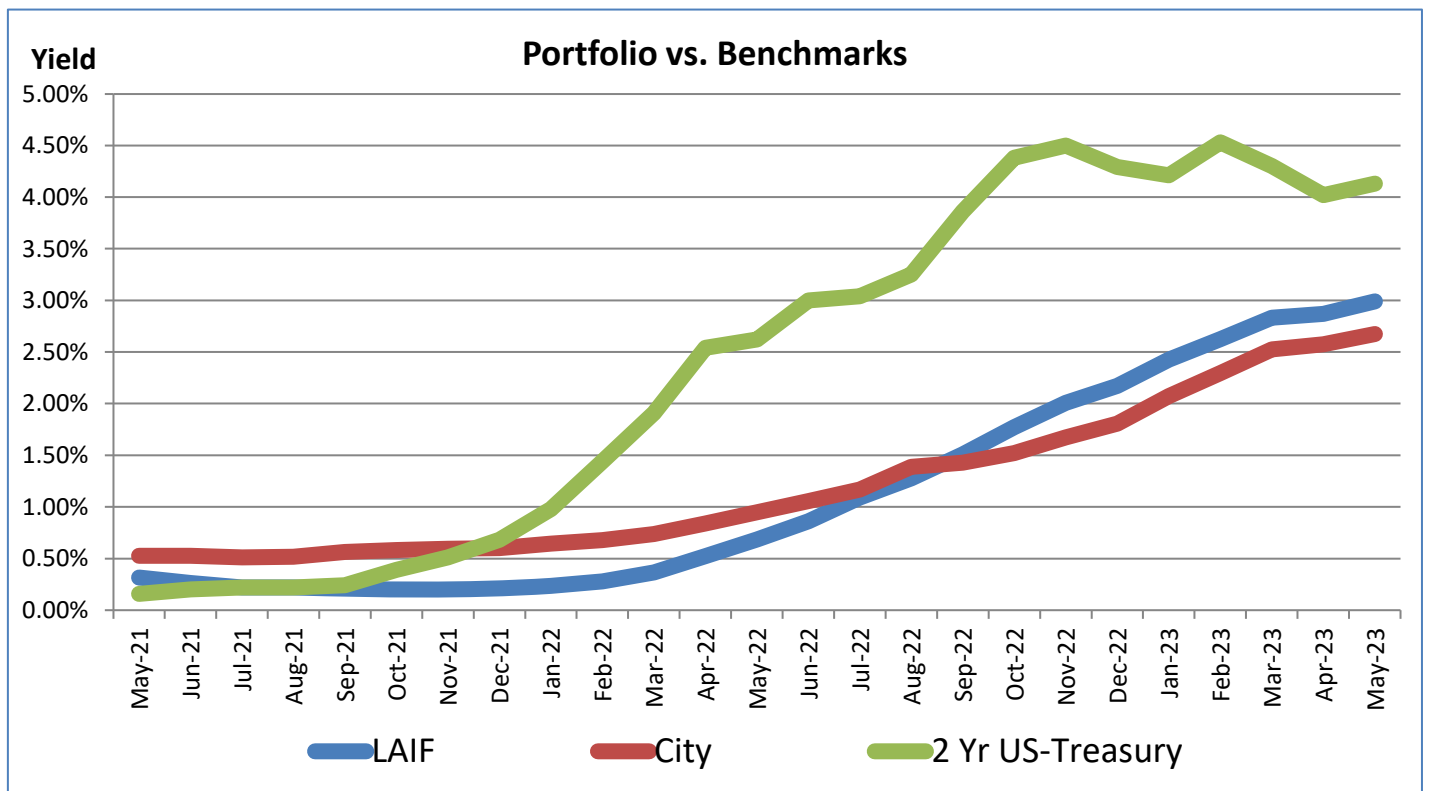
The following are the snapshots of City's investment portfolio as of May 31, 2023. The first chart shows the portfolio composition by investment type:



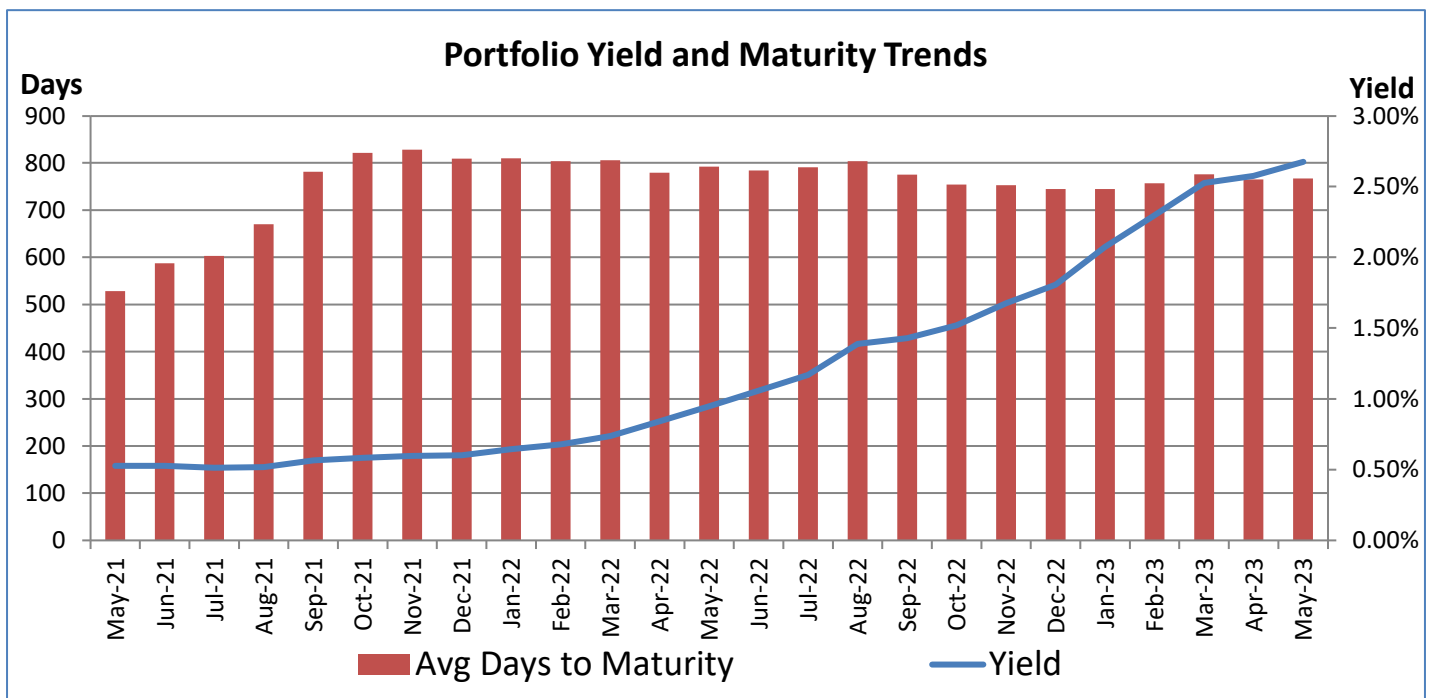
The chart below shows cash balances by fund type reconciled to City's financial system:



The following chart illustrates a yield comparison by month among the City's portfolio, LAIF and 2-Year US Treasury:



The chart below illustrates monthly average days to maturity of the City's portfolio along with the weighted average yield for the past two years:





City of Morgan Hill
Investment Portfolio Detail
As of May 31, 2023

Investment Type	CUSIP	Settlement Date	Cost Value	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F			\$ 3,050,434	\$ 3,050,434	1.62%	\$ 3,009,284	2.99%		
California C L A S S			9,216,286	9,216,286	4.88%	\$ 9,216,286	5.15%		
City Managed									
Treasury Bill	912796XY0	8/17/2022	\$ 2,423,428	\$ 2,484,814	1.32%	\$ 2,475,025	3.22%	8/10/2023	8/10/2023
Treasury Bill	912797FM4	5/9/2023	1,494,108	1,498,738	0.79%	1,498,905	5.14%	6/6/2023	6/6/2023
Treasury Bill	912797FN2	5/16/2023	2,290,769	2,295,714	1.22%	2,296,021	5.25%	6/13/2023	6/13/2023
Treasury Note	91282CCZ2	10/8/2021	1,987,656	1,991,730	1.06%	1,808,520	1.00%	9/30/2026	9/30/2026
Treasury Note	91282CDR9	1/4/2022	1,999,141	1,999,747	1.06%	1,947,740	0.77%	12/31/2023	12/31/2023
Treasury Note	91282CDR9	1/19/2022	1,989,688	1,996,896	1.06%	1,947,740	1.02%	12/31/2023	12/31/2023
Treasury Note	91282CDV0	2/11/2022	1,977,969	1,992,493	1.06%	1,942,420	1.44%	1/31/2024	1/31/2024
Treasury Note	9128286R6	3/28/2022	1,996,320	1,998,386	1.06%	1,946,260	2.34%	4/30/2024	4/30/2024
Treasury Note	912828S35	4/12/2022	1,985,703	1,999,034	1.06%	1,993,800	1.97%	06/30/2023	6/30/2023
Treasury Note	912828U24	6/13/2022	1,904,688	1,925,449	1.02%	1,873,200	3.16%	11/15/2026	11/15/2026
Treasury Note	91282CAW1	11/17/2022	1,246,984	1,275,464	0.68%	1,270,243	4.49%	11/15/2023	11/15/2023
FFCB Bond	3133ELVX9	4/8/2020	2,000,000	2,000,000	1.06%	1,924,120	0.88%	10/8/2023	4/8/2024
FFCB Bond	3133ELC28	5/27/2020	2,000,000	2,000,000	1.06%	1,843,100	0.73%	11/27/2023	5/27/2025
FHLMC Bond	3134GVYN2	6/3/2020	2,000,000	2,000,000	1.06%	1,879,000	0.60%	6/3/2023	12/3/2024
FHLMC Bond	3134GWZG4	10/20/2020	2,000,000	2,000,000	1.06%	1,818,100	0.60%	10/20/2023	10/20/2025
FHLMC Bond	3134GW3X2	10/27/2020	2,000,000	2,000,000	1.06%	1,818,020	0.63%	10/27/2023	10/27/2025
FHLMC Bond	3134GW6E1	11/2/2020	2,000,000	2,000,000	1.06%	1,958,800	0.32%	11/2/2023	11/2/2023
FFCB Bond	3133EMFR8	11/3/2020	2,000,000	2,000,000	1.06%	1,814,460	0.54%	11/3/2023	11/3/2025
FNMA Bond	3135GA4P3	11/18/2020	2,000,000	2,000,000	1.06%	1,817,160	0.65%	11/18/2023	11/18/2025
FHLMC Bond	3134GXEJ9	11/24/2020	2,000,000	2,000,000	1.06%	1,815,760	0.64%	11/24/2023	11/24/2025
FFCB Bond	3133EMHF2	11/24/2020	1,000,000	1,000,000	0.53%	906,950	0.60%	11/24/2023	11/24/2025
FHLMC Bond	3134GXCS1	11/25/2020	3,000,000	3,000,000	1.59%	2,730,540	0.63%	11/25/2023	11/25/2025
FHLMC Bond	3134GXFA7	11/30/2020	2,000,000	2,000,000	1.06%	1,815,960	0.65%	11/26/2023	11/26/2025
FFCB Bond	3133EMLC4	12/22/2020	2,000,000	2,000,000	1.06%	1,799,040	0.47%	6/22/2023	12/22/2025
FHLB Bond	3130AKQ74	1/22/2021	2,000,000	2,000,000	1.06%	1,800,700	0.63%	7/22/2023	1/22/2026
FNMA Bond	3135G06R9	1/28/2021	2,000,000	2,000,000	1.06%	1,796,140	0.55%	7/28/2023	1/28/2026
FHLB Bond	3130AKRN8	1/28/2021	2,000,000	2,000,000	1.06%	1,801,060	0.65%	7/28/2023	1/28/2026
FHLB Bond	3130ALCV4	2/24/2021	2,000,000	2,000,000	1.06%	1,801,160	0.75%	8/24/2023	2/24/2026
FHLB Bond	3130ALDB7	2/25/2021	2,000,000	2,000,000	1.06%	1,796,480	0.66%	8/25/2023	2/25/2026
FHLB Bond	3130AKZ25	2/26/2021	2,000,000	2,000,000	1.06%	1,795,820	0.65%	8/26/2023	2/26/2026
FHLB Bond	3130ALGS7	3/10/2021	2,000,000	2,000,000	1.06%	1,799,300	0.85%	9/10/2023	3/10/2026
FHLB Bond	3130ALEP5	3/16/2021	2,000,000	2,000,000	1.06%	1,790,800	0.70%	9/16/2023	3/16/2026
FHLB Bond	3130ALDN1	3/16/2021	2,000,000	2,000,000	1.06%	1,795,940	0.80%	9/16/2023	3/16/2026
FHLB Bond	3130AMNH1	6/9/2021	2,000,000	2,000,000	1.06%	1,801,620	1.08%	6/9/2023	6/9/2026
FHLB Bond	3130AMYJ5	6/30/2021	2,000,000	2,000,000	1.06%	1,794,220	1.00%	6/30/2023	6/30/2026
FHLB Bond	3130AMYP1	7/15/2021	3,000,000	3,000,000	1.59%	2,703,630	1.13%	7/15/2023	7/15/2026
FHLB Bond	3130AMY55	7/15/2021	2,000,000	2,000,000	1.06%	1,842,380	0.85%	7/15/2023	7/15/2025
FHLB Bond	3130ANJCS	8/26/2021	2,000,000	2,000,000	1.06%	1,777,720	0.80%	8/26/2023	8/26/2026
FHLB Bond	3130ANLW8	8/26/2021	3,000,000	3,000,000	1.59%	2,684,070	1.00%	8/26/2023	8/26/2026
FHLB Bond	3130ANLZ1	8/26/2021	2,000,000	2,000,000	1.06%	1,783,600	0.90%	8/26/2023	8/26/2026
FHLB Bond	3130A8XY4	9/13/2021	2,103,340	2,067,820	1.10%	1,865,860	0.82%	9/11/2023	9/11/2026
FFCB Bond	3133EM4X7	9/28/2021	1,982,960	1,988,726	1.05%	1,794,300	0.98%	9/10/2023	9/10/2026
FHLB Bond	3130APCH6	9/29/2021	3,000,000	3,000,000	1.59%	2,685,810	1.13%	9/29/2023	9/29/2026
FHLB Bond	3130ANZE3	9/30/2021	2,000,000	2,000,000	1.06%	1,785,580	0.88%	9/30/2023	9/30/2026
FHLB Bond	3130AP6N0	9/30/2021	3,000,000	3,000,000	1.59%	2,678,940	1.05%	9/30/2023	9/30/2026
FHLB Bond	3130AP6M2	9/30/2021	3,000,000	3,000,000	1.59%	2,676,270	1.02%	9/30/2023	9/30/2026
FHLB Bond	3130APCG8	10/19/2021	2,000,000	2,000,000	1.06%	1,780,440	1.00%	10/19/2023	10/19/2026
FHLB Bond	3130APNX9	11/18/2021	2,000,000	2,000,000	1.06%	1,790,580	1.30%	11/18/2023	11/18/2026
FHLB Bond	3130AQFL2	12/29/2021	2,000,000	2,000,000	1.06%	1,946,960	0.75%	6/29/2023	12/29/2023
FHLB Bond	3130AQHU0	1/19/2022	2,000,000	2,000,000	1.06%	1,838,200	1.74%	7/19/2023	1/19/2027
FHLB Bond	3130AQKT9	1/25/2022	2,000,000	2,000,000	1.06%	1,882,000	1.51%	7/25/2023	7/25/2025
FHLB Bond	3130AR4F5	3/10/2022	2,000,000	2,000,000	1.06%	1,915,820	3.48%	9/10/2023	3/10/2027
FHLMC Bond	3137EAE54	5/3/2022	1,954,860	1,997,268	1.06%	1,992,540	2.25%	6/26/2023	6/26/2023
FHLMC Bond	3134GXUZ5	6/15/2022	2,000,000	2,000,000	1.06%	1,955,360	3.28%	6/15/2023	12/15/2025
FHLB Bond	3130ASPE3	7/28/2022	2,000,000	2,000,000	1.06%	1,943,680	4.30%	7/28/2023	7/28/2027

Investment Type	CUSIP	Settlement Date	Cost Value	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
FNMA Bond	3135GACZ2	11/25/2022	2,000,000	2,000,000	1.06%	1,986,200	5.40%	11/25/2023	11/25/2024
FHLMC Bond	3134GY4B5	11/28/2022	2,000,000	2,000,000	1.06%	1,983,060	5.00%	11/15/2023	11/15/2023
FFCB Bond	313312MF4	12/19/2022	1,930,440	1,970,647	1.04%	1,967,160	4.65%	9/27/2023	9/27/2023
FHLMC Bond	3134GYC26	12/29/2022	2,000,000	2,000,000	1.06%	1,995,080	4.80%	6/29/2023	12/29/2027
FHLB Bond	313384JC4	1/13/2023	1,953,994	1,988,878	1.05%	1,988,100	4.72%	7/14/2023	7/14/2023
FHLB Bond	3130AUFT6	1/27/2023	2,000,000	2,000,000	1.06%	1,983,460	5.43%	7/27/2023	1/27/2025
FHLB Bond	3130AUP32	1/27/2023	2,250,000	2,250,000	1.19%	2,224,395	5.98%	7/27/2023	1/27/2028
FHLMCMTN Bond	3134GYGB2	1/30/2023	2,000,000	2,000,000	1.06%	1,970,760	5.20%	10/26/2023	1/26/2028
FHLMCMTN Bond	3134GYG22	2/16/2023	3,000,000	3,000,000	1.59%	2,954,790	5.13%	11/16/2023	11/16/2026
FHLMCMTN Bond	3137EAES4	2/17/2023	2,952,433	2,990,576	1.58%	2,988,810	4.85%	6/26/2023	6/26/2023
FHLB Bond	3130AUTZ7	2/24/2023	2,000,000	2,000,000	1.06%	1,979,580	6.44%	8/24/2023	2/24/2028
FHLB Bond	3130AUZH0	3/6/2023	2,000,000	2,000,000	1.06%	1,985,900	6.33%	6/6/2023	3/6/2026
FHLB Bond	3130AUZZ0	3/13/2023	2,000,000	2,000,000	1.06%	1,985,220	6.23%	6/13/2023	3/13/2026
FHLB Bond	3130AV2Z4	3/15/2023	2,000,000	2,000,000	1.06%	1,991,920	5.35%	9/15/2023	3/15/2024
FHLB Bond	3130AV3P5	3/20/2023	2,000,000	2,000,000	1.06%	1,988,620	5.50%	9/20/2023	9/20/2024
FHLB Bond	3130AVK92	4/5/2023	3,000,000	3,000,000	1.59%	2,983,860	5.00%	10/5/2023	4/5/2024
FHLB Bond	3130AVL83	4/6/2023	2,000,000	2,000,000	1.06%	1,984,680	5.20%	7/7/2023	10/7/2024
FHLB Bond	3130AVQ96	4/17/2023	2,000,000	2,000,000	1.06%	1,989,280	5.15%	7/17/2023	4/17/2024
FHLB Bond	3130AVNT5	4/28/2023	1,000,000	1,000,000	0.53%	993,260	5.50%	6/5/2023	4/25/2025
FHLMCMTN Bond	3134GYQZ8	5/11/2023	3,000,000	3,000,000	1.59%	3,000,870	6.09%	8/11/2023	5/11/2026
FHLMCMTN Bond	3134GYSV5	5/25/2023	2,000,917	2,000,000	1.06%	1,999,320	5.50%	9/22/2023	06/18/2024
CD - Ally Bank	02007GM83	3/30/2023	250,000	250,000	0.13%	249,538	5.15%	3/28/2024	3/28/2024
CD - Western Alliance Bank	95763PLA7	3/30/2023	250,000	250,000	0.13%	249,930	5.30%	1/2/2024	1/2/2024
CD - Dime Community Bank	25432JCF8	3/30/2023	250,000	250,000	0.13%	249,938	5.15%	7/31/2023	7/31/2023
CD - Zions Bancorp	98970LC43	3/31/2023	250,000	250,000	0.13%	250,123	5.40%	9/27/2024	9/27/2024
CD - Pacific City Bank	69406PEC9	3/31/2023	250,000	250,000	0.13%	249,965	5.05%	6/30/2023	6/30/2023
CD - Pacific Western Bank	69506YYD5	4/5/2023	250,000	250,000	0.13%	250,783	5.65%	4/5/2024	4/5/2028
CD - US Bank	90354KBR8	5/17/2023	250,000	250,000	0.13%	249,318	5.10%	5/16/2024	5/16/2024
Sub Total/Average			\$ 161,175,397	\$ 161,462,378	85.53%	\$ 152,711,782	2.53%		
Money Market			\$ 202,447	\$ 202,447	0.11%	\$ 202,447	4.99%		
Total City Managed/Average			\$ 173,644,564	\$ 173,931,546	87.26%	\$ 165,139,799	2.68%		
Bond Reserve Accounts - Held By Trustees			\$ 6,829,482	\$ 6,829,482	3.62%	\$ 6,829,482			
Cash/Deposits			\$ 1,220,498	\$ 1,220,498	0.65%	\$ 1,220,498			
PARS and CALPERS CERBT Trust			\$ 6,787,404	\$ 6,787,404	3.60%	\$ 7,253,643			
GRAND TOTAL/AVERAGE			\$ 188,481,948	\$ 188,768,929	100%	\$ 180,443,422			



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF MAY 31, 2023
FOR THE FISCAL YEAR OF 2022-23

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	2.99%	\$ 1,294,263	0.69%	\$ 1,276,804
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	2.99%	1,756,170	0.93%	1,732,480
California CLASS	All Funds Pooled	5.15%	9,216,286	4.88%	9,216,286
Federal Issues	All Funds Pooled	2.38%	138,253,914	73.24%	129,962,315
Treasury	All Funds Pooled	2.64%	21,458,464	11.37%	20,999,874
Certificate of Deposits	All Funds Pooled	5.26%	1,750,000	0.93%	1,749,593
Dreyfus Treas Cash Management Acct	All Funds Pooled	4.99%	202,447	0.11%	202,447
	SUBTOTAL		\$ 173,931,546	92.14%	\$ 165,139,799
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility					
Blackrock Liq Fund	Debt Service	4.47%	75	0.00%	75
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	4.47%	95	0.00%	95
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Agency Fund	0.00%	5,797,638	3.07%	5,797,638
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	4.47%	420,905	0.22%	420,905
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	4.47%	610,769	0.32%	610,769
	SUBTOTAL		6,829,482	3.62%	6,829,482
Other Cash/Deposits					
General Checking	All Funds		1,174,398	0.62%	1,174,398
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		16,100	0.01%	16,100
CALPERS CERBT - OPEB Trust			4,487,404	2.38%	4,762,585
PARS - PENSION Trust			2,300,000	1.22%	2,491,058 **
	SUBTOTAL		8,007,902	4.24%	8,474,141
Total Cash and Investments			\$ 188,768,929	100.00%	\$ 180,443,422

** As of April 30, 2023

CASH ACTIVITY SUMMARY
FY 2022-23

Fund Type	07/1/22 Balance	Change in Cash Balance	05/31/23 Balance
General Fund	\$ 26,535,041	\$ 1,252,771	\$ 27,787,812
Community Development	1,919,696	33,724	1,953,420
Housing Successor Agency/ CDBG	4,670,910	(412,817)	4,258,093
Water - Operations	2,980,708	1,457,893	4,438,601
Water Other	18,208,344	3,126,168	21,334,511
Sewer - Operations	1,663,439	(226,023)	1,437,416
Sewer Other	50,357,493	(4,414,771)	45,942,722
Other Special Revenue	8,482,063	250,965	8,733,028
Streets and Capital Projects (except RDA)	38,126,094	2,065,236	40,191,330
Debt Service	339,861	(53,287)	286,574
Internal Service	21,185,083	3,116,709	24,301,792
Agency Funds (assessment dists./refundable deposits)	9,072,901	(969,270)	8,103,631
Total	\$ 183,541,633	\$ 5,227,296	\$ 188,768,929

Note: See Investment Portfolio Detail for maturities of "Investments." Market values are obtained from the City's investment brokers' monthly reports.

I certify that information on the investment reports has been reconciled to the general ledger and bank statements and that there are sufficient funds to meet the expenditure requirements of the City for the next six months. The portfolio is in compliance with the City of Morgan Hill Investment Policy and all State laws and regulations.

Prepared by:

Gina Nazareno, Senior Accountant

Approved by:

Reviewed by:

Dat Nguyen, Finance Director

Caitlin Jachimowicz, Treasurer



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2022-23
For the Month Ended May 31, 2023
92% of Year Complete

	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
TAXES							
Property Tax - Secured/Unsecured	\$ 14,753,873	15,253,873	\$ 11,183,456	73%	\$ 10,357,113	\$ 826,343	8%
Property Tax - RPTTF Residual Distribution	2,429,832	2,429,832	987,196	41%	808,731	178,466	22%
Property Tax - Supplemental Roll	200,000	200,000	395,548	198%	202,005	193,542	96%
Sales Tax	11,950,308	12,450,308	9,301,272	75%	9,372,400	(71,128)	-1%
Public Safety Sales Tax	445,105	445,105	302,371	68%	347,390	(45,019)	-13%
Transient Occupancy Taxes	2,600,000	2,600,000	2,094,179	81%	1,971,611	122,569	6%
Franchise (Refuse ,Cable ,PG&E)	2,760,000	2,760,000	2,204,302	80%	2,056,454	147,847	7%
Property Transfer Tax	500,000	500,000	300,595	60%	642,400	(341,805)	-53%
TOTAL TAXES	35,639,118	36,639,118	26,768,919	73%	25,758,103	1,010,815	4%
LICENSES/PERMITS							
Business License	170,000	170,000	146,960	86%	172,563	(25,603)	-15%
Other Permits	53,975	53,975	640,736	1187%	77,172	563,565	730%
TOTAL LICENSES/PERMITS	223,975	223,975	787,696	352%	249,734	537,962	215%
FINES AND PENALTIES							
Parking Enforcement	2,932	2,932	6,489	221%	4,343	2,146	49%
Bails & Fines	46,480	46,480	41,898	90%	37,987	3,911	10%
Administrative Citations	20,000	20,000	5,128	26%	(5,933)	11,061	-186%
TOTAL FINES AND PENALTIES	69,412	69,412	53,515	77%	36,397	17,118	47%
OTHER AGENCIES							
Motor Vehicle in-Lieu	40,000	40,000	47,613	119%	54,729	(7,116)	-13%
Other Revenue - Other Agencies	1,304,130	1,304,130	1,085,449	83%	478,018	607,431	127%
TOTAL OTHER AGENCIES	1,344,130	1,344,130	1,133,063	84%	532,747	600,316	113%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	32,280	32,280	36,915	114%	25,708	11,206	44%
Business License Application Review	53,000	53,000	46,179	87%	38,355	7,824	20%
Membership Services & Rec Programs	5,136,869	5,136,869	4,773,647	93%	3,909,884	863,763	22%
Facility Rentals	819,459	830,459	1,117,155	135%	578,577	538,579	93%
Community Services	127,498	127,498	53,682	42%	107,927	(54,245)	-50%
General Administration Overhead	1,775,408	1,775,408	1,618,812	91%	1,679,612	(60,800)	-4%
Other Charges Current Services	998,144	998,144	650,355	65%	635,530	14,825	2%
TOTAL CURRENT SERVICES	8,942,658	8,953,658	8,296,744	93%	6,975,593	1,321,152	19%
OTHER REVENUE							
Use of money/property	774,829	874,829	770,338	88%	620,306	150,032	24%
Other Revenues	371,910	371,910	239,646	64%	290,472	(50,826)	-17%
TOTAL OTHER REVENUE	1,146,739	1,246,739	1,009,984	81%	910,778	99,206	11%
TRANSFERS IN							
One Time Transfer	180,000	180,000	165,000	92%	164,989	11	0%
Public Safety Facilities Fund	50,000	50,000	45,833	92%	22,913	22,920	100%
Supplemental Law Enforcement Fund	100,000	100,000	100,000	100%	100,000	-	n/a
Countywide Solid Waste	355,000	355,000	325,417	92%	297,700	27,717	9%
Streets	904,438	904,438	654,179	72%	324,267	329,912	102%
Park Maintenance	650,000	650,000	595,837	92%	595,837	-	n/a
Sewer Operations	375,000	375,000	343,750	92%	327,393	16,357	5%
Water Operations	375,000	375,000	343,750	92%	327,393	16,357	5%
Open Space	81,100	81,100	74,342	92%	-	74,342	n/a
Park Development	75,000	75,000	68,750	92%	68,750	-	n/a
TOTAL TRANSFERS IN	3,145,538	3,145,538	2,716,858	86%	2,229,242	487,615	22%
TOTAL GENERAL FUND	50,511,570	51,622,570	40,766,778	79%	36,692,594	4,074,184	11%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	909,478	909,478	650,483	72%	560,743	89,740	16%
Interest / Other Revenue/Other Charges	58	58	3,696	6373%	705	2,991	424%
202 STREET MAINTENANCE	909,536	909,536	654,179	72%	561,448	92,731	17%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2022-23
For the Month Ended May 31, 2023
92% of Year Complete

	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
SPECIAL REVENUE FUNDS							
205 SUPPLEMENTAL LAW ENFORCEMENT FUND							
Interest Income	1,438	1,438	3,979	277%	1,068	2,910	272%
Police Grant/SLEF/JAG	100,000	100,000	165,271	165%	154,849	10,422	7%
205 SUPPLEMENTAL LAW ENFORCEMENT FUND	101,438	101,438	169,250	167%	155,918	13,333	9%
206 DEVELOPMENT SERVICES							
Building Fees	3,433,600	3,433,600	3,490,010	102%	2,772,317	717,693	26%
Planning Fees	1,259,167	1,259,167	649,623	52%	698,874	(49,251)	-7%
Engineering Fees	1,142,289	1,142,289	890,552	78%	1,046,092	(155,540)	-15%
Other Revenue/Current Charges	346,181	346,181	311,001	90%	221,528	89,473	40%
206 DEVELOPMENT SERVICES	6,181,237	6,181,237	5,341,186	86%	4,738,811	602,375	13%
207 LONG RANGE PLANNING	995,882	995,882	986,580	99%	704,377	282,203	40%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	244	244	914	375%	319	595	187%
215 and 216 HCD BLOCK GRANT	244	244	914	375%	319	595	187%
225 ASSET SEIZURE	979	979	1,424	145%	661	764	116%
229 LIGHTING AND LANDSCAPE	199,916	199,916	111,890	56%	105,249	6,641	6%
230 COMMUNITY FACILITIES DISTRICT	37,591	37,591	27,938	74%	12,039	15,900	132%
232 ENVIRONMENTAL PROGRAMS	553,277	553,277	518,969	94%	458,905	60,063	13%
234 MOBILE HOME PARK RENT STAB.	441	441	6,614	1500%	8,144	(1,529)	-19%
236 HOUSING MITIGATION	1,575,835	1,575,835	870,883	55%	1,140,923	(270,040)	-24%
240 EMPLOYEE ASSISTANCE	20,673	20,673	7,756	38%	9,658	(1,901)	-20%
246 COUNTYWIDE SOLID WASTE	1,628,603	1,686,193	1,248,895	74%	1,048,667	200,228	19%
247 ENVIRONMENT REMEDIATION	1,023	1,023	1,931	189%	2,989	(1,058)	-35%
255 HOUSING SUCCESSOR AGENCY	233,641	233,641	366,133	157%	1,323,165	(957,032)	-72%
260 PUBLIC ART	501	501	-	n/a	1,100	(1,100)	-100%
TOTAL SPECIAL REVENUE FUNDS	12,440,818	12,498,408	10,314,543	83%	10,272,371	42,172	0%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	1,369,271	1,369,271	3,728,743	272%	5,999,282	(2,270,539)	-38%
302 PARK MAINTENANCE	540,773	540,773	526,062	97%	538,124	(12,062)	-2%
303 LOCAL DRAINAGE	374,484	374,484	1,007,297	269%	1,249,682	(242,385)	-19%
304 LOCAL DRAINAGE/NON AB1600	29,166	29,166	107,970	370%	178,943	(70,972)	-40%
306 AGRICULTURE & OPEN SPACE PRESERVATION	5,058	5,058	76,992	1522%	151,312	(74,320)	-49%
308 STREET CIP	5,662,650	5,662,650	5,031,711	89%	3,880,502	1,151,209	30%
309 TRAFFIC IMPACT	5,019,799	5,019,799	7,160,711	143%	7,196,234	(35,523)	0%
315 PUBLIC SAFETY FACILITIES IMPACT	6,221,575	6,221,575	627,030	10%	213,024	414,006	194%
346 PUBLIC FACILITIES NON-AB1600	1,165,537	1,165,537	405,295	35%	2,482,555	(2,077,260)	-84%
347 PUBLIC FACILITIES IMPACT	138,168	138,168	115,593	84%	47,767	67,827	142%
348 LIBRARY	480,582	480,582	186,160	39%	214,596	(28,436)	-13%
350 UNDERGROUNDING	29,592	29,592	23,523	79%	495,054	(471,531)	-95%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	482,291	482,291	214,745	45%	1,025,669	(810,923)	-79%
360 COMMUNITY/REC IMPACT FUND	1,335,488	1,335,488	532,277	40%	243,538	288,739	119%
375 QUIMBY FEE	653,451	653,451	1,560,852	239%	908,499	652,353	72%
TOTAL CAPITAL PROJECTS FUNDS	23,507,885	23,507,885	21,304,963	91%	24,824,780	(3,519,818)	-14%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	292,184	292,184	269,961	92%	280,341	(10,380)	-4%
441 POLICE FACILITY BOND	387,490	387,490	355,488	92%	352,282	3,206	1%
TOTAL DEBT SERVICE FUNDS	679,674	679,674	625,449	92%	632,623	(7,174)	-1%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2022-23
For the Month Ended May 31, 2023
92% of Year Complete

	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 SEWER OPERATION							
Sewer Service Fees	14,400,000	14,400,000	12,370,597	86%	11,859,302	511,295	4%
Interest Income/Transfers	38,548	38,548	33,325	86%	13,230	20,095	152%
Other Revenue/Current Charges	319,809	319,809	356,917	112%	531,891	(174,974)	-33%
640 SEWER OPERATION	14,758,357	14,758,357	12,760,839	86%	12,404,423	356,416	3%
641 SEWER EXPANSION							
Interest Income	64,455	64,455	323,312	502%	112,047	211,264	189%
Development Impact Fee	4,336,657	4,336,657	2,721,524	63%	3,072,230	(350,706)	-11%
Transfer From-643 (Sewer Replacement)	13,310,782	13,310,782	8,035,993	60%	-	8,035,993	n/a
641 SEWER EXPANSION	17,711,894	17,711,894	11,080,829	63%	3,184,278	7,896,551	248%
642 SEWER RATE STABILIZATION	50,000	50,000	85,929	172%	150,982	(65,053)	-43%
643 SEWER-CAPITAL PROJECT	6,710,456	6,710,456	6,246,360	93%	4,340,532	1,905,828	44%
TOTAL SEWER FUNDS	39,230,707	39,230,707	30,173,957	77%	20,080,215	10,093,743	50%
650 WATER OPERATION							
Water Sales	16,400,000	16,400,000	13,017,504	79%	11,532,846	1,484,658	13%
Meter Install & Service	50,000	50,000	68,439	137%	122,274	(53,835)	-44%
Transfers-In / Interest Income	580,372	580,372	727,904	125%	463,001	264,902	57%
Other Revenue/Current Charges	614,770	614,770	1,024,405	167%	1,066,677	(42,273)	-4%
650 WATER OPERATION	17,645,142	17,645,142	14,838,251	84%	13,184,799	1,653,453	13%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	21,044	21,044	42,154	200%	16,277	25,878	159%
Development Impact Fee	918,214	918,214	696,668	76%	410,354	286,314	70%
651 WATER EXPANSION	939,258	939,258	738,822	79%	426,631	312,192	73%
652 WATER RATE STABILIZATION	-	-	45,996	n/a	130,309	(84,314)	-65%
653 WATER CAPITAL PROJECT	5,128,809	5,128,809	4,816,760	94%	4,663,452	153,307	3%
TOTAL WATER FUNDS	23,713,209	23,713,209	20,439,829	86%	18,405,191	2,034,638	11%
TOTAL ENTERPRISE FUNDS	62,943,916	62,943,916	50,613,786	80%	38,485,406	12,128,381	32%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	2,233,768	2,233,768	2,055,166	92%	2,065,723	(10,556)	-1%
740 BUILDING MAINTENANCE	1,655,704	1,655,704	1,517,782	92%	1,036,508	481,274	46%
741 BUILDING REPLACEMENT	836,114	836,114	800,613	96%	657,872	142,741	22%
745 CIP ADMINISTRATION	1,977,307	1,977,307	1,235,983	63%	1,370,011	(134,028)	-10%
760 UNEMPLOYMENT INSURANCE	2,317	2,317	4,170	180%	1,584	2,586	163%
770 WORKERS COMPENSATION	719,150	719,150	800,025	111%	699,806	100,219	14%
790 EQUIPMENT REPLACEMENT	2,219,595	2,219,595	2,176,273	98%	1,034,227	1,142,046	110%
791 EMPLOYEE BENEFITS	813,718	813,718	744,444	91%	558,227	186,217	33%
795 GENERAL LIABILITY INSURANCE	1,981,019	1,981,019	1,826,601	92%	1,578,237	248,363	16%
TOTAL INTERNAL SERVICE FUNDS	12,438,692	12,438,692	11,161,059	90%	9,002,195	2,158,864	24%
TOTAL FOR ALL FUNDS	\$ 162,522,555	\$ 163,691,145	\$ 134,786,579	82%	\$ 119,909,970	\$ 14,876,609	12%



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2022-23
For the Month Ended May 31, 2023
92% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
010 GENERAL FUND								
I. ADMINISTRATION								
	CITY COUNCIL	\$ 14,206	\$ 430,915	\$ 359,303	\$ -	\$ 359,303	83%	\$ 291,501
	CITY ATTORNEY	59,715	1,081,769	712,874	152,424	865,298	80%	639,119
	CITY MANAGER	48,034	854,800	568,949	5,075	574,024	67%	557,166
	HUMAN RESOURCES	64,900	847,361	734,182	-	734,182	87%	639,897
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	45,565	595,414	457,498	-	457,498	77%	521,335
	Elections	2,244	357,836	217,152	-	217,152	61%	23,835
	COUNCIL SVCS & RECORDS MGMT	47,809	953,250	674,650	-	674,650	71%	545,170
	FINANCE	176,894	2,552,145	1,740,123	614,902	2,355,025	92%	1,422,518
	TOTAL ADMINISTRATION	411,558	6,720,240	4,790,081	772,401	5,562,482	83%	4,095,372
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	452,276	6,772,195	5,582,821	589,316	6,172,138	91%	4,699,695
	Recreation Facility Rentals	41,491	546,870	431,705	10,945	442,650	81%	496,555
	Innovative Transit	47,801	887,471	464,280	404,812	869,092	98%	-
	Community Services	46,463	644,107	508,822	22,783	531,605	83%	459,227
	Park Maintenance	83,802	1,495,918	1,051,869	46,156	1,098,025	73%	932,518
	Environmental Services	17,363	390,733	212,343	-	212,343	54%	191,345
	Countywide Solid Waste Program	30,445	392,096	329,304	-	329,304	84%	197,869
	Street Maintenance	162,994	2,710,389	2,025,041	77,810	2,102,851	78%	2,096,202
	Downtown Maintenance	12,766	325,886	155,067	6,047	161,114	49%	235,227
	Cable Television	6,182	74,758	50,322	-	50,322	67%	39,526
	COMMUNITY SERVICES	901,583	14,240,422	10,811,575	1,157,869	11,969,444	84%	9,348,165
	CODE COMPLIANCE	15,724	319,550	181,666	-	181,666	57%	160,823
	INFRASTRUCTURE PLANNING & CONGESTION MGMT	26,664	491,888	315,994	3,031	319,024	65%	296,186
	ECONOMIC DEVELOPMENT PROGRAMS	59,368	1,207,348	685,945	45,989	731,935	61%	622,838
	TOTAL COMMUNITY SERVICES	1,003,338	16,259,209	11,995,179	1,206,889	13,202,069	81%	10,428,012
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	118,540	1,676,697	1,386,390	30,577	1,416,968	85%	1,518,920
	Field Operations	796,972	10,629,971	8,871,973	23,419	8,895,391	84%	8,250,033
	Support Services	215,610	3,389,174	2,475,406	13,799	2,489,205	73%	2,312,983
	Emergency Services/Haz Mat	16,848	249,568	207,804	-	207,804	83%	176,448
	Special Operations	372,851	3,900,732	3,549,500	-	3,549,500	91%	2,482,266
	Dispatch Services	185,952	2,116,137	1,854,459	-	1,854,459	88%	1,635,005
	POLICE	1,706,774	21,962,279	18,345,532	67,795	18,413,327	84%	16,375,654
	FIRE	665,266	8,653,847	7,542,097	245,569	7,787,666	90%	6,726,997
	TOTAL PUBLIC SAFETY	2,372,040	30,616,126	25,887,629	313,364	26,200,993	86%	23,102,651
IV. TRANSFERS								
	Other	107,276	4,647,315	4,540,039	-	4,540,039	98%	3,488,361
	TOTAL TRANSFERS	107,276	4,647,315	4,540,039	-	4,540,039	98%	3,488,361
	TOTAL GENERAL FUND	3,894,212	58,242,889	47,212,927	2,292,654	49,505,582	85%	41,114,396



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2022-23
For the Month Ended May 31, 2023
92% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
SPECIAL REVENUE FUNDS								
202	STREET MAINTENANCE	420	909,478	654,179	-	654,179	72%	328,238
205	PUBLIC SAFETY/SUPP.LAW	104	101,252	101,148	-	101,148	100%	106,644
206	DEVELOPMENT SERVICES FUND							
	Planning	126,326	1,772,972	1,444,371	649	1,445,020	82%	1,798,268
	Building	201,536	2,452,139	2,007,787	72,039	2,079,826	85%	1,939,833
	Engineering	184,757	1,907,855	1,625,654	167,028	1,792,683	94%	1,346,061
206	DEVELOPMENT SERVICES FUND	512,619	6,132,966	5,077,812	239,717	5,317,529	87%	5,084,162
207	LONG RANGE PLANNING	61,161	936,040	778,379	16,140	794,519	85%	604,095
215/216	CDBG	7	81	74	-	74	91%	5,038
225	ASSET SEIZURE	63	759	696	-	696	92%	14,232
229	LIGHTING AND LANDSCAPE	7,464	224,538	137,128	8,213	145,341	65%	131,390
230	COMMUNITY FACILITIES DISTRICT	5,119	39,852	29,893	-	29,893	75%	20,215
232	ENVIRONMENT PROGRAMS	29,872	525,533	425,679	6,800	432,479	82%	370,546
234	MOBILE HOME PARK	73	881	807	-	807	92%	407
236	HOUSING MITIGATION	59,240	1,900,261	748,061	93,461	841,522	44%	767,837
240	EMPLOYEE ASSISTANCE	77	20,919	10,036	-	10,036	48%	9,957
246	COUNTYWIDE SOLID WASTE PROGRAM	190,654	1,879,903	1,282,326	462,822	1,745,148	93%	825,942
255	HOUSING SUCCESSOR AGENCY	95,138	1,143,490	1,088,413	-	1,088,413	95%	969,568
260	PUBLIC ART	104	17,000	18,658	-	18,658	110%	4,743
TOTAL SPECIAL REVENUE FUNDS		962,114	13,832,953	10,353,289	827,152	11,180,441	81%	9,243,014
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	16,458	3,385,632	800,274	985,848	1,786,122	53%	6,352,666
302	PARK MAINTENANCE	58,438	664,980	601,772	-	601,772	90%	610,833
303	LOCAL DRAINAGE	39,991	11,167,922	877,113	991,324	1,868,437	17%	122,262
304	LOCAL DRAIN. NON-AB1600	87,988	279,113	127,399	21,575	148,974	53%	8,773
306	AGRICULTURE & OPEN SPACE PRESERVATI	10,488	275,854	115,366	-	115,366	42%	5,488,281
308	STREET CIP	30,398	8,318,556	6,944,720	653,021	7,597,741	91%	3,102,090
309	TRAFFIC IMPACT	243,333	9,301,872	5,786,493	3,136,470	8,922,963	96%	9,105,957
315	PUBLIC SAFETY FACILITIES IMPACT	28,969	10,050,626	795,081	315,939	1,111,020	11%	391,395
346	PUBLIC FAC.NON AB1600	371	3,413,224	26,273	151,286	177,559	5%	144,451
347	PUBLIC FACILITIES IMPACT	2,429	279,154	26,724	-	26,724	10%	25,047
348	LIBRARY IMPACT	18,576	222,916	204,340	-	204,340	92%	200,277
350	UNDERGROUNDING	95	1,194,704	1,046	-	1,046	0%	1,045
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	1,730	443,838	48,177	39,055	87,232	20%	1,227,403
360	COMM/REC CENTER IMPACT	33,121	2,326,276	762,008	730,523	1,492,531	64%	263,151
375	QUIMBY FEE	41,873	1,564,865	542,182	151,321	693,503	44%	132
TOTAL CAPITAL PROJECTS FUNDS		614,259	52,889,531	17,658,968	7,176,363	24,835,330	47%	27,043,762
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	262	292,184	291,904	-	291,904	100%	297,193
441	POLICE FACILITY BOND DEBT	347	387,490	387,161	-	387,161	100%	388,884
TOTAL DEBT SERVICE FUNDS		609	679,674	679,065	-	679,065	100%	686,077



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2022-23
For the Month Ended May 31, 2023
92% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
ENTERPRISE FUNDS								
SEWER								
640	SEWER OPERATIONS	875,309	16,300,411	14,153,978	87,071	14,241,049	87%	12,008,739
641	SEWER CAPITAL EXPANSION	138,909	32,172,615	8,041,788	998,761	9,040,549	28%	6,755,438
642	SEWER RATE STABILIZATION	151	1,818	1,666	-	1,666	92%	1,045
643	SEWER-CAPITAL PROJECTS	6,989	23,759,295	11,512,549	385,891	11,898,440	50%	7,637,805
TOTAL SEWER FUND(S)		1,021,359	72,234,139	33,709,982	1,471,722	35,181,704	49%	26,403,027
WATER								
	Water Operations	1,011,294	16,045,940	12,565,730	519,180	13,084,910	82%	12,104,683
	Utility Billing	75,245	1,147,979	917,811	95,403	1,013,214	88%	824,688
	Water Conservation	19,718	439,985	244,995	31,539	276,534	63%	111,336
650	WATER OPERATIONS	1,106,258	17,633,904	13,728,536	646,122	14,374,658	82%	13,040,707
651	WATER CAPITAL EXPANSION	57,743	893,125	652,274	18,077	670,351	75%	727,235
652	WATER RATE STABILIZATION	113	1,362	1,248	-	1,248	92%	341
653	WATER-CAPITAL PROJECTS	1,361,466	5,617,611	1,681,733	406,004	2,087,737	37%	2,016,477
TOTAL WATER FUND(S)		2,525,580	24,146,001	16,063,791	1,070,203	17,133,994	71%	15,784,760
TOTAL ENTERPRISE FUNDS		3,546,938	96,380,140	49,773,773	2,541,925	52,315,698	54%	42,187,787
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	123,507	2,619,930	2,032,915	76,515	2,109,431	81%	1,616,628
740	BUILDING MAINTENANCE	120,319	1,668,218	1,306,318	39,105	1,345,423	81%	1,066,242
741	BUILDING REPLACEMENT	-	1,836,451	145,326	34,827	180,153	10%	352,654
745	CIP ADMINISTRATION	151,973	1,982,153	1,659,794	5,054	1,664,848	84%	1,556,715
760	UNEMPLOYMENT	-	15,000	14,081	-	14,081	94%	14,220
770	WORKERS COMPENSATION	22,996	1,106,358	680,901	-	680,901	62%	834,113
790	EQUIPMENT REPLACEMENT	-	2,765,964	593,426	181,542	774,968	28%	727,775
791	EMPLOYEE BENEFITS FUND	12,184	850,000	725,078	-	725,078	85%	651,748
795	GEN. LIABILITY INSURANCE	36,170	1,893,436	1,842,561	4,650	1,847,211	98%	1,804,654
TOTAL INTERNAL SERVICE FUNDS		467,149	14,737,510	9,000,400	341,693	9,342,094	63%	8,624,749
REPORT TOTAL		\$ 9,485,281	\$ 236,762,698	\$ 134,678,422	\$ 13,179,787	\$ 147,858,209	62%	\$ 128,899,786



City of Morgan Hill
Fund Activity Summary - Fiscal Year 2022-23
For the Month Ended May 31, 2023
92% of Year Complete

Fund No.	Fund Description	Beginning Fund Balance 07-01-22	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved
010	GENERAL FUND	\$ 33,685,888	\$ 40,766,778	79%	\$ 47,212,927	81%	\$ (6,446,149)	\$ 2,292,654	\$ 24,947,084
TOTAL GENERAL FUND		\$ 33,685,888	\$ 40,766,778	79%	\$ 47,212,927	81%	\$ (6,446,149)	\$ 2,292,654	\$ 24,947,084
202	STREET MAINTENANCE	63,915	\$ 654,179	72%	\$ 654,179	82%	\$ (0)	\$ -	\$ 63,915
205	PUBLIC SAFETY/SUPPL. LAW	251,291	169,250	167%	101,148	85%	68,103	-	319,394
206	DEVELOPMENT SERVICES	(495,437)	5,341,186	86%	5,077,812	83%	263,374	239,717	(471,780)
207	LONG RANGE PLANNING	1,197,975	986,580	99%	778,379	83%	208,202	16,140	1,390,037
215 / 216	CDBG	29,812	914	375%	74	91%	840	-	30,652
225	ASSET SEIZURE	101,644	1,424	145%	696	92%	729	-	102,373
229	LIGHTING AND LANDSCAPE	190,530	111,890	56%	137,128	61%	(25,238)	8,213	157,079
230	COMMUNITY FACILITIES DISTRICT	132,368	27,938	74%	29,893	75%	(1,954)	-	130,414
232	ENVIRONMENTAL PROGRAMS	236,258	518,969	94%	425,679	81%	93,290	6,800	322,748
234	MOBILE HOME PK RENT STAB.	69,992	6,614	1500%	807	92%	5,807	-	75,799
235	SENIOR HOUSING	236,079	-	n/a	-	n/a	-	-	236,079
236	HOUSING MITIGATION	5,879,386	870,883	55%	748,061	39%	122,822	93,461	5,908,747
240	EMPLOYEE ASSISTANCE	61,964	7,756	38%	10,036	48%	(2,280)	-	59,685
246	COUNTYWIDE SOLID WASTE	129,862	1,248,895	189%	1,282,326	68%	(33,432)	462,822	(366,391)
247	ENVIRONMENT REMEDIATION	139,118	1,931	189%	-	n/a	1,931	-	141,049
255	HOUSING SUCCESSOR AGENCY	3,091,721	366,133	157%	1,088,413	95%	(722,280)	-	2,369,441
260	PUBLIC ART	67,129	-	n/a	18,658	110%	(18,658)	-	48,471
TOTAL SPECIAL REVENUE FUNDS		\$ 11,383,607	\$ 10,314,543	83%	\$ 10,353,289	75%	\$ (38,745)	\$ 827,152	\$ 10,517,710
301	PARK DEV. IMPACT FUND	\$ (822,989)	\$ 3,728,743	272%	\$ 800,274	24%	\$ 2,928,469	\$ 985,848	\$ 1,119,631
302	PARK MAINTENANCE	2,567,344	526,062	97%	601,772	90%	(75,710)	-	2,491,634
303	LOCAL DRAINAGE	11,596,359	1,007,297	269%	877,113	8%	130,185	991,324	10,735,220
304	LOCAL DRAINAGE/NON-AB1600	1,374,682	107,970	370%	127,399	46%	(19,428)	21,575	1,333,679
306	AG. AND OPEN SPACE PRESERVATION	589,238	76,992	1522%	115,366	42%	(38,375)	-	550,863
308	STREET CIP	5,741,205	5,031,711	89%	6,944,720	83%	(1,913,008)	653,021	3,175,176
309	TRAFFIC IMPACT FUND	1,187,038	7,160,711	143%	5,786,493	62%	1,374,218	3,136,470	(575,214)
315	PUBLIC SAFETY FACILITIES IMPACT	3,221,824	627,030	10%	795,081	8%	(168,051)	315,939	2,737,835
346	PUBLIC FACILITIES NON-AB1600	2,878,803	405,295	35%	26,273	1%	379,022	151,286	3,106,539
347	PUBLIC FACILITIES IMPACT FUND	1,017,051	115,593	84%	26,724	10%	88,869	-	1,105,920
348	LIBRARY IMPACT FUND	1,444,583	186,160	39%	204,340	92%	(18,179)	-	1,426,404
350	UNDERGROUNDING	1,600,648	23,523	79%	1,046	0%	22,477	-	1,623,125
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	(46,063)	214,745	45%	48,177	11%	166,568	39,055	81,450
360	COMM/REC CTR IMPACT FUND	1,295,025	532,277	40%	762,008	33%	(229,731)	730,523	334,771
375	QUIMBY FEE	839,370	1,560,852	239%	542,182	35%	1,018,670	151,321	1,706,719
TOTAL CAPITAL PROJECT FUNDS		\$ 34,484,118	\$ 21,304,963	91%	\$ 17,658,968	33%	\$ 3,645,995	\$ 7,176,363	\$ 30,953,750
420	CIVIC CENTER DEBT	\$ 173,445	\$ 269,961	92%	\$ 291,904	100%	\$ (21,942)	\$ 75	\$ 151,428
441	POLICE FACILITY BOND DEBT	166,744	355,488	92%	387,161	100%	(31,673)	95	134,975
TOTAL DEBT SERVICE FUNDS		\$ 340,189	\$ 625,449	92%	\$ 679,065	100%	\$ (53,616)	\$ 170	\$ 286,403
640	SEWER OPERATIONS	\$ 4,567,000	\$ 12,760,839	86%	\$ 14,153,978	87%	\$ (1,393,139)	87,071	3,086,790
641	SEWER IMPACT FUND*	20,552,531	11,080,829	63%	8,041,788	25%	3,039,041	998,761	22,592,811
642	SEWER RATE STABILIZATION	2,726,339	85,929	172%	1,666	92%	84,263	-	2,810,602
643	SEWER-CAPITAL PROJECTS	22,007,034	6,246,360	93%	11,512,549	48%	(5,266,190)	385,891	16,354,954
650	WATER OPERATIONS	4,289,349	14,838,251	84%	13,728,536	78%	1,109,715	646,122	4,752,942
651	WATER IMPACT FUND*	2,924,596	738,822	79%	652,274	73%	86,548	18,077	2,993,067
652	WATER RATE STABILIZATION	3,154,313	45,996	n/a	1,248	92%	44,747	-	3,199,060
653	WATER -CAPITAL PROJECT	10,397,946	4,816,760	94%	1,681,733	30%	3,135,027	406,004	13,126,969
TOTAL ENTERPRISE FUNDS		\$ 70,619,108	\$ 50,613,786	80%	\$ 49,773,773	52%	\$ 840,013	\$ 2,541,925	\$ 68,917,196
730	INFORMATION SERVICES	\$ 795,800	\$ 2,055,166	92%	\$ 2,032,915	78%	\$ 22,251	\$ 76,515	\$ 741,536
740	BUILDING MAINTENANCE	(166,058)	1,517,782	92%	1,306,318	78%	211,464	39,105	6,301
741	BUILDING REPLACEMENT	3,719,439	800,613	96%	145,326	8%	655,287	34,827	4,339,900
745	CIP ENGINEERING	8,327	1,235,983	63%	1,659,794	84%	(423,811)	5,054	(420,538)
760	UNEMPLOYMENT	316,781	4,170	180%	14,081	94%	(9,910)	-	306,871
770	WORKERS COMPENSATION	1,944,442	800,025	111%	680,901	62%	119,124	30,000	2,033,566
790	EQUIPMENT REPLACEMENT	6,113,244	2,176,273	98%	593,426	21%	1,582,847	181,542	7,514,549
791	EMPLOYEE BENEFITS FUNDS	(161,343)	744,444	91%	725,078	85%	19,366	-	(141,977)
795	GEN. LIABILITY INSURANCE	1,123,565	1,826,601	92%	1,842,561	97%	(15,961)	4,650	1,102,954
TOTAL INTERNAL SERVICE FUNDS		\$ 13,694,197	\$ 11,161,059	90%	\$ 9,000,400	61%	\$ 2,160,659	\$ 371,693	\$ 15,483,162

 CITY OF MORGAN HILL City of Morgan Hill Fund Activity Summary - Fiscal Year 2022-23 For the Month Ended May 31, 2023 92% of Year Complete							
Beginning Fund Balance 07-01-22	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
	YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 33,685,888	\$ 40,766,778	79%	\$ 47,212,927	81%	\$ (6,446,149)	\$ 2,292,654	\$ 24,947,084
SPECIAL REVENUE GROUP	11,383,607	10,314,543	83%	10,353,289	75%	(38,745)	827,152	10,517,710
DEBT SERVICE GROUP	340,189	625,449	92%	679,065	100%	(53,616)	170	286,403
CAPITAL PROJECTS GROUP	34,484,118	21,304,963	91%	17,658,968	33%	3,645,995	7,176,363	30,953,750
ENTERPRISE GROUP	70,619,108	50,613,786	80%	49,773,773	52%	840,013	2,541,925	68,917,196
INTERNAL SERVICE GROUP	13,694,197	11,161,059	90%	9,000,400	61%	2,160,659	371,693	15,483,162
TOTAL ALL GROUPS	\$ 164,207,107	\$ 134,786,579	82%	\$ 134,678,422	57%	\$ 108,157	\$ 13,209,957	\$ 151,105,306

For Enterprise Funds: Unrestricted fund balance = Fund balance net of fixed assets and long-term liabilities.

*Unreserved fund balance includes bond proceeds reserved for projects listed in bond documents.

¹ Amount restricted for encumbrances, fixed asset replacement, long-term receivables, and bond reserves.

CITY COUNCIL STAFF REPORT

MEETING DATE: June 21, 2023

PREPARED BY:

Adam Paszkowski, Principal Planner

APPROVED BY: City Manager

CERTIFY THE ENVIRONMENTAL IMPACT REPORT, ADOPT FINDINGS OF SIGNIFICANCE AND STATEMENT OF OVERRIDING CONSIDERATIONS, APPROVE VESTING TENTATIVE MAP, AND APPROVE DESIGN PERMIT FOR A RESIDENTIAL DEVELOPMENT, COMPRISED OF 269 UNITS. THE PROPERTIES, IDENTIFIED BY ASSESSOR PARCEL NUMBERS 728-30-001, 728-30-002, 728-30-003, AND 728-30-004 ARE LOCATED AT THE SOUTHWEST INTERSECTION OF HALF ROAD AND MISSION VIEW DRIVE (THE CROSSWINDS AT MORGAN HILL, LLC, OWNER)

RECOMMENDATION(S)

1. Open/close public hearing;
2. Adopt a Resolution to certify the Environmental Impact Report (EIR), approve the Mitigation Monitoring and Reporting Program prepared for the project, and adopt Findings of Significance and Statement of Overriding Considerations; and
3. Adopt a Resolution approving the Vesting Tentative Map and Design Permit.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

Enhancing Diversity and Inclusiveness

Advancing Regional Initiatives

2022-2023 Strategic Priorities

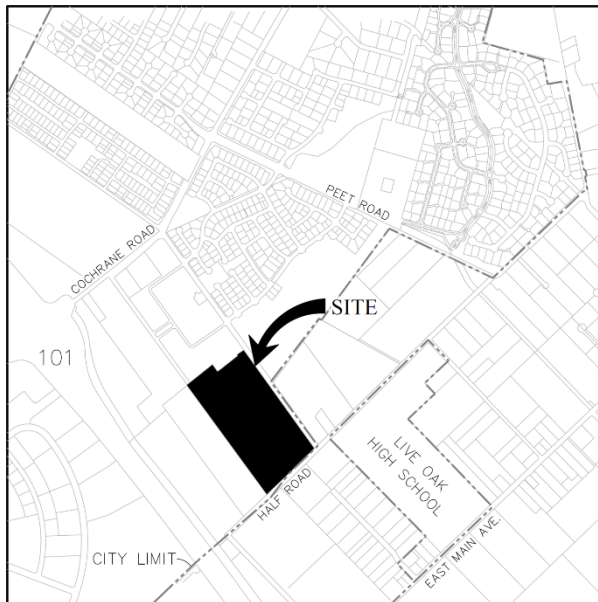
Affordable Housing and Homelessness

Guiding Documents

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

LOCATION MAP/PROJECT INFORMATION:



1. Location: Southwest intersection of Half Road and Mission View Drive identified by Assessor's Parcel Numbers: 728-30-001, 728-30-002, 728-30-003, and 728-30-004
2. Site Area: 33 Acres
3. General Plan: Residential Attached Low
4. Zoning: Residential Attached Low Density (RAL 3,500)
5. Request: Request for a Vesting Tentative Map and Design Permit to allow 269 residential units, comprised of 56 single-family, 64 duets, and 149 condominiums.

BACKGROUND:

On June 16, 2020, Dividend Homes submitted applications for a Vesting Tentative Map and Design Permit for a 269-unit residential development.

The General Plan land use designation for the project area is Residential Attached Low with a net density range of 6 to 16 units an acre. The project proposes a density of 8.15 units an acre.

The project site is located in the Residential Attached Low Density (RAL 3,500) Zoning District. The purpose of the RAL zoning district is to provide locations for low-density attached housing types. The RAL zoning district is divided into two subzones, allowing for a range of permitted residential densities. The RAL 3,500 zoning district allows for a minimum lot area of 3,500 square feet.

The purpose of the residential attached zoning districts is to provide locations for attached housing types to meet the full range of housing needs in Morgan Hill. The residential attached zoning districts accommodate small lot single-family homes, townhomes, and multifamily dwellings at a range of densities. The residential attached

zoning district increases housing options for seniors, young people, renters, and smaller households. The RAL zoning district allows for duets, single-family attached, and single-family detached dwellings, as well as accessory structures, as proposed by the applicant.

PROJECT DESCRIPTION:

The project proposes to construct a total of 269 residential units, comprised of 56 single-family, 64 duets, and 149 condominium units. The project would provide a total of 795 parking spaces, consisting of 538 covered parking spaces and 257 uncovered parking spaces (curbside and bay parking). Each unit would include a two-car garage on the ground floor.

The single-family detached residences would consist of clustered courtyard-style homes and would be constructed on the eastern and southern perimeters of the project site, along Mission View Drive and Half Road. The single-family courtyard residences would be two-stories and reach a maximum height of 30 feet. The two-story attached duets would be located in the center of the project site and would reach a maximum height of 30 feet. Three-story townhome-style condominiums would be constructed along the western and northwestern perimeters of the project site, along DePaul Drive and adjacent to a vacant parcel. The condominiums would reach a maximum height of 39 feet. There would be a total of 40 below-market-rate (BMR) units dispersed throughout the project and unit type.

The project would include recreational areas including a clubhouse, pool, children's play area, and barbeque/picnic areas. The project would also include pedestrian paths, and landscaping, including trees and lawn areas.

The project proposes three vehicular connections; one main project entry each from DePaul Drive and Mission View Drive. DePaul Drive also has a secondary project entry to further enhance vehicle connectivity in and through the project as well as provide additional access points for emergency services. In addition to the vehicular connections, the project includes three emergency vehicle access points; one along Half Road and two along DePaul Drive.

Further explanation of the applicant's request, details regarding the project, and how the project is consistent with the Zoning Code are provided within the [May 23, 2023 Planning Commission Staff Report and](#) adopted Resolution No. [23-04](#) and [23-05](#). Details of the CEQA analysis are included in the CEQA section of this report.

PLANNING COMMISSION ACTION:

The Planning Commission reviewed the project on May 23, 2023 and accepted public comment on the proposed project. During the review of the project, the Planning Commission expressed concerns regarding impacts on the adjacent roads and intersections and Transportation Mitigation Measure TRN-2.1 which identifies mitigation for Vehicle Miles Traveled (VMT).

The Traffic Impact Analysis prepared for the proposed project, and as summarized in

the EIR, identified four (4) intersections that the proposed project would impact. Therefore, the proposed project would be required, and the proposed project is conditioned, to pay a fair share contribution towards improvements for each intersection. However, although the developer is required to pay a fair share contribution, at the Cochrane Road and Mission View Drive intersection the developer would be required to install a second northbound left-turn lane on Mission View Drive. The following proposed conditions pertain to these four intersections:

1. Cochrane Road and Mission View Drive: Prior to occupancy of each unit, developer shall pay a fair share contribution toward the installation of a second northbound left-turn lane on Mission View Drive and a cycle length adjustment to improve intersection operations. The addition of the second northbound left-turn lane will require lane striping and signal modification but will fit within the existing curb-to-curb pavement width on Mission View Drive. The cost to install the required traffic signal modification, improvements, and striping required for the addition of the second left-turn lane shall be reimbursed to the developer, by agreement or credits, and shall be issued on a per unit basis through the traffic impact fees to be determined by the Public Services Director or Director's designee at improvement plan stage.
2. Mission View Drive and Half Road: Prior to occupancy of each unit, developer shall pay a fair share contribution toward the installation of a signal at the Mission View Drive and Half Road intersection.
3. Main Avenue and Condit Road: Prior to occupancy of each unit, developer shall pay a fair share contribution toward the addition of an exclusive southbound right-turn lane on Condit Road. The addition of the right-turn lane will require signal modifications and lane striping on the southbound approach.
4. Condit Road and Diana Avenue: Prior to occupancy of each unit, developer shall pay a fair share contribution toward the installation of a signal at the Condit Road and Diana Avenue intersection.

The concerns the Planning Commission had in regards to the adjacent roads and intersections consisted of pedestrian access; primarily sidewalks and crosswalks to access the nearby Live Oak High School. During the Planning Commission meeting, it was clarified that the proposed project will provide pedestrian improvements along the project frontages along Mission View Drive, Half Road, and the future extension of De Paul Drive. It was also clarified that the proposed project is along the City boundary, and the Mission View Drive and Half Road intersection is not entirely within City limits; therefore, the installation of a signal and associated improvements at that intersection must be coordinated and approved by Santa Clara County when warranted and that the proposed project will pay a fair share contribution towards the intersection improvements.

Regarding VMT, Mitigation Measure TRN-2.1 requires the development of a Transportation Demand Management (TDM) plan to reduce VMT to and from the site. As part of the TDM plan, Mitigation Measure TRN-2.1 also requires the project applicant to either make a financial contribution to the City's on-site demand rideshare

service (MoGo) or during project operations, the management entity/HOA shall provide fully (100 percent) subsidized annual VTA transit passes for all project homeowners (a total of 269 transit passes per year). As part of the Planning Commission's discussion and recommendation to approve the project, the Commission recommends that the developer shall provide the fully (100 percent) subsidized annual VTA transit passes instead of the management entity/HOA. This recommended change has been made to the conditions of approval, Findings of Fact, and the Mitigation Monitoring and Reporting Program.

In addition, the Planning Commission recommended adding a condition of approval to notify future residents of the proposed project of possible internal street extensions to the vacant properties north of the project site. This recommended change has been made to the conditions of approval.

CONCLUSION:

The project has been found to be consistent with the General Plan, Zoning Code, City's Design Review Criteria, the City's Residential Development Design and Development Standards, and the Subdivision Map Act. It is recommended that the City Council adopt resolutions to certify the Environmental Impact Report (EIR), approve the Mitigation Monitoring and Reporting Program prepared for the project, and adopt Findings of Significance and Statement of Overriding Considerations, and approve the Vesting Tentative Map and Design Permit subject to the Conditions of Approval.

COMMUNITY ENGAGEMENT:

Inform

The proposed project was publicly noticed, including a mailing to property owners in an expanded area beyond 600 feet of the project and within the newspaper via a quarter page display ad for the minimum 10-day period, a project webpage and a sign was posted on the project site pursuant to the Planning Division requirements. The public hearing was also advertised in the City's 411 and on Social Media.

ALTERNATIVE ACTIONS:

The City Council could approve the project with amendments or direct staff to make changes to the request provided the SEIR is certified and Findings of Significance and Statement of Overriding Considerations approved. The City Council could also deny the proposed project. It should be noted that the City has received letters from two legal firms urging the City to approve the project as it conforms with the City's General Plan and Zoning.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission held a public hearing on May 23, 2023, accepted public comment on the proposed project and recommended City Council certify the EIR, adopt a Statement of Overriding Considerations and approve a Vesting Tentative Map and Design Permit.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

An Environmental Impact Report (EIR) was prepared for this project in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines. An EIR is an informational document that assesses potential environmental impacts of a proposed project, as well as identifies mitigation measures and alternatives to the proposed project. As the CEQA Lead Agency for this project, the City of Morgan Hill is required to consider the information in the EIR along with any other available information in deciding whether to approve the project. On January 29, 2021, the City of Morgan Hill circulated a Notice of Preparation (NOP) for a 45-day comment period to request input on the types of impacts that could result from the proposed project. The Draft EIR, along with appendices, was made available for public review for a 60-day comment period that began on November 4, 2022 and ended on January 3, 2023. The Notice of Availability of a Draft EIR was posted with the County Clerk, sent to the State Clearinghouse, published on the City's website, and mailed to responsible agencies. The City also held a virtual community open house as an opportunity for the public to submit verbal comments on December 6, 2022.

Responses to the Notice of Preparation of a Draft EIR are summarized in Section 2.0 of the Draft EIR. Comment letters received during circulation of the Draft EIR and responses to those letters are included in the Final EIR. A Mitigation Monitoring and Reporting Program was also prepared.

EIR SUMMARY

The EIR evaluates two project options related to the management of stormwater. Under Option 1, stormwater runoff would be directed to underground retention facilities designed for a 25-year, 24-hour storm event and under Option 2, 100 percent of stormwater from the site would be directed to underground retention facilities designed for a 100-year, 24-hour storm event (as described in further detail in Section 3.2.4, Stormwater Drainage Improvements of the Draft EIR). The two project options would have the same site design described above, including the proposed number of residences, building elevations, and site layout. Although Options 1 and 2 were evaluated, City Staff recommends, and the applicant is in agreement with, the approval of Option 1.

Table 1.2-1 in the Draft EIR summarizes the environmental impacts of the proposed project, proposed mitigation measures, and residual impacts (the impact after application of mitigation, if required) identified in the EIR. Impacts are categorized as follows:

- **Significant and Unavoidable.** An impact that cannot be reduced to below the threshold level given reasonably available and feasible mitigation measures. Such an impact requires a Statement of Overriding Considerations to be issued if the project is approved per §15093 of the CEQA Guidelines.
- **Less than Significant with Mitigation Incorporated.** An impact that can be

reduced to below the threshold level given reasonably available and feasible mitigation measures. Such an impact requires findings under §15091 of the CEQA Guidelines.

- Less than Significant. An impact that may be adverse but does not exceed the threshold levels and does not require mitigation measures. However, mitigation measures that could further lessen the environmental effect may be suggested if readily available and easily achievable.
- No Impact: The proposed project would have no effect on environmental conditions or would reduce existing environmental problems or hazards.

The Draft EIR identifies significant impacts to the following California Environmental Quality Act (CEQA) environmental issue areas: agriculture and transportation. As described in the Draft EIR, the proposed project would convert approximately 16 acres of Prime Farmland, and although the project will comply with the Agricultural Mitigation Ordinance (Chapter 18.152 of the Municipal Code) by preserving a minimum of one acre of agricultural land for each acre of agricultural land converted to a non-agricultural use, CEQA case law affirms the principle that the loss of prime farmlands is irreversible, and protection of other existing farmland does not fully offset the lost farmland, but rather prevents further loss. Therefore, the loss of prime farmland would be considered significant and unavoidable. The Draft EIR also describes that Vehicle Miles Traveled (VMT) impacts can be mitigated, but the project would not fall below the applicable residential VMT per capita threshold and would be considered significant and unavoidable. All other subject area impacts were determined to have no impact or less than significant with the implementation of mitigation measures.

VMT measures the amount and distance of vehicle travel attributed to a project or use. Specifically, VMT focuses on determining the origin and destination of travel patterns. Unlike LOS, VMT does not assess the local vehicle trips from a project or the project's traffic impacts on a local intersection or road/highway segment. Rather, VMT assesses the effects of the project on regional traffic and use of transit and non-motorized travel. VMT is not a new methodology; it has been used for many years in CEQA documents in estimating pollution (air quality impacts), GHG emissions, and energy consumption. VMT is typically calculated using a travel demand model, which estimates the total number and length of vehicle trips to and from a given geographic area, such as transportation analysis zones (TAZs). The Valley Transportation Authority (VTA) developed the countywide VMT evaluation tool that is used to generate VMT calculations. Unfortunately, because it is a countywide model, the calculations levy 13 extra miles attached to Morgan Hill due to the City's distance from regional job centers in San Jose.

In June 2021, City Council directed City Staff to pursue a VMT model in order to deviate from the Valley Transportation Authority (VTA) Santa Clara Countywide VMT Evaluation Tool and/or to provide substantial evidence to deviate from the Governor's Office of Planning and Research (OPR) Technical Advisory which recommends a 15% threshold of significance reduction from existing VMT. This effort is currently underway.

As required by the California Environmental Quality Act (CEQA), the Draft EIR also examined alternatives to the proposed project. Studied alternatives include the following three alternatives: 1) No Project-No Development; 2) Existing General Plan/Zoning Development; and 3) Reduced Footprint: Agricultural Preservation alternative. Based on the alternatives analysis, the No Project-No Development alternative would be the environmentally superior alternative to the project because all of the project's significant environmental impacts would be avoided by leaving the site in its current condition. However, Section 15126(e)(2) states that "if the environmentally superior alternative is the No Project Alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives." Among the alternatives that assume some development on the site, the environmentally superior alternative is the Reduced Footprint: Agricultural Preservation alternative which would avoid significant agricultural impacts since development would not occur on the portion of the site mapped as Prime Farmland but would not avoid the significant and unavoidable VMT impact. This alternative could meet most of the project objectives; however, by only achieving half of the proposed housing units, this alternative would not achieve the project objective of providing market-rate and below-market-rate (BMR) housing, as envisioned in the City of Morgan Hill General Plan, to the same degree as the project.

Due to the Significant and Unavoidable impacts discussed at the beginning of this section, a Findings of Significance and Statement of Overriding Considerations is included as part of the Resolution to Certify the EIR. Per the Regional Housing Needs Assessment 6th Housing Element Cycle 2023-2031, the draft allocation housing for Morgan Hill is 1,037 dwelling units. The proposed project is accounted for within the adopted 2023-2031 Housing Element and allows for Morgan Hill to contribute positively to addressing the housing crisis in a manner that fits within established densities of the community, without proposing a density in excess of those identified in General Plan.

RESOLUTION NO. 23-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE HALF-DIVIDEND (CROSSWINDS) PROJECT AS CONSISTENT WITH THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND ADOPTING CEQA FINDINGS OF FACT, A STATEMENT OF OVERRIDING CONSIDERATIONS REGARDING ENVIRONMENTAL IMPACTS, AND A RELATED MITIGATION MONITORING AND REPORTING PROGRAM

WHEREAS, an Environmental Impact Report (EIR) (SCH Number 2021010358) was prepared for the Half-Dividend (Crosswinds) Project in accordance with the California Environmental Quality Act (CEQA). A Notice of Preparation (NOP) was circulated between January 29, 2021 and March 17, 2022, to receive comments regarding the scope and content of the EIR. The Draft EIR was circulated between November 4, 2022 and January 3, 2023; and

WHEREAS, the City of Morgan Hill received comments on the Draft EIR by four individuals / organizations. Responses to those comments and minor changes to the Draft EIR were included in a Final EIR document in accordance with the requirements of CEQA; and

WHEREAS, the information contained in the Final EIR, consisting of the Draft EIR document in combination with the Final EIR document, was reviewed and considered by the Planning Commission at a duly-noticed Planning Commission public hearing held on May 23, 2023; and the Planning Commission took action to recommend to the City Council that the Final EIR be certified as being found complete, correct, and in substantial compliance with the requirements of the California Environmental Quality Act; and

WHEREAS, the Environmental Impact Report concluded that implementation of the Project could result in two significant effects on the environment and identified mitigation measures that would reduce some but not all of those significant effects to a less-than significant level; and

WHEREAS, in connection with the approval of a project involving the preparation of an Environmental Impact Report that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environmental effects to a less-than-significant level and/or adopt a Findings of Fact and Statement of Overriding Considerations; and

WHEREAS, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during project implementation, and such a mitigation monitoring and

reporting program has been prepared for the Project for consideration by the decision-maker of the City of Morgan Hill as lead agency for the Project (the "Mitigation Monitoring and Reporting Program"); and

WHEREAS, the City of Morgan Hill is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to construct and otherwise undertake the Project; and

WHEREAS, the Environmental Impact Report and the related Findings of Fact and Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program for the Project are, by this reference, incorporated into this Resolution as if fully set forth herein; and

WHEREAS, the Environmental Impact Report, incorporating any Addenda, and related Findings of Fact and Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program for the Project are on file in the Development Services Department located at 17575 Peak Avenue, Morgan Hill, California, 95037, and are available for inspection by any interested person at that location.

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

SECTION 1: FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL REGARDING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE HALF-DIVIDEND (CROSSWINDS) PROJECT: The City Council finds, determines, and declares the findings and facts and statement of overriding considerations as set forth in the attached Exhibit "A" by this reference incorporated herein.

SECTION 2: CERTIFICATION OF FINAL EIR: The City Council hereby certifies that the Final EIR has been completed in compliance with CEQA.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 21st day of June, 2023 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

∞ 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-XXX, adopted by the City Council at a Regular Meeting held on June 21, 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

EXHIBIT "A"

FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL REGARDING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE CROSSWINDS RESIDENTIAL PROJECT (State Clearinghouse No. 2021010358)

The following Findings, the mitigation measures specified herein, and the Mitigation Monitoring and Reporting Program attached hereto are hereby adopted by the Morgan Hill City Council in accordance with the California Environmental Quality Act (CEQA), Public Resources Code Section 21081, 21081.5 and 21081.6, and the CEQA Guidelines, Title 14, California Code of Regulations, Sections 15091 and 15092 for the Crosswinds Residential (project).

Section 15091 of the CEQA Guidelines states that:

- a. *No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:*
 - (1) *Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.*
 - (2) *Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.*
 - (3) *Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.*

In short, CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to avoid or mitigate significant environmental impacts that will otherwise occur with implementation of the project. Project mitigation or alternatives are not required, however, where they are infeasible or where the responsibility for modifying the project lies with another agency.

For those significant effects that cannot be mitigated to a less-than-significant level, the public agency is required to find that specific overriding economic, legal, social, technological, or other

benefits of the project outweigh the significant effects on the environment. The CEQA Guidelines state in section 15093 that:

“If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered ‘acceptable.’”

A. ENVIRONMENTAL REVIEW PROCESS

The Environmental Impact Report (EIR) prepared by the City of Morgan Hill (City) for the Crosswinds Residential Project (project) consists of the Draft EIR (Draft EIR) and the Final EIR / Response to Comments on the Draft EIR.

On January 29, 2021, the City of Morgan Hill circulated a Notice of Preparation (NOP) for a 45-day comment period to request input on the types of impacts that could result from the proposed project. The Draft EIR was made available for public review for a 60-day comment period that began on November 4, 2022 and ended on January 3, 2023. The Notice of Availability of a Draft EIR was posted with the Santa Clara County Clerk, sent to the State Clearinghouse, published on the City’s website, and mailed to responsible agencies. The City of Morgan Hill received a total of four written comment letters during the public comment period.

The City released the Final EIR for public review on May 3, 2023. The Final EIR consists of copies of all comments received on the Draft EIR, a list of commenters, all responses to comments, and Draft EIR text revisions. The Final EIR, Draft EIR, and Mitigation Monitoring and Reporting Program (MMRP) together comprise the EIR for the project. The analysis and conclusions contained in the EIR reflect the independent judgment of the City.

B. PROJECT DESCRIPTION

Section 3 of the Draft EIR includes a detailed description of the project. Other than minor clarifications, no revisions to the project description were required.

The approximately 33-acre project site is located at the intersection of Half Road and Mission View Drive in the City of Morgan Hill. The project is located on four parcels. The Assessor’s Parcel Numbers (APNs) are 728-30-001, 728-30-002, 728-30-003, and 728-30-004. The project site is mostly undeveloped and consists of grassland, fallowed agricultural fields, and boxed trees.

The project proposes to construct a total of 269 residential units, comprised of 56 single-family detached, 64 duets, and 149 condominium units. There would be a total of 40 below-market-rate (BMR) units. Each unit would include a two-car garage on the ground floor. The single-family detached residences would be constructed on the eastern and southern perimeters of the project site, along Mission View Drive and Half Road. The single-family residences would be

two-stories and reach a maximum height of 30 feet. The project also proposes to construct an off-site sanitary sewer line that would extend from Half Road to Condit Road, to the existing sanitary sewer line in East Main Avenue.

The EIR evaluates two project options related to the management of stormwater. Under Option 1, stormwater runoff would be directed to underground retention facilities designed for a 25-year, 24-hour storm event and under Option 2, 100 percent of stormwater from the site would be directed to underground retention facilities designed for a 100-year, 24-hour storm event (as described in further detail in Section 3.2.4, Stormwater Drainage Improvements). The two project options would have the same site design described below including the proposed number of residences, building elevations, and site layout (described above). Although Options 1 and 2 were evaluated, the City of Morgan Hill City Council approves Option 1.

The project objectives are to:

- Provide market-rate and below-market rate housing, as envisioned in the City of Morgan Hill General Plan.
- Create a visually appealing pedestrian corridor along the Mission View Drive and Half Road frontages.
- Implement improvements to provide private vehicular and pedestrian circulation.
- Increase passive and active open space throughout the project site.

The proposed project would require the following approvals:

- Certification of the EIR: Certify the Crosswinds Residential Project EIR and make environmental findings pursuant to CEQA.
- Vesting Tentative Map and Final Map
- Design Permit
- Issuance of Demolition, Grading, Building, and Occupancy Permits
- Encroachment Permit from Valley Water (Sanitary Sewer Modifications)

C. SIGNIFICANT UNAVOIDABLE ADVERSE IMPACTS AND DISPOSITION OF RELATED MITIGATION MEASURES

The following findings are hereby made by the City of Morgan Hill City Council for the significant environmental effects identified in the EIR related to agriculture and forestry resources (impacts related to conversion of Important Farmland) and transportation (impacts related to vehicle miles traveled [VMT]). The Final EIR identified the following impacts associated with the project that would be significant and unavoidable:

1. **Agricultural and Forestry Resources Impact AG-1:** The project would convert 16 acres

of Prime Farmland to non-agricultural use. Mitigation measures MM AG-1.1 and MM AG-1.2 would reduce the project's impacts associated with conversion of Prime Farmland, but not to a less than significant level. The impact would be significant and unavoidable.

Mitigation Measure MM AG-1.1: A minimum of one acre of agricultural land (1:1 mitigation ratio) shall be preserved for each acre of agricultural land changed to a non-agricultural use. The required acreage of area to be protected through an agricultural conservation easement or agricultural preservation in-lieu fee will depend on the measurement of affected area. The 16 acres of Prime Farmland shall be used for calculating the required mitigation.

Mitigation Measure MM AG-1.2: Conversion of agricultural land shall require off-setting acquisition and/or dedication of agricultural conservation easements over approved agricultural mitigation land, or payment to the City of the agricultural preservation in-lieu fee, to support agricultural preservation activities. Developer acquisition/dedication of easements shall require the project to pay an agricultural lands preservation program stewardship fee to cover administrative costs and ongoing management and monitoring of the easements. Agricultural mitigation fees shall be required prior to the acceptance of a final parcel or subdivision map, or prior to issuance of building or grading permits. Easement dedication is required prior to issuance of building permits.

Finding: Based on the Farmland Mapping and Monitoring Program of the California Resources Agency Mapping System, the project site consists of approximately 16 acres of Prime Farmland and 17 acres of Grazing Land. The project proposes to develop the site with residential uses. Conversion of the Prime Farmland would constitute a significant impact to agricultural resources. Consistent with the City's Agricultural Preservation Program and Agricultural Mitigation Ordinance, mitigation measures MM AG-1.1 and MM AG-1.2 require a minimum of one acre of agricultural land (1:1 mitigation ratio) to be preserved for each acre of agricultural land changed to a non-agricultural use and acquisition and/or dedication of agricultural conservation easements over approved agricultural mitigation land, or payment to the City of the agricultural preservation in-lieu fee. The project applicant will implement mitigation measures MM AG-1.1 and MM AG-1.2, however, the impact would not be reduced to a less than significant level because, while the project would preserve existing agricultural lands, it would not create any new agricultural lands to offset the lost 16 acres of prime farmland. There are no other feasible mitigation measures which could be implemented to reduce the loss of agricultural lands to a less than significant level, as CEQA case law affirms the principle that the loss of prime farmland is irreversible, and protection of other existing farmland does not fully offset the lost farmland, but rather prevents further loss. Therefore, the impact would remain significant and unavoidable.

Impacts related to agricultural and forestry resources have been mitigated to the extent feasible. The City of Morgan Hill finds that although this impact would be significant and unavoidable, the impact is acceptable when weighed against the overriding social, economic, and other considerations set forth in Section I, *Statement of Overriding Considerations*.

For a detailed description of impacts and mitigation measures, see the appropriate text in the Draft and Final EIR.

2. **Transportation Impact TRN-2 and Impact TRN-C:** The project is estimated to generate 27.41 VMT per capita, which would exceed the California Office of Planning and Research's (OPR's) impact threshold of 20.94 VMT per capita. Mitigation Measure MM TRN-2.1 would not reduce the project VMT to below OPR's impact threshold, therefore, the VMT impact would not be reduced to a less than significant level. The impact would be significant and unavoidable. Since the project generated VMT per capita is above the citywide threshold, the project would result in a considerable contribution to a significant cumulative citywide VMT impact.

Mitigation Measure TRN-2.1: Prior to project occupancy, the project applicant shall develop and implement a Transportation Demand Management (TDM) plan which targets achieving a reduction in residential vehicle trips to and from the site. The TDM plan shall be prepared by a qualified traffic consultant and in coordination with the City of Morgan Hill Development Services Director or Designee. The TDM plan shall quantify the reduction in VMT. The TDM shall require the project applicant to make a financial contribution to the City's on-site demand rideshare service (MoGo), as a one-time or annual financial contribution based on City approval, or during project operations, the developer shall provide fully (100 percent) subsidized annual VTA transit passes for all project homeowners (a maximum of one transit subsidy per residential unit, which would result in up to 269 transit passes per year). This subsidized transit program shall be approved by the City of Morgan Hill's Public Services Director or Director's designee prior to issuance of occupancy. The HOA shall submit a receipt and documentation to the City showing that the transit passes have been purchased annually.

Finding: The project would result in VMT per capita of 27.41, while citywide VMT per capita is 24.64, and the OPR threshold relied upon in the EIR was 20.94 VMT per capita. Using OPR's impact thresholds, the project would need to implement VMT reduction measures to achieve a 24 percent reduction (27.41 to 20.94) in its VMT per capita for the proposed residential uses to reduce its impact to less than significant level. Mitigation Measure TRN-2.1 requires the project applicant to make a financial contribution to the City's on-site demand rideshare service, as a one-time or annual financial contribution based on City approval, or during project operations, requires the developer to provide fully (100 percent) subsidized annual VTA transit passes for all project homeowners. The provision of fully (100 percent) subsidized annual VTA transit passes for all project homeowners under mitigation MM TRN-2.1 could reduce the project's VMT per resident from 27.41 to 27.37. VTA's VMT tool does not include a feature which calculates VMT reduction from the project applicant's contribution to the City's on-site demand rideshare service. The project design features would encourage the use of pedestrian and bicycle facilities, but not to a degree which would have any measurable effect on project VMT. Therefore, the project

VTM would continue to be above the 20.94 VTM per capita threshold. There are no other feasible mitigation measures which could be implemented to reduce the transportation impacts. Measures such as carshare programs and transit service expansion programs would not be feasible given the costs to maintain such programs. As mentioned above, even with the implementation of these measures, the project VTM would be above the VTM per capita threshold. Therefore, the impact would remain significant and unavoidable.

Impacts related to transportation have been mitigated to the extent feasible. The City of Morgan Hill finds that although this impact would be significant and unavoidable, the impact is acceptable when weighed against the overriding social, economic, and other considerations set forth in Section I, *Statement of Overriding Considerations*, below.

D. SIGNIFICANT IMPACTS IDENTIFIED IN THE EIR THAT ARE REDUCED TO A LEVEL OF “LESS THAN SIGNIFICANT” BY THE MITIGATION MEASURES INCORPORATED INTO THE PROJECT

The following findings are hereby made by the City of Morgan Hill City Council for the significant environmental effects identified in the EIR that would be reduced to a less than significant level through incorporation of mitigation measures. The City finds for each of the significant or potentially significant impacts identified in this section that based upon substantial evidence in the record, changes or alterations have been required or incorporated into the project which avoid or substantially lessen the significant effects as identified in the EIR and, thus, that adoption of the mitigation measures set forth below will reduce these significant or potentially significant effects to less than significant levels. Adoption of the mitigation measures will effectively make the mitigation measures part of the project. In addition, compliance with City and other applicable regulations will further reduce project impacts. Therefore, the City finds that based upon substantial evidence in the record, changes or alterations have been required or incorporated into the project which avoid or substantially lessen the significant effects as identified in the EIR.

The Final EIR identified several impacts associated with the project that would be reduced to a level of less than significant with the implementation of mitigation measures identified in the Final EIR:

1. **Biological Resources Impact BIO-1:** The project could have a substantial adverse effect on nesting birds. With the implementation of mitigation measures MM BIO-1.1 and MM BIO-1.2, this impact would be reduced to less than significant.

MM BIO-1.1: Construction shall be scheduled to avoid the nesting season. If construction can be scheduled to occur between September 1st and January 31st (inclusive) to avoid the raptor nesting season, no impacts will be expected. If construction will take place between February 1st and August 31st, then pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed

during project implementation. Performance of the required surveys for construction occurring between February 1st and August 31st will ensure that impacts to nesting raptors are reduced to less than significant. Surveys will be completed within 30 days of the on-set of tree removal, site clearing or construction activities. During this survey, the ornithologist will inspect all trees and other potential nesting habitats (e.g., trees, shrubs, buildings) onsite trees as well as all trees within 250 feet of the site for nests. The pre-construction survey shall be submitted to the City's Development Services Director or the Director's designee for review prior to tree removals or issuance of a grading permit.

MM BIO-1.2: If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist will determine the extent of a disturbance-free buffer zone to be established around the nest (typically 250 feet for raptors and 50-100 feet for other species) that will remain off limits to construction until the nesting season is over, to ensure that no nests of species protected by the Migratory Bird Treaty Act and California Fish and Wildlife Code will be disturbed during project implementation. A report indicating the result of the survey and any designated buffer zones shall be submitted to the satisfaction of the City's Development Services Director or Director's designee prior to removal of trees and issuance of a grading permit.

Finding: The proposed project would remove all existing trees on the 33-acre site. The mature trees on-site have the potential to provide nesting or foraging habitat for nesting raptors and migratory birds protected under state and federal regulations. At the time of development, raptors and migratory birds could be nesting in the trees and vegetation on and adjacent to the project site. Project construction and tree removal during the avian breeding season could result in direct or indirect impacts to eggs and nestlings. The project would implement mitigation measures MM BIO-1.1 and MM BIO-1.2 which require pre-construction surveys for nesting birds if construction takes place between February 1st and August 31st and a buffer zone around any active nests. This impact would be less than significant with adherence to mitigation measures MM BIO-1.1 and MM BIO-1.2.

2. **Biological Resources Impact BIO-5:** The project could conflict with the City's tree ordinance without the implementation of mitigation. With the implementation of mitigation measure MM BIO-5.1, this impact would be reduced to less than significant.

MM BIO-5.1: The project applicant shall comply with local ordinances and submit permit applications for removal, trimming, damage, or relocation of all trees covered by the City ordinance. Any trees to be removed shall require replacement at a two-to-one ratio on a comparable ratio of size. The replacement trees shall be planted on site to the extent feasible and the project proponent shall comply with all other replacement requirements imposed by the City. Prior to tree removal, the project applicant shall apply for a tree removal permit, which will be reviewed by the City's Development Services Director or Director's designee.

Finding: An ordinance-sized/significant tree is considered to be a tree with a single stem or trunk of a circumference of 40 inches (or diameter of 12.7 inches) or more for nonindigenous species and a circumference of 18 inches (or diameter of 5.7 inches) or more for indigenous species measured at four and one-half feet vertically above the ground. The project site contains four ordinance-sized trees as defined by the City of Morgan Hill Municipal Code Section 12.32.030. This includes one Monterey pine, one Peruvian pepper tree, and two Ponderosa pines. Mitigation measure MM BIO-5.1 requires any trees proposed for removal to be replaced at a two-to-one ratio on a comparable ratio of size and the project applicant to apply for a tree removal permit, which will be reviewed by the City's Development Services Director or Director's designee. Implementation of mitigation measure MM BIO-5 would ensure that potential impacts to trees would be less than significant.

3. **Cultural Resources Impact CUL-2:** The project could result in a substantial adverse change in the significance of an archaeological resource without mitigation. With the implementation of mitigation measures MM CUL-2.1 and MM CUL-2.2, this impact would be reduced to less than significant.

MM CUL-2.1: A moderate potential exists for unrecorded historic period archaeological resources to be within the project area. The developer shall enter into written contracts with an archaeologist and the Tamien Nation Tribe, and pay all fees associated with the activities required by this Mitigation Measure. The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply:

(a) Prior to the start of grading or earthmoving activity (includes demolition and moving of heavy equipment on site) on the "first day of construction," the archaeologist and Tribal Monitor shall hold a pre-construction meeting for the purposes of "cultural sensitivity training" with the general contractor or subcontractors.

(b) A Tamien Nation Tribal Monitor shall be present on-site to monitor all ground-disturbing activities and an archaeologist shall be on-call. Where historical or archaeological artifacts are found, work in areas where remains or artifacts are found will be restricted or stopped until proper protocols are met, as described below:

1. Work at the location of the find shall halt immediately within fifty feet of the find. If an archaeologist is not present at the time of the discovery, the applicant shall contact an archaeologist for evaluation of the find to determine whether it qualifies as a unique archaeological resource as defined by this chapter.
2. If the find is determined not to be a Unique Archaeological Resource, construction can continue. The archaeologist shall prepare a brief informal memo/letter in collaboration with a tribal representative that describes and assesses the

significance of the resource, including a discussion of the methods used to determine significance for the find.

3. If the find appears significant and to qualify as a unique archaeological resource, the archaeologist shall determine if the resource can be avoided and shall detail avoidance procedures in a formal memo/letter.
4. If the resource cannot be avoided, the archaeologist in collaboration with a tribal representative shall develop within forty-eight hours an action plan to avoid or minimize impacts. The field crew shall not proceed until the action plan is approved by the Development Services Director or Director's designee. The action plan shall be in conformance with California Public Resources Code 21083.2. An archaeologist shall be on-call during ground disturbing activities. Where historical or archaeological artifacts are found, work in areas where remains or artifacts are found will be restricted or stopped until proper protocols are met, as described below.

(c) The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply. If human remains are discovered, it is probable they are the remains of Native Americans,

1. If human remains are encountered, they shall be treated with dignity and respect as due to them. Discovery of Native American remains is a very sensitive issue and serious concern. Information about such a discovery shall be held in confidence by all project personnel on a need-to-know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs and around artifacts shall be upheld.
2. Remains should not be held by human hands. Surgical gloves should be worn if remains need to be handled.
3. Surgical mask should also be worn to prevent exposure to pathogens that may be associated with the remains.

(d) In the event that known or suspected Native American remains are encountered, or significant historic or archaeological materials are discovered, ground-disturbing activities shall be immediately stopped. Examples of significant historic or archaeological materials include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, ground stone mortars and pestles), culturally altered ash stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials and historic structure remains such as stone lined building foundations,

wells or privy pits. Ground-disturbing project activities may continue in other areas that are outside the exclusion zone as defined below.

(e) An "exclusion zone" where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer zone by the contractor foreman or authorized representative, or party who made the discovery and initiated these protocols, or if on-site at the time of discovery, by the monitoring archaeologist and tribal representative (typically twenty-five to fifty feet for single burial or archaeological find).

(f) The discovery locale shall be secured (e.g., 24-hour surveillance) as directed by the City or County Coroner if considered prudent to avoid further disturbances.

(g) The contractor foreman or authorized representative, or party who made the discovery and initiated these protocols shall be responsible for immediately contacting by telephone the parties listed below to report the find and initiate the consultation process for treatment and disposition:

- The City of Morgan Hill Development Services Director (408) 779-7247
- The Contractor's Point(s) of Contact
- The Coroner of the County of Santa Clara (if human remains found) (408) 793-1900
- The Native American Heritage Commission (NAHC) in Sacramento (916) 653-4082
- The Amah Mutsun Tribal Band (916) 481-5785 (H) or (916) 743-5833 (C)
- The Tamien Nation (707)295-4011 (office) and (925)336-5359 (THPO)

(h) The Coroner has two working days to examine the remains after being notified of the discovery. If the remains are Native American the Coroner has 24 hours to notify the NAHC.

(i) The NAHC is responsible for identifying and immediately notifying the Most Likely Descendant (MLD). (Note: NAHC policy holds that the Native American Monitor will not be designated the MLD.)

(j) Within 24 hours of their notification by the NAHC, the MLD will be granted permission to inspect the discovery site if they so choose.

(k) Within 24 hours of their notification by the NAHC, the MLD may recommend to the City's Development Services Director or Director's designee, the recommended means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal and non-destructive or destructive analysis of human remains and items associated with Native American burials. Only those osteological analyses or DNA analyses recommended by the appropriate tribe may be considered and carried out.

(l) If the MLD recommendation is rejected by the City of Morgan Hill the parties will attempt to mediate the disagreement with the NAHC. If mediation fails, then the remains and all associated grave offerings shall be reburied with appropriate dignity on the property in a location not subject to further subsurface disturbance.

MM CUL-2.2: The project applicant shall note on any plans that require ground disturbing excavation that there is a potential for exposing buried cultural resources including prehistoric Native American burials. Any archaeological site information supplied to the Contractor Foreman or authorized representative shall be considered confidential. Information on the project plans shall be verified by the Development Services Director or Director's designee prior to issuance of a grading permit or any building permit.

Finding: Based on the City's archaeological sensitivity map and a records search in the California Historical Resource Information System (CHRIS) database, reviewed archival literature, and completed a field inspection (in May 2019) to determine the potential presence of historic-era archaeological resources, the project site is considered to have low to moderate sensitivity for prehistoric and historic archaeological resources. While the project site is not known to contain an archaeological site or buried deposits, construction operations could result in the inadvertent exposure of buried prehistoric or historic archaeological materials that could be eligible for inclusion on the California Register and/or meet the definition of a unique archaeological resource as defined in Section 21083.2 of the Public Resources Code. No surface indications of prehistoric or significant historic cultural materials or culturally modified soils were observed during the survey completed for the proposed project. Mitigation measure MM CUL-2.1 and MM CUL-2.2 require a tribal monitor to be present on-site to monitor all ground-disturbing activities, and where historical or archaeological artifacts are found, work in areas where remains or artifacts are found to be restricted. Implementation of mitigation measures MM CUL-2.1 and MM CUL-2.2 would reduce this impact to less than significant.

4. **Cultural Resources Impact CUL-3:** The project could result in a significant impact to human remains without mitigation. With the implementation of mitigation measure MM CUL-2.1 and MM CUL-2.2 described above, this impact would be reduced to less than significant.

MM CUL-2.1 and MM CUL-2.2: See mitigation measures MM-2.1 and MM CUL-2.2 listed above.

Finding: As stated above, no surface indications of prehistoric or significant historic cultural resources or culturally modified soils were observed during the survey completed for the proposed project. Although it is not expected, human remains could be discovered during construction of the project. Implementation of mitigation measures MM CUL-2.1 and MM CUL-2.2 would reduce the impact to human remains to less than significant.

5. **Greenhouse Gas Emissions Impact GHG-1:** The project would generate GHG emissions that may have a significant impact on the environment. With the implementation of mitigation measures MM GHG-1.1 through MM GHG-1.3, this impact would be reduced to less than significant.

MM GHG-1.1: The project applicant shall develop a GHG reduction plan to reduce GHG emissions in the build-out year by 206 MT/year prior to issuance of a grading permit and to the satisfaction of the City's Development Services Director or Director's designee. These reductions shall be kept in place by the project until the City adopts a qualified GHG reduction plan (consistent with CEQA Guidelines Section 15183.5) that contains goals and associated strategy to decrease emissions in a manner consistent with meeting the State's interim 2030 GHG emissions reduction target of 40 percent below 1990 levels.

MM GHG-1.2: A combination of the GHG reduction elements listed below would reduce project GHG impacts. The project applicant shall implement some or all of the following elements to further reduce GHG emission from operation of the project and the service population efficiency metric such that the metric would be below the significance threshold. The GHG reduction elements to be included within the project shall be verified prior to the issuance of a building permit and shall be to the satisfaction of the City's Development Services Director or Director's designee.

- Prior to issuance of any building permits, the project applicant shall submit a Transportation Demand Management (TDM) Plan, which would include measures to reduce vehicle miles traveled (VMT) and GHG emissions, to the City's Development Services Director or Director's designee.
- The TDM Plan shall be implemented by the Homeowners Association (HOA) once the proposed residences are occupied.
- The project applicant shall install solar power systems or other renewable electric generating systems that provide electricity to power on-site equipment and possibly provide excess electric power;
- The project applicant shall provide infrastructure for electric vehicle charging for residential units (i.e., provide 220 VAC power); and,
- The project applicant shall increase water conservation above state average conditions for residential uses by installing low flow water utilities and irrigation.

MM GHG-1.3: The project applicant shall purchase verifiable carbon emission offsets through a verified registry for remaining amount of GHG reduction required, after exhausting on-site reduction options prior to issuance of a building permit. Offsets shall be determined by calculating the total estimated number of GHG emissions the project would create over a 30-year period, and purchasing verifiable offsets based on the calculated number of GHG emissions.

Finding: The existing greenhouse gas emissions (GHG) are primarily generated by vehicle travel to and from the site, emissions related to irrigation, and operation of agricultural equipment. There would also be long-term operational emissions associated with vehicular traffic within the project vicinity, energy, and water usage, and solid waste disposal. A Substantial Progress efficiency threshold of 2.8 MT CO₂e/service population/year threshold, which is a 40 percent reduction from the BAAQMD 2020 service population emissions target of 4.6 MT CO₂e /service population/year, is utilized in this EIR. An adjusted bright-line threshold of 660 MT CO₂e/year, which is 40 percent below BAAQMD 2020 bright-line threshold of 1,100 MT CO₂e, is also used. The efficiency and adjusted bright-line thresholds were calculated based on the GHG reduction goals of SB 32 and EO B-30-15 for 2030.

To be considered an exceedance, a project must exceed both the GHG significance threshold in metric tons per year and the service population significance threshold in the future year of 2030. The project would exceed the annual emissions bright-line threshold of 660 MT CO₂e/year and the service population threshold of 2.8 MT of CO₂e/year/service population in 2030. Therefore, the project would exceed the brightline and service population GHG emissions target for 2030, which would result in a significant GHG impact. Mitigation measures GHG-1.1 through MM GHG-1.3 require the project applicant to develop a GHG reduction plan to reduce GHG emissions in the build-out year by 206 MT/year and a Transportation Demand Management Plan; the project applicant will also be required to purchase verifiable carbon emission offsets for the remaining amount of GHG reduction required, after exhausting on-site reduction options prior to issuance of a building permit. Therefore, implementation of Mitigation measures GHG-1.1 through MM GHG-1.3 would reduce GHG impacts to less than significant.

6. **Hazards and Hazardous Materials Impact HAZ-2:** The project could create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. With the implementation of mitigation measures MM HAZ-2.1 through MM HAZ-2.7, this impact would be reduced to less than significant.

MM HAZ-2.1: Since lead-impacted soils are determined to be present in concentrations above established regulatory environmental screening levels, the project applicant shall enter into the Santa Clara County Department of Environmental Health's (SCCDEH) Voluntary Cleanup Program (VCP), or equivalent, to formalize regulatory oversight of the mitigation of contaminated soil to ensure the site is safe for construction workers and the public after development. The project applicant responsible for the contaminated area of the site shall remove contaminated soil to levels acceptable to the SCCDEH (or equivalent oversight agency) for residential exposure prior to issuance of any grading permits.

MM HAZ-2.2: A Removal Action Plan, Soil Mitigation Plan or other similarly titled report describing the remediation shall be prepared and implemented to document the removal and/or capping of contaminated soil. Prior to issuance of any grading permits, a copy of any

reports prepared shall be submitted to the Development Services Director or Director's designee. All work and reports produced shall be performed under the regulatory oversight and approval of the SCCDEH (or equivalent oversight agency).

MM HAZ-2.3: The project applicant shall prepare a Site Management Plan (SMP) prior to issuance of any grading permits to reduce or eliminate exposure risk to human health and the environment, specifically, potential risks associated with the presence of organochlorine pesticides and pesticide-based metals. The SMP shall include, but is not limited to, the following elements to mitigate potential risks associated with environmental conditions:

- Procedures for transporting and disposing the waste material generated during removal activities, if such transport and disposal is necessary;
- Procedures for stockpiling soil on-site if such stockpiling is necessary;
- Provisions for collecting soil samples to prior to grading activities;
- Provisions for confirmation soil sampling as appropriate to obtain a "No Further Action" letter (or equivalent) from the state and/or local agency assuming oversight for the site;
- Procedures to ensure that fill and cap materials are verified as clean truck routes;
- Staging and loading procedures and record keeping requirement.

The SMP shall reference the Storm Water Pollution Prevention Plan (SWPPP) required for the project in accordance with the Construction General Permit Order issued by the California State Water Resources Control Board. The SMP shall be submitted to the Santa Clara County Department of Environmental Health (SCCDEH), or equivalent regulatory agency, for review and approval. Copies of the approved SMP shall be provided to the City's Development Services Department prior to issuance of any grading permits.

MM HAZ-2.4: All contractors and subcontractors at the project site shall develop a health and safety plan (HSP) specific to their scope of work and based upon the known environmental conditions for the site. The HSP shall be implemented under the direction of a Site Safety and Health Officer. The HSP shall include, but not limited to, the following elements, as applicable:

- Provisions for personal protection and monitoring exposure to construction workers;
- Procedures to be undertaken in the event that contamination is identified above action levels or previously unknown contamination is discovered;
- Procedures for the safe storage, stockpiling, and disposal of contaminated soils;
- Provisions for the on-site management and/or treatment of contaminated groundwater during extraction or dewatering activities;
- Emergency procedures and responsible personnel.

The HSP shall be submitted to the Santa Clara County Department of Environmental Health (SCCDEH), or equivalent regulatory agency, for review and approval. Copies of the approved HSP shall be provided to the City's Development Services Department prior to issuance of any grading permits.

MM HAZ-2.5: Prior to issuance of any grading permits, the project applicant shall excavate lead-impacted soils identified at sample location SS-R-17B (near the single-family residence and barn structure) to a depth of at least 2.5 below the ground. The soil shall be properly disposed of in accordance with state and SCCDEH and California Code of Regulations, Title 8 waste disposal requirements. The SCCDEH (or equivalent oversight agency) may also approve leaving in-place some of the contaminated soil if the contaminated soil will be buried under hardscape and/or several feet of clean soil and not at risk of being encountered by future site users or nearby residents.

MM HAZ-2.6: Prior to issuance of a demolition permit for on-site structures, the project applicant shall consult with certified Asbestos and/or Lead Risk Assessors to complete and submit for review to the Building Department an asbestos and lead survey. If asbestos-containing materials or lead-containing materials are not discovered during the survey, further mitigation related to asbestos-containing materials or lead-containing materials shall not be required. If asbestos containing materials and/or lead-containing materials are discovered by the survey, the project applicant shall prepare a work plan to demonstrate how the on-site asbestos-containing materials and/or lead-containing materials shall be removed in accordance with current California Occupational Health and Safety (Cal-OSHA) Administration regulations and disposed of in accordance with all CalEPA regulations, prior to the demolition and/or removal of the on-site structures. The plan shall include the requirement that work shall be conducted by a Cal-OSHA registered asbestos and lead abatement contractor in accordance with Title 8 CCR 1529 and Title 8 CCR 1532.1 regarding asbestos and lead training, engineering controls, and certifications. The applicant shall submit the work plan to the City for review and approval. The City has the right to defer the work plan to the Santa Clara County Department of Environmental Health for additional review. The following measures shall be included in the work plan:

- During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
- All potentially friable asbestos containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos

- exposure.
- A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
 - Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
 - Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.
 - Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.
 - During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
 - Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.

MM HAZ-2.7: Prior to issuance of a grading permit, the project applicant shall research well records from Valley Water and attempt to locate abandoned wells at the site. The project applicant or contractor shall contact Valley Water's Wells Hotline immediately to assist in the identification of abandoned/unregistered wells or structures and help determine the appropriate means of addressing them. If the wells are identified, or subsequently encountered during earthwork activities, the wells shall be properly destroyed in accordance with Valley Water Ordinance 90-1. If septic systems are encountered during earthwork activities, those systems shall be abandoned in accordance with SCCDEH requirements.

Finding: The project site was used for agricultural purposes until 2019. Sampling at the site was completed to determine if shallow soils had been impacted by organochlorine pesticides, arsenic, and lead in September 2018. The results showed organochlorine pesticides such as chlordane, p,p-DDD, p,p-DDE, and p,p-DDT, were detected below the regulatory environmental screening levels (ESLs). Arsenic was detected at concentrations below background levels. Therefore, the presence of organochlorine pesticides and arsenic on-site is not a recognized environmental condition. Lead was detected in samples near the on-site residence and barn structure, therefore, in October 2018, additional sampling for lead was completed around the residence and ancillary barn structure. Since the lead-impacted soil remains on-site, this is considered a recognized environmental condition. Impacted soils could be released into the environment during project construction and could expose construction workers and nearby land uses, resulting in a significant impact.

In addition, the on-site residence and associated barn structure were constructed prior to 1978 and could contain lead-based paint and asbestos-containing materials. Demolition of the existing buildings on site could expose construction workers and nearby residents to asbestos or lead. One water well and septic system were located on-site during a site reconnaissance in 2018. The water supply well and septic systems on the site will be abandoned. Improper abandonment of the well and septic system could lead to a recognized environmental condition by potentially exposing construction workers, neighboring uses, and the environment to hazardous materials.

Mitigation measures MM HAZ-2.1 through MM HAZ-2.5 require the project applicant shall enter into the Santa Clara County Department of Environmental Health's (SCCDEH) Voluntary Cleanup Program (VCP), or equivalent, to formalize regulatory oversight of the mitigation of contaminated soil, complete a Removal Action Plan, Soil Mitigation Plan, or other similarly titled report, complete a Site Management Plan and Health and Safety Plan, and excavate lead-impacted soils near the on-site residence and barn structure. Mitigation measure MM HAZ-2.6 requires removal asbestos-containing materials and/or lead-containing materials to be in accordance with current California Occupational Health and Safety (Cal-OSHA) Administration regulations and disposal of these materials in accordance with all CalEPA regulations. Mitigation measure HAZ-2.7 requires wells on-site to be abandoned in accordance with Valley Water and the Santa Clara County Department of Environmental Health requirements. Implementation of MM HAZ-2.1 through MM HAZ-2.7 would reduce the project's hazardous materials impacts to less than significant.

E. MITIGATION MONITORING AND REPORTING PROGRAM

When making findings, the lead agency must adopt a reporting or monitoring program for the mitigation measures it has adopted or made a condition of project approval to mitigate or avoid significant effects on the environment. The City hereby adopts the MMRP for the project, included as Attachment A to these findings. The mitigation measures identified in the Final EIR and adopted and incorporated into the project will be monitored pursuant to this program.

F. ALTERNATIVES

Pursuant to CEQA Guidelines Section 15126.6, the EIR examined a range of reasonable alternatives to the proposed project that would attain most of the basic project objectives but would avoid or substantially lessen the significant adverse impacts. The City has reviewed the impacts associated with each alternative as compared with the proposed project, and has also considered each alternative's feasibility, considering a range of economic, environmental, social, and legal factors. Overall, the City concludes that the No Project Alternative would be the environmentally superior alternative. However, pursuant to CEQA Guidelines Section 15126.6(e)(2), if the No Project Alternative/No Development Alternative is determined to be environmentally superior, the EIR shall also identify an environmentally superior alternative among the other alternatives. The alternatives considered by the City are summarized as follows.

No Project Alternative/No Development Alternative: Under the No Project Alternative, existing site conditions would be maintained and returned to active agricultural uses, and thereby avoid all of the project's environmental impacts, including the significant unavoidable impacts related to agriculture (conversion of Prime Farmland) and residential VMT. Project impacts that would be less than significant with mitigation measures, including biological resources, cultural resources, greenhouse gas emissions, and hazardous materials impacts, would also be avoided under the No Project Alternative. The No Project Alternative is an environmentally superior alternative to the proposed project. Because the No Project Alternative would not result in any new development on the site, this alternative would avoid all environmental impacts of the project. This alternative would not, however, meet any of the applicant's project objectives and it would not implement the site's General Plan land use designation, which is Residential Attached Low (six to 16 du/ac). Therefore, this alternative is rejected.

No Project – Existing General Plan/Zoning Development Alternative: The General Plan EIR assumes that the project site will be developed in conformance with the existing General Plan designation of Residential Attached Low (six to 16 du/ac), with approximately 345 residential units, based on the site acreage. The project proposes to construct a total of 269 residential units (149 condominiums, 64 duet units, and 56 single-family attached units) consistent with the site's existing General Plan Land Use Designation and zoning district of Residential Attached Low Density. When compared to the proposed project, the No Project/Existing Plan Alternative would potentially result in more residential development on the site, and result in 718 more daily trips, 56 more AM peak hour trips, and 76 more PM peak hour trips. Given the increase vehicle traffic, the No Project/Existing Plan alternative would slightly increase roadway traffic noise. This alternative would also increase the number of residents by approximately 236 compared to the proposed project. As a result, this alternative has greater impacts on water, sanitary sewer, and solid waste facilities. The No Project/Existing General Plan/Zoning Alternative would result in the same significant and unavoidable VMT as the proposed project given VMT impacts are assessed using a per capita threshold. The No Project - Existing General Plan/Zoning Alternative could achieve all of the project objectives including providing market-rate and below-market rate housing, implementing improvements to provide private vehicular and pedestrian circulation, and increase passive and active open space throughout the project site. However, this alternative would not be the environmentally superior alternative given it would increase the severity of most operational impacts and would avoid none of the project's significant impacts. Therefore, this alternative is rejected.

Reduced Footprint: Agricultural Preservation Alternative: The purpose of the Reduced Footprint Agricultural Preservation alternative is to reduce the identified impacts to agricultural resources. The site consists of approximately 16 acres of Prime Farmland (western portion of the site) and 17 acres of Grazing Land (eastern portion of the site). Reducing the footprint of the site so that the residential development is only on the eastern portion of the site (Grazing Land) and retaining the western 16 acres of Prime Farmland for agriculture would avoid the significant impact to Prime Farmland. The project's footprint would be reduced by approximately 50

percent and the number of residences would be reduced to approximately 135 units.

This alternative would avoid significant impacts to Prime Farmland. The proposed project would result in a significant and unavoidable VMT impact with and without mitigation, given VMT impacts are assessed using a per capita threshold (27.41 VMT per capita without mitigation, 27.37 VMT per capita with mitigation that includes issuance of transit passes to project owners, and 24.37 VMT per capita regardless of the extent of VMT reduction measures implemented, while the threshold is 20.94). Given the significant and unavoidable VMT impact is based on the location of the site (e.g., lack of jobs and transit in the City), this alternative would also result in a significant unavoidable VMT impact, as the units developed on the portion of the site mapped as less important Grazing Land would still have high VMT per capita due to the site location. Reducing the project footprint and number of units by half would not affect the per capita GHG emissions, which would continue to require mitigation to be reduced below the applicable threshold. Given the alternative would reduce the number of residents by half, the water and wastewater, and solid waste demands would be lower than the proposed project's demands by approximately half as well. This alternative would result in reduced operational criteria pollutant emissions due to less trips generated from the site. Given the smaller project may result in a shorter construction period, construction noise impacts to nearby residents would be reduced, however, the construction noise mitigation measures would still be required. The Reduced Footprint Agricultural Preservation Alternative would avoid the significant and unavoidable impact to agricultural resources but would not avoid the significant and unavoidable VMT impact. This alternative could meet most of the project objectives, however, by only achieving half of the proposed housing units, this alternative would not achieve the project objective of providing market-rate and below-market rate (BMR) housing, as envisioned in the City of Morgan Hill General Plan, to the same degree as the project. Therefore, this alternative is rejected.

G. RECIRCULATION NOT REQUIRED

No new or substantial changes to the EIR were proposed as a result of the public comment process. The Final EIR responds to comments and makes only minor technical changes, clarifications or additions to the EIR. The minor changes, clarifications, and additions to the EIR do not identify any new significant impacts or substantial increase in the severity of any environmental impacts. Therefore, recirculation of the EIR is not required.

H. RECORD OF PROCEEDINGS

Various documents and other materials constitute the record of proceedings upon which the City base their findings and decisions contained herein. Documents related to this proposed project are located in the City of Morgan Hill Development Services, 17575 Peak Avenue, Morgan Hill, California 95037.

I. STATEMENT OF OVERRIDING CONSIDERATIONS

CEQA requires the decision-making agency to balance the benefits of a project against its significant and unavoidable impacts when determining whether to approve a project. If the benefits of the project outweigh its unavoidable adverse environmental effects, those effects may be considered acceptable (CEQA Guidelines Section 15093(a)). CEQA requires the agency to state in writing the specific reasons for considering a project acceptable when significant impacts are not avoided or substantially lessened. Those reasons must be based on substantial evidence in the Final EIR or elsewhere in the administrative record (CEQA Guidelines Section 15093(b)). The proposed project would result in significant and unavoidable impacts related to agricultural and forestry resources, even after incorporation of mitigation measures MM AG-1.1 and MM AG1.2, which require a minimum of one acre of agricultural land (1:1 mitigation ratio) to be preserved for each acre of agricultural land changed to a non-agricultural use and acquisition and/or dedication of agricultural conservation easements over approved agricultural mitigation land, or payment to the City of the agricultural preservation in-lieu fee, and VMT, even after incorporation of Mitigation Measure MM TRN-2.1, which requires a financial contribution to the City's on-site demand rideshare service or issuance of transit passes to residents.

The City adopts and makes this Statement of Overriding Considerations regarding the significant unavoidable impacts of the project and the anticipated benefits of the project. The City finds that the project's benefits of providing housing, including BMR units, outweighs the project's significant unavoidable environmental effects.

On balance, the City finds that there are specific considerations associated with the project that serve to override and outweigh the project's significant unavoidable effects. Therefore, pursuant to CEQA Guidelines Section 15093(b), these adverse effects are considered acceptable.

J. SUBSTANTIAL EVIDENCE SUPPORTING FINDINGS

Substantial evidence supporting each and every finding made herein is contained in the Final EIR and record of proceedings. Omission of reference in these findings to any evidence in the EIR and/or record of proceedings is not intended to exclude that evidence as supporting these findings.

In making these findings, the City Council has relied upon the expertise of a variety of independent technical and professional consultants to the City, and the expertise of the City's Staff. The City Council has also carefully considered the evidence submitted by property owners and other interested agencies and individuals. To the extent that evidence consists of expert opinions that differ from the opinions of the City's outside consultants and Staff, at most it represents a disagreement of experts, which is adequately reviewed in the EIR. Based on its review, the City Council has determined that the opinions of its outside consultants and Staff are valid and are hereby accepted. In some instances, the City Council has also relied on the expertise of other agencies who have provided comments on the Draft EIR and other actions related to the Project. To the extent that alternatives or mitigation measures were

proposed by other agencies or interested persons that differ from the mitigation adopted herein, the City Council specifically rejects these proposals based on the substantial evidence in the record supporting the mitigation adopted as sufficient and necessary to mitigate impacts to a less than significant level or to the level that the impacts can feasibly be mitigated.

ATTACHMENT "A"

MITIGATION MONITORING AND REPORTING PROGRAM

Crosswinds Residential Project

File Numbers: EA2020-0007, SD2020-0003, and
SR2020-0010: Half – Dividend (Crosswinds)

May 3, 2023



PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program (MMRP) whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Environmental Impact Report (EIR) prepared for the Crosswinds Residential Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This MMRP addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the EIR concluded that the impacts from implementation of the project would be less than significant.

I, _____, the applicant, on the behalf of _____, hereby agree to fully implement the Mitigation Measures described below which have been developed in conjunction with the preparation of an EIR for my proposed project. I understand that these mitigation measures or substantially similar measures will be adopted as conditions of approval with my development permit request to avoid or significantly reduce potential environmental impacts to a less than significant level, where feasible.

Project Applicant's Signature _____

Date _____



Crosswinds Residential Project
File Nos. EA2020-0007, SD2020-0003, and
SR2020-0010: Half – Dividend (Crosswinds)

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
AGRICULTURAL RESOURCES			
Impact AG-1: The project would convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use. (Significant and Unavoidable Impact with Mitigation Incorporated)			
MM AG-1.1: A minimum of one acre of agricultural land (1:1 mitigation ratio) shall be preserved for each acre of agricultural land changed to a non-agricultural use. The required acreage of area to be protected through an agricultural conservation easement or agricultural preservation in-lieu fee will depend on the measurement of affected area. The 16 acres of Prime Farmland will be used for calculating the required mitigation.	To be implemented by the project applicant prior to issuance of any grading and/or building permit.	All measures will be required as part of the development permit. All measures will be printed on all construction documents, contracts, and project plans prior to issuance of any grading and/or building permits.	Director of Development Services Department.
MM AG-1.2: Conversion of agricultural land shall require off-setting acquisition and/or	To be implemented by the project applicant prior to	All measures will be required as part of the	Director of Development Services Department.

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
dedication of agricultural conservation easements over approved agricultural mitigation land, or payment to the City of the agricultural preservation in-lieu fee, to support agricultural preservation activities. Developer acquisition/dedication of easements shall require the project to pay an agricultural lands preservation program stewardship fee to cover administrative costs and ongoing management and monitoring of the easements. Agricultural mitigation fees shall be required prior to the acceptance of a final parcel or subdivision map, or prior to issuance of building or grading permits. Easement dedication is required prior to issuance of building permits.	issuance of any grading and/or building permit.	development permit. All measures will be printed on all construction documents, contracts, and project plans prior to issuance of any grading and/or building permits.	
BIOLOGICAL RESOURCES			
Impact BIO-1: The project would not have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS. (Less than Significant Impact with Mitigation Incorporated)			
MM BIO-1.1: Construction shall be scheduled to avoid the nesting season. If construction can be scheduled to occur between September 1st and January 31st (inclusive) to avoid the raptor nesting season, no impacts will be expected. If	To be implemented by qualified biologist prior to issuance of any grading and/or building permit.	All measures will be required as part of the development permit. All measures will be printed on all construction documents, contracts, and project plans	Director of Development Services Department.

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
construction will take place between February 1st and August 31st, then pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. Performance of the required surveys for construction occurring between February 1st and August 31st will ensure that impacts to nesting raptors are reduced to less than significant. Surveys will be completed within 30 days of the on-set of site clearing or construction activities. During this survey, the ornithologist will inspect all trees and other potential nesting habitats (e.g., trees, shrubs, buildings) onsite trees as well as all trees within 250 feet of the site for nests. The pre-construction survey shall be submitted to the City's Development Services Director or the Director's designee for review prior to tree removals or issuance of a grading permit.		prior to issuance of any grading and/or building permits.	
MM BIO-1.2: If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist will determine the extent of a disturbance-free buffer zone to be	To be implemented by qualified biologist prior to issuance of any grading and/or building permit.	All measures will be required as part of the development permit. All measures will be printed on all construction documents,	Director of Development Services Department.

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
established around the nest (typically 250 feet for raptors and 50-100 feet for other species) that will remain off limits to construction until the nesting season is over, to ensure that no nests of species protected by the Migratory Bird Treaty Act and California Fish and Wildlife Code will be disturbed during project implementation. A report indicating the result of the survey and any designated buffer zones shall be submitted to the satisfaction of the City's Development Services Director or Director's designee prior to issuance of a grading permit.		contracts, and project plans prior to issuance of any grading and/or building permits.	
Impact BIO-5: The project would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance. (Less than Significant Impact with Mitigation Incorporated)			
MM BIO-5.1: The project applicant shall comply with local ordinances and submit permit applications for removal, trimming, damage, or relocation of all trees covered by the City ordinance. Any trees to be removed shall require replacement at a two-to-one ratio on a comparable ratio of size. The replacement trees shall be planted on site to the extent feasible and the project proponent shall comply with all other replacement requirements imposed by the City. Prior to tree removal, the project applicant shall	To be implemented by the project applicant prior to issuance of any grading and/or building permit.	All measures will be required as part of the development permit. All measures will be printed on all construction documents, contracts, and project plans prior to issuance of any grading and/or building permits.	Director of the Development Services Department.

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
apply for a tree removal permit, which will be reviewed by the City's Development Services Director or Director's designee.			
CULTURAL RESOURCES			
Impact CUL-2: Demolition and construction activities on the project site could unearth sensitive archaeological resources. (Less than Significant Impact with Mitigation Incorporated)			
MM CUL-2.1: A moderate potential exists for unrecorded historic-period archaeological resources to be within the project area. The developer shall enter into written contracts with an archaeologist and the Tamien Nation Tribe, and pay all fees associated with the activities required by this Mitigation Measure. The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply: (a) Prior to the start of grading or earthmoving activity (includes demolition and moving of heavy equipment on site) on the "first day of construction," the archaeologist and Tribal Monitor shall hold a pre-construction meeting for the purposes of	To be implemented by a qualified archaeologist during project demolition, grading, and construction activities.	All measures will be required as part of the development permit. All measures will be printed on all construction documents, contracts, and project plans prior to issuance of any grading and/or building permits.	Director of Development Services Department.

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
“cultural sensitivity training” with the general contractor or subcontractors. (b) A Tamien Nation Tribal Monitor shall be present on-site to monitor all ground-disturbing activities and an archaeologist shall be on-call. Where historical or archaeological artifacts are found, work in areas where remains or artifacts are found will be restricted or stopped until proper protocols are met, as described below: 1. Work at the location of the find shall halt immediately within 50 feet of the find. If an archaeologist is not present at the time of the discovery, the applicant shall contact an archaeologist for evaluation of the find to determine whether it qualifies as a unique archaeological resource as defined by this chapter. 2. If the find is determined not to be a Unique Archaeological resource, construction can continue. The archaeologist shall prepare a brief informal memo/letter in collaboration with a tribal representative that describes and assesses the significance of the resource, including a			

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
discussion of the methods used to determine significance for the find. 3. If the find appears significant and to qualify as a unique archaeological resource, the archaeologist shall determine if the resource can be avoided and shall detail avoidance procedures in a formal memo/letter. 4. If the resource cannot be avoided, the archaeologist in collaboration with a tribal representative shall develop within forty-eight hours an action plan to avoid or minimize impacts. The field crew shall not proceed until the action plan is approved by the City' Development Services Director or Director's designee. The action plan shall be in conformance with California Public Resources Code 21083.2. An archaeologist shall be on-call during ground disturbing activities. Where historical or archaeological artifacts are found, work in areas where remains or artifacts are found will be restricted or stopped until proper protocols are met, as described below.			

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
(c) The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply. If human remains are discovered, it is probable they are the remains of Native Americans. 1. If human remains are encountered, they shall be treated with dignity and respect as due to them. Discovery of Native American remains is a very sensitive issue and serious concern. Information about such a discovery shall be held in confidence by all project personnel on a need-to-know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs, and around artifacts shall be upheld. 2. Remains should not be held by human hands. Surgical gloves should be worn if remains need to be handled. 3. Surgical masks should also be worn to prevent exposure to pathogens that may be associated with the remains.			

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
(d) In the event that known or suspected Native American remains are encountered, or significant historic or archaeological materials are discovered, ground-disturbing activities shall be immediately stopped. Examples of significant historic or archaeological materials include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, ground stone mortars and pestles), culturally altered ash stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials and historic structure remains such as stone lined building foundations, wells, or privy pits. Ground-disturbing project activities may continue in other areas that are outside the exclusion zone as defined below. (e) An “exclusion zone” where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer			

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
zone by the contractor foreman or authorized representative, or party who made the discovery and initiated these protocols, or if on-site at the time of discovery, by the monitoring archaeologist and tribal representative (typically 25 to 50 feet for single burial or archaeological finds). (f) The discovery locale shall be secured (e.g., 24-hour surveillance) as directed by the City or County Coroner if considered prudent to avoid further disturbances. (g) The contractor foreman or authorized representative, or party who made the discovery and initiated these protocols shall be responsible for immediately contacting by telephone the parties listed below to report the find and initiate the consultation process for treatment and disposition: • The City of Morgan Hill Development Services Director (408) 779-7247 • The Contractor's Point(s) of Contact • The Coroner of the County of Santa Clara (if human remains found) (408) 793-1900 • The Native American Heritage Commission (NAHC) in Sacramento (916) 653-4082			

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
• The Amah Mutsun Tribal Band (916) 481-5785 (H) or (916) 743-5833 (C) • The Tamien Nation (707) 295-4011 (office) and (925) 336-5359 (THPO) (h) The Coroner has two working days to examine the remains after being notified of the discovery. If the remains are Native American, the Coroner has 24 hours to notify the NAHC. (i) The NAHC is responsible for identifying and immediately notifying the Most Likely Descendant (MLD). (Note: NAHC policy holds that the Native American Monitor will not be designated as the MLD). (j) Within 24 hours of their notification by the NAHC, the MLD will be granted permission to inspect the discovery site if they so choose. (k) Within 24 hours of their notification by the NAHC, the MLD may recommend to the City's Development Services Director or			

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
Director's designee, the recommended means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal and non-destructive or destructive analysis of human remains and items associated with Native American burials. Only those osteological analyses or DNA analyses recommended by the appropriate tribe may be considered and carried out. (l) If the MLD recommendation is rejected by the City of Morgan Hill, the parties will attempt to mediate the disagreement with the NAHC. If mediation fails, then the remains and all associated grave offerings shall be reburied with appropriate dignity on the property in a location not subject to further subsurface disturbance.			
MM CUL-2.2: The project applicant shall note on any plans that require ground disturbing excavation that there is a potential for exposing buried cultural resources including prehistoric Native American burials. Any archaeological site information supplied to the Contractor Foreman or authorized representative shall be considered confidential. Information on the	To be implemented by the project applicant prior to issuance of any grading and/or building permit.	All measures will be required as part of the development permit. All measures will be printed on all construction documents, contracts, and project plans prior to issuance of any	Director of Development Services Department.

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
project plans shall be verified by the City's Development Services Director or Director's designee prior to issuance of a grading permit or any building permit.		grading and/or building permits.	
GREENHOUSE GAS EMISSIONS			
Impact GHG-1: The project would generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment. (Less than Significant Impact with Mitigation Incorporated)			
MM GHG-1.1: The project applicant shall develop a GHG reduction plan to reduce GHG emissions in the build-out year by 206 MT/year prior to issuance of a grading permit and to the satisfaction of the City's Development Services Director or Director's designee. These reductions shall be kept in place by the project until the City adopts a qualified GHG reduction plan (consistent with CEQA Guidelines Section 15183.5) that contains goals and associated strategy to decrease emissions in a manner consistent with meeting the State's interim 2030 GHG emissions reduction target of 40 percent below 1990 levels.	To be implemented by the project applicant prior to issuance of any grading and/or building permit.	All measures will be required as part of the development permit. All measures will be printed on all construction documents, contracts, and project plans prior to issuance of any grading and/or building permits.	Director of Development Services Department.

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
MM GHG-1.2: A combination of the GHG reduction elements listed below would reduce project GHG impacts. The project applicant shall implement some or all of the following elements to further reduce GHG emission from operation of the project and the service population efficiency metric such that the metric would be below the significance threshold. The GHG reduction elements to be included within the project shall be verified prior to the issuance of a building permit and shall be to the satisfaction of the City's Development Services Director or Director's designee. • Prior to issuance of any building permits, the project applicant shall submit a Transportation Demand Management (TDM) Plan, which would include measures to reduce vehicle miles traveled (VMT) and GHG emissions, to the City's Development Services Director or Director's designee; • The TDM Plan shall be implemented by the Homeowners Association (HOA) once the proposed residences are occupied. • The project applicant shall install solar power systems or other renewable electric generating systems that provide electricity	To be implemented by the project applicant prior to issuance of any grading and/or building permit and prior to occupancy of the project.	All measures will be required as part of the development permit. All measures will be printed on all construction documents, contracts, and project plans prior to issuance of any grading and/or building permits.	Director of Development Services Department.

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
to power on-site equipment and possibly provide excess electric power; • The project applicant shall provide infrastructure for electric vehicle charging for residential units (i.e., provide 220 VAC power); and, • The project applicant shall increase water conservation above state average conditions for residential uses by installing low flow water utilities and irrigation.			
MM GHG-1.3: The project applicant shall purchase verifiable carbon emission offsets through a verified registry for remaining amount of GHG reduction required, after exhausting on-site reduction options prior to issuance of a building permit. Offsets shall be determined by calculating the total estimated number of GHG emissions the project would create over a 30-year period, and purchasing verifiable offsets based on the calculated number of GHG emissions.	To be implemented by the project applicant prior to issuance of any grading and/or building permit.	All measures will be required as part of the development permit. All measures will be printed on all construction documents, contracts, and project plans prior to issuance of any grading and/or building permits.	Director of Development Services Department.
HAZARDS AND HAZARDOUS MATERIALS			
Impact HAZ-2: The project would create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. (Less than Significant Impact with Mitigation Incorporated)			

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
MM HAZ-2.1: Since lead-impacted soils are determined to be present in concentrations above established regulatory environmental screening levels, the project applicant shall enter into the Santa Clara County Department of Environmental Health's (SCCDEH) Voluntary Cleanup Program (VCP), or equivalent, to formalize regulatory oversight of the mitigation of contaminated soil to ensure the site is safe for construction workers and the public after development. The project applicant responsible for the contaminated area of the site shall remove contaminated soil to levels acceptable to the SCCDEH (or equivalent oversight agency) for residential exposure prior to issuance of any grading permits.	To be implemented by the project applicant prior to issuance of any grading and/or building permit.	All measures will be required as part of the development permit. All measures will be printed on all construction documents, contracts, and project plans prior to issuance of grading permits.	Santa Clara County Department of Environmental Health and Director of the Development Services Department
MM HAZ-2.2: A Removal Action Plan, Soil Mitigation Plan or other similarly titled report describing the remediation shall be prepared and implemented to document the removal and /or capping of contaminated soil. Prior to issuance of any grading permits, a copy of any reports prepared shall be submitted to the Development Services Director or Director's designee. All work and reports produced shall be performed under the regulatory oversight and approval of the SCCDEH (or equivalent oversight agency).	To be implemented by the project applicant prior to issuance of any grading and/or building permit.	All measures will be required as part of the development permit. All measures will be printed on all construction documents, contracts, and project plans prior to issuance of grading permits.	Santa Clara County Department of Environmental Health and Director of the Development Services Department

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
MM HAZ-2.3: The project applicant shall prepare a Site Management Plan (SMP) prior to issuance of any grading permits to reduce or eliminate exposure risk to human health and the environment, specifically, potential risks associated with the presence of organochlorine pesticides and pesticide-based metals. The SMP shall include, but is not limited to, the following elements to mitigate potential risks associated with environmental conditions: • Procedures for transporting and disposing the waste material generated during removal activities, if such transport and disposal is necessary; • Procedures for stockpiling soil on-site if such stockpiling is necessary; • Provisions for collecting soil samples to prior to grading activities; • Provisions for confirmation soil sampling as appropriate to obtain a “No Further Action” letter (or equivalent) from the state and/or local agency assuming oversight for the site;	To be implemented by the project applicant prior to issuance of any grading and/or building permit.	All measures will be required as part of the development permit. All measures will be printed on all construction documents, contracts, and project plans prior to issuance of grading permits.	Santa Clara County Department of Environmental Health and Director of the Development Services Department

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
- Procedures to ensure that fill and cap materials are verified as clean truck routes; - Staging and loading procedures and record keeping requirements. The SMP shall reference the Storm Water Pollution Prevention Plan (SWPPP) required for the project in accordance with the Construction General Permit Order issued by the California State Water Resources Control Board. The SMP shall be submitted to the Santa Clara County Department of Environmental Health (SCCDEH), or equivalent regulatory agency, for review and approval. Copies of the approved SMP shall be provided to the City's Development Services Department prior to issuance of any grading permits.			
MM HAZ-2.4: All contractors and subcontractors at the project site shall develop a health and safety plan (HSP) specific to their scope of work and based upon the known environmental conditions for the site. Each Health and Safety plan shall be implemented under the direction of a Site Safety and Health Officer. The Health and Safety Plan shall include, but not limited to, the following elements, as applicable:	To be implemented by the project applicant prior to issuance of any grading and/or building permit.	All measures will be required as part of the development permit. All measures will be printed on all construction documents, contracts, and project plans prior to issuance of grading permits.	Santa Clara County Department of Environmental Health and Director of the Development Services Department

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
• Provisions for personal protection and monitoring exposure to construction workers; • Procedures to be undertaken in the event that contamination is identified above action levels or previously unknown contamination is discovered; • Procedures for the safe storage, stockpiling, and disposal of contaminated soils; • Provisions for the on-site management and/or treatment of contaminated groundwater during extraction or dewatering activities; • Emergency procedures and responsible personnel. The HSP shall be submitted to the Santa Clara County Department of Environmental Health (SCCDEH), or equivalent regulatory agency, for review and approval. Copies of the approved HSP shall be provided to the City's Development Services Department prior to issuance of any grading permits.			

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
MM HAZ-2.5: Prior to issuance of any grading permits, the project applicant shall excavate lead-impacted soils identified at sample location SS-R-17B (near the single-family residence and barn structure) to a depth of at least 2.5 below the ground. The soil shall be properly disposed of in accordance with state and SCCDEH and California Code of Regulations, Title 8 waste disposal requirements. The SCCDEH (or equivalent oversight agency) may also approve leaving in-place some of the contaminated soil if the contaminated soil will be buried under hardscape and/or several feet of clean soil and not at risk of being encountered by future site users or nearby residents.	To be implemented by the project applicant prior to issuance of any grading and/or building permit.	All measures will be required as part of the development permit. All measures will be printed on all construction documents, contracts, and project plans prior to issuance of grading permits.	Santa Clara County Department of Environmental Health and Director of the Development Services Department
MM HAZ-2.6: Prior to issuance of a demolition permit for on-site structures, the project applicant shall consult with certified Asbestos and/or Lead Risk Assessors to complete and submit for review to the Building Department an asbestos and lead survey. If asbestos-containing materials or lead-containing materials are not discovered during the survey, further mitigation related to asbestos-containing materials or lead-containing materials shall not be required. If asbestos containing materials and/or lead-	To be implemented by the project applicant prior to issuance of any grading and/or building permit.	All measures will be required as part of the development permit. All measures will be printed on all construction documents, contracts, and project plans prior to issuance of grading permits.	Santa Clara County Department of Environmental Health and Director of the Development Services Department

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
containing materials are discovered by the survey, the project applicant shall prepare a work plan to demonstrate how the on-site asbestos-containing materials and/or lead-containing materials shall be removed in accordance with current California Occupational Health and Safety (Cal-OSHA) Administration regulations and disposed of in accordance with all CalEPA regulations, prior to the demolition and/or removal of the on-site structures. The plan shall include the requirement that work shall be conducted by a Cal-OSHA registered asbestos and lead abatement contractor in accordance with Title 8 CCR 1529 and Title 8 CCR 1532.1 regarding asbestos and lead training, engineering controls, and certifications. The applicant shall submit the work plan to the City for review and approval. The City has the right to defer the work plan to the Santa Clara County Department of Environmental Health for additional review. The following measures shall be included in the work plan: • During demolition activities, all building materials containing lead-based paint shall be removed in accordance with			

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
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Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed. • All potentially friable asbestos containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure. • A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above. • Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-			

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
percent asbestos shall be completed in accordance with BAAQMD requirements and notifications. • Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers. • Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint. • During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control. • Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.			
MM HAZ-2.7: Prior to issuance of a grading permit, the project applicant shall research well records from Valley Water and attempt	To be implemented by the project applicant prior to	All measures will be required as part of the development permit. All	Santa Clara County Department of Environmental Health and Director of the

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
to locate abandoned wells at the site. The project applicant or contractor shall contact Valley Water's Wells Hotline immediately to assist in the identification of abandoned/unregistered wells or structures and help determine the appropriate means of addressing them. If the wells are identified, or subsequently encountered during earthwork activities, the wells shall be properly destroyed in accordance with Valley Water Ordinance 90-1. If septic systems are encountered during earthwork activities, those systems shall be abandoned in accordance with SCCDEH requirements.	issuance of any grading and/or building permit.	measures will be printed on all construction documents, contracts, and project plans prior to issuance of grading permits.	Development Services Department
TRANSPORTATION			
Impact TRN-2: The project would conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b). (Significant and Unavoidable Impact with Mitigation Incorporated)			
MM TRN-2.1: Prior to project occupancy, the project applicant shall develop and implement a Transportation Demand Management (TDM) plan which targets achieving a reduction in residential vehicle trips to and from the site. The TDM plan shall be prepared by a qualified traffic consultant and in coordination with the City of Morgan Hill Development Services Director or Designee. The TDM plan shall quantify the reduction in VMT. The TDM	To be implemented by the project applicant prior to issuance of occupancy and during project operation.	All measures will be required as part of the development permit. All measures will be printed on all construction documents, contracts, and project plans prior to issuance of building permits.	Director of the Development Services Department

MITIGATIONS	MONITORING AND REPORTING PROGRAM		
	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
shall require the project applicant to make a financial contribution to the City’s on-site demand rideshare service (MoGo), as a one-time or annual financial contribution based on City approval, or during project operations, the developer shall provide fully (100 percent) subsidized annual VTA transit passes for all project homeowners (a maximum of one transit subsidy per residential unit, which would result in up to 269 transit passes per year). This subsidized transit program shall be approved by the City of Morgan Hill’s Public Services Director or Director’s designee prior to issuance of occupancy.			

Source: City of Morgan Hill. *Crosswinds Residential Project Final EIR*. May 3, 2023.

RESOLUTION NO. 23-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A VESTING TENTATIVE MAP AND A DESIGN PERMIT FOR A RESIDENTIAL DEVELOPMENT, COMPRISED OF 269 UNITS, LOCATED AT THE SOUTHWEST INTERSECTION OF HALF ROAD AND MISSION VIEW DRIVE FOR THE CROSSWINDS AT MORGAN HILL (APNS 728-30-001, 728-30-002, 728-30-003, AND 728-30-004)

WHEREAS, on June 16, 2020, Dividend Homes submitted applications for a Vesting Tentative Map and Design Permit for a 269-unit residential development, comprised of 56 single-family court-yard style homes, 64 duets, and 149 townhome-style condominium units. (SD2020-003/SR2020-0010: Half-Dividend (Crosswinds)); and

WHEREAS, such requests were considered by the Planning Commission at its meeting of May 23, 2023 at which time the Planning Commission recommended approval of applications SD2020-003 and SR2020-0010: Half-Dividend (Crosswinds); and

WHEREAS, an Environmental Impact Report has been prepared for this project as part of the Vesting Tentative Map and Design Review Permit applications. Mitigation measures and a monitoring program will be adopted for those environmental impacts identified in the report; and

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

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

SECTION 1. The City Council has considered the full record before it, which may include but not limited to such things as the staff report, public testimony, and other materials and evidence submitted or provided. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. The Vesting Tentative Map, together with its provisions for its design and improvements, is consistent with the General Plan or specific plans adopted by the City.

The Vesting Tentative Map entitled “The Crosswinds at Morgan Hill” submitted by Ruggeri-Jensen-Azar (RJA) April 2023, attached as Exhibit A has been designed consistent with the City’s General Plan, considering neighborhood circulation patterns, and providing future connections.

SECTION 3. The project is consistent with the Zoning Ordinance, and General Plan.

The project site is located in the Residential Attached Low (RAL) Zoning District. The project, as proposed, is consistent with the General Plan and meets the base zoning standards.

SECTION 4. The project is subject to the SB 330 permit streamlining process and has been designed consistent with the City's Design Review Criteria and the City's December 2019 Residential Development Design and Development Standards.

The proposed project substantially complies with all applicable design standards and guidelines contained in the Design Review Handbook and the City's Residential Development Design and Development Standards.

SECTION 5. The proposed project development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.

The development site is not located adjacent to any wildlands that could expose people or structures to wildfire risks. The project site is not located within an earthquake fault zone. In addition, the project will comply with stormwater and building code requirements. The project will not be detrimental to the public health, safety, or welfare, and will not be materially injurious to the properties or improvements in the vicinity.

SECTION 6. The proposed project complies with all Design Review criteria in subsection H. of Section 18.108.040 of the municipal code.

The project as proposed complies with all criteria in subsection H of Section 18.108.040 (Design Review Criteria) of the Morgan Hill Municipal Code as demonstrated in the staff report.

SECTION 7. The City Council hereby approves SD2020-0003/SR2020-0010: Half-Dividend (Crosswinds). The design shall be expressly conditioned in conformance with conditions incorporated herein and as attached as Exhibit "B". Minor deviations to the site review permit may be approved by the Development Services Director when consistent with the overall intent of the project.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 21st day of June, 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-XXX, adopted by the City Council at a Regular Meeting held on June 21, 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

EXHIBIT "A"
VESTING TENTATIVE MAP

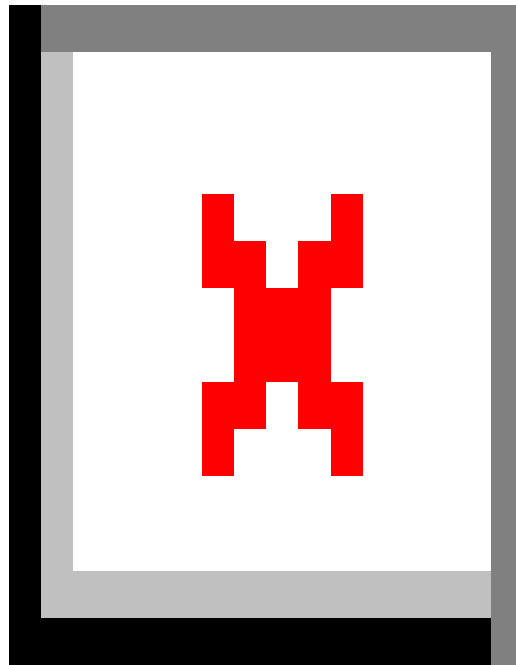


EXHIBIT "B"
STANDARD CONDITIONS

**APPLICATION NO: SR2020-0010/SD2020-0003/EA2020-0007:HALF - DIVIDEND
(CROSSWINDS)**

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

Legend

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

I. PROJECT DESCRIPTION

The project includes a total of 269 residential units, comprised of 56 single-family, 64 duets, and 149 condominium units. The single-family detached residences would consist of clustered courtyard-style homes and would be constructed on the eastern and southern perimeters of the project site, along Mission View Drive and Half Road. The single-family courtyard residences would be two-stories and reach a maximum height of 30 feet. The two-story attached duets would be located in the center of the project site and would reach a maximum height of 30 feet. Three-story townhome-style condominiums would be constructed along the western and northwestern perimeters of the project site, along DePaul Drive and adjacent to a vacant parcel. The condominiums would reach a maximum height of 39 feet. There would be a total of 40 below-market-rate (BMR) units dispersed throughout the project and unit type. The project would include recreational areas including a clubhouse, pool, children's play area, and barbeque/picnic areas. The project would also include pedestrian paths, and landscaping, including trees and lawn areas.

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

- A. Vesting Tentative Map SD2020-0003
- B. Design Review SR2020-0010
- C. Environmental Assessment EA2020-0007

II. PROJECT MITIGATION MEASURES

The applicant shall be subject to compliance with the mitigation measures of the project's adopted Mitigation Monitoring and Reporting Program. The following mitigation measures shall be included with all building permit, grading, or improvement plans.

Agricultural Resources

- A. **MM AG-1.1:** A minimum of one acre of agricultural land (1:1 mitigation ratio) shall be preserved for each acre of agricultural land changed to a non-agricultural use. The required acreage of area to be protected through an agricultural conservation easement or agricultural preservation in-lieu fee will depend on the measurement of affected area. The 16 acres of Prime Farmland will be used for calculating the required mitigation.
- B. **MM AG-1.2:** Conversion of agricultural land shall require off-setting acquisition and/or dedication of agricultural conservation easements over approved agricultural mitigation land, or payment to the City of the agricultural preservation in-lieu fee, to support agricultural preservation activities. Developer acquisition/dedication of easements shall require the project to pay an agricultural lands preservation program stewardship fee to cover administrative costs and ongoing management and monitoring of the easements. Agricultural mitigation fees shall be required prior to the acceptance of a final parcel or subdivision map, or prior to issuance of building or grading permits. Easement dedication is required prior to issuance of building permits.

Biological Resources

- C. **MM BIO-1.1:** Construction shall be scheduled to avoid the nesting season. If construction can be scheduled to occur between September 1st and January 31st (inclusive) to avoid the raptor nesting season, no impacts will be expected. If construction will take place between February 1st and August 31st, then pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. Performance of the required surveys for construction occurring between February 1st and August 31st will ensure that impacts to nesting raptors are reduced to less than significant. Surveys will be completed within 30 days of the onset of site clearing or construction activities. During this survey, the ornithologist will inspect all trees and other potential nesting habitats (e.g., trees, shrubs, buildings) onsite trees as well as all trees within 250 feet of the site for nests. The pre-construction survey shall be submitted to the City's Development Services Director or the Director's designee for review prior to tree removals or issuance of a grading permit.
- D. **MM BIO-1.2:** If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist will determine the extent of a disturbance-free buffer zone to be established around the nest (typically 250 feet for raptors and 50-100 feet for other species) that will remain off limits to construction until the nesting season is over, to ensure that no nests of species protected by the Migratory Bird Treaty Act and California Fish and Wildlife Code will be disturbed during project implementation. A report indicating the result of the survey and any designated buffer zones shall be submitted to the satisfaction of the City's Development Services Director or Director's designee prior to issuance of a grading permit.

- E. **MM BIO-5.1:** The project applicant shall comply with local ordinances and submit permit applications for removal, trimming, damage, or relocation of all trees covered by the City ordinance. Any trees to be removed shall require replacement at a two-to-one ratio on a comparable ratio of size. The replacement trees shall be planted on site to the extent feasible and the project proponent shall comply with all other replacement requirements imposed by the City. Prior to tree removal, the project applicant shall apply for a tree removal permit, which will be reviewed by the City's Development Services Director or Director's designee.

Cultural Resources

- F. **MM CUL-2.1:** A moderate potential exists for unrecorded historic-period archaeological resources to be within the project area. The developer shall enter into written contracts with an archaeologist and the Tamien Nation Tribe, and pay all fees associated with the activities required by this Mitigation Measure. The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply:

(a) Prior to the start of grading or earthmoving activity (includes demolition and moving of heavy equipment on site) on the "first day of construction," the archaeologist and Tribal Monitor shall hold a pre-construction meeting for the purposes of "cultural sensitivity training" with the general contractor or subcontractors.

(b) A Tamien Nation Tribal Monitor shall be present on-site to monitor all ground-disturbing activities and an archaeologist shall be on-call. Where historical or archaeological artifacts are found, work in areas where remains or artifacts are found will be restricted or stopped until proper protocols are met, as described below:

1. Work at the location of the find shall halt immediately within 50 feet of the find. If an archaeologist is not present at the time of the discovery, the applicant shall contact an archaeologist for evaluation of the find to determine whether it qualifies as a unique archaeological resource as defined by this chapter.
2. If the find is determined not to be a Unique Archaeological resource, construction can continue. The archaeologist shall prepare a brief informal memo/letter in collaboration with a tribal representative that describes and assesses the significance of the resource, including a discussion of the methods used to determine significance for the find.
3. If the find appears significant and to qualify as a unique archaeological resource, the archaeologist shall determine if the resource can be avoided and shall detail avoidance procedures in a formal memo/letter.
4. If the resource cannot be avoided, the archaeologist in collaboration with a tribal representative shall develop within forty-eight hours an action plan to avoid or minimize impacts. The field crew shall not proceed until the action plan is approved by the City's Development Services Director or Director's designee. The action plan

shall be in conformance with California Public Resources Code 21083.2. An archaeologist shall be on-call during ground disturbing activities. Where historical or archaeological artifacts are found, work in areas where remains or artifacts are found will be restricted or stopped until proper protocols are met, as described below.

(c) The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply. If human remains are discovered, it is probable they are the remains of Native Americans.

1. If human remains are encountered, they shall be treated with dignity and respect as due to them. Discovery of Native American remains is a very sensitive issue and serious concern. Information about such a discovery shall be held in confidence by all project personnel on a need-to-know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs, and around artifacts shall be upheld.
2. Remains should not be held by human hands. Surgical gloves should be worn if remains need to be handled.
3. Surgical masks should also be worn to prevent exposure to pathogens that may be associated with the remains.

(d) In the event that known or suspected Native American remains are encountered, or significant historic or archaeological materials are discovered, ground-disturbing activities shall be immediately stopped. Examples of significant historic or archaeological materials include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, ground stone mortars and pestles), culturally altered ash stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials and historic structure remains such as stone lined building foundations, wells, or privy pits. Ground-disturbing project activities may continue in other areas that are outside the exclusion zone as defined below.

(e) An “exclusion zone” where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer zone by the contractor foreman or authorized representative, or party who made the discovery and initiated these protocols, or if on-site at the time of discovery, by the monitoring archaeologist and tribal representative (typically 25 to 50 feet for single burial or archaeological finds).

(f) The discovery locale shall be secured (e.g., 24-hour surveillance) as directed by the City or County Coroner if considered prudent to avoid further disturbances.

(g) The contractor foreman or authorized representative, or party who made the discovery and initiated these protocols shall be responsible for immediately contacting by telephone the parties listed below to report the find and initiate the consultation process for treatment and disposition:

- The City of Morgan Hill Development Services Director (408) 779-7247
- The Contractor's Point(s) of Contact
- The Coroner of the County of Santa Clara (if human remains found) (408) 793-1900
- The Native American Heritage Commission (NAHC) in Sacramento (916) 653-4082
- The Amah Mutsun Tribal Band (916) 481-5785 (H) or (916) 743-5833 (C)
- The Tamien Nation (707) 295-4011 (office) and (925) 336-5359 (THPO)

(h) The Coroner has two working days to examine the remains after being notified of the discovery. If the remains are Native American, the Coroner has 24 hours to notify the NAHC.

(i) The NAHC is responsible for identifying and immediately notifying the Most Likely Descendant (MLD). (Note: NAHC policy holds that the Native American Monitor will not be designated as the MLD).

(j) Within 24 hours of their notification by the NAHC, the MLD will be granted permission to inspect the discovery site if they so choose.

(k) Within 24 hours of their notification by the NAHC, the MLD may recommend to the City's Development Services Director or Director's designee, the recommended means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal and non-destructive or destructive analysis of human remains and items associated with Native American burials. Only those osteological analyses or DNA analyses recommended by the appropriate tribe may be considered and carried out.

(l) If the MLD recommendation is rejected by the City of Morgan Hill, the parties will attempt to mediate the disagreement with the NAHC. If mediation fails, then the remains and all associated grave offerings shall be reburied with appropriate dignity on the property in a location not subject to further subsurface disturbance.

- G. **MM CUL-2.2:** The project applicant shall note on any plans that require ground disturbing excavation that there is a potential for exposing buried cultural resources including prehistoric Native American burials. Any archaeological site information supplied to the Contractor Foreman or authorized representative shall be considered confidential. Information on the project plans shall be verified by the City's Development Services Director or Director's designee prior to issuance of a grading permit or any building permit.

Greenhouse Gas Emissions

- H. **MM GHG-1.1:** The project applicant shall develop a GHG reduction plan to reduce GHG emissions in the build-out year by 206 MT/year prior to issuance of a grading permit and

to the satisfaction of the City's Development Services Director or Director's designee. These reductions shall be kept in place by the project until the City adopts a qualified GHG reduction plan (consistent with CEQA Guidelines Section 15183.5) that contains goals and associated strategy to decrease emissions in a manner consistent with meeting the State's interim 2030 GHG emissions reduction target of 40 percent below 1990 levels.

- I. **MM GHG-1.2:** A combination of the GHG reduction elements listed below would reduce project GHG impacts. The project applicant shall implement some or all of the following elements to further reduce GHG emission from operation of the project and the service population efficiency metric such that the metric would be below the significance threshold. The GHG reduction elements to be included within the project shall be verified prior to the issuance of a building permit and shall be to the satisfaction of the City's Development Services Director or Director's designee.
- Prior to issuance of any building permits, the project applicant shall submit a Transportation Demand Management (TDM) Plan, which would include measures to reduce vehicle miles traveled (VMT) and GHG emissions, to the City's Development Services Director or Director's designee;
 - The TDM Plan shall be implemented by the Homeowners Association (HOA) once the proposed residences are occupied.
 - The project applicant shall install solar power systems or other renewable electric generating systems that provide electricity to power on-site equipment and possibly provide excess electric power;
 - The project applicant shall provide infrastructure for electric vehicle charging for residential units (i.e., provide 220 VAC power); and,
 - The project applicant shall increase water conservation above state average conditions for residential uses by installing low flow water utilities and irrigation.
- J. **MM GHG-1.3:** The project applicant shall purchase verifiable carbon emission offsets through a verified registry for remaining amount of GHG reduction required, after exhausting on-site reduction options prior to issuance of a building permit. Offsets shall be determined by calculating the total estimated number of GHG emissions the project would create over a 30-year period, and purchasing verifiable offsets based on the calculated number of GHG emissions.

Hazards and Hazardous Materials

- K. **MM HAZ-2.1:** Since lead-impacted soils are determined to be present in concentrations above established regulatory environmental screening levels, the project applicant shall enter into the Santa Clara County Department of Environmental Health's (SCCDEH) Voluntary Cleanup Program (VCP), or equivalent, to formalize regulatory oversight of the mitigation of contaminated soil to ensure the site is safe for construction workers and the public after development. The project applicant responsible for the contaminated area of the site shall remove contaminated soil to levels acceptable to the SCCDEH (or equivalent oversight agency) for residential exposure prior to issuance of any grading permits.

- L. **MM HAZ-2.2:** A Removal Action Plan, Soil Mitigation Plan or other similarly titled report describing the remediation shall be prepared and implemented to document the removal and /or capping of contaminated soil. Prior to issuance of any grading permits, a copy of any reports prepared shall be submitted to the Development Services Director or Director's designee. All work and reports produced shall be performed under the regulatory oversight and approval of the SCCDEH (or equivalent oversight agency).
- M. **MM HAZ-2.3:** The project applicant shall prepare a Site Management Plan (SMP) prior to issuance of any grading permits to reduce or eliminate exposure risk to human health and the environment, specifically, potential risks associated with the presence of organochlorine pesticides and pesticide-based metals. The SMP shall include, but is not limited to, the following elements to mitigate potential risks associated with environmental conditions:
- Procedures for transporting and disposing the waste material generated during removal activities, if such transport and disposal is necessary;
 - Procedures for stockpiling soil on-site if such stockpiling is necessary;
 - Provisions for collecting soil samples to prior to grading activities;
 - Provisions for confirmation soil sampling as appropriate to obtain a "No Further Action" letter (or equivalent) from the state and/or local agency assuming oversight for the site;
 - Procedures to ensure that fill and cap materials are verified as clean truck routes;
 - Staging and loading procedures and record keeping requirements.

The SMP shall reference the Storm Water Pollution Prevention Plan (SWPPP) required for the project in accordance with the Construction General Permit Order issued by the California State Water Resources Control Board. The SMP shall be submitted to the Santa Clara County Department of Environmental Health (SCCDEH), or equivalent regulatory agency, for review and approval. Copies of the approved SMP shall be provided to the City's Development Services Department prior to issuance of any grading permits.

- N. **MM HAZ-2.4:** All contractors and subcontractors at the project site shall develop a health and safety plan (HSP) specific to their scope of work and based upon the known environmental conditions for the site. Each Health and Safety plan shall be implemented under the direction of a Site Safety and Health Officer. The Health and Safety Plan shall include, but not limited to, the following elements, as applicable:
- Provisions for personal protection and monitoring exposure to construction workers;
 - Procedures to be undertaken in the event that contamination is identified above action levels or previously unknown contamination is discovered;
 - Procedures for the safe storage, stockpiling, and disposal of contaminated soils;
 - Provisions for the on-site management and/or treatment of contaminated groundwater during extraction or dewatering activities;
 - Emergency procedures and responsible personnel.

The HSP shall be submitted to the Santa Clara County Department of Environmental Health (SCCDEH), or equivalent regulatory agency, for review and approval. Copies of the approved HSP shall be provided to the City's Development Services Department prior to issuance of any grading permits.

- O. **MM HAZ-2.5:** Prior to issuance of any grading permits, the project applicant shall excavate lead-impacted soils identified at sample location SS-R-17B (near the single-family residence and barn structure) to a depth of at least 2.5 below the ground. The soil shall be properly disposed of in accordance with state and SCCDEH and California Code of Regulations, Title 8 waste disposal requirements. The SCCDEH (or equivalent oversight agency) may also approve leaving in-place some of the contaminated soil if the contaminated soil will be buried under hardscape and/or several feet of clean soil and not at risk of being encountered by future site users or nearby residents.
- P. **MM HAZ-2.6:** Prior to issuance of a demolition permit for on-site structures, the project applicant shall consult with certified Asbestos and/or Lead Risk Assessors to complete and submit for review to the Building Department an asbestos and lead survey. If asbestos-containing materials or lead-containing materials are not discovered during the survey, further mitigation related to asbestos-containing materials or lead-containing materials shall not be required. If asbestos containing materials and/or lead-containing materials are discovered by the survey, the project applicant shall prepare a work plan to demonstrate how the on-site asbestos-containing materials and/or lead-containing materials shall be removed in accordance with current California Occupational Health and Safety (Cal-OSHA) Administration regulations and disposed of in accordance with all CalEPA regulations, prior to the demolition and/or removal of the on-site structures. The plan shall include the requirement that work shall be conducted by a Cal-OSHA registered asbestos and lead abatement contractor in accordance with Title 8 CCR 1529 and Title 8 CCR 1532.1 regarding asbestos and lead training, engineering controls, and certifications. The applicant shall submit the work plan to the City for review and approval. The City has the right to defer the work plan to the Santa Clara County Department of Environmental Health for additional review. The following measures shall be included in the work plan:
- During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
 - All potentially friable asbestos containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.

- A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.
- Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.
- During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
- Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.

Q. **MM HAZ-2.7:** Prior to issuance of a grading permit, the project applicant shall research well records from Valley Water and attempt to locate abandoned wells at the site. The project applicant or contractor shall contact Valley Water's Wells Hotline immediately to assist in the identification of abandoned/unregistered wells or structures and help determine the appropriate means of addressing them. If the wells are identified, or subsequently encountered during earthwork activities, the wells shall be properly destroyed in accordance with Valley Water Ordinance 90-1. If septic systems are encountered during earthwork activities, those systems shall be abandoned in accordance with SCCDEH requirements.

Transportation

R. **MM TRN-2.1:** Prior to project occupancy, the project applicant shall develop and implement a Transportation Demand Management (TDM) plan which targets achieving a reduction in residential vehicle trips to and from the site. The TDM plan shall be prepared by a qualified traffic consultant and in coordination with the City of Morgan Hill Development Services Director or Designee. The TDM plan shall quantify the reduction in VMT. The TDM shall require the project applicant to make a financial contribution to the City's on-site demand rideshare service (MoGo), as a one-time or annual financial contribution based on City approval, or during project operations, the developer shall provide fully (100 percent) subsidized annual VTA transit passes for all project homeowners (a maximum of one transit subsidy per residential unit, which would result in up to 269 transit passes per year). This subsidized transit program shall be approved by the City of Morgan Hill's Public Services Director or Director's designee prior to issuance of occupancy.

III. PROJECT CONDITIONS OF APPROVAL

This Vesting Tentative Map and Design Permit approval is limited to the plan set date stamped April 29, 2023 on file (File Number SR2020-0010) with the Development Services Department. The approved building plans and landscape plans must be in substantial conformance with the Design Permit plans as determined by the Development Services Director. These documents show the location and sizes of all lots in this development, the location and dimensions of all vehicle and pedestrian circulation ways (ingress/egress), common areas, and other easement areas.

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

The Final Map shall be in substantial compliance with the approved Vesting Tentative Map as determined by the City Engineer and Development Services Director.

PLANNING DIVISION

DEFENSE AND INDEMNITY

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

they are the Applicant or are fully empowered by the Applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by Applicant to be bound by such conditions.

TIME LIMITS

- A. **Term:** The Design Permit approval granted pursuant to this Resolution shall remain in effect for two years to _____. Failure to obtain building permits within this term shall result in termination of approval unless an extension of time is granted with a showing of just cause prior to expiration date. **(MHMC 18.108.040)**
- B. **Term:** The Vesting Tentative Map approval granted pursuant to this Resolution shall remain in effect for two years to _____. Failure to apply for Final Map approval with the City Engineer within this term shall result in expiration of approval unless an extension of time is granted by the Development Services Department prior to the expiration date. **(MHMC 18.104.210)**

SITE DEVELOPMENT

- A. **Final Site Development Plans:** Final site development plans shall be reviewed for conformance with Design Review Permit SR2020-0010 Half-Dividend (Crosswinds) and in accordance with Morgan Hill Municipal Code Section 18.108.040 (Design Permit) and approved by the Development Services Department prior to issuance of a building permit. All such plans shall include:
1. Detail depicting all concrete curbs as full formed.
 2. Provision of catalogue drawings depicting the proposed parking area lighting fixtures. Exterior lighting of the building and site shall be designed so that lighting is not directed onto adjacent properties and light source is shielded from direct off-site viewing.
 3. Ramps, special parking spaces, signing and other physical features for the disabled, shall be provided throughout the site for all publicly used facilities.
 4. All mechanical equipment, including electrical and gas meters, post indicator valve, backflow prevention devices, etc., shall be architecturally screened from view or located interior to the building. All ground mounted utility appurtenances such as transformers shall not be visible from any public right-of-way and shall be adequately screened through the use or combination of concrete or masonry walls, berming, and landscaping. **(MHARH p.20, 45, 79)** For additional screening, backflow preventers shall be painted dark green, except the fire connection which shall be painted yellow.
 5. All existing on-site overhead utilities shall be placed underground in an approved

conduit from the service connection at the street or at the property line to the service connection at the building.

B. **Pedestrian Access:** The Project shall provide pedestrian walkways in compliance with ADA requirements and with Section 18.72.060.H of the Morgan Hill Municipal Code, which states the following:

1. Parking lots with more than thirty parking spaces shall include a pedestrian walkway in compliance with ADA requirements.
2. The design of the pedestrian walkway shall be clearly visible and distinguished from parking and circulation areas through striping, contrasting paving material, or other similar method as approved by the Development Services Director.

C. **Bicycle parking.** The project shall provide short-term and long-term bicycle parking spaces in conformance with Section 18.72.080 and Table 18.72-7 of the Morgan Hill Municipal Code:

Table 18.72-7: Required Bicycle Parking Spaces

Land Use	Required Bicycle Parking Spaces	
	Short-Term Spaces	Long-Term Spaces
Multi-family dwellings	10 percent of required automobile spaces; min. of 4 spaces	1 per 5 units

1. **Short-Term/Class II Bicycle Parking Standards.** Short-term bicycle parking shall be located within one hundred feet of the primary entrance of the structure or use it is intended to serve.
2. **Long-Term Bicycle Parking Standards.** The following standards apply to long-term bicycle parking:
 - a. Location. Long-term bicycle parking shall be located on or within seven hundred fifty feet of the use that it is intended to serve.
 - b. Security. Long-term bicycle parking spaces shall be secured. Spaces are considered secured if they are:
 - i. In a locked room or area enclosed by a fence with a locked gate;
 - ii. Within view or within one hundred feet of an attendant or security guard;
 - iii. In an area that is monitored by a security camera; or
 - iv. Visible from employee work areas.
3. **Parking Space Dimensions.**
 - a. Minimum dimensions of two feet by six feet shall be provided for each bicycle parking space.

- b. An aisle of at least five feet shall be provided behind all bicycle parking to allow room for maneuvering.
 - c. 2 feet of clearance shall be provided between bicycle parking spaces and adjacent walls, polls, landscaping, pedestrian paths, and other similar features.
 - d. Four feet of clearance shall be provided between bicycle parking spaces and adjacent automobile parking spaces and drive aisles.
4. **Rack Design.** Bicycle racks must be capable of locking both the wheels and the frame of the bicycle and of supporting bicycles in an upright position.
5. **Cover.** Required cover for bicycle parking spaces shall be permanent, designed to protect the bicycle from rainfall, and at least seven feet above the floor or ground.

The location of all bicycle parking spaces shall be identified prior to issuance of a building permit.

- D. **Electric Vehicle Charging Stations:** The Project shall provide electric vehicle charging stations in compliance with Section 18.72.040.C of the Morgan Hill Municipal Code. The project is required to provide two charging stations, plus one for each additional fifty parking spaces. The developer shall provide location of each charging station prior to issuance of building permit.
- E. **Tandem parking and garages:** Residents shall use tandem parking spaces and dedicated garages for parking. This requirement shall be incorporated into the Covenants, Conditions and Restrictions (CC&R's) for the project.
- F. **Street Names:** Street names, private or otherwise, used to identify building locations shall be submitted at building permit stage to the Planning Division for approval. Proposed street names shall comply with the Street Naming Policy approved by City Council (Resolution No. 4601).
- G. **Tree Protection:** Unless tree removal has been previously approved, all trees located within 25 feet of any site disturbance shall be protected using the following minimum protection measures (these guidelines shall be included with all site development plans):
- 1. Mark all trees to be saved with a survey flag or ribbon. Do not nail or staple directly to the tree.
 - 2. Erect a temporary fence enclosing an area equal to at least the dripline of the tree (or as far from the trunk as possible). This tree protection zone shall not be used for parking, storage of building materials, or other equipment or the placement of temporary or permanent fill. Signs should be posted identifying the restriction of uses in the tree protection zone.
 - 3. Locate structures, grade changes, and other ground or surface disturbances (e.g.

concrete pours) as far as feasible from the “dripline” area of the tree.

4. Avoid root damage through grading, trenching, and compaction, at least within an area 1.5 times the dripline area of the tree. Where root damage cannot be avoided, roots encountered over 1 inch in diameter should be exposed approximately 12 inches beyond the area to be disturbed (towards the tree stem), by hand excavation, or with specialized hydraulic or pneumatic equipment, cut cleanly with hand pruners or power saw and immediately back-filled with soil. Avoid tearing or otherwise disturbing that portion of the roots to remain.
 5. The addition of plant or other landscaping materials shall remain outside of the dripline of all trees.
 6. All trees proposed to be removed from the project site shall be replaced at a 1:1 ratio. Replacement trees shall be consistent with the City of Morgan Hill Master Street Tree. All replacement trees shall be a minimum of 15-gallons in size. All mitigation/replacement trees shall be shown on the landscape plans and approved by the Development Services Director prior to the issuance of the building/grading permit.
 7. Any tree subject to Chapter 12.32 Restrictions on Removal of Significant Trees of the Morgan Hill Municipal Code requires approval from the Planning Division. The applicant shall request approval prior to removing any significant trees.
- H. **Future Street Notification:** The developer shall install a sign at the terminus of Street B adjoining the undeveloped land to the north of the project site (Assessor’s Parcel Number 728-31-013) to notify residents of the possible future street extension. The sign shall read, “Future Through Street, Subject to Increased Traffic” or similar language subject to the review and approval of the Development Services Director. This future street extension notification shall also be included in the disclosures during the sale of a residence within the project site.

BUILDING DESIGN

- A. **Roof mounted mechanical equipment:** All roof mounted mechanical equipment shall be placed within a screened roof top enclosure depicted on the elevation drawings or located below the parapet level and shall not be visible from the ground at any distance from the building. Cross section roof drawings shall be provided at the building permit stage indicating the relative height of the screen wall or parapet. Minimum screen height or parapet depth shall be 5 feet or greater to match the height of any proposed equipment. **(MHARH p.48, 65, 87, 106)**
- B. **Building mounted lighting:** Lighting fixtures shall not project above the fascia or roofline of the building. Any ground mounted lighting projecting onto the building or site shall be subject to the review and approval of the Development Services Director. Adjustment to the lighting intensity may be required after the commencement of the use. **(MHARH p. 67, 109)**

C. **Architectural elements:** A final site development plan shall be provided at the building permit stage for review and approval to the Development Services Director prior to issuance of a building permit.

1. All vents, gutters, downspouts, flashing, electrical conduits, etc. shall be painted to match the color of the adjacent surface or otherwise designed in harmony with the building exterior.
2. Soffits and other architectural elements visible from view but not detailed on the plans shall be finished in a material in harmony with the exterior of the building.

PARKING, VEHICULAR ACCESS AND LANDSCAPING

A. **Parking lot landscaping:** All landscaping within parking lots shall comply with the requirements of Chapter 18.72 (Landscaping) in addition to the standards within this section.

1. **Interior Landscaping.** All areas within a parking lot not utilized for parking spaces or access/circulation shall be landscaped. For parking lots with more than fifteen spaces, the minimum amount of interior landscaping is specified in Table 18.72-6. Interior landscaping is defined as any landscaped area surrounded on at least two sides by parking spaces or drive aisles, and excluding areas around the perimeter of the parcel or development site.

Table 18.72-6: Minimum Required Parking Lot Landscaping

Number of Required Parking Spaces	Percent of Surface Parking Area to be Landscaped
16-30	10 percent
31-60	15 percent
Over 60	20 Percent

2. **Shade Trees.**
 - a. One shade tree shall be provided for every five parking spaces in a parking lot.
 - b. Shade trees shall be a minimum twenty-four-inch box in size and shall provide a minimum thirty-foot canopy at maturity.
 - c. Shade trees shall be of a type that can reach maturity within fifteen years of planting and shall be selected from a city-recommended list of canopy tree species.
 - d. Shade trees shall be arranged in a parking lot to provide maximum shade coverage (based on a thirty-foot canopy) on August 21. The arrangement should approximate nearly fifty percent shade coverage.
3. **Concrete Curbs.**

- a. All landscape areas shall be separated from parking spaces, drive aisles and driveways by a continuous, raised concrete curb. Raised concrete curbs shall be a minimum of six inches high by four inches deep.
 - b. The city may approve alternatives to raised concrete curbs as needed to comply with any mandatory stormwater drainage standards.
4. **Parking Space Landscaping.** A maximum of two feet at the front end of a parking space may be landscaped with low shrubs or ground cover in which a vehicle could extend over in lieu of paving surface. This landscaping may not count toward minimum required parking lot landscaped area.
5. **Timing.** Landscaping shall be installed prior to the city's authorization to occupy any buildings served by the parking area, or prior to the final inspection for the parking lot.
- B. **Landscape maintenance agreement:** The applicant shall enter into a two-year landscape maintenance agreement effective upon acceptance of landscaping improvements and provide an appropriate bond as required by Section 18.64.070 (Landscaping maintenance and enforcement) of the Municipal Code. Bond amount shall be equal to 100 percent of the value of the landscaping and irrigation improvements for the development project.
- C. **Planting and irrigation working drawings:** Detailed landscape planting and irrigation working drawings shall be submitted to the Development Services Director for approval prior to issuance of building permits. Landscape plans for streets and landscape easements shall be part of the improvement plan submittal.
- D. **Lighting:** Walkways and pedestrian pathways in landscaped areas or common areas not considered building entrances or a part of parking lot areas shall be illuminated with a minimum of one (1) foot-candle to ensure safe nighttime conditions. **(MHARH p.30, 67, 108)**
 1. A final photometric plan shall be provided at the building permit stage for review and approval to the Development Services Director prior to issuance of a building permit.
- E. **Maintenance of landscaping:** The landscaping installed and accepted with this project shall be maintained on the site as stated within the approved plans. Any alteration or modification to the landscaping shall not be permitted unless otherwise approved by the Development Services Director.
- F. **Water Conserving Landscape Ordinance:** The landscape plans shall be in conformance with the City's Water Conserving Landscape Ordinance that was developed in accordance with California law. This Ordinance restricts landscaping turf to certain areas, specifies plant selection, requires certain types of irrigation equipment, and calls

for the development of comprehensive water use calculations as an aspect of the submitted landscape plans. **(MHMC 18.64)**

- G. **Reciprocal Ingress/Egress Easements:** Prior to issuance of a certificate of occupancy, the property owner shall record an appropriate deed restriction and covenant running with the land subject to review and approval of the Development Services Director for a reciprocal ingress/egress easement along the common driveway.

SIGNS

- A. **Separate application required for sign approval:** Signs proposed for this development shall be designed in conformance with the Sign Ordinance and shall require separate application and approval by the Planning Division prior to installation of any signs.
- B. **Directory signs required:** Directory sign(s) and location map(s) shall be provided for apartment, condominium, or townhouse projects prior to occupancy. Location of the sign(s) shall be interior to the project and design of the directory sign(s) shall be approved by the Planning Division and Fire Department prior to issuance of building permits. **(MHARH p.61)**

HABITAT PLAN

- A. **Fees:** The approved project is covered pursuant to the Santa Clara Valley Habitat Plan (Habitat Plan) and subject to fees and conditions contained in the Habitat Plan.
- B. **Application Package:** Prior to issuance of a grading permit, the project shall complete and submit a Habitat Plan Application Package. All fees shall be paid prior to issuance of a grading permit. **(MHMC 18.132)**
- C. **Conditions:** Any additional conditions or mitigations required by the Habitat Plan shall be clearly stated on all plans that involve any ground disturbing activity (i.e. grading plans, improvement plans, paving plans, demolition plans or other plans for site clearing or temporary stockpile of dirt). **(MHMC 18.132)**

AIR QUALITY

- A. **Dust, Noise, Vibration and Materials Management Plan:** A management plan detailing strategies for control of noise, dust and vibration, and storage of hazardous materials during construction of the project shall be submitted for review prior issuance of a grading permit and requirements shall be included on all site development and grading plans. The intent of this condition is to minimize construction related disturbance of residents of the nearby or adjacent properties. **(MHMC 18.76)**
1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.

2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
4. All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).
5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
6. Replant vegetation in disturbed areas as soon as possible after completion of construction.
7. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of the California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
8. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
9. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

CULTURAL RESOURCES

- A. **Significant historic or archaeological materials:** A moderate potential exists for unrecorded historic-period archaeological resources to be within the project area. The developer shall enter into written contracts with an archaeologist and the Tamien Nation Tribe, and pay all fees associated with the activities required by this condition. The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply:
 1. Prior to start of grading or earthmoving activity on the "first day of construction", the archaeologist and Tamien Nation Tribal Monitor shall hold a pre-construction meeting for the purposes of "cultural sensitivity training" with the general contractor and subcontractors.

2. A Tamien Nation Tribal Monitor shall be present on-site to monitor all ground-disturbing activities and an archaeologist shall be on-call. Where historical or archaeological artifacts are found, work in areas where remains or artifacts are found will be restricted or stopped until proper protocols are met, as described below:
 - a. Work at the location of the find will halt immediately within fifty feet of the find. If an archaeologist is not present at the time of the discovery, the applicant shall contact an archaeologist for evaluation of the find to determine whether it qualifies as a unique archaeological resource as defined by this chapter;
 - b. If the find is determined not to be a Unique Archaeological Resource, construction can continue. The archaeologist will prepare a brief informal memo/letter in collaboration with a tribal representative that describes and assesses the significance of the resource, including a discussion of the methods used to determine significance for the find;
 - c. If the find appears significant and to qualify as a unique archaeological resource, the archaeologist will determine if the resource can be avoided and will detail avoidance procedures in a formal memo/letter; and
 - d. If the resource cannot be avoided, the archaeologist in collaboration with a tribal representative shall develop within forty-eight hours an action plan to avoid or minimize impacts. The field crew shall not proceed until the action plan is approved by the Development Services Director. The action plan shall be in conformance with California Public Resources Code 21083.2.
3. The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply. If human remains are discovered, it is probable they are the remains of Native Americans,
 - a. If human remains are encountered, they shall be treated with dignity and respect as due to them. Discovery of Native American remains is a very sensitive issue and serious concern. Information about such a discovery shall be held in confidence by all project personnel on a need to know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs and around artifacts shall be upheld.
 - b. Remains should not be held by human hands. Surgical gloves should be

worn if remains need to be handled.

- c. Surgical mask should also be worn to prevent exposure to pathogens that may be associated with the remains.
4. In the event that known or suspected Native American remains are encountered, or significant historic or archaeological materials are discovered, ground-disturbing activities shall be immediately stopped. Examples of significant historic or archaeological materials include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, ground stone mortars and pestles), culturally altered ash stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials and historic structure remains such as stone lined building foundations, wells or privy pits. Ground-disturbing project activities may continue in other areas that are outside the exclusion zone as defined below.
5. An "exclusion zone" where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer zone by the contractor foreman or authorized representative, or party who made the discovery and initiated these protocols, or if on-site at the time of discovery, by the monitoring archaeologist and tribal representative (typically twenty-five to fifty feet for single burial or archaeological find).
6. The discovery locale shall be secured (e.g., 24-hour surveillance) as directed by the City or County if considered prudent to avoid further disturbances.
7. The Contractor Foreman or authorized representative, or party who made the discovery and initiated these protocols shall be responsible for immediately contacting by telephone the parties listed below to report the find and initiate the consultation process for treatment and disposition:
 - The City of Morgan Hill Development Services Director (408) 779-7247
 - The Contractor's Point(s) of Contact
 - The Coroner of the County of Santa Clara (if human remains found) (408) 793-1900
 - The Native American Heritage Commission (NAHC) in Sacramento (916) 653-4082
 - The Amah Mutsun Tribal Band (916) 481-5785 (H) or (916) 743-5833 (C)
 - The Tamien Nation (707)295-4011 (office) and (925)336-5359 (THPO)
8. The Coroner has two working days to examine the remains after being notified of the discovery. If the remains are Native American the Coroner has 24 hours to notify the NAHC.

9. The NAHC is responsible for identifying and immediately notifying the Most Likely Descendant (MLD). (Note: NAHC policy holds that the Native American Monitor will not be designated the MLD.)
10. Within 24 hours of their notification by the NAHC, the MLD will be granted permission to inspect the discovery site if they so choose.
11. Within 24 hours of their notification by the NAHC, the MLD may recommend to the City's Development Services Director the recommended means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal and non-destructive or destructive analysis of human remains and items associated with Native American burials. Only those osteological analyses or DNA analyses recommended by the appropriate tribe may be considered and carried out.
12. If the MLD recommendation is rejected by the City of Morgan Hill the parties will attempt to mediate the disagreement with the NAHC. If mediation fails then the remains and all associated grave offerings shall be reburied with appropriate dignity on the property in a location not subject to further subsurface disturbance.

NOISE

- A. **Construction Hours:** The project shall comply with Chapter 8.28 of the Morgan Hill Municipal Code which prohibits construction activities between 8:00 PM and 7:00 AM, Monday through Friday, and between 6:00 PM and 9:00 AM on Saturdays. Construction activities may not occur on Sundays or federal holidays.
- B. **Noise Construction Control Plan:** The project applicant shall develop a noise construction control plan, which shall be submitted to the Development Services Director or Director's designee for review and approval prior to issuance of a grading permit. The noise construction control plan shall include but not be limited to the following construction best management controls:
 - Equipment and trucks used for construction shall use the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds);
 - Impact tools (e.g., jackhammers, pavement breakers, and rock drills) used for construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools; and
 - Stationary noise sources shall be located as far from noise-sensitive receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or include other measures.

- Construct temporary noise barriers, where feasible, to screen stationary noise-generating equipment. Temporary noise barrier fences would provide a 5 dBA noise reduction if the noise barrier interrupts the line-of-sight between the noise source and receptor and if the barrier is constructed in a manner that eliminates any cracks or gaps.
- Unnecessary idling of internal combustion engines shall be strictly prohibited.
- Construction staging areas shall be established at locations that will create the greatest distance between the construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction. Locate material stockpiles, as well as maintenance/equipment staging and parking areas, as far as feasible from residential receptors.
- Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
- Where feasible, temporary power service from local utility companies should be used instead of portable generators.
- Locate cranes as far from noise-sensitive receptors as possible.
- During final grading, substitute graders for bulldozers, where feasible. Wheeled heavy equipment are quieter than track equipment and should be used where feasible.
- Substitute nail guns for manual hammering, where feasible.
- Avoid the use of circular saws, miter/chop saws, and radial arm saws near the adjoining noise-sensitive receptors. Where feasible, shield saws with a solid screen with material having a minimum surface density of two pounds per square foot (e.g., such as 0.75-inch plywood).
- Maintain smooth vehicle pathways for trucks and equipment accessing the site and avoid local residential neighborhoods as much as possible.
- During interior construction, the exterior windows facing noise-sensitive receptors should be closed.
- During interior construction, locate noise-generating equipment within the building to break the line-of-sight to the adjoining receptors.
- The contractor shall prepare a detailed construction schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.
- Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem. Conspicuously

post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

GENERAL

- A. **Mitigation Fee Act:** Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of this development project for the purpose of defraying all or a portion of the cost of public facilities related to this development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, or fees collected as part of development agreements. The Mitigation Fee Act Fees applying to this project are listed in the schedule of fees to be provided at building permit stage. Notice is also hereby given that the Developer has an opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval or conditional approval of this development project and that the 90-day protest period has begun.
- B. **Covenants, Conditions and Restrictions:** The applicant shall provide a set of Covenants, Conditions and Restrictions (CC&R's), Bylaws and Articles of Incorporation, for review and approval by the Development Services Director prior to final occupancy or recordation of a final map. All such CC&Rs shall include the following:
1. The Owners recognize that the use, modification and proper maintenance of the Common Area and public right-of-way(s)* are for the benefit of all citizens of the City of Morgan Hill (City) and that the City is an intended third-party beneficiary of these covenants, conditions and restrictions and may, upon notice of hearing as set forth below, exercise the same powers of enforcement as the Association.

*Public right-of-way: Exclusive of streets dedicated to and accepted by the City of Morgan Hill.
 2. The City may, by mail or personal delivery, give written notice of the breach of any maintenance obligation to the Association with a demand that such breach be remedied. If such breach is not remedied within thirty (30) days of the mailing or delivery of such notice, the City shall have standing and the right (but not the obligation) to bring a court action against the Association and Owners to enforce such provision. In addition, the City shall be entitled to recover reasonable attorneys' fees and costs incurred in such action.
 3. The Notice may also contain a date for a hearing on the matter before a City employee designated by the City (which hearing shall be held no sooner than fifteen (15) days after mailing of such notice), and if after such hearing the City determines that there has been inadequate maintenance, the City shall have the right (but not the obligation) to undertake the maintenance of the Common Area or public right-of-way in question. Any and all costs incurred by the City in so maintaining the Common Area or public right-of-way shall be a lien against all

the properties included with the Project and shall be the personal responsibility of the Owners and the Association.

4. The entire Project and all of the properties located thereon shall be subject to the conditions and restrictions of all subdivision and other Project approvals by the City, with respect to the Project. Any changes and/or modifications to the Project and/or any Unit, including but not limited to changes to the exterior of any Unit, may be subject to review and approval of the City of Morgan Hill as may be determined by review of the Project approvals by the City of Morgan Hill.
 5. This section may not be amended without the prior written consent of the Development Services Director for the City. Nothing contained in this section shall limit any other right or remedy which the City may have under its ordinances or state law.
 6. For the purposes of this section, the question of whether there has been a breach of a maintenance obligation or adequate maintenance shall be determined by the provisions of the original Declaration as first recorded with the County Recorder for Santa Clara County and by any amendment thereto, but only to the extent that such maintenance obligation or duty of maintenance is increased by such amendment.
- C. **Signed copies of Approval Certificate:** Submit two (2) signed copies of the Approval Certificate to the Planning Division prior to issuance of a building permit.
- D. **Minimize Seismic Shaking:** To avoid or minimize potential damage from seismic shaking, the proposed residential development shall be built using standard engineering and seismic safety design techniques. Prior to issuance of building permits, building design and construction at the site shall be completed in conformance with the recommendations of a design-level geotechnical investigation, which shall be included in a report to the City. The structural designs for the proposed development will account for repeatable horizontal ground accelerations. The report shall be reviewed and approved by the City of Morgan Hill Building Division prior to issuance of a building permit. The buildings shall be required to meet the requirements of applicable Building and Fire Codes, including the California Building Code Chapter 16, Section 1613, as adopted or updated by the City. The project will be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property to the extent feasible and in compliance with the Building Code.

ENGINEERING DIVISION

Project Specific

- A. **Streets:**
1. Mission View Drive:

- a. For the future realignment of Mission View per the General Plan and circulation element, the needed street right-of-way dedication shall be granted to City as shown on sheet PA-11 of the preliminary submittal.

B. Stormwater Management, Drainage, and Flood Control:

1. The MADRONE CHANNEL 2D FLOODPLAIN STUDY, dated July 2022, jointly prepared by Akel Engineering Group, Inc. and Kasraie Consulting for the City of Morgan Hill and Valley Water was completed to determine the available 100-year flow capacity in the Madrone Channel. A summary of the floodplain study was documented in a separate Technical Memo by AKEL ENGINEERING titled “Proposed New 42” Storm Drain Outfall at Half Road”, dated December 16, 2022. The Technical Memo included recommendations to the City on how to manage the remaining 100-year flow capacity in the Madrone Channel among developments north of Half Road, which includes the Crosswinds Project. The Crosswinds Project will need to update plans, calculations, and reports to be consistent with the Flood Study and Technical Memo. The Technical Memo was previously provided to the Crosswinds developer.
2. Flood Facility Sizing:
 - a. The minimum required volume for the on-site detention facility(ies) shall be designed to hold the 25-year, 24-hour design storm event with an additional 25% detention basin volume for freeboard.
 - b. The 25-year, 24-hour design storm event is 5.24” rainfall if the downstream conveyance is capable of conveying excess flow up to the 100-year, 24-hour of 6.50” rainfall design storm. The design storm is based on Table 3.4 “Hydrology and Hydraulics Design Criteria for Ponding Basins” of the City’s 2018 Storm Drainage System Master Plan.
 - c. Release into the new public storm main along Half Road cannot exceed the flow rate, per the Technical Memo stated under Comment no. B.1. Note that the Crosswinds Project shall submit flow calculations for the 100-year storm event where the 100-year post-development flow does not exceed the project’s Madrone Channel capacity allotment of 13.4 cfs.
3. Stormwater Management:
 - a. This project shall comply with the California Regional Water Quality Control Board Central Coast Region Resolution No. R3-2013-0032 as documented by the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements. Following the approval of the SD and SR application, these conditions for Stormwater Management shall be addressed on the Preliminary Post-Construction Stormwater Control Plan prior to submitting for the Building Permits and Final Map approval applications.
 - b. If the project is proposing underground infiltration systems (such as pre-manufactured vaults and modular structures), submit a geotechnical report/soils assessment of the proposed underground infiltration systems that shall include the following to confirm the underground infiltration systems comply with the post-construction requirements:

- i. Statement of whether the site is suitable for the proposed underground infiltration system;
 - ii. Site-specific soil infiltration rates for each area of the site at the depths (i.e., at the base of the facility) where the underground infiltration systems are proposed;
 - iii. Field boring/test pit logs;
 - iv. Information about any surface or subsurface soil contamination at the site;
 - v. Identification of seasonally high depth to groundwater table surface elevation; and
 - vi. Identification of potential impacts to nearby structural foundations.
 - c. If underground infiltration systems are proposed, the project shall also demonstrate compliance with the following design criteria for the underground infiltration system:
 - i. Minimum soil infiltration rate: 1.0 inch per hour after applying a safety factor of 2, as initially determined from field-measured soil infiltration test. If the site-specific soil infiltration rate is less than 1.0 inch per hour after applying a safety factor of 2, a hydraulic modeling and calculation was provided showing the drawdown time for the system is no longer than 48 hours;
 - ii. Contributing drainage area to each of the underground infiltration systems is less than 5 acres (217,800 sq. ft.);
 - iii. Meets the Santa Clara Valley Water District's Guidelines for Stormwater Infiltration Devices (*see page 25 of the Stormwater Management Guidance Manual for Low Impact Development & Post-Construction Requirements*) that include the following:
 - (a) Required horizontal setbacks from drinking water wells, septic systems, underground storage tanks and known contamination sites;
 - (b) Required vertical separation from seasonally high groundwater; and
 - (c) Provides pretreatment prior to infiltration.
 - iv. Minimum 10' horizontal distance from a building or structural foundation unless a wider distance is recommended by the project's Geotechnical/Soils Engineer.
 - v. Minimum 10' horizontal distance to any adjacent property line.
 - vi. Minimum distance from slopes greater than 15% as recommended by the project's Geotechnical/Soils Engineer; and
 - vii. Proposed underground infiltration system will not produce infiltrating water that contains a pollutant that will be discharged to a nearby waterway/surface water impaired for that pollutant.
- C. **Water:** Onsite water system shall be privately maintained.
- 1. Private submeters to be located or banked in accessible locations similar to public meters, to be accessible to renter/owner, HOA, city staff, and County Weights and Measures.
- D. **Broadband Connectivity:** Indicate on the plans that broadband conduits will be provided along all public frontages (Mission View Drive, Half Road, and De Paul Drive).

- E. **Transportation:** Pursuant to the project's EIR, the developer shall comply with the following:
1. **Transit Facilities:** Prior to occupancy of each unit, developer shall pay a fair share contribution toward the installation of a southbound bus stop, including street lighting, landscaping, and a new passenger pad, after the main entrance on Mission View Drive.
 2. **Cochrane Road and Mission View Drive:** Prior to occupancy of each unit, developer shall pay a fair share contribution toward the installation of a second northbound left-turn lane on Mission View Drive and a cycle length adjustment to improve intersection operations. The addition of the second northbound left-turn lane will require lane striping and signal modification but will fit within the existing curb-to-curb pavement width on Mission View Drive. The cost to install the required traffic signal modification, improvements, and striping required for the addition of the second left-turn lane shall be reimbursed to the developer, by agreement or credits, and shall be issued on a per unit basis through the traffic impact fees to be determined by the Public Services Director or Director's designee at improvement plan stage.
 3. **Mission View Drive and Half Road:** Prior to occupancy of each unit, developer shall pay a fair share contribution toward the installation of a signal at the Mission View Drive and Half Road intersection.
 4. **Main Avenue and Condit Road:** Prior to occupancy of each unit, developer shall pay a fair share contribution toward the addition of an exclusive southbound right-turn lane on Condit Road. The addition of the right-turn lane will require signal modifications and lane striping on the southbound approach.
 5. **Condit Road and Diana Avenue:** Prior to occupancy of each unit, developer shall pay a fair share contribution toward the installation of a signal at the Condit Road and Diana Avenue intersection.
- F. **Parkland Dedication/Parkland Fee In-Lieu:** This project is subject to the Parkland Dedication and Parkland Fee In-Lieu requirements (**MHMC 17.28**).
1. The developer shall pay fees, in-lieu of parkland dedication, at the time of filing of the project's final map to meet the parkland obligation. The project's parkland obligation will be calculated using the formula shown in MHMC Section 17.28.060.
 2. Private recreation credits, which could allow a credit of up to 40% towards the parkland obligation, could be available for private open space(s) within the subdivision that meets the standard requirements listed in MHMC Section 17.28.130.
- G. **Final or Parcel Map:** The project's tract/final map shall be approved by the City Council prior to issuance of a grading permit. (**MHMC 17.20.390; 17.24.210**)
- H. **Reciprocal Access:** Reciprocal access easements and maintenance agreements ensuring access to all parcels and joint maintenance of all common roads, drives or parking areas shall be provided by CC&R's and by deed and shall be recorded concurrent with the map, or prior to issuance of building permit where no map is involved. (**MHMC 17.20.350 H**)

- I. **Stormwater Management:** The project is proposing a land use that is considered a priority by the City to implement trash full capture. At improvement plan/building permit stage, the project shall include the installation of a trash full capture system(s) from a list of certified trash full capture systems by the State Water Resources Control Board. The list of certified trash full capture systems can be viewed from the Water Board's webpage at:
https://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/trash_implementation/2022/fullcptre-availabletopublic10-11.pdf
- J. **Water:**
1. Project shall grid private water from Mission View Drive to De Paul Drive with Phase 1 for pressure redundancy.
 2. Install public master meters at two locations: Mission View Drive and De Paul Drive with Phase 1.
 3. All new water main installations (public and private) shall adhere to the separation criteria established by the California Waterworks Standards (California Code of Regulations (CCR), Title 22, Division 4, Chapter 16, Section 64572). Any proposal for alternative compliance to these requirements shall be submitted to the State Water Resources Control Board' Division of Drinking Water, pursuant to CCR, Title 22, Section 64551.100.
- K. **Private Sanitary Sewer Maintenance Agreement:** Prior to final map approval/building permit issuance, the Owner(s) shall enter into a Private Sanitary Sewer Maintenance Agreement with the City for maintenance of all private sanitary sewer facilities which includes the private sewer mains, and sewer laterals. The Agreement shall be recorded at the County Recorder's Office prior to building final.
- L. **Reimbursement:** Prior to final map approval, the project shall pay reimbursement fees for the actual costs of the following improvements to be constructed by the Redwood Tech Industrial Development and which will benefit the Crosswinds Project (refer to Subsequent Development Reimbursement Agreement executed on October 26, 2022 by the City and Redwood Tech developer):
1. De Paul Drive Improvements (*Maximum Reimbursable Amount = \$473,591*): Half of cost of new wet utilities (water and storm) along Crosswinds' property frontage.
 2. Sanitary Sewer Main Extension (*Maximum Reimbursable Amount = \$785,301*): 55% Cost-share cost (per sewer cost allocation between the Redwood Tech Project and Crosswinds Project) of total estimated sewer extension cost, less the cost to upsize entire length of sanitary sewer main extension from 8" (developers' responsibility) to 10".
- M. At improvement plan/building permit stage, the developer shall submit the offsite improvement plans to Valley Water for review of the proposed improvements that may impact the existing Valley Water groundwater recharge pipeline along Half Road.

GENERAL

- A. **Final Map:** The applicant shall have a Final Map prepared by a registered engineer (licensed prior to 01/01/1982: registration number 33,965 or lower) or licensed land surveyor delineating all parcels and easements created. There shall be concurrence in writing by PG & E, Telephone, Cable TV and any other affected agencies to all improvements and easements which are applicable to them. The number and locations of monuments shall be set as required by the City Engineer. **(MHMC 17.20.200 A; 17.20.290; 17.24.010)**
- B. **Public and Private Improvements:** The applicant shall cause the construction of all public and private improvements in accordance with the latest City Standard Drawings and Specifications. **(MHMC 12.02.090 A; 17.32.010 A)**
- C. **Improvement Drawings:** The applicant shall submit as part of the improvement drawings for the project, profiles of all improvements in the subdivision and typical cross-sections of all streets and details of curbs, gutters, and sidewalks, to be accomplished to the satisfaction of the City Engineer prior to submittal of Final Map. **(MHMC Sec 17.32.060 B; 17.32.070; 17.32.080 A)**
1. Improvement plans shall show water lines, sanitary sewer, storm drain system, pavement widths, curve radius, and existing utilities.
- D. **Encroachment Permits:** Obtain necessary encroachment permits from the City of Morgan Hill and provide guarantee covering off-site improvements. **(MHMC 12.08.040 A; 12.08.090)**
- E. **Subdivision Improvement Agreement:** Enter into a Subdivision Improvement Agreement (SIA) with the City of Morgan Hill to cover required improvements. **(MHMC 12.02.150; 17.32.010 B; 17.32.160)**
- F. **Impact Fee Increase:** The City of Morgan Hill, pursuant to City Code Chapter 3.56 has established impact fees to finance the cost of improvements required by new development. City Code Chapter 3.56.050 provides for automatic annual (July 1st) adjustment of those fees in existence utilizing the Engineering News Record Index for the preceding twelve months. The City maintains historical records on the Engineering News Record Index. These records are available for inspection during normal business hours. **(MHMC 3.56.010; 3.56.030; 3.56.050)**
1. The developer shall pay all applicable impact fees and other engineering review fees prior to building permit issuance and at building final. The fees shall be based on the Public Works Fee Schedule prepared by Land Development Engineering.
 2. The project will be subject to the updated Water Capacity fees, which become effective May 15, 2023. Information related to the City's impact and development fees are available on the City's Finance Department webpage at: <https://www.morganhill.ca.gov/1572/Fee-Schedules>.

STREET IMPROVEMENTS

- A. **Public and Private Streets:** The applicant shall cause the design and construction of all new public and private streets serving the project. The design of all new public and private streets shall be consistent with the General Plan Land Use and Circulation Element as well as the Street Standard Details as contained within the Public Works Standards Details. The construction of the streets shall be undertaken to the lines and grades and in a manner satisfactory to the City Engineer. All street improvements shall be constructed to the satisfaction of the City Engineer. The timing of the improvements will be determined by the City. **(MHMC 12.02.010; 12.02.090; 17.32.060 B; CMH General Plan; CMH Design Standards and Standard Details for Construction)**
- B. **Installation and Dedication of Streets:** The project shall install and dedicate street improvement including, but not limited to, curb and gutter, sidewalk, compaction, street paving, oiling, storm drainage facilities, sewer and water, fire protection, undergrounding of utilities and street lighting in conformance with City of Morgan Hill requirements. **(MHMC 12.02.010; 12.02.50; 12.02.080; 12.02.100; 17.28.010; 17.32.060)**
- C. **Underground existing utilities:** All existing overhead utilities adjacent to any site boundary or along any street frontage of site shall be placed underground in accordance with City standards and affected utility company guidelines. **(MHMC 12.02.090 B; 17.32.020 E.1)**
- D. **Street Trees:** The proposed street trees shall comply with the street tree species and spacing listed under the applicable zone in the Master Street Tree List of the City's Master Street Tree Plan.

SANITARY SEWER SYSTEM

- A. **Design of Sewer Improvements:** The applicant shall cause to be undertaken the design and construction of sanitary sewer improvements including, but not limited to installation of sewer line extension on the proposed public street(s) or private street(s)/drive aisle(s). The sanitary collection system shall include, but not be limited to manholes with manhole frames and covers, cleanouts, wye-branches and laterals, and separate sewer taps to each lot. These are to be installed by the developer. **(MHMC 13.20.355; 17.32.020 C; CMH Sewer System Master Plan; CMH Design Standards and Standard Details for Construction)**
- B. **Sewer Connections:** All existing and future sewer lines shall be tied into the City's system and existing septic systems shall be abandoned in accordance with City requirements. **(MHMC 13.24.060; 17.32.20 C)**

STORM DRAIN SYSTEM

- A. **Storm Drainage Study:** A complete storm drainage study of the proposed development must be submitted showing amount of run-off, and existing and proposed drainage structure capacities. This study shall be subject to review and approval by the City

Engineer. All needed improvements will be made by the applicant. No overloading of the existing system will be permitted. **(MHMC 17.32.020 B; 17.32.090; CMH Design Standards and Standard Details for Construction)**

- B. **Storm Drainage Design:** The applicant shall cause the design and construction to be undertaken for a storm drainage collection system shown on the Tentative Map/Design Review plans. All storm drain improvements shall be constructed to the satisfaction of the City Engineer. **(MHMC 17.32.020 A & B)**
- C. **Storm Drainage Capacity:** Collection system shall be designed to be capable of handling a 10-year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Streets shall be designed to carry 100-year storm. Items of construction shall include, but not be limited to installation of storm line extension on proposed public street(s), surface and subsurface storm drain facilities, manholes with manhole frames and covers, catch basins and laterals. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows. **(MHMC 17.32.020 B; 18.74.440; CMH Design Standards and Standard Details for Construction; CMH Storm Drainage System Master Plan)**
- D. **Storm Drainage General Requirements:** Prior to final map approval or issuance of a grading permit, the applicant shall complete the following to the satisfaction of the City Engineer.
1. Storm drain calculations to determine detention/retention pond sizing and operations.
 2. Plan describing how material excavated during construction will be controlled to prevent this material from entering the storm drain system.
 3. Water Pollution Control Drawings (WPCD) for Sediment and Erosion Control.
(CMH Design Standards and Standard Details for Construction)
- E. **NPDES Construction Activity General Permit/SWPPP Requirements:** As required by the State Water Resources Control Board (SWRCB) Order No. 2009-0009-DWQ, construction activity resulting in a land disturbance of one (1) acre or more of soil, or whose projects are part of a larger common plan of development that in total disturbs more than one (1) acre, are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Discharges of Storm Water Associated with Construction Activity (General Permit). To be permitted with the SWRCB under the General Permit, owners must file a complete Notice of Intent (NOI) ONLINE at: <http://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp> and develop a Storm Water Pollution Prevention Plan (SWPPP) Manual in accordance with the General Permit. The SWPPP Manual shall follow the CASQA SWPPP template/format at <https://www.casqa.org/store/products/tabid/154/p-167-construction-handbookportal-initial-subscription.aspx> and shall be approved by Public Works

Engineering. A Waste Discharger Identification (WDID) number to be issued to the construction site after the SWRCB receives and verifies the submitted ONLINE NOI information. The WDID number and approved SWPPP Manual shall be provided to Public Works and the Building Department prior to any approval of grading activities **(SWRCB NPDES General Permit CA000002)**.

F. **NPDES General Permit/Site SWPPP Inspections and Compliance:**

1. ALL project onsite and offsite construction activity shall have the site inspected by a **qualified third party SWPPP Inspector (QSD or QSP or RCE)**.
2. SWPPP Inspections shall occur weekly during the rainy season (September 15th thru May 1st).
3. SWPPP Inspections shall occur bi-weekly during the non-rainy season.
4. 48 hours prior to and following a forecasted rain event, SWPPP Inspections shall occur in addition to those of items 2 or 3 above.
5. Per each of the inspection conditions 2, 3, or 4, the NPDES SWPPP Inspector shall certify in writing to the Building and Public Works Department if the site is in compliance or non-compliance with the NPDES General Permit for Stormwater, site SWPPP Manual, and Water Pollution Control Drawings (per the CMH-SWPPP Inspection Check List to be provided by Public Works). QSD/QSP SWPPP Inspectors shall forward onsite and offsite information/certification to the Building (on-site private property issues) and Public Works (public right-of-way issues) inspectors respectively.
6. Prior to rain events, BMPs* not in compliance will need to be corrected immediately.
7. Illicit discharges per the NPDES General Permit, non-compliance of tracking control, and inlet protection within the public right of way shall be address immediately.
8. Other non-compliance issues need to be addressed within a 24-hour period.
9. Non-compliance issues which have been corrected shall be verified by NPDES SWPPP Inspector by a follow up inspection.
10. BMPs maintenance/inspections shall include tree protection if applicable.

- G. **Reduce construction-related water quality impacts:** The following measures shall be included in the project to reduce construction-related water quality impacts to a less than significant level. The measures shall be implemented to the satisfaction of the Director of Development Services or Director's designee. The BMPs shall be approved by the Director of Development Services or Director's designee prior to the issuance of a grading permit.

The following BMPs shall be implemented during project construction:

- Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- Earthmoving or other dust-producing activities shall be suspended during periods of high winds.

- All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust.
- Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- All trucks hauling soil, sand, and other loose materials shall be covered and all trucks will be required to maintain at least two feet of freeboard.
- All paved access roads, parking areas, staging areas and residential streets adjacent to the construction site shall be swept daily (with water sweepers).
- Vegetation in disturbed areas shall be replanted as quickly as possible.

WATER SYSTEM

- A. **Water well abandonment:** Abandonment of any existing water well shall be in conformance with Santa Clara Valley Water District (SCVWD) Ordinance 90-1. Location and disposition to be shown on the plan. Well(s) shall be properly registered with the SCVWD and either be maintained or abandoned in accordance with SCVWD standards.
- B. **Water Master Meter:** All residential units are being served by two (2) master public meter(s) and shall be privately sub-metered as allowed pursuant to Section 13.04.130.C of the Morgan Hill Municipal Code. The owner may, upon compliance with the following, install separate private submeters to each residential unit:
1. The owner shall obtain approval/permit from the Public Works Department for the submeter system.
 - a. Any submeters shall accurately and completely measure all water consumed from the municipal water system.
 - b. The owner shall agree to charge the tenant of each unit a water utility charge strictly based on the consumption by the occupants of the unit.
 - c. Installation, maintenance and monitoring of the submeter system shall be the responsibility of the owner, and in no circumstances shall the city be responsible.
 - d. If any water conservation plan is implemented or imposed by the city, the owner shall be responsible for complying with any reductions required by such plan as measured by consumption on the meter(s) directly connected to the municipal water system.
 2. Failure to abide by the above conditions, and/or any other conditions the city may impose, may result in revocation of any permit issued and/or other action as authorized by law, such as at the owners expense install individual public water meters for each unit.
 3. Owner/developer shall provide an agreement with the City to cover/outline the requirements of section 13.04.130.C of the Municipal Code to be reviewed and approved by the City Engineer or designee.

4. Records of bookkeeping and private sub-metering usage shall be accurately maintained digitally. Upon request from the City, records shall be produced to the city within a 24-hour period.

OTHER CONDITIONS

- A. **Easement Dedications:** The owner shall dedicate all necessary utility easements. **(MHMC 12.02.080 D; 17.28.010 A)**
- B. **Undergrounding new utilities:** The applicant shall cause the design and construction required to underground all electric, gas, Cable TV and communication lines within the development. Such design and construction shall be to the satisfaction of the affected utilities and the City Engineer. **(MHMC 17.32.020 E.1)**
- C. **Landscaping and Irrigation Systems:** Landscaping and irrigation systems serving common areas that are required to be installed in the public right-of-way on the perimeter of this tract area shall be continuously maintained by the property owner or designated maintenance entity.
- D. **Final Landscape Plans:** Final landscape plans shall be submitted with and included as part of the improvement plans for the subdivision. **(MHMC 17.08.090)**
- E. **Pre-construction Meeting:** Prior to the approval of any Building Permit for grading activity, the developer shall schedule a pre-construction meeting with the Public Works Inspection Division with the following project team members:
 1. Civil Engineer of record
 2. Geotechnical Engineer of record
 3. Third Party QSD/QSP SWPPP Inspector
 4. General Contractor
 5. Sub-Contractors
- F. **As-Built Submittal Standards:** The developer shall submit digital as-builts of the project's Final Map, Grading Plan, and Improvement Plans which adhere to the City's updated GIS/CAD Developer Submittal Standards.

NPDES WATER QUALITY STORMWATER MANAGEMENT DEVELOPMENT STANDARDS

- A. **Stormwater Post Construction Requirements (PCRs):** Project shall comply with the California Regional Water Quality Control Board Central Coast Region Resolution No. R3-2013-0032 as documented by the **Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements** (developed from Resolution No. R-2013-0032 Attachment 1 and 2 at:

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/stormwater/docs/lid/lid_hydromod_charette_index.shtml). A copy of the guidance manual can be obtained through the Land Development Engineering webpage. Project shall provide Stormwater

Runoff Management Plan, Stormwater Control Plan Checklist and applicable calculations per the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements. Project shall meet the applicable requirements of the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements:

1. Performance Requirement 1: Site Design and Runoff Reduction
2. Performance Requirement 2: Water Quality Treatment
3. Performance Requirement 3: Runoff Retention
4. Performance Requirement 4: Peak Management

B. **Peak Storm Water Runoff Discharge Rates** - Post-development peak storm water runoff discharge rates shall not exceed the estimated pre-development rate for developments where the increased peak storm water discharge rate will result in increased potential for downstream erosion. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows.

C. **Storm Drain System Stenciling and Signage:** All storm drain inlets and catch basins within the project area must be stenciled with prohibitive language (such as: “NO DUMPING – DRAINS TO CREEK”) and/or graphical icons to discourage illegal dumping. Signs and prohibitive language and/or graphical icons, which prohibit illegal dumping, must be posted at public access points along channels and creeks within the project area. Legibility of stencils and signs must be maintained.

D. **Trash Enclosure Areas:** In addition to compliance with the requirements under Municipal Code Section 18.92.155 (Refuse and Recycling Enclosures), all trash enclosure areas must meet the following Structural or Treatment Control BMP requirements:

1. Roof Required: Trash enclosure areas shall have an all-weather noncombustible solid roof to prevent rainwater from mixing with the enclosure’s contents.
2. Walls Required: Trash enclosure shall have structural walls to prevent unauthorized off-site transport of trash.
3. Doors: Trash enclosure shall have door(s) which can be secured when closed.
4. Grades: The pad for the enclosure shall be designed to not drain outward, and the grade surrounding the enclosure shall be designed to not drain into the enclosure.
5. Drain Inlet: Within the enclosure, an area drain with an approved (Zurn) vandal proof drain shall be installed and shall be plumbed to the sanitary sewer system with grease trap. Grease trap shall be located within the trash enclosure footprint.

E. **Design Standards for Structural or Treatment Control BMPs:** The post-construction treatment control BMPs shall incorporate, at a minimum, either a volumetric or flow-based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) stormwater runoff:

1. Volumetric Treatment Control BMP
 - a. The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from the formula recommended

- in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998); or
 - b. The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in California Stormwater Best Management Practices Handbook – Industrial/ Commercial, (2003); or
 - c. The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for “treatment” that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.
 - 2. Flow Based Treatment Control BMP
 - a. The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the area; or
 - b. The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.
- F. **Inlets and Riser Pipes for Underground Stormwater Infiltration and Storage Facilities:** If proposed with the project, underground stormwater infiltration and storage facilities shall include adequate inlets and/or risers for visual inspection, maintenance and as flush ports.
- G. **Stormwater Runoff Management Plan (SWRMP):** The stormwater runoff management plan shall include sufficient information to evaluate the environmental characteristics of affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures (post construction BMPs) proposed for managing stormwater runoff.
 - 1. The stormwater runoff management plan shall be prepared under the direction of a professional civil engineer registered in the State of California. The responsible professional civil engineer shall stamp and sign the approved stormwater runoff management plan.
 - 2. The developer shall provide a signed certification from the civil engineer responsible for preparing the Stormwater Runoff Management Plan that all stormwater best management practices have been designed to meet the requirements of this chapter.
- H. **Stormwater BMP operation, maintenance, and replacement responsibility**
 - 1. Prior to building final, the property owner shall submit a signed certification (with signature, date & license number/seal) certifying that all post-construction stormwater management/BMP facilities shown on the as-built drawings were inspected by the civil engineer (or by a qualified third party stormwater inspector hired by the permittee/owner) and have been constructed in accordance with the approved plans and specifications.
 - 2. All on-site stormwater management facilities shall be operated and maintained in good condition and promptly repaired/replaced by the property owner(s), an

- owners' or homeowners' association or other legal entity approved by the city.
 3. Any repairs or restoration/replacement and maintenance shall be in accordance with city-approved plans.
 4. The property owner(s) shall develop a maintenance schedule for the life of any stormwater management facility and shall describe the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be included with the approved stormwater runoff management plan.
- I. **Stormwater BMP operation and Maintenance Agreement (SWBOMA):** Prior to the issuance of any building permit requiring stormwater management BMPs, the owner(s) of the site shall enter into a formal written Stormwater BMP Operation and Maintenance Agreement with the City. The City shall record this agreement, against the property or properties involved, with the County of Santa Clara and it shall be binding on all subsequent owners of land served by the storm water management BMPs. The City standard Stormwater BMP Operation and Maintenance Agreement will be provided by Land Development Engineering at building permit/improvement plan stage.
- J. **Stormwater BMP inspection responsibility**
1. The property owner(s) shall be responsible for having all stormwater management facilities inspected for condition and function by a **certified Qualified Stormwater Practitioner (QSP)**.
 2. Unless otherwise required by the City Engineer or designee, stormwater facility inspections shall be done at least twice per year (April 15th and September 15th) by the QSP. Written records shall be kept of all inspections and shall include, at minimum, the following information:
 - a. Site address;
 - b. Date and time of inspection;
 - c. Name of the person conducting the inspection;
 - d. List of stormwater facilities inspected;
 - e. Condition of each stormwater facility inspected;
 - f. Description of any needed maintenance or repairs; and
 - g. As applicable, the need for site re-inspection.
 3. Upon completion of each inspection, an inspection report shall be submitted to Land Development Engineering.
- K. **Records of maintenance and inspection activities:** On or before April 15th and September 15th of each year, the party responsible for the operation and maintenance of on-site stormwater management facilities under the BMP operation and maintenance agreement shall provide the chief engineer or designee with records of all inspections, maintenance and repairs.
- L. **Annual Certification of SWRMP** – On or before September 30th of each year a Registered Civil Engineer (RCE) shall provide written certification that the developments stormwater quality design standards are properly maintained and functioning as required

by the SWRMP.

BUILDING DIVISION

- A. **California Code of Regulations:** Project shall be designed to comply with the edition of the California Codes of Regulations as amended by the Morgan Hill Municipal Code Title 15 that is in effect at time of Building Permit Application submittal.
- B. **Compliance with Morgan Hill Municipal Code:** Project shall comply with the Morgan Hill Municipal Code (MHMC) including but not limited to:
 - 1. MHMC 15.65 Sustainable Building Regulations.
 - 2. MHMC 18.72.040 C. Electric Vehicle Charging.
 - 3. MHMC 15.40 Building Security
 - 4. MHMC 15.38 Wage Theft Preventions
 - 5. MHMC 18.148 Water Conservation
 - 6. MHMC 15.63 Prohibition of Natural Gas Infrastructure in New Buildings
(Applies to all Building Permit Applications Received on or after March 1, 2020)
- C. **Acoustical Analysis:** An acoustical analysis report shall be submitted with the building permit documents showing interior and exterior noise mitigations for compliance to the MHMC, California Building Code, and CALGreen Code.

FIRE DIVISION

- A. **Fire Prevention Division Standard Details and Specifications:** Project shall conform to the minimum requirements of The City of Morgan Hill's Fire Prevention Division Standard Details and Specifications:
<https://www.morganhill.ca.gov/DocumentCenter/View/10668/Fire-Details-and-Specs?bidId=>.
- B. **Automatic Fire Sprinkler System Required:** Provide proposed fire sprinkler design standard for the R2 and R3 occupancy types. **(CFC Chapter 9 as amended by MHMC 15.44.170)**

HOUSING DIVISION

- A. **Inclusionary Housing Agreement:** The developer shall execute and record an Inclusionary Affordable Housing Agreement with the City prior to issuance of a building permit. **(MHMC 14.04.050)**

All new for-sale Residential Projects consisting of two (2) or more Dwelling Units located within the City but outside of Downtown are required to restrict fifteen percent (15%) of the Dwelling Units for sale at Affordable Sales Prices to Moderate-Income Households. See ordinance and amendment for more specific Inclusionary requirements. Project

consists of 269 units. $269 \times 15\% = 40.35$ BMR units. Project will build 40 BMR units and pay .35 fractional fee. Fractional Fee shall be paid prior to issuance of building permits for Market-Rate units in a Residential Project.

All Inclusionary Units shall be reasonably dispersed throughout the Residential Project. City staff request the following BMR unit placement as "reasonably dispersed" to be as follows per sheet T1.3 submitted 8/28/20:

- Total project units = 269/100%
- Total SFD = 56/21% of total project = 8 BMR's/21% of project
- Total Attached Duets = 64/24% of total project = 10 BMR's/24% of project
- Total Townhomes = 149/55% of total project = 22 BMR's/55% of project

- B. **BMR Standards:** The Below Market Rate (BMR) units shall comply with the BMR standards.

BMR standards:

1. Location. BMR units shall be distributed evenly throughout the project.
2. Lot Size. Lot size shall be at least the same size as the smallest lot of a market rate unit within the project;
3. Bedroom Count. Average bedroom count shall be the same as the average bedroom count in the market rate units in the project;
4. Exterior. Exterior trim entry door hardware, and finish to the same standard as the Market Rate
5. Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed by the developer shall be of good quality and in new condition. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The below listed items must be installed as a basic feature of each BMR home.
6. Minimum Interior standard finishes will be as follows:
 - a. All closets shall have doors
 - b. Interior doors to be raised panel type or same as market rate
 - c. Door hardware to be brass finish or equivalent
 - d. Appliances shall be major brand name
 - e. Microwave with an exhaust vent shall be installed over the range
 - f. Kitchen counters shall be white ceramic tile
 - g. Kitchen cabinets shall be stained wood with white melamine interiors
 - h. Units will be roughed in for AC including electrical and line set. If installation of an Air Conditioner is a standard feature for market rate units, then it is a standard for the BMR units.

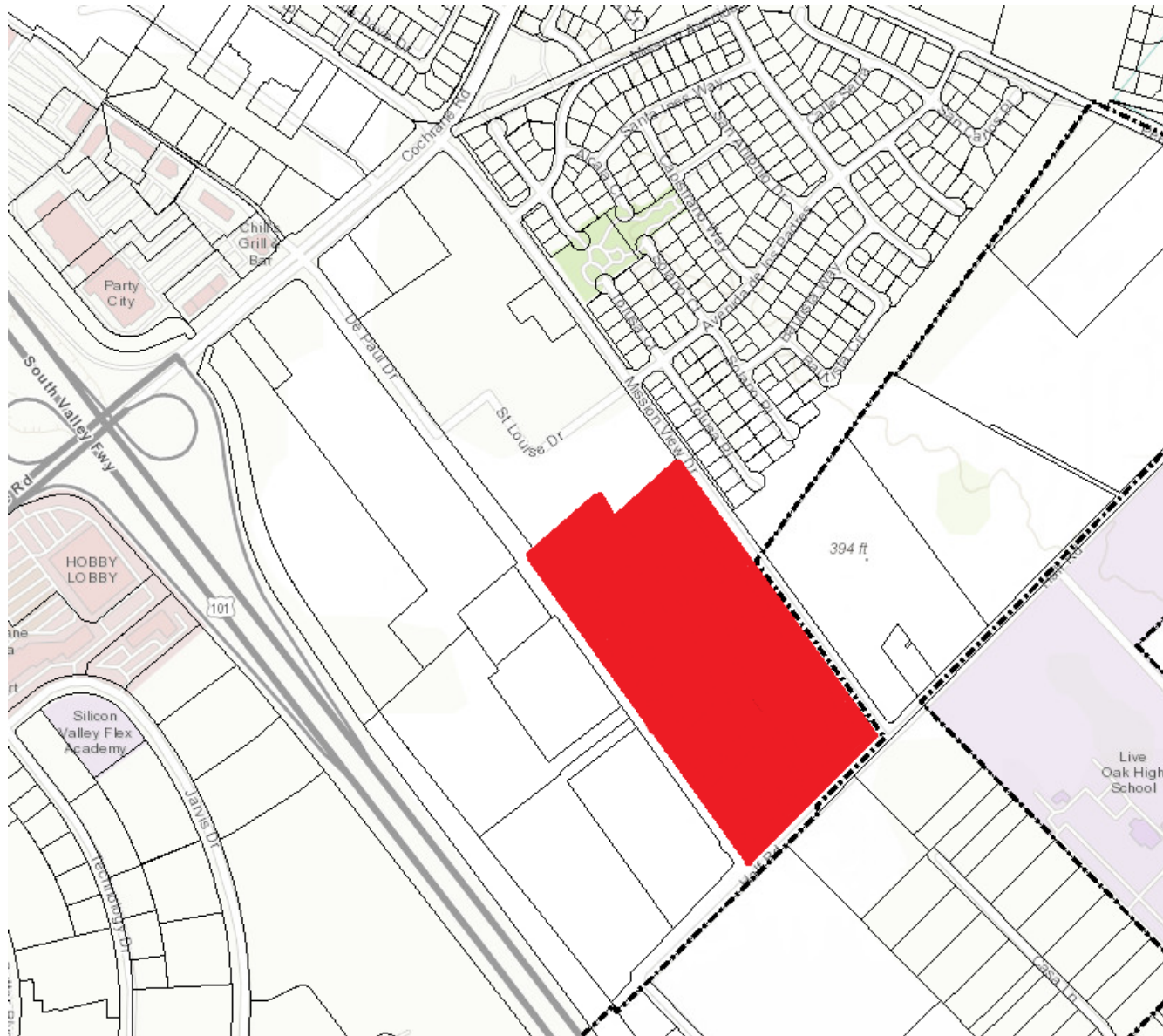
- i. Basic alarm system to secure all accessible openings to the home
 - j. Carpet in bedrooms, hallways, family rooms
 - k. Linoleum or tile entry, bathroom kitchens
 - l. Laminate flooring may substitute for carpet or linoleum
 - m. Electric garage door opener
7. Timing of Construction. BMR units shall be constructed in proportion to the BMR ownership housing requirement applicable to the project. For example, for a 40-unit project with an 15% BMR ownership housing commitment (6 BMR's), at least one BMR unit shall be constructed before or concurrently with every 6th market rate unit constructed. The last market rate unit to be completed in the project may not receive a certificate of occupancy until the last BMR unit has received a certificate of occupancy. The Director may approve a modified schedule if the timing requirement will create unreasonable delays in the issuance of certificates of occupancy for market rate units.



SR2020-0010, SD2020-0003, and EA2020-0007 HALF-DIVIDEND (CROSSWINDS)



Crosswinds – Project Site and Location



Crosswinds



Project:

- Vesting Tentative Map (SD2020-0003)
- Design Review (SR2020-0010)
- Environmental Impact Report (EA2020-0007)

Request:

269-unit Residential Subdivision

- 56 courtyard-style single-family homes
- 64 duets
- 149 townhome-style condominiums

Crosswinds



General Plan & Zoning

- Residential Attached Low (density 6-16 units/acre)
- Residential Attached Low (RAL 3,500)

Site Description

- Undeveloped grassland, fallowed agricultural fields, boxed trees, vacant single-family residence

Surrounding Uses

- Vacant land, orchards, single-family residences, health center, Cochrane Tech

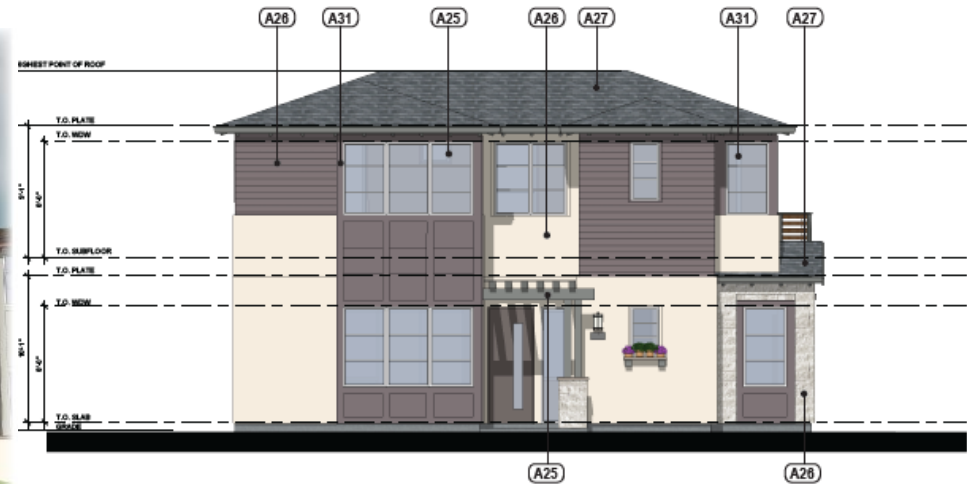
Crosswinds – Site Plan



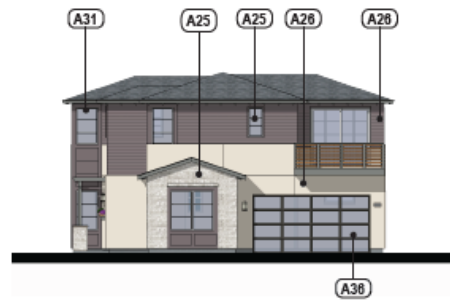
Crosswinds – Elevations



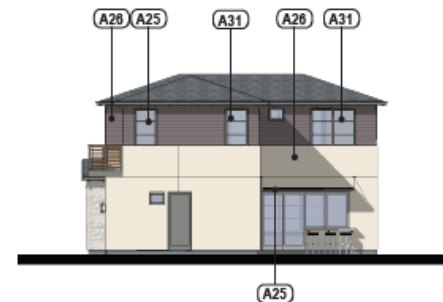
SINGLE FAMILY DETACHED



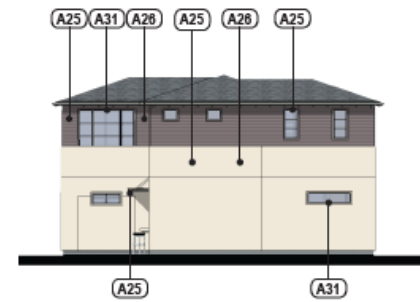
① PLAN C-1, ELEVATION STYLE A, FRONT ELEVATION - COLOR SCHEME 1A
SCALE 1/4" = 1'-0"



② RIGHT ELEVATION
SCALE 1/8" = 1'-0"



③ REAR ELEVATION
SCALE 1/8" = 1'-0"

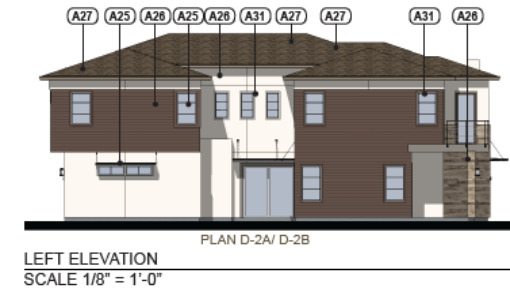
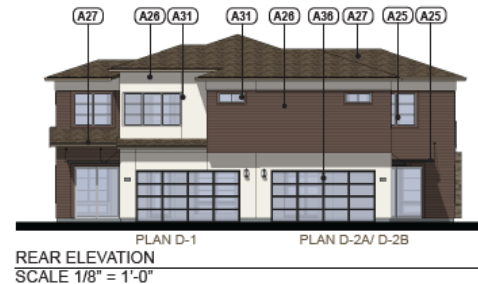
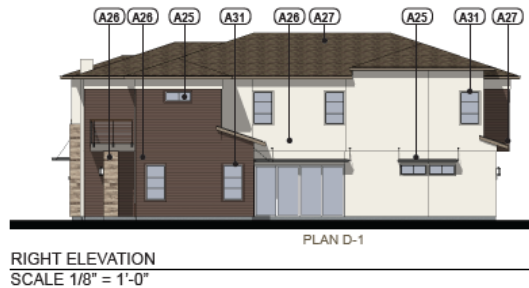


④ LEFT ELEVATION
SCALE 1/8" = 1'-0"

Crosswinds – Elevations



ATTACHED DUETS



CITY OF MORGAN HILL



PLAN TH-3B

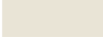
PLAN TH-3B PLAN TH-1 PLAN TH-2A/2B PLAN TH-2A/2B PLAN TH-1 PLAN TH-3B

PLAN TH-3B

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Material Boards

SINGLE FAMILY DETACHED - COLOR SCHEME 1A

	GAF OR APPROVED EQUAL TIMBERLINE Pewter Gray	ROOFING
	SHERWIN WILLIAMS OR APPROVED EQUAL SW9147 Panda White	BODY COLOR 1
	SHERWIN WILLIAMS OR APPROVED EQUAL SW7629 Gray	BODY COLOR 2
	SHERWIN WILLIAMS OR APPROVED EQUAL SW7067 Chesapeake	BODY COLOR 3
	SHERWIN WILLIAMS OR APPROVED EQUAL SW6505 Pebbles	ACCENT
	ELDORADO STONE OR APPROVED EQUAL Veritage 30 White Elm	STONE

WINDOW FRAMES SHALL BE WHITE

SINGLE FAMILY DETACHED- COLOR SCHEME 2A

	GAF TIMBERLINE Barkwood	ROOFING
	SHERWIN WILLIAMS SW9189 Dove Mist	BODY COLOR 1
	SHERWIN WILLIAMS SW6521 Downing Stone	BODY COLOR 2
	SHERWIN WILLIAMS SW6547 Hot Cocoa	BODY COLOR 3
	SHERWIN WILLIAMS SW7048 Urbane Bronze	ACCENT
	ELDORADO STONE OR APPROVED EQUAL Veritage 30 Southern Peak	STONE

WINDOW FRAMES SHALL BE WHITE

SINGLE FAMILY DETACHED - COLOR SCHEME 3A

	GAF TIMBERLINE Barkwood	ROOFING
	SHERWIN WILLIAMS SW7524 Churne Beige	BODY COLOR 1
	SHERWIN WILLIAMS SW6062 Rugged Brown	BODY COLOR 2
	SHERWIN WILLIAMS SW2335 Quartersawn oak	BODY COLOR 3
	SHERWIN WILLIAMS SW7048 Urbane Bronze	ACCENT
	ELDORADO STONE OR APPROVED EQUAL Veritage 30 White Elm	STONE

WINDOW FRAMES SHALL BE WHITE

PROPOSED LIGHT FIXTURE FOR
ELEVATION A (PROGRESS LIGHTING OR
APPROVED EQUAL)



PROPOSED LIGHTED ADDRESS
SIGN ELEVATION A (SEAGULL
LIGHTING OR APPROVED EQUAL)

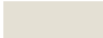


SINGLE FAMILY DETACHED - COLOR SCHEME 1B

	GAF OR APPROVED EQUAL TIMBERLINE Pewter Gray	ROOFING
	SHERWIN WILLIAMS OR APPROVED EQUAL SW7048 First Star	BODY COLOR 1
	SHERWIN WILLIAMS OR APPROVED EQUAL SW6052 Cobble Brown	BODY COLOR 2
	SHERWIN WILLIAMS OR APPROVED EQUAL SW7065 Vail Street	BODY COLOR 3
	SHERWIN WILLIAMS OR APPROVED EQUAL SW6128 Blonde	ACCENT
	ELDORADO OR APPROVED EQUAL Tundra Brick Chalk Dust	STONE

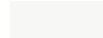
WINDOW FRAMES SHALL BE WHITE

SINGLE FAMILY DETACHED - COLOR SCHEME 2B

	GAF TIMBERLINE Weathered Wood	ROOFING
	SHERWIN WILLIAMS SW7627 Oyster White	BODY COLOR 1
	SHERWIN WILLIAMS SW6001 Mulberry Silk	BODY COLOR 2
	SHERWIN WILLIAMS SW7025 Backdrop	BODY COLOR 3
	SHERWIN WILLIAMS SW7615 Sea Serpent	ACCENT
	ELDORADO Tundra Brick Latigo	STONE

WINDOW FRAMES SHALL BE WHITE

SINGLE FAMILY DETACHED - COLOR SCHEME 3B

	GAF TIMBERLINE Charcoal	ROOFING
	SHERWIN WILLIAMS SW7622 Modern Gray	BODY COLOR 1
	SHERWIN WILLIAMS SW2739 Charcoal Blue	BODY COLOR 2
	SHERWIN WILLIAMS SW2548 Roycroft Pewter	BODY COLOR 3
	SHERWIN WILLIAMS SW2638 Polished Mahogany	ACCENT
	ELDORADO Tundra Brick Chalk Dust	STONE

WINDOW FRAMES SHALL BE WHITE

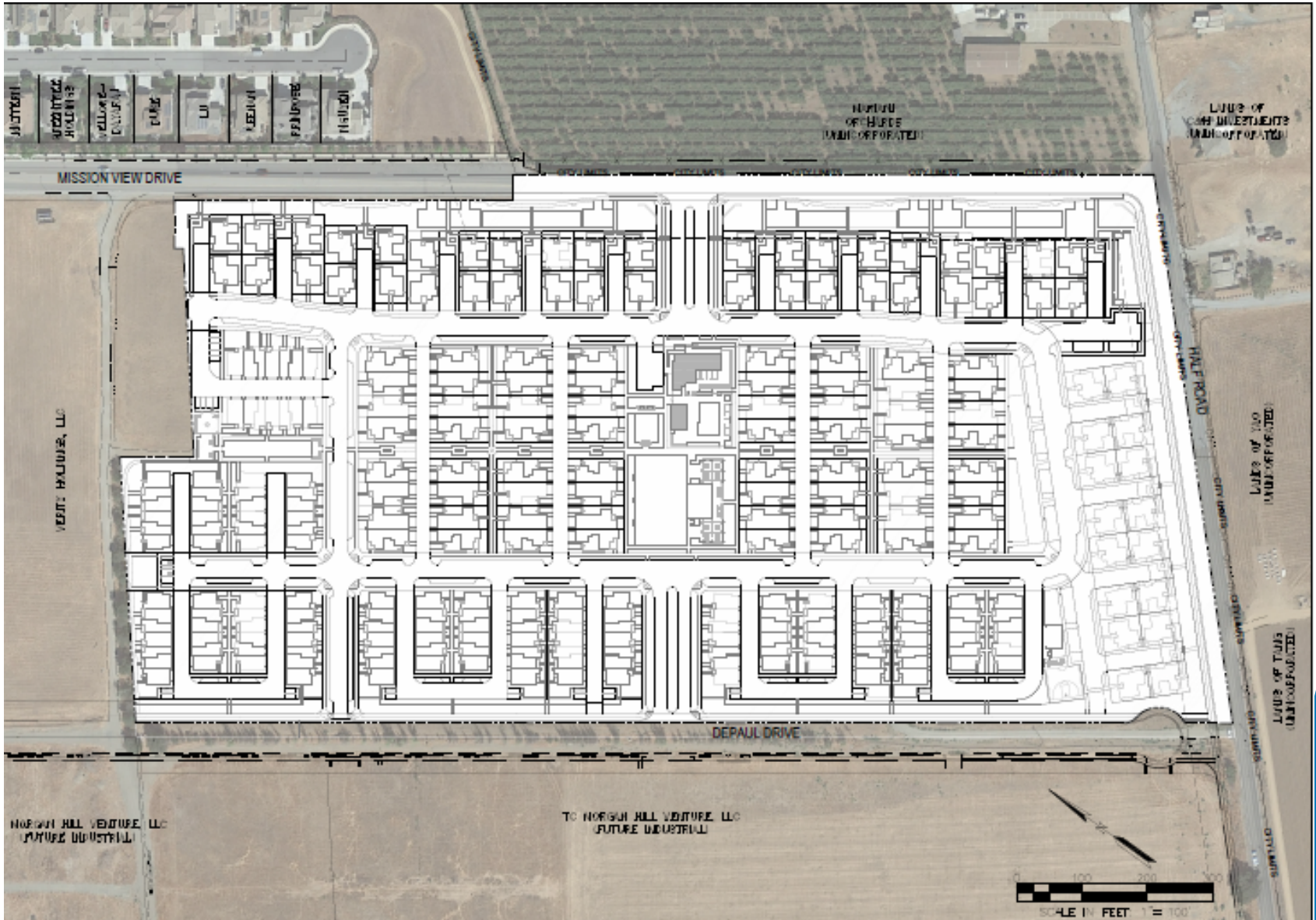
PROPOSED LIGHT FIXTURE FOR
ELEVATION B (PROGRESS LIGHTING OR
APPROVED EQUAL)



PROPOSED LIGHTED ADDRESS
SIGN ELEVATION B (SEAGULL
LIGHTING OR APPROVED EQUAL)



Vesting Tentative Map



CEQA (EIR)



- Draft EIR significant impacts:
 - Agriculture
 - Project converts 16 acres of Prime Farmland
 - MM AG-1.1 requires agricultural conservation on a 1:1 mitigation ratio
 - Transportation (VMT)
 - Project can not reduce VMT by 15% below existing City-wide VMT per capita threshold
 - MM TRN-2.1 requires Transportation Demand Management (TDM) plan to reduce VMT; shall require contribution to MoGo or 100% subsidized VTA transit passes

Traffic Improvements (LOS)



- *Please Note: These LOS factors were included in the EIR, however, CEQA limits the evaluation of transportation impacts to VMT, not LOS*
- **Mission View Drive and Half Road**
 - Cumulative 2030 = LOS F & D without project
 - Signalization fair share contribution improves to LOS C
- **Main Avenue and Condit Road**
 - Cumulative 2030 = LOS F without project
 - Signalization fair share contribution improves to LOS D
- **Condit Road and Diana Avenue**
 - Cumulative 2030 = LOS E without project
 - Signalization fair share contribution improves to LOS B
- **Cochrane Road and Mission View Drive**
 - Cumulative 2030 = LOS F & E without project
 - Add second northbound left-turn lane on Mission View Drive
 - Improves to LOS C

Planning Commission

- PC May 23rd Recommendation:
 - Recommended Approval with the following changes:
 - Revise MM TRN-2.1 to require the developer, instead of the HOA, to provide the 100% subsidized annual VTA passes
 - Added a Condition of Approval requiring the notification to future project residents of possible internal street extensions



Design Permit Findings



- a. The proposed project is consistent with the general plan and any applicable specific plan, area plan, or other design policies and regulations adopted by the city council.
- b. The proposed project complies with all applicable provisions of the zoning code and municipal code.
- c. The proposed project substantially complies with all applicable design standards and guidelines contained in the design review handbook.
- d. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).
- e. The proposed development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.
- f. The proposed project complies with all Design Review criteria in Subsection H of Section 18.108.040 of the municipal code.

Vesting Tentative Map Findings



- a. The proposed subdivision, together with its provisions for its design and improvements, is consistent with the General Plan.

Crosswinds Summary



- SB 330
 - Subject to the permit streamlining process
- Objective Standards
 - Designed consistent with the December 2019 Residential Development Design and Development Standards
- Requires a Statement of Overriding Considerations
 - For Significant and Unavoidable impacts (agricultural conversion and VMT)

Questions?



CITY COUNCIL STAFF REPORT

MEETING DATE: June 21, 2023

PREPARED BY:

Matthew Mahood, Economic Development Director

APPROVED BY: City Manager

INTRODUCE ORDINANCE AMENDING SECTION 18.24.020 (LAND USE REGULATIONS) OF 18.24 (COMMERCIAL ZONING DISTRICTS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING MINOR AMENDMENTS TO THE ADMINISTRATIVE OFFICE (CO) ZONING DISTRICT TO ALLOW VEHICLE-RELATED USES AND OTHER COMPATIBLE USES ON MINIMUM ONE-ACRE LOTS

RECOMMENDATION(S)

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

COUNCIL PRIORITIES, GOALS & STRATEGIES

2022-2023 Strategic Priorities

Fiscal Sustainability

Economic Development

Guiding Documents

Economic Blueprint

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

An ordinance is being proposed that would amend Section 18.24.020 (Land Use Regulations) of Chapter 18.24 (Commercial Zoning Districts) of the Zoning Code to allow vehicle-related uses as well as other compatible uses within the Administrative Commercial (CO) zoning district on lots that are one (1) acre in size or larger.

The Planning Commission held a public hearing regarding the proposed draft Ordinance on May 9, 2023 and recommended the following amendments to Table 18.24-1 (Permitted Land Uses in the Commercial Zoning Districts) within Section 18.24.020 (Land Use Regulations) of Chapter 18.24 (Commercial Zoning Districts) of the Municipal Code are proposed for the Administrative Office (CO) zoning district:

- a. Allow “Restaurants, Fast Food” as a permitted use.
- b. Allow “Restaurants, Sit-Down” as a permitted use.
- c. Allow “Tasting Rooms” as a permitted use.
- d. Allow “Convenience Market with Fuel and Service Station” as a conditional use.
- e. Allow “General Retail” as a permitted use.
- f. Allow “Fuel and Service Stations” as a conditional use.
- g. Allow “Vehicle Rentals” as a permitted use.
- h. Allow “Vehicle Repair and Maintenance, Minor” as a permitted use when associated with an on-site or off-site automotive manufacturer.
- i. Allow “Vehicle Sales and Leasing” as a permitted use.
- j. Allow “Vehicle Washing” as a conditional use.
- k. Allow all of the above uses only on a lot sized one-acre or greater.

Complete details of the proposed amendments are provided in the draft Ordinance (Attachment 1) and in the [Planning Commission staff report](#). If the proposed Ordinance is approved, the Code Amendment becomes effective 30 days following the adoption of the Ordinance by the City Council.

Pursuant to Section 18.114.060 (Findings for Approval), the City Council may approve a zoning code amendment only if all of the following findings are made:

1. The proposed amendment is consistent with the General Plan and any applicable specific plan as provided by Government Code Section 65860.
2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.
3. The proposed amendment is internally consistent with other applicable provisions of the zoning code.

The proposed amendments are consistent with the above findings as the amendments implement the General Plan and the 2017 Morgan Hill Economic Blueprint, do not propose any new uses that were not analyzed in the Morgan Hill 2035 Environmental Impact Report, and are internally consistent with other applicable provisions of the zoning code.

PLANNING COMMISSION ACTION:

The Planning Commission reviewed the proposed amendments on May 9, 2023. Following discussion, the Planning Commission approved Resolution No. 23-03 on a 4-1 vote recommending the City Council approve the proposed Amendments as presented by Staff with the exception of allowing “Vehicle Repair and Maintenance, Minor” as a permitted use when associated with an on-site or off-site automotive manufacturer. The one dissenting vote on the Planning Commission was due to the desire to require all of the proposed uses to be a Conditional Use instead of allowing some of the uses to be a Permitted Use.

BACKGROUND:

In February 2002, the City Council authorized an Auto Dealer Assistance Program as a part of an Auto Dealer Economic Development Strategy. Since that time, the City Council has successfully utilized the strategy and incentives to help attract and expand three auto dealers in the City.

In April 2017, the City Council unanimously adopted the 2017 Morgan Hill Economic Blueprint that identified Retail as a key strategy for long-term economic sustainability. The retail market provides many assets for the community. When done well, retail can create great places, serve the residents and business needs, and be a catalyst for additional new investment. Retail is also an important source of General Fund revenue for the City through sales tax collection. Fostering successful retail nodes and increasing the City's sales tax revenue requires careful planning and land use flexibility. The City's Economic Development team invests significant time, energy, and resources working with local property owners, potential developers, and potential users to identify opportunities for new commercial and retail investment that will support the continued growth and sustainability of the General Fund.

The two largest contributors to the General Fund are Property Tax and Sales Tax.

Property Tax collections make up approximately 35% of the General Fund while Sales Tax collections make up approximately 25% of the General Fund. Within the Sales Tax number, the Autos and Transportation tax group accounts for approximately 25% of the Sales Tax collected. To support continued growth in this sales tax group, the City has previously adopted and implemented the Auto Dealer Incentive program and made the recruitment and expansion of new auto dealers a priority in the Economic Development work plan. A successful auto dealership can generate enough sales tax on an annual basis to support the salaries of two and one-half police officers. The only other use that would generate more tax revenue to the City per acre is an upper midscale hotel.

As the City's Economic Development team and Planning Division work in partnership to implement the City's Auto Dealer strategy, City staff identified a potential opportunity to increase the amount of available land for future auto dealer users. Auto dealers, and similar businesses, locate in high visibility locations, typically either freeway facing or immediately adjacent to the freeway. And while some of this freeway facing land in the City of Morgan Hill is designated for commercial use in the General Plan, the specific uses related to an auto dealership are currently not permitted on commercial land zoned Administrative Office (CO).

Although the Administrative Office (CO) zoning district supports the future development of professional and general commercial office, the existing CO zoning district provides very limited flexibility and very little opportunity to generate significant sales tax revenue.

Given the freeway proximity of some of the undeveloped CO-zoned land, especially parcels over one (1) acre in size, the Economic Development team sees an opportunity to increase the City's land-use flexibility that could potentially attract new investment into the CO-zoned properties, especially with auto dealer and related uses, while still protecting professional office, general office, and medical office uses.

Following the adoption of the 2035 General Plan on July 27, 2016, the City Council adopted Ordinance No. 2277 N.S., a comprehensive update of Title 18 – Zoning of the City of Morgan Hill Municipal Code, and an Addendum to the Morgan Hill 2035 Environmental Impact Report for the Zoning Code Update. The update included an amendment to the City’s official zoning map consistent with the Morgan Hill 2035 General Plan.

It is important to note, that as part of the 2035 General Plan and the 2018 Comprehensive Zoning Code Update, it was envisioned to remove the Administrative Office (CO) zoning district and designate all properties zoned Administrative Office (CO) with alternate commercial zoning. However, as part of the public hearing process for the 2018 Comprehensive Zoning Code Update, the Planning Commission recommended, and the City Council adopted, to retain the Administrative Office (CO) zoning district in the hope of drawing an office use to Morgan Hill. Several properties that were proposed to be rezoned to another commercial zoning district remained zoned Administrative Office (CO).

During the 2018 Comprehensive Zoning Code Update public hearings, the Planning Commission also recommended, and the City Council adopted, that Assessor’s Parcel Number 817-05-041 (275 Tennant Avenue), which included an existing multi-tenant professional office building, to change the proposed zoning district from General Commercial (CG) to Administrative Office (CO).

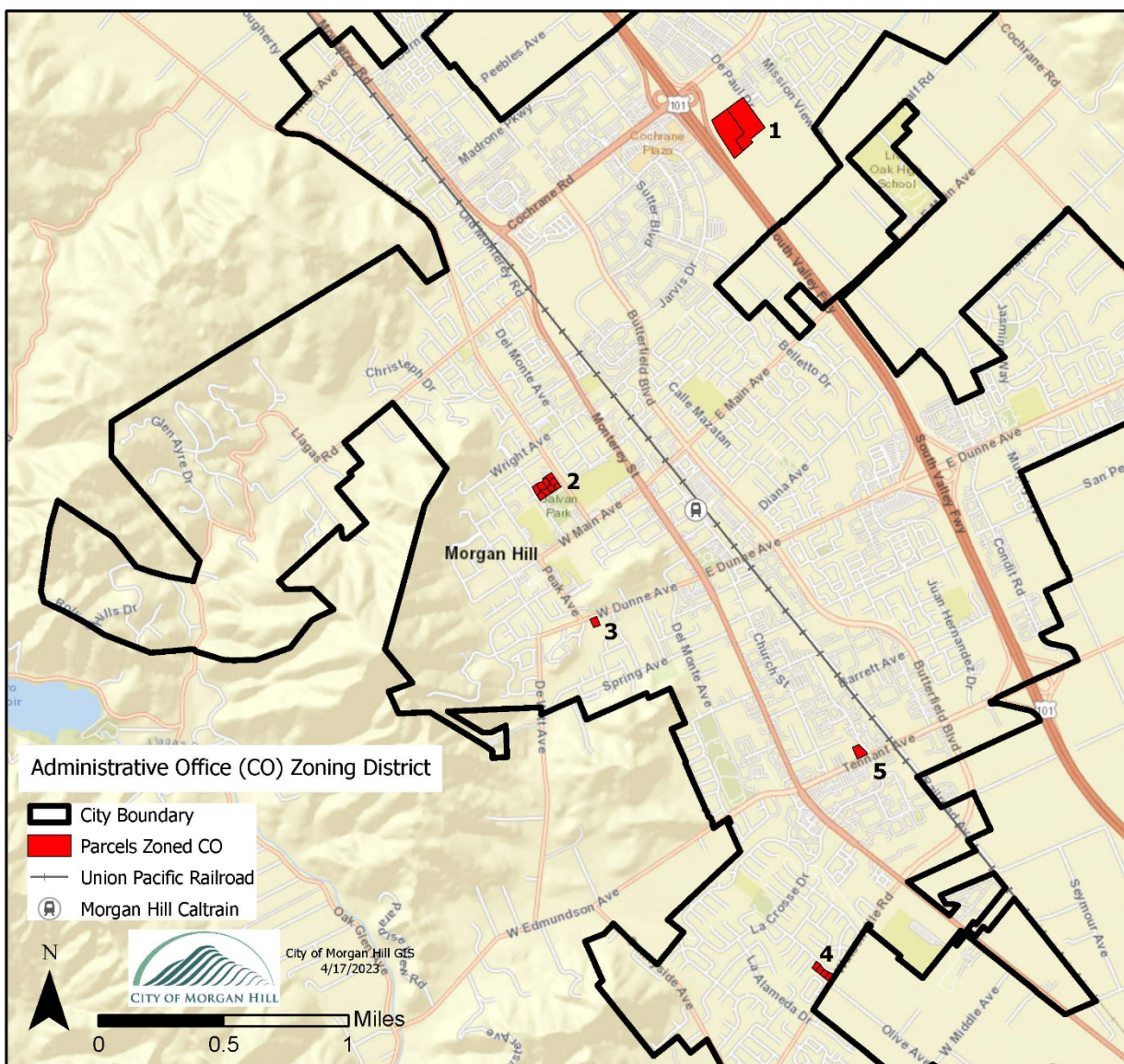
The following properties listed below are currently zoned Administrative Office (CO).

Administrative Office (CO) Zoning Districts

Map ID	APN	Address	Zoning	Size in Acres
1	728-310-17	Cochrane Rd	CO	9.30
1	728-310-19	1040 Cochrane Rd	CO	8.00
2	764-190-16	17705 I Hale Ave	CO	0.50
2	764-190-17	17705 H Hale Ave	CO	0.47
2	764-190-18	17705 F Hale Ave	CO	0.25
2	764-190-19	17705 G Hale Ave	CO	0.25
2	764-190-20	17705 D Hale Ave	CO	0.40
2	764-190-21	17705 E Hale Ave	CO	0.50
2	764-190-22	17705 A Hale Ave	CO	0.30
2	764-190-23	17705 B Hale Ave	CO	0.25
2	764-190-24	17705 C Hale Ave	CO	0.25
3	767-120-22	370 W Dunne Ave	CO	0.68
4	767-240-18	15345 Calle Enrique	CO	0.42
4	767-240-25	15335 Calle Enrique	CO	0.42
4	767-240-26	15325 Calle Enrique	CO	0.40
4	767-240-27	15305 Watsonville Rd	CO	0.40
5	817-050-41	275 Tennant Ave	CO	1.24

Although this is a city-wide change to the CO Zoning District, as indicated in the above table, only three existing parcels (APN's 728-310-17, 728-310-19, and 817-050-41) would be affected by the proposed amendments to the CO zoning district, due to the three parcels being one-acre in size or larger. However, only two parcels (APN's 728-310-17 and 728-310-19) are currently vacant. As mentioned above, APN 817-050-41 (275 Tennant Ave), is developed as a multi-tenant professional office building. In addition, all of the other parcels smaller than one-acre in size (except for APN 764-190-20) are also developed. However, in the future, nothing would prohibit a developer from assembling smaller commercial properties and seeking a rezone to Administrative Office (CO).

Administrative Office (CO) Zoning District Map



PROJECT ANALYSIS AND FINDINGS:

The proposed Zoning Amendment has been analyzed with respect to consistency with the: 1) General Plan, and 2) Zoning Ordinance.

1. General Plan Consistency

The proposed amendments are consistent with the General Plan as the amendments implement the General Plan and the 2017 Morgan Hill Economic Blueprint.

2. Zoning Ordinance Consistency

The purpose of the Zoning Code is to implement the General Plan and to protect public health, safety, and welfare. The City may approve a Zoning Amendment only if the following findings are made:

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

Consistent

The proposed text amendments are consistent with the General Plan as the amendments implement the General Plan and the 2017 Morgan Hill Economic Blueprint.

- b. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the city.

Consistent

The proposed text amendment consists of implementing the General Plan and the 2017 Morgan Hill Economic Blueprint and does not propose any new uses that were not analyzed in the Morgan Hill 2035 Environmental Impact Report, and, therefore, will not be detrimental to the City.

- c. The proposed amendment is internally consistent with other applicable provisions of the zoning code.

Consistent

The proposed revisions will implement the General Plan and the 2017 Morgan Hill Economic Blueprint, and, therefore, are internally consistent with the overall zoning code.

CONCLUSION:

The proposed Zoning Code amendments will further support Morgan Hill's 2017 Economic Blueprint in the area of Retail development and provide additional land use flexibility that is critical to the City's future economic vitality and sustainability. The Zoning Code amendment only removes a potential barrier to entry. Any actual project would be required to go through the City's entitlement process. Therefore, staff recommends the City Council adopt the Resolution approving the Zoning Amendment.

COMMUNITY ENGAGEMENT:

Inform/Engage

A 10-Day public hearing notice was published in the Friday, June 9, 2023 edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notices were also provided on the City's 411, City's website, and via social media. On May 9, 2023, the Planning Commission held a public hearing regarding the proposed ordinance amendments in which a 10-day public hearing notice was published in the Friday, April 21, 2023 edition of the Morgan Hill Times.

In addition, the City's Economic Development team presented the proposed Zoning Code Text Amendment to the Morgan Hill Chamber of Commerce's Economic Development Committee on May 11, 2023 and conducted a Neighborhood meeting on June 15, 2023. The Neighborhood meeting was promoted in the City's 411.

ALTERNATIVE ACTIONS:

If the City Council does not take action on the proposed ordinance amendments, the Municipal Code will remain as-is. The Council may also make modifications to the proposed amendments, or not approve certain sections that the Council deems appropriate.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 9, 2023, the Planning Commission recommended approval of the Zoning Code Text Amendment on a vote of 4-1 with two members absent.

In January 2023, the City Council reaffirmed the Economic Development department's strategic priorities to include the attraction and recruitment of hotels and auto dealers.

On December 18, 2019, the City Council adopted Ordinance No. 2310 N.S., amending various sections of Title 18- Zoning of the City of Morgan Hill Municipal Code. The update included amendments to provide distinct definitions and standards for standalone convenience markets, convenience markets with fueling stations, and liquor stores.

On June 6, 2018, the City Council adopted Ordinance No. 2277 N.S., a comprehensive update of Title 18 – Zoning of the City of Morgan Hill Municipal Code. The update included an amendment to the City's official zoning map consistent with the Morgan Hill 2035 General Plan.

In April 2017, the City Council unanimously adopted the 2017 Morgan Hill Economic Blueprint that identified Retail as a key strategy for long-term economic sustainability.

In 2002, 2003, 2013, 2014, and 2017, the City created and utilized the Auto Incentive program to attract and expand new auto dealers to the City of Morgan Hill.

FISCAL AND RESOURCE IMPACT:

Staff regularly brings forward bundles of minor amendments as necessary to enhance and/or refine the Code; and therefore, the cost is borne, and work is accommodated, within the respective division's annual workplan and budget.

CEQA (California Environmental Quality Act):

There are no new significant environmental impacts or previously identified significant impacts associated with the Project. Therefore, the City determined that an Addendum to the Morgan Hill 2035 General Plan Final Environmental Impact Report (EIR) is the appropriate California Environmental Quality Act (CEQA) document to address project modifications in accordance with CEQA Guidelines Section 15164. CEQA Guidelines Section 15164(c) provides that an addendum need not be circulated for public review.

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 18.24.020 (LAND USE REGULATIONS) OF CHAPTER 18.24 (COMMERCIAL ZONING DISTRICTS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING MINOR AMENDMENTS TO THE ADMINISTRATIVE OFFICE (CO) ZONING DISTRICT TO ALLOW VEHICLE-RELATED USES AND OTHER COMPATIBLE USES ON MINIMUM ONE-ACRE LOTS

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

Section 1. Table 18.24-1 (Permitted Land Uses in the Commercial Zoning Districts) within Section 18.24.020 (Land Use Regulations) of Chapter 18.24 (Commercial Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows:

Table 18.24-1 Permitted Land Uses in the Commercial Zoning Districts

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed	Zoning District					Additional Regulations
	CO	CN	CG	CH	CS	
Residential Uses						
Caretaker Quarters	—	—	C	—	C	
Nursing Homes and Long-Term Care	C	C	C	—	—	
Residential Care Facilities	—	C	—	—	—	
Public and Quasi-Public Uses						

Colleges and Trade Schools	—	C	C	—	—	
Community Assembly	C	C	C	—	—	
Cultural Institutions	C	C	C	—	C	
Day Care Centers	—	C	A	—	C	
Government Offices	—	P	P	—	C	
Instructional Services	P	A	A	A	A	
Medical Offices and Clinics	P	P	P	A	C	
Schools, Public and Private	C	C	C	—	—	
Social Services	C	C	C	—	C	
Commercial Uses						
Animal-Related Uses	—					
Animal Boarding	—	C	C	—	C	
Veterinarian Clinics and Hospitals	P	A	A	A	P	
Banks and Financial Institutions	P	P	P	P	P	
Business Support Services	—	P	P	P	P	
Cinemas and Theatres	—	A	A	A	A	
Commercial Recreation, Indoor						
≤ 15,000 sq. ft.	C	P	P	P	P	
> 15,000 sq. ft.	—	C	C	C	C	
Drive-Through and Drive-In Facilities	C	C	C	C	C	18.92.040
Eating and Drinking Uses						
Bars and Nightclubs	—	C	C	—	—	

Restaurants, Fast Food	P[4]	C	P	P	C	
Restaurants, Sit-Down	P[4]	C	P	P	C	
Tasting Rooms	P[4]	C	A	P	C	
Funeral Parlors and Mortuaries	—	—	C	—	C	
Lodging Facilities						
Hotels and Motels	—	C	A	P	A	
Mini-Storage	—	—	C	—	C	
Personal Services	P	P	P	—	C	
Plant Nurseries	—	—	C	—	P	
Professional Offices	P	P	P	P	P	
Retail Uses						
Convenience Markets	—	C	C	C	C	
Convenience Market with Fuel and Service Station	C[4]	C	C	C	C	
General Retail	P[4]	P	P	P	C	
Home Improvement Centers	—	—	P	—	P	
Liquor Store	—	C	C	C	C	
Large Commodity Retail	—	—	C	—	C	
Vehicle-Related Uses						
Convenience Market with Fuel and Service Station	C[4]	C	C	C	C	
Fuel and Service Stations	C[4]	C	C	C	C	
Towing and Impound	—	—	—	—	C	
Vehicle Rentals	P[4]	C [2]	C [2]	P	P	

Vehicle Repair and Maintenance, Minor	P[4][5]	—	C	—	P	
Vehicle Sales and Leasing	P[4]	C [1]	C [1]	P	P	
Vehicle Washing	C[4]	C	C	C	C	
Wholesaling	—	—	C	—	P	
Industrial Uses						
Construction and Material Yards	—	—	—	—	C	
Food and Beverage Production						
< 5,000 sq. ft. [3]	—	A	A	A	A	
5,000 sq. ft. to 10,000 sq. ft. [3]	—	A	A	C	A	
> 10,000 sq. ft.	—	—	—	—	C	
Research and Development	—	—	—	—	C	
Warehousing and Distribution, Large and Small	—	—	—	—	C	
Transportation, Communication, and Utility Uses						
Freight Terminals and Transfer	—	—	—	C	—	
Light Fleet-Based Services	—	C	C	—	C	
Parking Lots and Structures	—	—	C	—	C	
Recycling Facilities						
Reverse Vending Machine	—	C	C	C	C	
Recycling Collection Facility	—	—	—	—	C	

Transportation Terminals		—	—	—	C	
Utilities, Major	—	—	C	—	C	
Wireless Communications Facilities	See Chapter 18.96					
Other Uses						
Accessory Uses	See Chapter 18.44					
Temporary Uses	See Section 18.92.150					

Notes:

[1] Allowed only when conducted entirely within an enclosed building without outdoor storage and display of vehicles.

[2] Vehicles stored outdoors must be fully screened from public view.

[3] On-site wholesale or retail sales required.

[4] Allowed only on a lot sized one-acre or greater.

[5] Allowed only when associated with an on-site or off-site automotive manufacturer.

Section 2. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 3. Effective Date; Posting. This Ordinance shall take effect on _____, 20____. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE _____ DAY OF _____, 20____, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE _____ DAY OF _____, 20____, AND SAID ORDINANCE WAS DULY PASSES AND ADOPTED IN ACCORDANCE WITH LAW 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

CERTIFICATE OF THE CITY CLERK

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the _____ day of _____, 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

From: [Rene Spring](#)
To: [Christina Turner](#)
Subject: Fwd: In favor-Auto Dealer Zone & Health Offices
Date: Thursday, June 15, 2023 10:04:56 AM

Sent from my iPhone

Begin forwarded message:

From: Michele Rumfola <mrumfola@gmail.com>
Date: June 15, 2023 at 10:02:48 AM PDT
To: Mark Turner <mark.turner@morganhill.ca.gov>, Rene Spring <rene.spring@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>
Subject: In favor-Auto Dealer Zone & Health Offices

Dear Councilman/Councilwoman,

I am sure you are receiving many letters against the rezoning for auto dealers around the Trammel Crow property driven by the followers of MH Responsible growth. While growth and development is not something I fully support, I understand it's needed.

I support auto dealers and/or expansion of DePaul and medical offices. My 84 year old mother in law has medical coverage through Santa Clara and I would love to see more resources for her in our area, instead of driving her to San Jose for basic testing. Our area needs more health offices, especially with the growing population! I would FULLY support Kaiser or DePaul building in our area!

In terms of auto dealers, support rezoning for two Auto dealers instead of more housing or warehouses. Auto dealerships are clean, well lite at night, and bring far less traffic and cars to the area than housing does. Plus the city earns tax revenue from sales. Also as resident of MH who bought a car at Ford, I liked supporting my local dealer, while also providing tax revenue to my city.

Lastly it brings jobs. From mechanics, to support staff to salespeople. Our salesperson at MH Ford lives in Soledad! What a great way MH can support workers from Santa Clara county to San Benito and beyond. Plus they might take less resources, such as water, (Can their lights be hooked up to solar panels?)

In my support of this I only ask that you don't cut deals with the businesses. Let's capitalize on their interest as much as we can. I also ask that it does not become another lot for more housing, as we already have crosswinds coming to that area.

We live in the area discussed and I would much rather see clean, well landscaped, and a variety of dealerships or zoning for medical establishments than more housing or warehouses.

Thank you for your time,
Michele & Miguel Cabrera

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From: [Rene Spring](#)
To: [Christina Turner](#)
Subject: Fwd: Development
Date: Thursday, June 15, 2023 6:34:11 AM

Sent from my iPhone

Begin forwarded message:

From: Teri Koss <kossfamily@gmail.com>
Date: June 15, 2023 at 5:05:31 AM PDT
To: Rene Spring <rene.spring@morganhill.ca.gov>
Subject: Development

Dear City Council,

I strongly oppose the proposed 'Zoning Text Amendment to add vehicle-related uses such as Vehicle Sales, Rentals, and Minor Repair and Maintenance to the Administrative Office (CO) zone'.

From a practical standpoint this change only impacts the land owned by Trammell Crow at Cochrane Road and Highway 101. During the May 9th Planning Commission meeting, City Staff stated they wanted to give a potential developer 'increased certainty' on how they could develop this property as part of an updated Auto Dealership strategy. What certainty does the community have that the developer won't just build a giant auto mall? The existing zoning code reflects input from the community and City leaders on how the City should develop and grow and is consistent with it's proximity to a revitalized De Paul Health Center. Our community needs more options and more availability of health care services and I want the city to promote and incentivize Medical Office developers instead of more Auto Dealerships, especially since the City has identified other 'preferred sites' which they have been marketing as suitable for auto dealerships. If a land owner has a development proposal, they should submit it and share it with the community.

If this change is approved, no protection would remain to preserve the CO designated land at Cochrane Road and Highway 101 for uses the community and city leaders desire (as codified in the General Plan with the CO designation) such as medical offices. I understand that medical offices would still be allowed to be built on the site, but if a developer can make a larger profit building an auto mall that's what they will do if allowed.

Please take a transparent approach with the community and have the developer submit a proposal rather than the City approving a zoning 'text amendment' that isn't site specific, but from a practical standpoint only benefits one land owner for the site at Cochrane Road and 101.

Sincerely,

Robert and Teresa Koss
Morgan Hill

--

Teri Koss
Design Studio
A.S.I.D. Allied
408-930-0830
www.designstudioco.com

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From: [Rene Spring](#)
To: [Christina Turner](#)
Subject: Fwd: PROPERTY AT COCHRANE ROAD and HIGHWAY 101
Date: Thursday, June 15, 2023 4:22:50 AM

Sent from my iPhone

Begin forwarded message:

From: Ryan Mihelich <rmihelich@gmail.com>
Date: June 14, 2023 at 9:22:14 PM PDT
To: Mark Turner <mark.turner@morganhill.ca.gov>, Rene Spring <rene.spring@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Marilyn Librers <Marilyn.Librers@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>
Subject: **PROPERTY AT COCHRANE ROAD and HIGHWAY 101**

Dear City Council,

I strongly oppose the proposed 'Zoning Text Amendment to add vehicle-related uses such as Vehicle Sales, Rentals, and Minor Repair and Maintenance to the Administrative Office (CO) zone'.

From a practical standpoint this change only impacts the land owned by Trammell Crow at Cochrane Road and Highway 101. During the May 9th Planning Commission meeting, City Staff stated they wanted to give a potential developer 'increased certainty' on how they could develop this property as part of an updated Auto Dealership strategy. What certainty does the community have that the developer won't just build a giant auto mall? The existing zoning code reflects input from the community and City leaders on how the City should develop and grow and is consistent with its proximity to a revitalized De Paul Health Center.

Our community needs more options and more availability of health care services and I want the city to promote and incentivize Medical Office developers instead of more Auto Dealerships, especially since the City has identified other 'preferred sites' which they have been marketing as suitable for auto dealerships. If a land owner has a development proposal, they should submit it and share it with the community.

If this change is approved, no protection would remain to preserve the CO designated land at Cochrane Road and Highway 101 for uses the community and city leaders desire (as codified in the General Plan with the CO designation) such as medical offices. I understand that medical offices would still be allowed to be built on the site, but if a developer can make a larger profit building an auto mall that's what they will do if allowed.

Please take a transparent approach with the community and have the developer submit a proposal rather than the City approving a zoning 'text amendment' that isn't site specific, but from a practical standpoint only benefits one land owner for the site at Cochrane Road and 101.

Respectfully,
Ryan Mihelich
Morgan Hill Resident



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From: [Rene Spring](#)
To: [Christina Turner](#)
Subject: Fwd: Zoning Text Amendment
Date: Thursday, June 15, 2023 4:22:17 AM

Sent from my iPhone

Begin forwarded message:

From: Ruth Ann Armstrong <ruarmstr@gmail.com>
Date: June 14, 2023 at 8:16:19 PM PDT
To: Mark Turner <mark.turner@morganhill.ca.gov>, Rene Spring <rene.spring@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Marilyn Librers <Marilyn.Librers@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>
Subject: **Zoning Text Amendment**

I strongly oppose the proposed 'Zoning Text Amendment to add vehicle-related uses such as Vehicle Sales, Rentals, and Minor Repair and Maintenance to the Administrative Office (CO) zone'.

From a practical standpoint this change only impacts the land owned by Trammell Crow at Cochrane Road and Highway 101. During the May 9th Planning Commission meeting, City Staff stated they wanted to give a potential developer **'increased certainty'** on how they could develop this property as part of an updated Auto Dealership strategy. What certainty does the community have that the developer won't just build a giant auto mall?

The existing zoning code reflects input from the community and City leaders on how the City should develop and grow and is consistent with its proximity to a revitalized **De Paul Health Center**. Our community needs more options and more availability of health care services and I want the city to promote and incentivize Medical Office developers instead of more Auto Dealerships, **especially since the City has identified other 'preferred sites' which they have been marketing as suitable for auto dealerships.**

If a land owner has a development proposal, **they should submit it and share it with the community.**

If this change is approved, no protection would remain to preserve the CO

designated land at Cochrane Road and Highway 101 for uses the community and city leaders desire (as codified in the General Plan with the CO designation) such as medical offices.

I understand that medical offices would still be allowed to be built on the site, but if a developer can make a larger profit building an auto mall that's what they will do if allowed.

Please take a transparent approach with the community and have the developer submit a proposal rather than the City approving a zoning 'text amendment' that isn't site specific, but from a practical standpoint only benefits one land owner for the site at Cochrane Road and 101.

--

Ruth Ann Armstrong
408 921-7169

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From: [Rene Spring](#)
To: [Christina Turner](#)
Subject: Fwd: PROPERTY AT COCHRANE ROAD and HIGHWAY 101
Date: Thursday, June 15, 2023 4:21:54 AM

Sent from my iPhone

Begin forwarded message:

From: Ryan Mihelich <rmihelich@gmail.com>
Date: June 14, 2023 at 9:22:14 PM PDT
To: Mark Turner <mark.turner@morganhill.ca.gov>, Rene Spring <rene.spring@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Marilyn Librers <Marilyn.Librers@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>
Subject: **PROPERTY AT COCHRANE ROAD and HIGHWAY 101**

Dear City Council,

I strongly oppose the proposed 'Zoning Text Amendment to add vehicle-related uses such as Vehicle Sales, Rentals, and Minor Repair and Maintenance to the Administrative Office (CO) zone'.

From a practical standpoint this change only impacts the land owned by Trammell Crow at Cochrane Road and Highway 101. During the May 9th Planning Commission meeting, City Staff stated they wanted to give a potential developer 'increased certainty' on how they could develop this property as part of an updated Auto Dealership strategy. What certainty does the community have that the developer won't just build a giant auto mall? The existing zoning code reflects input from the community and City leaders on how the City should develop and grow and is consistent with its proximity to a revitalized De Paul Health Center.

Our community needs more options and more availability of health care services and I want the city to promote and incentivize Medical Office developers instead of more Auto Dealerships, especially since the City has identified other 'preferred sites' which they have been marketing as suitable for auto dealerships. If a land owner has a development proposal, they should submit it and share it with the community.

If this change is approved, no protection would remain to preserve the CO designated land at Cochrane Road and Highway 101 for uses the community and city leaders desire (as codified in the General Plan with the CO designation) such as medical offices. I understand that medical offices would still be allowed to be built on the site, but if a developer can make a larger profit building an auto mall that's what they will do if allowed.

Please take a transparent approach with the community and have the developer submit a proposal rather than the City approving a zoning 'text amendment' that isn't site specific, but from a practical standpoint only benefits one land owner for the site at Cochrane Road and 101.

Respectfully,
Ryan Mihelich
Morgan Hill Resident



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From: [Rene Spring](#)
To: [Christina Turner](#)
Subject: Fwd: About the Trammell Crow property
Date: Thursday, June 15, 2023 4:20:38 AM

FYI

Sent from my iPhone

Begin forwarded message:

From: Anna Peng <shishupeng1@gmail.com>
Date: June 14, 2023 at 11:14:17 PM PDT
To: Mark Turner <mark.turner@morganhill.ca.gov>, Rene Spring <rene.spring@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Marilyn Librers <Marilyn.Librers@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>
Subject: About the Trammell Crow property

Dear City Council,

I strongly oppose the proposed 'Zoning Text Amendment to add vehicle-related uses such as Vehicle Sales, Rentals, and Minor Repair and Maintenance to the Administrative Office (CO) zone'.

From a practical standpoint this change only impacts the land owned by Trammell Crow at Cochrane Road and Highway 101. During the May 9th Planning Commission meeting, City Staff stated they wanted to give a potential developer 'increased certainty' on how they could develop this property as part of an updated Auto Dealership strategy. What certainty does the community have that the developer won't just build a giant auto mall? The existing zoning code reflects input from the community and City leaders on how the City should develop and grow and is consistent with its proximity to a revitalized De Paul Health Center. Our community needs more options and more availability of health care services and I want the city to promote and incentivize Medical Office developers instead of more Auto Dealerships, especially since the City has identified other 'preferred sites' which they have been marketing as suitable for auto dealerships. If a land owner has a development proposal, they should submit it and share it with the community.

If this change is approved, no protection would remain to preserve the CO designated land at Cochrane Road and Highway 101 for uses the community and city leaders desire (as codified in the General Plan with

the CO designation) such as medical offices. I understand that medical offices would still be allowed to be built on the site, but if a developer can make a larger profit building an auto mall that's what they will do if allowed.

Please take a transparent approach with the community and have the developer submit a proposal rather than the City approving a zoning 'text amendment' that isn't site specific, but from a practical standpoint only benefits one land owner for the site at Cochrane Road and 101.

Anna Peng

16755 San Simeon Dr. Morgan Hill.

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From: [Rene Spring](#)
To: [Christina Turner](#)
Subject: Fwd: Development of Property at 101 and Cochrane
Date: Thursday, June 15, 2023 7:24:37 PM

Sent from my iPhone

Begin forwarded message:

From: Peggy Roberts <pgyroberts@gmail.com>
Date: June 15, 2023 at 7:07:50 PM PDT
To: Rene Spring <rene.spring@morganhill.ca.gov>
Cc: Mark Turner <mark.turner@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Marilyn Librers <Marilyn.Librers@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>
Subject: Development of Property at 101 and Cochrane

Dear City Council,

I strongly oppose the proposed 'Zoning Text Amendment to add vehicle-related uses such as Vehicle Sales, Rentals, and Minor Repair and Maintenance to the Administrative Office (CO) zone'.

From a practical standpoint this change only impacts the land owned by Trammell Crow at Cochrane Road and Highway 101. During the May 9th Planning Commission meeting, City Staff stated they wanted to give a potential developer 'increased certainty' on how they could develop this property as part of an updated Auto Dealership strategy. What certainty does the community have that the developer won't just build a giant auto mall? The existing zoning code reflects input from the community and City leaders on how the City should develop and grow and is consistent with its proximity to a revitalized De Paul Health Center. Our community needs more options and more availability of health care services and I want the city to promote and incentivize Medical Office developers instead of more Auto Dealerships, especially since the City has identified other 'preferred sites' which they have been marketing as suitable for auto dealerships. If a land owner has a development proposal, they should submit it and share it with the community.

If this change is approved, no protection would remain to preserve the CO designated land at Cochrane Road and Highway 101 for uses the community and city leaders desire (as codified in the General Plan with

the CO designation) such as medical offices. I understand that medical offices would still be allowed to be built on the site, but if a developer can make a larger profit building an auto mall that's what they will do if allowed.

Please take a transparent approach with the community and have the developer submit a proposal rather than the City approving a zoning 'text amendment' that isn't site specific, but from a practical standpoint only benefits one land owner for the site at Cochrane Road and 101.

Peggy Roberts
17725 Casa Ln, Morgan Hill, CA
408-310-8790

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From: [Rene Spring](#)
To: [Christina Turner](#)
Subject: Fwd: MH Resident: Oppose the proposed "Zoning Text Amendment Trammel Crow"
Date: Friday, June 16, 2023 5:58:55 AM

Sent from my iPhone

Begin forwarded message:

From: CaLea <cariannelea@gmail.com>
Date: June 15, 2023 at 9:47:45 PM PDT
To: Rene Spring <rene.spring@morganhill.ca.gov>
Subject: MH Resident: Oppose the proposed "Zoning Text Amendment Trammel Crow"

Dear Rene,

I am emailing you as you are the City Council Member for the people of Morgan Hill. I have already emailed my City Council Member Gino but i am emailing you too as you are the City Council Member for the people of Morgan Hill. When you were running for office you promised slowing down residential growth and you have been the only City Council Member to uphold your promise to the people of Morgan Hill. I am writing to you as a resident since 1996 to ask you to support the people of Morgan Hill and oppose the proposed "Zoning Test Amendment to add vehicle-related uses such as Vehicle sales, rentals and minor repair and maintenance to the Administrative Office Zone" . This Zone is NOT what the people of Morgan Hill would like and we need your support to please advocate to us. Here are the reasons why this does not make sense to the people of Morgan Hill:

- There is no protection to the City of Morgan Hill that Trammel Crow will not just build a Giant Auto Mall. Trammel Crow has history about this
- The Auto Industry is rapibility changing (look at Tesla) and this is not the type of business that will fit into City of Morgan Hill Long Term Growth
- We do not have the current infrastructure to support this type of business in terms of roads, traffic, and water
- This does not fit MH growth strategy and also your vision of bringing higher paying jobs and new opportunities

My ask is to vote for the people of Morgan Hill and vote against this proposed Amendment.

Thank you for your time and I look forward to hearing from you.

Sincerely,

Carianne Skinner
Morgan Hill Resident

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From: [Rene Spring](#)
To: [Christina Turner](#)
Subject: Fwd: Morgan Hill Issue of Concern
Date: Friday, June 16, 2023 5:58:40 AM

Sent from my iPhone

Begin forwarded message:

From: Jean Remer <jaremer@gmail.com>
Date: June 15, 2023 at 11:49:13 PM PDT
To: Jean Remer <jaremer@gmail.com>
Subject: **Morgan Hill Issue of Concern**

Dear Council Member,

Morgan Hill has been "discovered" for the hidden gem that it is, and I don't want large corporations making plans for us. It will take a strong council and your leadership to keep it our town. After all, that's why we are all here. It is our little corner of the world to be enjoyed.

That is why I have been troubled by past council decisions, made against the wishes of many constituents. It seems that ideas are rubber-stamped from Sacramento. I know there are tempting incentives that come down with proposals, but we need to decide if the money or other incentives are worth it for Morgan Hill. I'm looking forward to strong constituent-minded leadership moving forward.

Morgan Hill residents are diverse, intelligent, caring, family and community minded people. We don't elect you thinking you will forget our voices. We want a say in everything Morgan Hill. You are elected to represent our views not your own. Our community is amazing and we want to keep it that way.

At issue, currently, is the Trammel Crow Property (language) changes. Once again, what seems a minor "text amendment", is not minor.

I strongly oppose the proposed 'Zoning Text Amendment to add vehicle-related uses such as Vehicle Sales, Rentals, and Minor Repair and Maintenance to the Administrative Office (CO) zone'.

This change only impacts the land owned by Trammell Crow at Cochrane Road and Highway 101. During the May 9th Planning Commission meeting, City Staff stated they wanted to give a potential developer 'increased certainty' on how they could develop this property as part of an updated Auto Dealership strategy. What certainty does the community have that the developer won't just build a giant auto mall? The existing zoning code reflects input from the community and City leaders on how the City should develop and grow and is consistent with it's proximity to a revitalized De Paul Health Center and the Senior Living Center. In my opinion, businesses that are as sensory neutral as possible would be the best for that corner of Cochrane. For example, the large bright lights of, a dealership and blaring loud speakers late into the night could be sensory obnoxious.

If this change is approved, no protection would remain to preserve the CO designated land at Cochrane Road and Highway 101 for uses the community and city leaders desire (as codified in the General Plan with the CO designation) such as medical offices. I understand that medical offices would still be allowed to be built on the site, but if a developer can make a larger profit building an auto mall that's what they will do if allowed.

Please take a transparent approach with the community and have the developer submit a proposal rather than the City approving a zoning 'text amendment' that isn't site specific, but from a practical standpoint only benefits one land owner for the site at Cochrane Road and 101.

Thank you for listening, hearing and putting constituents first.

Kind Regards,

Jean A. Remer, RN
39 Year Resident

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From: [Rene Spring](#)
To: [Christina Turner](#)
Subject: Fwd: Opposition to the Zoning Text Amendment
Date: Thursday, June 15, 2023 10:45:54 AM

Sent from my iPhone

Begin forwarded message:

From: Dina Betjoseph <dina.betjoseph@gmail.com>
Date: June 15, 2023 at 10:25:16 AM PDT
To: Mark Turner <mark.turner@morganhill.ca.gov>, Rene Spring <rene.spring@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Marilyn Librers <Marilyn.Librers@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>
Cc: Invia Betjoseph <invia.betjoseph@gmail.com>
Subject: **Opposition to the Zoning Text Amendment**

Dear City Council,

We are residents of Morgan Hill, living in the Lantana community off of Cochrane on Golden Eagle. We have four children ages 5 and under. My husband and I are both professionals. I am an attorney and my husband is a doctor of psychology. We moved to Morgan Hill given Morgan Hill's strong family oriented community. Many (or even much) of our neighbors share the same story.

Now, Morgan Hill is quickly changing the environment allowing industrial zoning and forgetting what makes Morgan Hill attractive, unique and special. We are so proud to be residents here, but the more we receive news of these developments, the more we have considered being short-term residents and leaving the area. I'm opposed to driving around the "town" and being inundated with industrial spaces. I do not want that for myself or my family. It is the complete opposite of why residents choose to live in Morgan Hill.

One could argue, families will not leave given moves are hard to do. However, the City's actions are significant enough that I believe families would do so. Such conversations regularly exist in our community. The financial impact of this may pale in comparison to the financial dollars the Council would like to see from industrial development; however, the impact is sad. It's a complete change of the City's values and the citizens' interests. I encourage the Council to continue to stand with us and

celebrate the values and interests of our City and community.

As such, I strongly oppose the proposed 'Zoning Text Amendment to add vehicle-related uses such as Vehicle Sales, Rentals, and Minor Repair and Maintenance to the Administrative Office (CO) zone'.

From a practical standpoint this change only impacts the land owned by Trammell Crow at Cochrane Road and Highway 101. During the May 9th Planning Commission meeting, City Staff stated they wanted to give a potential developer 'increased certainty' on how they could develop this property as part of an updated Auto Dealership strategy. What certainty does the community have that the developer won't just build a giant auto mall? The existing zoning code reflects input from the community and City leaders on how the City should develop and grow and is consistent with its proximity to a revitalized De Paul Health Center. Our community needs more options and more availability of health care services and I want the city to promote and incentivize Medical Office developers instead of more Auto Dealerships, especially since the City has identified other 'preferred sites' which they have been marketing as suitable for auto dealerships. If a landowner has a development proposal, they should submit it and share it with the community.

If this change is approved, no protection would remain to preserve the CO designated land at Cochrane Road and Highway 101 for uses the community and city leaders desire (as codified in the General Plan with the CO designation) such as medical offices. I understand that medical offices would still be allowed to be built on the site, but if a developer can make a larger profit building an auto mall that's what they will do if allowed.

Please take a transparent approach with the community and have the developer submit a proposal rather than the City approving a zoning 'text amendment' that isn't site specific, but from a practical standpoint only benefits one landowner for the site at Cochrane Road and 101.

Thank you.

Betjoseph Family

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From: [Rene Spring](#)
To: [Christina Turner](#)
Subject: Fwd: Zoning Text Amendment
Date: Thursday, June 15, 2023 1:39:18 PM

Sent from my iPhone

Begin forwarded message:

From: Mike Margozi <margozi@charter.net>
Date: June 15, 2023 at 1:35:53 PM PDT
To: Mark Turner <mark.turner@morganhill.ca.gov>, Rene Spring <rene.spring@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Marilyn Librers <Marilyn.Librers@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>
Subject: Zoning Text Amendment

Dear City Council,

I strongly oppose the proposed 'Zoning Text Amendment to add vehicle-related uses such as Vehicle Sales, Rentals, and Minor Repair and Maintenance to the Administrative Office (CO) zone'.

From a practical standpoint this change only impacts the land owned by Trammell Crow at Cochrane Road and Highway 101. During the May 9th Planning Commission meeting, City Staff stated they wanted to give a potential developer 'increased certainty' on how they could develop this property as part of an updated Auto Dealership strategy. What certainty does the community have that the developer won't just build a giant auto mall? The existing zoning code reflects input from the community and City leaders on how the City should develop and grow and is consistent with its proximity to a revitalized De Paul Health Center. Our community needs more options and more availability of health care services and I want the city to promote and incentivize Medical Office developers instead of more Auto Dealerships, especially since the City has identified other 'preferred sites' which they have been marketing as suitable for auto dealerships. If a land owner has a development proposal, they should submit it and share it with the community.

If this change is approved, no protection would remain to preserve the CO designated land at Cochrane Road and Highway 101 for uses the community and city leaders desire (as codified in the General Plan with the CO designation) such as medical offices. I understand that medical offices would still be allowed to be built on the site, but if a developer can make a larger profit building an auto mall that's what they will do if allowed.

Please take a transparent approach with the community and have the developer submit a proposal rather than the City approving a zoning 'text amendment' that isn't site specific, but from a practical standpoint only benefits one land owner for the site at Cochrane Road and 101.

Mike Margozi

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From: [Rene Spring](#)
To: [Christina Turner](#)
Subject: Fwd: Ref: The latest city-initiated plan for the Trammell Crow property.
Date: Friday, June 16, 2023 1:56:53 PM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)

Sent from my iPhone

Begin forwarded message:

From: Joel Levine <Joel.Levine@rfmw.com>
Date: June 16, 2023 at 1:19:26 PM PDT
To: Mark Turner <mark.turner@morganhill.ca.gov>, Rene Spring <rene.spring@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Marilyn Librers <Marilyn.Librers@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>
Cc: mhrge@mh-rgc.org
Subject: Ref: The latest city-initiated plan for the Trammell Crow property.

Dear City Council Members,

Are you purposely trying to ruin the quality of life for the residents of Morgan Hill? Especially in the area noted below...

You are supposed to be representing and protecting the interests of the residents of Morgan Hill, NOT special interests.

I live near Cochrane Road and 101. Why wasn't I notified of the proposed change via mail like I have learned about other proposed projects?

Technically, the City proposal isn't specific to a particular parcel of land, but rather a 'text amendment'. However, the change is crafted in such a way that from a practical perspective it only applies to the Trammel Crow land at highway 101 and Cochrane Road. You can view a video of the May 9, 2023 Planning Commission meeting here: <https://morganhillca.portal.civicclerk.com/event/688/media>

Why are these large warehouse type buildings being constructed noted in FAQ 2? I thought the initiative (Measure A) approved by the voters prevented any 'buildings with characteristics that could be used for new

storage and distribution uses' was passed by the voters in November 2022?

The voters did approve *Measure A* in November of 2022. However, in May of 2021 the Planning Commission approved the Trammell Crow project design permit and vesting tentative map on a 6-1 vote. The MHRGC appealed the Planning Commission approval to the City Council.

The City Council subsequently denied the appeal by a 3- to-1 vote in June of 2021.

I strongly oppose the proposed 'Zoning Text Amendment to add vehicle-related uses such as Vehicle Sales, Rentals, and Minor Repair and Maintenance to the Administrative Office (CO) zone.

Don't you think that the area in question will already be overbuilt, especially including Cochrane Commons?

Overcrowding from Cochrane Commons, PLUS the industrial construction PLUS the potential for auto dealerships, are you kidding me?? What kind of city planning is this?

From a practical standpoint this change only impacts the land owned by Trammell Crow at Cochrane Road and Highway 101. During the May 9th Planning Commission meeting, City Staff stated they wanted to give a potential developer 'increased certainty' on how they could develop this property as part of an updated Auto Dealership strategy. What certainty does the community have that the developer won't just build a giant auto mall? The existing zoning code reflects input from the community and City leaders on how the City should develop and grow and is consistent with it's proximity to a revitalized De Paul Health Center. Our community needs more options and more availability of health care services and I want the city to promote and incentivize Medical Office developers instead of more Auto Dealerships, especially since the City has identified other 'preferred sites' which they have been marketing as suitable for auto dealerships. If a landowner has a development proposal, they should submit it and share it with the community.

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Please take a transparent approach with the community and have the developer submit a proposal rather than the City approving a zoning 'text amendment' that isn't site specific, but from a practical standpoint only

benefits one land owner for the site at Cochrane Road and 101.



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