



**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*

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**Wednesday, October 4, 2023 5:00 PM**

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

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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](mailto: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 p.m. for the purpose of conducting a closed session.

### **SPECIAL MEETING**

5:00 p.m. 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

### **OPPORTUNITY FOR PUBLIC COMMENT**

### **ADJOURN TO CLOSED SESSION**



## **REGULAR MEETING**

6:00 p.m.

## **SILENT INVOCATION**

## **PLEDGE OF ALLEGIANCE**

## **RECOGNITIONS**

Recognizing South Valley Symphony's 50th anniversary

## **PROCLAMATIONS**

Proclamation Recognizing the Festival of Deepavali  
Proclaiming September 17-23, 2023 as Constitution Week  
Proclaiming October 1, 2023 as Latino Physician Day  
Proclaiming October 4, 2023 as Clean Air Day  
Proclaiming the month of October 2023 as Dementia and Brain Health Awareness Month

## **PRESENTATIONS**

SVCE Presentation

## **CITY COUNCIL REPORTS**

Council Member Borgioli

## **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](mailto:ccpubliccomment@morganhill.ca.gov) to receive a response. (See additional noticing at the end of this agenda)

## **ADOPTION OF AGENDA**

### **CONSENT CALENDAR**

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

1. **ADOPT RESOLUTION DECLARING THE SECOND MONDAY IN OCTOBER EACH YEAR AS INDIGENOUS PEOPLES' DAY**

Recommendation:

Adopt resolution declaring the second Monday in October of each year as Indigenous Peoples' Day.

2. **APPROVE AND ADOPT A RESOLUTION DECLARING THE SUMMARY VACATION OF A PORTION OF DEPOT STREET RIGHT-OF-WAY, ESTABLISHING NEW DEPOT STREET RIGHT-OF-WAY, AND ADDING A PUBLIC UTILITY EASEMENT AT THE MORGAN HILL COMMUNITY AND CULTURAL CENTER (CCC)**

Recommendation:

1. Adopt a Resolution declaring the Summary Vacation of a portion of Depot Street right-of-way, from approximately 340 feet south of East 5th Street to East Dunne Avenue;
2. Approve the establishment of a Public Street Right-of-Way over the realigned portion of Depot Street;
3. Approve a Grant of Public Utility Easement along the southern portion of the Community and Cultural Center (CCC) that is parallel and adjacent to the area of Depot Street proposed to be vacated;
4. Approve the inclusion of the above Depot Street Public Street Right-of-Way and Grant of Public Utility Easement actions in the Summary Vacation Resolution;
5. Direct the City Clerk to file a certified copy of the Resolution in the Office of the Recorder of Santa Clara County; and
6. Authorize the City Manager to sign a Quitclaim Deed of the vacated portion of Depot Street and a separate Grant of Public Utility Easement

on behalf of the City and direct the City Clerk to file in the Office of the Recorder of Santa Clara County.

3. **APPROVE A THREE-YEAR MAINTENANCE SERVICE AGREEMENT WITH HB RESTORATION, INC. FOR WELL SITE AND BOOSTER STATION PAINTING**

Recommendation:

1. Award a Maintenance Service Agreement to HB Restoration, Inc. in the not-to-exceed amount of \$180,000 for annual painting of the City's well sites and booster stations; and
2. Authorize the City Manager to execute and administer a three-year agreement with HB Restoration, Inc.

4. **APPROVE HEATING, VENTILATION, AND AIR CONDITIONING (HVAC) MAINTENANCE SERVICE AGREEMENT**

Recommendation:

1. Award a Maintenance Service Agreement to Environmental Systems, Inc. in the total amount of \$662,944 for preventative HVAC maintenance (\$62,944) and repair services (not-to-exceed \$600,000) for a two-year period; and
2. Authorize the City Manager to execute and administer that certain Maintenance Service Agreement with Environmental Systems, Inc.

5. **APPROVE THE SEPTEMBER 6, 2023 CITY COUNCIL MEETING MINUTES**

Recommendation:

Approve the September 6, 2023 City Council Meeting Minutes.

6. **ADOPT RESOLUTION OF INTENTION TO RENEW THE MORGAN HILL TOURISM BUSINESS IMPROVEMENT DISTRICT**

Recommendation:

Adopt Resolution of Intention to Renew the Morgan Hill Tourism Business Improvement District (TBID).

7. **AWARD COMMUNITY PARK PICKLEBALL COURTS PROJECT TO EF&S CONCRETE, INC.**

Recommendation:

1. Approve Community Park Pickleball Courts plans and specifications;
2. Award contract to EF&S Concrete, Inc. in the amount of \$307,120;

3. Authorize expenditure of construction contingency funds not-to-exceed \$61,424; and
4. Authorize the City Manager to execute and administer the construction contract with EF&S Concrete, Inc.

8. **APPROVE SUBORDINATION AGREEMENT FOR CITY OPEN SPACE EASEMENT WITH THE SANTA CLARA VALLEY HABITAT AGENCY**

Recommendation:

Authorize the City Manager to execute a subordination agreement for a City Open Space Easement with the Santa Clara Valley Habitat Agency.

9. **CARRYING A CONCEALED WEAPON LICENSE UPDATE**

Recommendation:

Accept report.

10. **SECOND AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT WITH HARRIS & ASSOCIATES, INC. FOR ON-CALL ENGINEERING PLAN REVIEW AND TECHNICAL SUPPORT SERVICES FOR LAND DEVELOPMENT ENGINEERING**

Recommendation:

1. Approve the Second Amendment to the professional service agreement with Harris & Associates, Inc. for on-call engineering plan review and technical support services for Land Development Engineering to add \$180,000 to contract amount for a total not-to-exceed amount of \$631,000 with the term of the agreement unchanged; and
2. Authorize the City Manager to execute the Second Amendment.

**OTHER BUSINESS**

11. **ACCEPT MORGAN HILL TOURISM BUSINESS IMPROVEMENT DISTRICT (MHTBID) OWNERS ASSOCIATION ANNUAL REPORT (DBA VISIT MORGAN HILL)**

Recommendation:

Accept and file the Visit Morgan Hill Annual Report.

12. **APPROVE OR DENY COMMUNITY FUNDING REQUESTS FOR DIA DE LOS MUERTOS AND HOLIDAY POSADA EVENTS**

Recommendation:

The City Council may approve or deny the requests.

### **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](mailto: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](mailto:cityclerk@morganhill.ca.gov). Requests must be made as early as possible and at least two-full business days before the start of the meeting.

# SUSTAINABLE MORGAN HILL



## Vision

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



## Choose Morgan Hill

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



## City Council Ongoing Priorities

- Enhancing Public Safety and Quality of Life
- Protecting the Environment and Preserving Open Space and Agricultural Land
- Maintaining and Enhancing Infrastructure
- Supporting our Youth, Seniors, and Entire Community
- Fostering a Positive Organizational Culture
- Preserving and Cultivating Public Trust
- Preserving our Community History
- Enhancing Diversity and Inclusiveness
- Advocating for Local, Regional, and State Legislative Initiatives



## 2022-2023 Strategic Priorities

- Fiscal Sustainability
- Affordable Housing and Homelessness
- Community Outreach, Engagement, and Messaging
- Economic Development
- Transportation



These strategic priorities were established prior to the COVID-19 pandemic. In light of recent events, we recognize that all of these goals and priorities will be viewed through the lens of recovering from the global pandemic, and we will continue to have equity, public health, and financial responsibility in mind.



## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: October 4, 2023**

PREPARED BY:

Michelle Bigelow, City Clerk

APPROVED BY: City Manager

## **ADOPT RESOLUTION DECLARING THE SECOND MONDAY IN OCTOBER EACH YEAR AS INDIGENOUS PEOPLES' DAY**

### **RECOMMENDATION(S)**

Adopt resolution declaring the second Monday in October of each year as Indigenous Peoples' Day.

### **COUNCIL PRIORITIES, GOALS & STRATEGIES**

#### **City Council Ongoing Priorities**

Supporting our Youth, Seniors, and Entire Community

Fostering a Positive Organizational Culture

Preserving our Community History

Enhancing Diversity and Inclusiveness

### **REPORT NARRATIVE:**

Indigenous Peoples' Day was first proposed in 1977 by a delegation of Native Nations to the United Nations-sponsored International Conference on Discrimination Against Indigenous Populations in the Americas, and as of the date of this resolution, over 200 cities, counties, states, and universities across the United States have officially adopted Indigenous Peoples' Day.

Staff proposes recognizing the second Monday in October as Indigenous Peoples Day, celebrating enduring traditions, values, and strength of Indigenous Peoples and bringing hope for a brighter future of respect, partnership, and unity.

### **COMMUNITY ENGAGEMENT:**

This report serves to inform the community of the proposed City Council action to adopt a resolution declaring the second Monday in October each year as Indigenous Peoples' Day.

### **ALTERNATIVE ACTIONS:**

City Council may choose to recognize Indigenous Peoples Day differently or not approve the resolution.



**PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

None.

**FISCAL AND RESOURCE IMPACT:**

There is no fiscal impact associated with seeking direction from the Council on this item.

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

Not a Project.

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

## **RESOLUTION NO. 23-**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING THE SECOND MONDAY IN OCTOBER OF EACH YEAR AS INDIGENOUS PEOPLES' DAY IN MORGAN HILL**

**WHEREAS**, the City Council of the City of Morgan Hill recognizes that the lands now known as the Americas have been inhabited by Indigenous peoples for thousands of years, and that the City of Morgan Hill is built upon the ancestral homelands of Indigenous people, who were longtime caretakers of these lands we now cherish; and

**WHEREAS**, October 12, 1492, is one of the most significant historical dates for all Indigenous people of the Americas, as it marks the beginning of European and American colonization; and

**WHEREAS**, government entities and public institutions today have a responsibility to enact policies to oppose systemic racism towards Indigenous people in the United States, as discrimination perpetuates high rates of poverty and disproportionate health, education, and social crises; and

**WHEREAS**, Indigenous Peoples' Day was first proposed in 1977 by a delegation of Native Nations to the United Nations-sponsored International Conference on Discrimination Against Indigenous Populations in the Americas, and as of the date of this resolution, over 200 cities, counties, states, and universities across the United States have officially adopted Indigenous Peoples Day; and

**WHEREAS**, Indigenous Peoples' Day on the second Monday of October celebrates enduring traditions, values, and strength of Indigenous peoples, and brings hope for a brighter future of respect, partnership, and unity;

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

That the City of Morgan Hill shall henceforth also recognize the second Monday in October of each year as Indigenous Peoples' Day.

**PASSED AND ADOPTED THIS 4<sup>TH</sup> DAY OF OCTOBER 2023, AT A REGULAR MEETING OF THE CITY COUNCIL 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-\_\_\_ adopted by the City Council at the meeting held on the 4<sup>th</sup> day of October 2023.**

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

**DATE: \_\_\_\_\_**

\_\_\_\_\_  
**MICHELLE BIGELOW, City Clerk**

## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: October 4, 2023**

PREPARED BY:

Maria Angeles, Senior Civil Engineer

APPROVED BY: City Manager

### **APPROVE AND ADOPT A RESOLUTION DECLARING THE SUMMARY VACATION OF A PORTION OF DEPOT STREET RIGHT-OF-WAY, ESTABLISHING NEW DEPOT STREET RIGHT-OF-WAY, AND ADDING A PUBLIC UTILITY EASEMENT AT THE MORGAN HILL COMMUNITY AND CULTURAL CENTER (CCC)**

#### **RECOMMENDATION(S)**

1. Adopt a Resolution declaring the Summary Vacation of a portion of Depot Street right-of-way, from approximately 340 feet south of East 5th Street to East Dunne Avenue;
2. Approve the establishment of a Public Street Right-of-Way over the realigned portion of Depot Street;
3. Approve a Grant of Public Utility Easement along the southern portion of the Community and Cultural Center (CCC) that is parallel and adjacent to the area of Depot Street proposed to be vacated;
4. Approve the inclusion of the above Depot Street Public Street Right-of-Way and Grant of Public Utility Easement actions in the Summary Vacation Resolution;
5. Direct the City Clerk to file a certified copy of the Resolution in the Office of the Recorder of Santa Clara County; and
6. Authorize the City Manager to sign a Quitclaim Deed of the vacated portion of Depot Street and a separate Grant of Public Utility Easement on behalf of the City and direct the City Clerk to file in the Office of the Recorder of Santa Clara County.

#### **COUNCIL PRIORITIES, GOALS & STRATEGIES**

##### **City Council Ongoing Priorities**

Enhancing Public Safety

##### **2022-2023 Strategic Priorities**

Transportation

##### **Guiding Documents**

Morgan Hill 2035 General Plan

Vision Zero

## **REPORT NARRATIVE:**

On December 1, 2021, the City Council approved the Final Map and related Subdivision Improvements Agreement for The Lumber Yard - Tract No. 10541 located on the former Hale Lumber site on the east side of Depot Street between East 5<sup>th</sup> Street and East Dunne Avenue shown on the attached Site Map (Attachment 1).

The developer of the Lumber Yard Project, MH Lumberyard 49, LLC (Developer), was required pursuant to a Disposition and Development Agreement (DDA) and related amendments executed with the City to i) realign Depot Street to connect with Church Street; ii) perform surface parking lot enhancements on the City's Community and Cultural Center (CCC) located at the northeast corner of Monterey Road and East Dunne Avenue; and iii) construct a mixed-use housing development with a ground floor office that will be a future City office space for public purposes.

The realigned/new segment of Depot Street is described in Attachments 2 and 3. Since the realigned/new segment of Depot Street is now complete and open to the public, staff is recommending the establishment of a Public Street Right-of-Way along this new segment of Depot Street.

Moreover, pursuant to the DDA, the City will convey to the Developer an approximate 0.29-acre portion of the current Depot Street alignment after the construction and realignment of Depot Street, and after City Council approval of a Summary Vacation of the right-of-way area. The 0.29-acre Depot Street right-of-way area that is proposed to be vacated is described in Attachments 4 and 5.

The Developer has submitted for City review the second Final Map for The Lumber Yard Project that incorporates the 0.29-acre area proposed to be vacated. Approval of the proposed Summary Vacation is required to occur first before the approval of the second Final Map. Staff's recommendation for City Council approval of this second Final Map is proposed for a November 2023 City Council meeting date.

The recommended Summary Vacation of a portion of the Depot Street right-of-way conforms to the California Streets and Highways Code Section 8330 as said portion of Depot Street has been superseded by relocation.

All concerned utility companies have been contacted in writing and one utility company requested the City to grant a Public Utility Easement in the CCC parking lot where a portion of the company's public utilities have been relocated. Some of the other public utilities have been relocated to the realigned segment of Depot Street. The proposed Public Utility Easement is described in Attachments 6 and 7.

Staff is recommending that Council approve the Summary Vacation of a portion of Depot Street right-of-way, the establishment of a Public Street Right-of-Way along the realigned segment of Depot Street, and the granting of a Public Utility Easement at the CCC parking lot by adoption of the attached resolution (Attachments 8 and 9).

## **COMMUNITY ENGAGEMENT:**

### Inform

No public engagement was performed specific to the actions associated with this report. The approvals of the changes in the CCC Parking Lot and the development were previously made in past actions by the City Council. Staff at the Community and Cultural Center have engaged users to prepare and manage the related construction.

## **ALTERNATIVE ACTIONS:**

There are no feasible alternative actions, as the realignment of Depot Street has been completed and the 0.29-acre Depot Street right-of-way area can be vacated. In addition, a Public Utility Easement is required over the public utilities that are within the CCC parking lot which will serve The Lumber Yard Project and the future City office space to be constructed by the project.

## **PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

October 3, 2018 – City Council adopted Resolution 18-075 approving the Disposition and Development Agreement with the developer for the project.

September 10, 2019 – Planning Commission approved the Tentative Map for The Lumber Yard Project and recommended approval of the Design Review Permit to City Council.

October 2, 2019 – City Council reviewed and approved the Design Review Permit for The Lumber Yard Project.

September 1, 2021 – City Council adopted Resolution 21-041 amending the Disposition and Development Agreement (DDA) with the Developer; and Council also adopted Resolution 21-042 amending Fiscal Year 2021-22 Budget appropriations related to The Lumber Yard Project.

December 1, 2021 – City Council approved the Phase 1 Final Map and Subdivision Improvements Agreement for The Lumber Yard Project.

## **FISCAL AND RESOURCE IMPACT:**

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

## **CEQA (California Environmental Quality Act):**

### Project

The Final Master Environmental Impact Report (FMEIR) for the Morgan Hill Downtown Specific Plan was certified in November 2009 in conformance with California Environmental Quality Act (CEQA) Guidelines Section 15175(a), which identified the impacts of the Downtown Specific Plan in order to streamline the later environmental

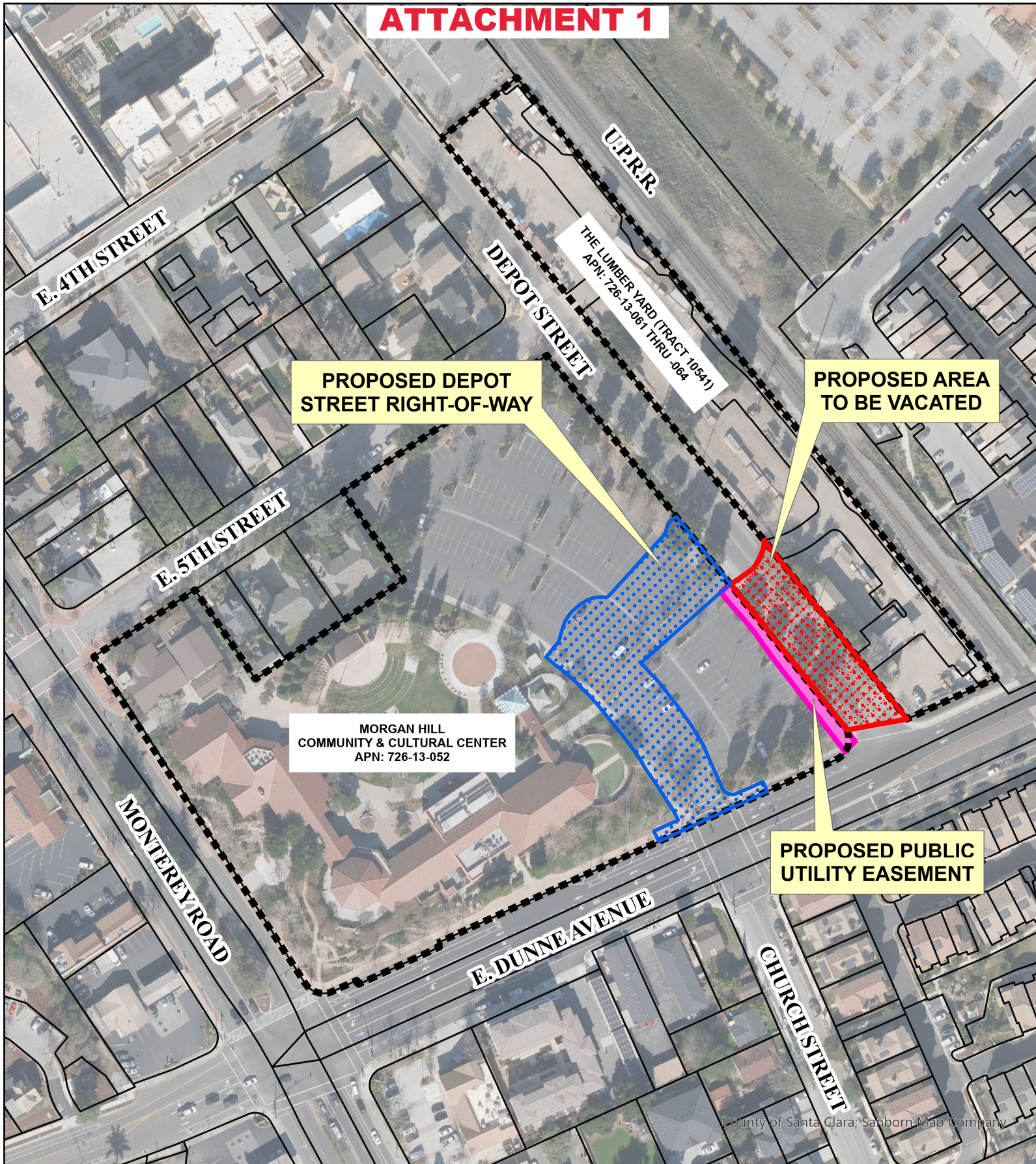
review of projects and approvals required to implement the Specific Plan. The intent was for the Downtown Specific Plan MFEIR to be a program-level document from which subsequent development consistent with the Specific Plan could tier from in conformance with CEQA Guidelines Section 15176(d)).

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

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



# ATTACHMENT 1



**Engineering and Utilities Department  
Land Development Engineering Division**

**Site Map  
Summary Vacation of a Portion of Depot Street,  
proposed Depot Street Right-of-Way, and  
proposed Public Utility Easement**

0 40 80 160 240 320 Feet

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**ATTACHMENT 2**  
**"EXHIBIT A"**  
**LEGAL DESCRIPTION FOR A**  
**PUBLIC STREET RIGHT OF WAY**

All that real property situated in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of the Lands described in the Grant Deed recorded December 13, 2002 as Document Number 16685374, Official Records of Santa Clara County, California, being more particularly described as follows:

**Commencing** at the east corner of said Lands, said point being the intersection of the northwesterly line of East Dunne Avenue with the southwest line of Depot Street; thence along the northeast line of said Lands, N39°22'00"W, a distance of 234.91 feet to the **True Point of Beginning**; thence leaving said northeast line, S45°35'04"W, a distance of 133.26 feet to a tangent curve to the left having a radius of 6.00 feet; thence southerly along said curve, through a central angle of 86°37'12", a distance of 9.07 feet to a reverse curve to the right having a radius of 524.50 feet; thence southeasterly along said curve, through a central angle of 12°31'32", a distance of 114.66 feet; thence S33°48'17"E, a distance of 23.94 feet to a tangent curve to the left having a radius of 15.00 feet; thence easterly along said curve, through a central angle of 81°39'04", a distance of 21.38 feet; thence N64°32'39"E, a distance of 32.16 feet; thence S25°27'21"E, a distance of 14.00 feet to the northwest line of the Street and Public Utility Easement described in the Easement Deed recorded June 7, 1996 as Document Number 13322008, Official Records of Santa Clara County, California; thence along said northwest line, S64°32'39"W, a distance of 108.49 feet; thence leaving said northwest line, N33°09'15"W, a distance of 39.30 feet; thence N34°19'24"W, a distance of 54.80 feet to a tangent curve to the left having a radius of 457.50 feet; thence northwesterly along said curve, through a central angle of 11°56'39", a distance of 95.37 feet; thence N43°43'57"E, a distance of 11.74 feet to a tangent curve to the left having a radius of 3.00 feet; thence northeasterly along said curve, through a central angle of 28°13'46", a distance of 1.48 feet to a compound curve to the left having a radius of 11.00 feet; thence northerly along said curve, through a central angle of 23°35'10", a distance of 4.53 feet to a reverse curve to the right having a radius of 40.00 feet; thence northeasterly along said curve, through a central angle of 74°39'33", a distance of 52.12 feet to the beginning of a tangent curve to the left, having a radius of 30.00 feet; thence northeasterly along said curve, through a central angle of 20°59'30", a distance of 10.99 feet; thence N45°35'04"E, a distance of 113.58 feet to a tangent curve to the left having a radius of 15.00 feet; thence northerly along said curve, through a central angle of 56°13'29", a distance of 14.72 feet to a reverse curve to the right having a radius of 25.00 feet; thence northerly along said curve, through a central angle of 30°02'46", a distance of 13.11 feet to a reverse curve to the left having a radius of 15.00 feet; thence northerly along said curve, through a central angle of 10°34'58", a distance of 2.77 feet to the northeast line of said Lands; thence along said northeast line, S39°22'00"E, a distance of 72.42 feet to the **True Point of Beginning**.

Containing 22,754 square feet or 0.522 acres, more or less.

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

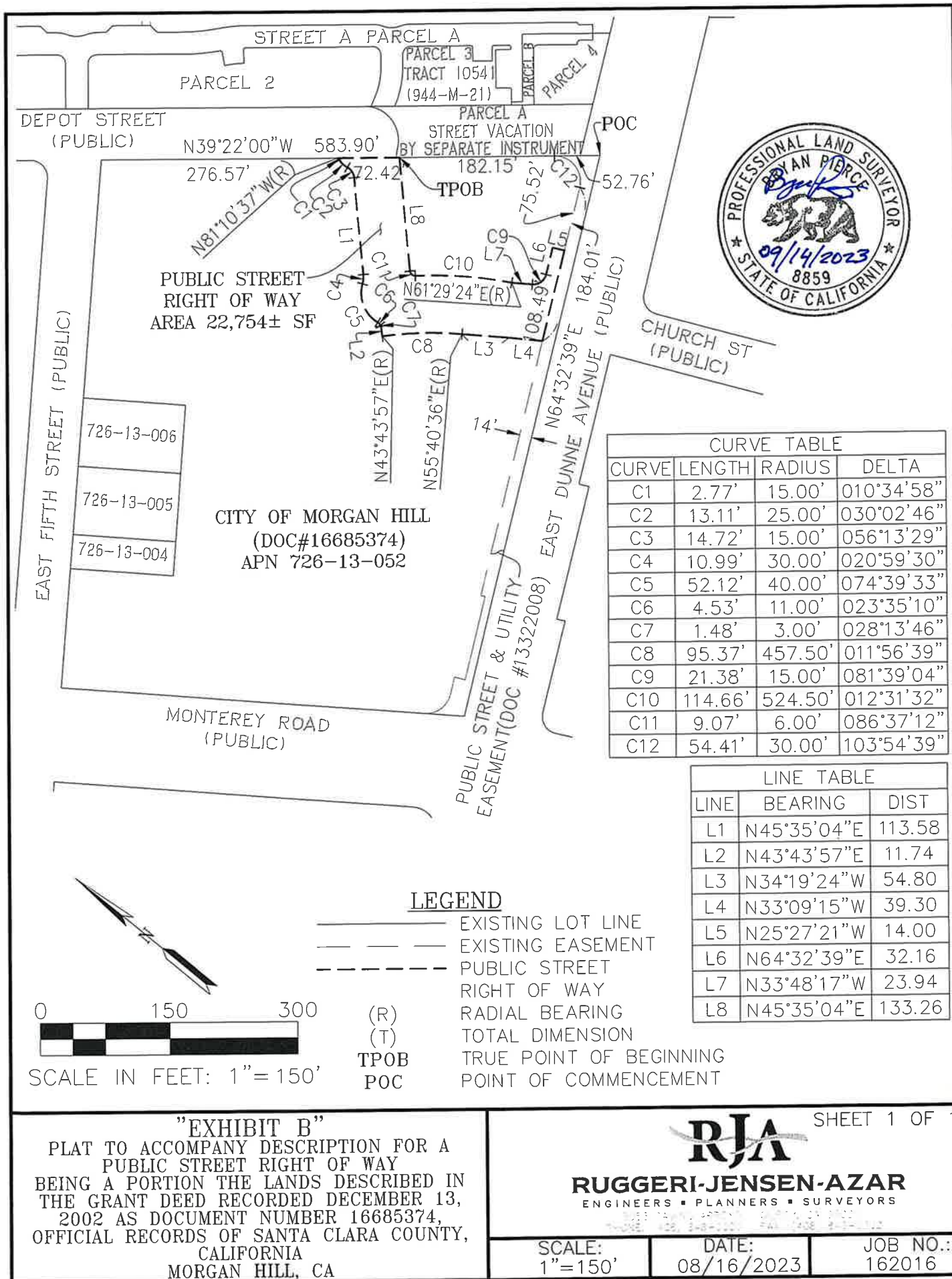
END OF DESCRIPTION.

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

 09/14/2023  
Bryan Pierce, PLS 8859                      Date



# ATTACHMENT 3



# ATTACHMENT 4

## "EXHIBIT A"

### LEGAL DESCRIPTION TO ACCOMPANY THE VACATION OF A PORTION OF DEPOT STREET

#### PARCEL A

All that real property situated in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of Depot Street as shown on the Map entitled "Tract 10541, The Lumber Yard", filed December 9, 2021 in Book 944 of Maps, at Pages 21 through 26, Records of Santa Clara County, California, being more particularly described as follows:

**Beginning** at the intersection of the northwesterly line of "East Dunne Avenue" and the northeasterly line of "Depot Street" as shown on said Map, said point also being the southwest corner of "Parcel 4" as shown on said Map; thence  $S64^{\circ}32'39''W$ , a distance of 61.81 feet to a point along the southeasterly prolongation of the southwesterly line of "Depot Street", as shown on said Map; thence along said prolongation, and southwesterly line of "Depot Street", as shown on said Map,  $N39^{\circ}22'00''W$ , a distance of 215.74 feet to the beginning of a non-tangent curve to the right, from which the radius point bears  $S42^{\circ}25'01''E$ , a radial distance of 30.00 feet; thence leaving said southwesterly line of "Depot Street", northeasterly along said curve, through a central angle of  $18^{\circ}17'35''$ , a distance of 9.58 feet to the beginning of a reverse curve to the left having a radius of 40.00 feet; thence northerly along said curve, through a central angle of  $105^{\circ}14'34''$ , a distance of 73.47 feet to a point on the northeasterly line of "Depot Street", as shown on said Map, said point also being on the southwesterly line of "Parcel 2", "Parcel 3", "Parcel 4" and "Parcel B", as shown on said Map; thence along said northeasterly line of "Depot Street",  $S39^{\circ}22'00''E$ , a distance of 268.18 feet to the **Point of Beginning**.

Containing 13,614 square feet of land, more or less.

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

END OF DESCRIPTION.

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

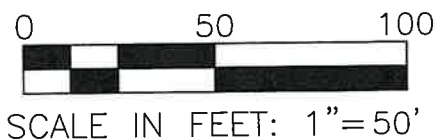
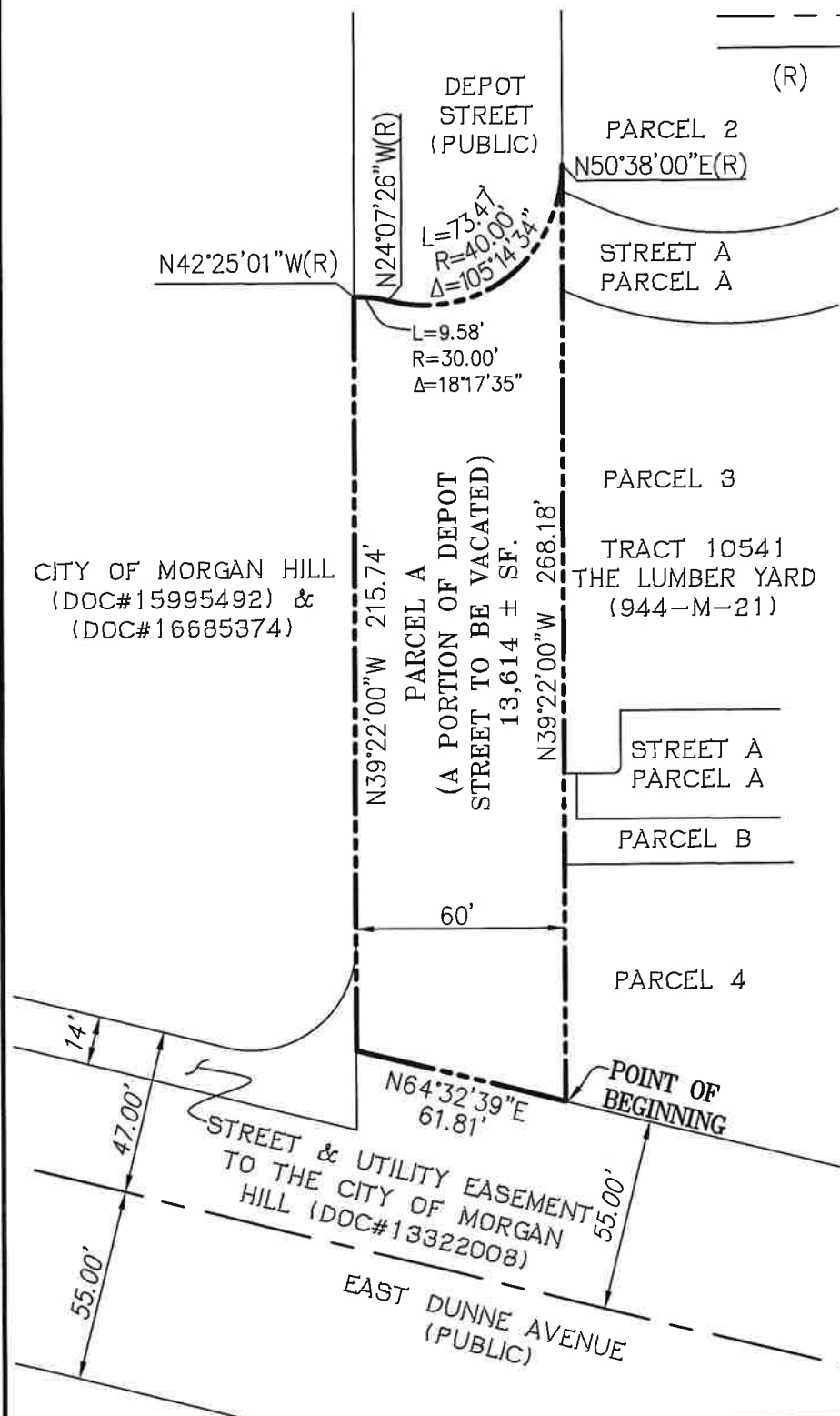
 09/14/2023  
Bryan Pierce, PLS 8859 Date



# ATTACHMENT 5

## LEGEND

- BOUNDARY LINE OF VACATION
- - - CENTERLINE
- EXISTING RIGHT-OF-WAY
- (R) RADIAL BEARING



### "EXHIBIT B"

PLAT TO ACCOMPANY THE VACATION OF  
A PORTION OF DEPOT STREET  
BEING A PORTION OF DEPOT STREET AS SHOWN  
ON THE MAP ENTITLED "TRACT 10541, THE  
LUMBER YARD", FILED DECEMBER 9, 2021 IN  
BOOK 944 OF MAPS, PAGES 21 THROUGH 26,  
RECORDS OF SANTA CLARA COUNTY, CALIFORNIA  
MORGAN HILL, CA

**RJA**

SHEET 1 OF 1

**RUGGERI-JENSEN-AZAR**

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

SCALE:  
1"=50'

DATE:  
08/16/2023

JOB NO.:  
162016



## ATTACHMENT 6

### "EXHIBIT A" LEGAL DESCRIPTION FOR A PUBLIC UTILITY EASEMENT

All that real property situated in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of the Lands described in the Grant Deed recorded December 13, 2002 as Document Number 16685374, Official Records of Santa Clara County, California, being more particularly described as follows:

**Commencing** at the east corner of said Lands, said point being the intersection of the northwesterly line of East Dunne Avenue with the southwesterly line of Depot Street; thence along the northeasterly line of said Lands, N39°22'00"W, a distance of 52.76 feet to the northeast corner of the Street and Public Utility Easement described in the Easement Deed recorded June 7, 1996 as Document Number 13322008, Official Records of Santa Clara County, California, and the **True Point of Beginning**; said point also being the point of cusp, of a curve to the right, from which the radius point bears S50°38'00"W, a radial distance of 30.00 feet; thence along the north line of said Street and Public Utility Easement, southerly along the arc, through a central angle of 41°03'43", a distance of 21.50 feet to a point on a line 7.38 feet southwesterly of, and parallel with, the northeasterly line of said lands; thence along said parallel line, N39°22'00"W, a distance of 201.20 feet; thence leaving said parallel line, N45°35'04"E, a distance of 7.41 feet to the northeasterly line of said Lands; thence along said northeasterly line, S39°22'00"E, a distance of 182.15 feet to the **True Point of Beginning**.

Containing 1,441 square feet, more or less.

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

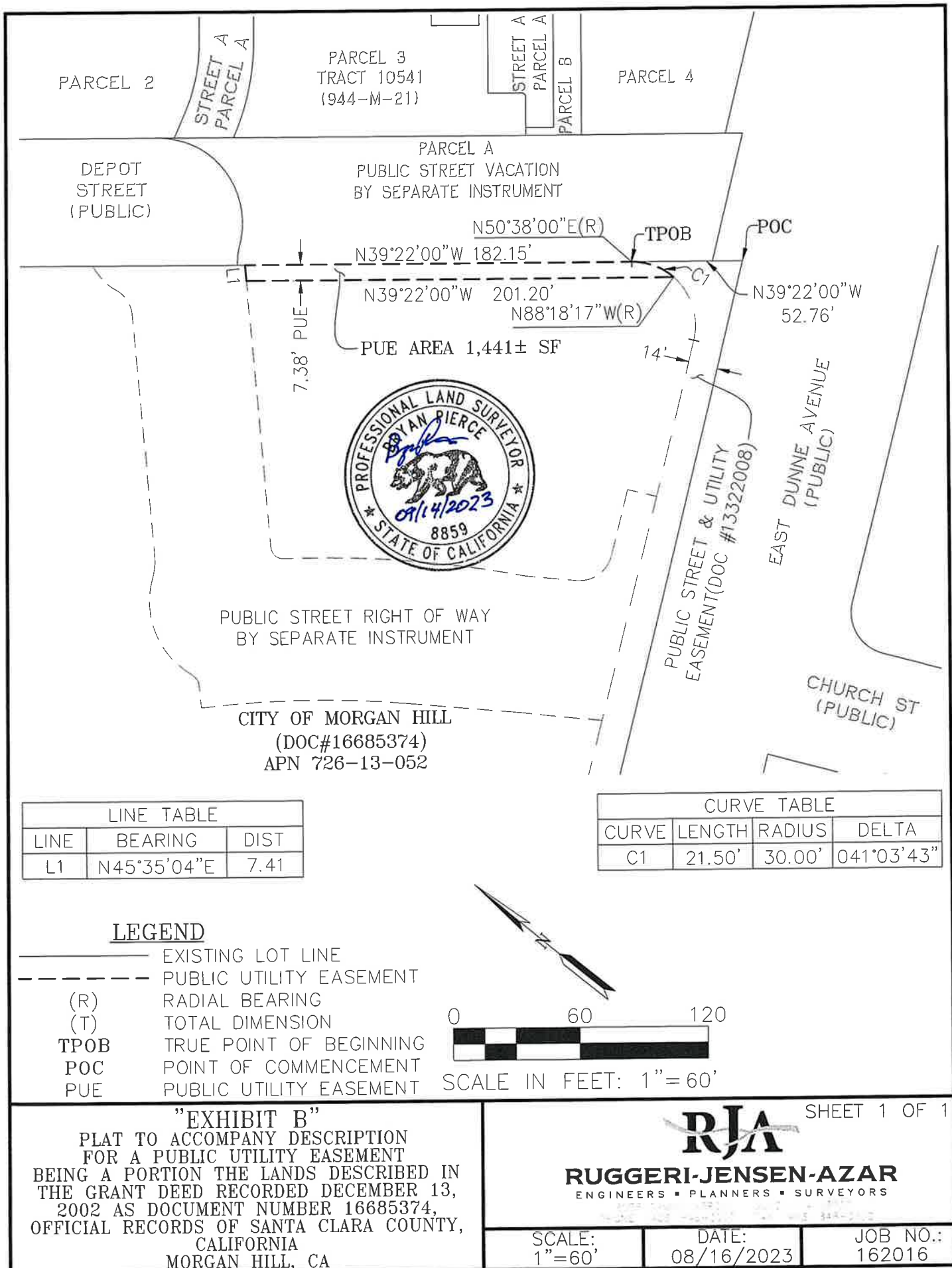
END OF DESCRIPTION.

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

 09/14/2023  
Bryan Pierce, PLS 8859 Date



# ATTACHMENT 7



## **ATTACHMENT 8**

### **RESOLUTION NO. 23-0\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING ITS SUMMARY VACATION OF A PORTION OF DEPOT STREET RIGHT-OF-WAY, LOCATED BETWEEN EAST 5<sup>TH</sup> STREET AND EAST DUNNE AVENUE; ESTABLISHING A PUBLIC STREET RIGHT-OF-WAY ALONG THE REALIGNED DEPOT STREET SEGMENT; AND ADDING A PUBLIC UTILITY EASEMENT AT THE MORGAN HILL COMMUNITY & CULTURAL CENTER (CCC) PARKING LOT LOCATED AT 17000 MONTEREY ROAD IN THE CITY OF MORGAN HILL**

**WHEREAS**, the Downtown Specific Plan and the Morgan Hill 2035 General Plan envision the realignment of Depot Street to connect to Church Street, improving transportation circulation and movement in the Downtown area; and

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

**WHEREAS**, the developer of the adjacent residential project, MH Lumberyard 49, LLC (“Developer”), was required pursuant to the Disposition and Development Agreement (“DDA”) with the City to realign Depot Street and construct the new segment of Depot Street, which has been completed and is open to the public; and

**WHEREAS**, pursuant to the DDA, the City will convey to the Developer an approximate 0.29-acre portion of the current Depot Street alignment after the construction and realignment of Depot Street such that Developer is provided additional developable area; and

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

**WHEREAS**, the City Engineer of the City of Morgan Hill has recommended that the hereinafter described property presently held for public purposes is unnecessary for present or prospective municipal purposes, as Depot Street has been relocated; and

**WHEREAS**, the City intends to establish a Public Street Right-of-Way along the realigned segment of Depot Street and intends to grant a Public Utility Easement at the CCC parking lot over the public utilities that will be relocated outside of the existing Depot Street alignment due to the proposed summary vacation of Depot Street; and



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

**SECTION 1:** The City Council of the City of Morgan Hill hereby finds from all evidence submitted that the street right-of-way of a portion of Depot Street (a public street) from approximately 340 feet south of East 5<sup>th</sup> Street to East Dunne Avenue, as fully described in Exhibits “A” and “B”, is unnecessary for present or prospective public street as said portion of Depot Street has been superseded by relocation, and is hereby vacated.

**SECTION 2:** The relocated or realigned segment of Depot Street right-of-way is fully described in Exhibits “C” and “D”.

**SECTION 3:** A Public Street Right-of-Way is hereby established over the realigned segment of Depot Street described in Exhibits “C” and “D”.

**SECTION 4:** All concerned utility companies have been notified in writing of the proposed summary vacation and one utility company requested the granting by the City of a Public Utility Easement for their respective public facilities that have been relocated in the CCC parking lot.

**SECTION 5:** Public convenience and necessity require the granting of a Public Utility Easement, as fully described in Exhibits “E” and “F”, over a portion of the CCC parking lot, to construct, maintain, operate, replace, remove, renew, and enlarge lines of pipe, conduits, cables, wires, poles, and other convenient structures, equipment, and fixtures for any and all existing and future public facilities.

**SECTION 6:** The order of vacation of Depot Street right-of-way, from approximately 340 feet south of East 5<sup>th</sup> Street to East Dunne Avenue, conforms to the California Streets and Highways Code Section 8330 as said portion of Depot Street has been superseded by relocation.

**SECTION 7:** From and after the date this Resolution is recorded, the portion of street right-of-way described here as vacated will no longer constitute a public street.

**SECTION 8:** The vacation hereby releases all public right-of-way rights for streets and highway purposes to the property owner (who is also the Developer) of the two adjacent parcels (with Assessor Parcel Numbers 726-13-063, and 726-13-064 and), MH Lumberyard 49, LLC.

**SECTION 9:** The City Manager is hereby authorized to sign on behalf of the City a Quitclaim Deed granting property as described in Exhibits “A” and “B” to MH Lumberyard 49, LLC and a separate Grant of Public Utility Easement, which easement is described in Exhibits “E” and “F”, granting easement rights to public utilities, including PG&E.

**SECTION 10:** The City Clerk is hereby directed to cause said Quitclaim Deed and Grant of Public Utility Easement to be notarized and recorded in the Office of the Recorder of Santa Clara County. No fees shall be charged for recordation.

**SECTION 11:** The City Clerk is hereby directed to cause a certified copy of this Resolution, attested by said Clerk under seal, to be recorded without acknowledgment, certificate of acknowledgment or further proof in the Office of the Recorder of Santa Clara County. No fees shall be charged for recordation.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the \_\_\_<sup>th</sup> day of \_\_\_\_\_ 2023 by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

**COUNCIL MEMBERS:**

**COUNCIL MEMBERS:**

**COUNCIL MEMBERS:**

**COUNCIL MEMBERS:**

**APPROVED:**

**ATTEST:**

\_\_\_\_\_  
**MARK TURNER, Mayor**

\_\_\_\_\_  
**MICHELLE BIGELOW, City Clerk**

**∞ CERTIFICATION ∞**

**I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California,** do hereby certify that the foregoing is a true and correct copy of Resolution No. 23-00\_ adopted by the City Council at the meeting held on \_\_\_\_\_, 2023.

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

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**MICHELLE BIGELOW, City Clerk**

# ATTACHMENT 9

## "EXHIBIT A"

### LEGAL DESCRIPTION TO ACCOMPANY THE VACATION OF A PORTION OF DEPOT STREET

#### PARCEL A

All that real property situated in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of Depot Street as shown on the Map entitled "Tract 10541, The Lumber Yard", filed December 9, 2021 in Book 944 of Maps, at Pages 21 through 26, Records of Santa Clara County, California, being more particularly described as follows:

**Beginning** at the intersection of the northwesterly line of "East Dunne Avenue" and the northeasterly line of "Depot Street" as shown on said Map, said point also being the southwest corner of "Parcel 4" as shown on said Map; thence  $S64^{\circ}32'39''W$ , a distance of 61.81 feet to a point along the southeasterly prolongation of the southwesterly line of "Depot Street", as shown on said Map; thence along said prolongation, and southwesterly line of "Depot Street", as shown on said Map,  $N39^{\circ}22'00''W$ , a distance of 215.74 feet to the beginning of a non-tangent curve to the right, from which the radius point bears  $S42^{\circ}25'01''E$ , a radial distance of 30.00 feet; thence leaving said southwesterly line of "Depot Street", northeasterly along said curve, through a central angle of  $18^{\circ}17'35''$ , a distance of 9.58 feet to the beginning of a reverse curve to the left having a radius of 40.00 feet; thence northerly along said curve, through a central angle of  $105^{\circ}14'34''$ , a distance of 73.47 feet to a point on the northeasterly line of "Depot Street", as shown on said Map, said point also being on the southwesterly line of "Parcel 2", "Parcel 3", "Parcel 4" and "Parcel B", as shown on said Map; thence along said northeasterly line of "Depot Street",  $S39^{\circ}22'00''E$ , a distance of 268.18 feet to the **Point of Beginning**.

Containing 13,614 square feet of land, more or less.

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

END OF DESCRIPTION.

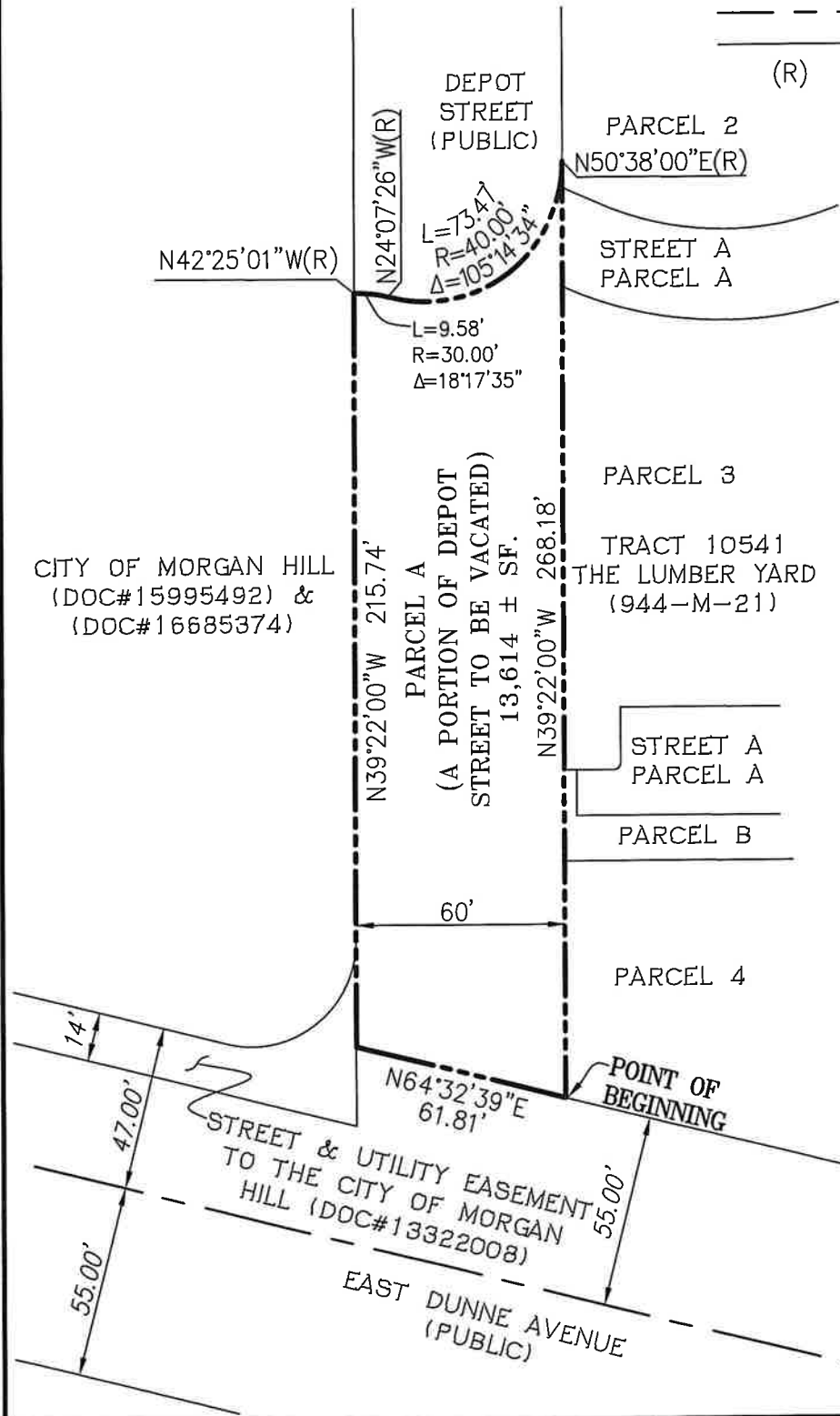
This description was prepared by me or under my direction pursuant to the requirements of the Professional Land Surveyor's Act.

 09/14/2023  
Bryan Pierce, PLS 8859 Date



# **LEGEND**

- BOUNDARY LINE OF VACATION
- - - CENTERLINE
- EXISTING RIGHT-OF-WAY
- (R) RADIAL BEARING



|                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                      |                     |                    |              |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|--------------------|--------------|--|
| <p><b>"EXHIBIT B"</b></p> <p>PLAT TO ACCOMPANY THE VACATION OF<br/>A PORTION OF DEPOT STREET<br/>BEING A PORTION OF DEPOT STREET AS SHOWN<br/>ON THE MAP ENTITLED "TRACT 10541, THE<br/>LUMBER YARD", FILED DECEMBER 9, 2021 IN<br/>BOOK 944 OF MAPS, PAGES 21 THROUGH 26,<br/>RECORDS OF SANTA CLARA COUNTY, CALIFORNIA<br/>MORGAN HILL, CA</p> | <p><b>RJA</b></p> <p><b>RUGGERI-JENSEN-AZAR</b></p> <p>ENGINEERS • PLANNERS • SURVEYORS</p> <p>8055 CAMINO ARROYO GILROY, CA 95020<br/>PHONE: (408) 848-0300 FAX: (408) 848-0302</p> |                     |                    | SHEET 1 OF 1 |  |
|                                                                                                                                                                                                                                                                                                                                                  | SCALE:<br>1"=50'                                                                                                                                                                     | DATE:<br>08/16/2023 | JOB NO.:<br>162016 |              |  |
|                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                      |                     |                    |              |  |

**"EXHIBIT C"**  
**LEGAL DESCRIPTION FOR A**  
**PUBLIC STREET RIGHT OF WAY**

All that real property situated in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of the Lands described in the Grant Deed recorded December 13, 2002 as Document Number 16685374, Official Records of Santa Clara County, California, being more particularly described as follows:

**Commencing** at the east corner of said Lands, said point being the intersection of the northwesterly line of East Dunne Avenue with the southwest line of Depot Street; thence along the northeast line of said Lands, N39°22'00"W, a distance of 234.91 feet to the **True Point of Beginning**; thence leaving said northeast line, S45°35'04"W, a distance of 133.26 feet to a tangent curve to the left having a radius of 6.00 feet; thence southerly along said curve, through a central angle of 86°37'12", a distance of 9.07 feet to a reverse curve to the right having a radius of 524.50 feet; thence southeasterly along said curve, through a central angle of 12°31'32", a distance of 114.66 feet; thence S33°48'17"E, a distance of 23.94 feet to a tangent curve to the left having a radius of 15.00 feet; thence easterly along said curve, through a central angle of 81°39'04", a distance of 21.38 feet; thence N64°32'39"E, a distance of 32.16 feet; thence S25°27'21"E, a distance of 14.00 feet to the northwest line of the Street and Public Utility Easement described in the Easement Deed recorded June 7, 1996 as Document Number 13322008, Official Records of Santa Clara County, California; thence along said northwest line, S64°32'39"W, a distance of 108.49 feet; thence leaving said northwest line, N33°09'15"W, a distance of 39.30 feet; thence N34°19'24"W, a distance of 54.80 feet to a tangent curve to the left having a radius of 457.50 feet; thence northwesterly along said curve, through a central angle of 11°56'39", a distance of 95.37 feet; thence N43°43'57"E, a distance of 11.74 feet to a tangent curve to the left having a radius of 3.00 feet; thence northeasterly along said curve, through a central angle of 28°13'46", a distance of 1.48 feet to a compound curve to the left having a radius of 11.00 feet; thence northerly along said curve, through a central angle of 23°35'10", a distance of 4.53 feet to a reverse curve to the right having a radius of 40.00 feet; thence northeasterly along said curve, through a central angle of 74°39'33", a distance of 52.12 feet to the beginning of a tangent curve to the left, having a radius of 30.00 feet; thence northeasterly along said curve, through a central angle of 20°59'30", a distance of 10.99 feet; thence N45°35'04"E, a distance of 113.58 feet to a tangent curve to the left having a radius of 15.00 feet; thence northerly along said curve, through a central angle of 56°13'29", a distance of 14.72 feet to a reverse curve to the right having a radius of 25.00 feet; thence northerly along said curve, through a central angle of 30°02'46", a distance of 13.11 feet to a reverse curve to the left having a radius of 15.00 feet; thence northerly along said curve, through a central angle of 10°34'58", a distance of 2.77 feet to the northeast line of said Lands; thence along said northeast line, S39°22'00"E, a distance of 72.42 feet to the **True Point of Beginning**.

Containing 22,754 square feet or 0.522 acres, more or less.

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

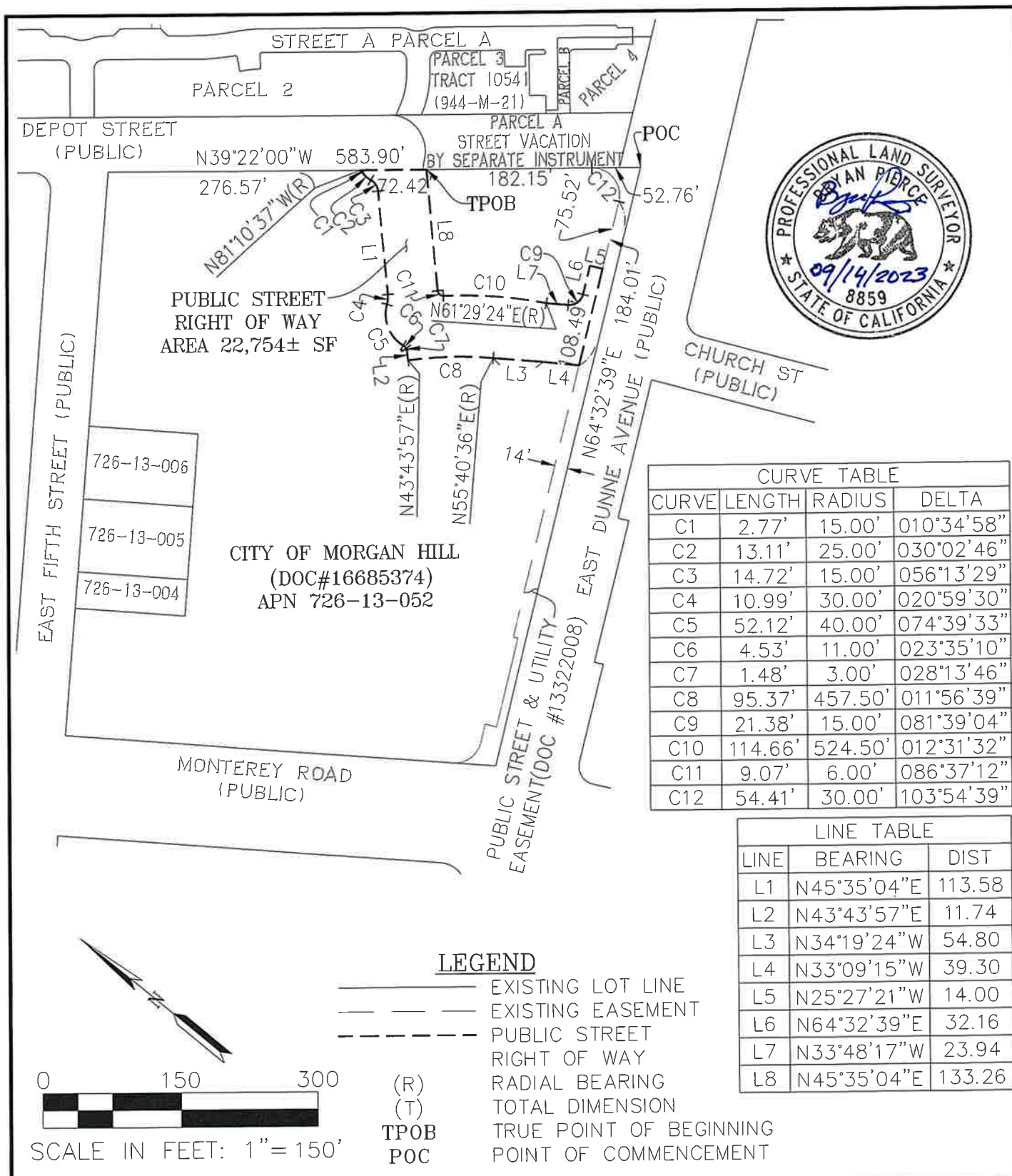
END OF DESCRIPTION.

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

 09/14/2023  
Bryan Pierce, PLS 8859                      Date







| LINE TABLE |             |        |
|------------|-------------|--------|
| LINE       | BEARING     | DIST   |
| L1         | N45°35'04"E | 113.58 |
| L2         | N43°43'57"E | 11.74  |
| L3         | N34°19'24"W | 54.80  |
| L4         | N33°09'15"W | 39.30  |
| L5         | N25°27'21"W | 14.00  |
| L6         | N64°32'39"E | 32.16  |
| L7         | N33°48'17"W | 23.94  |
| L8         | N45°35'04"E | 133.26 |

### "EXHIBIT D"

PLAT TO ACCOMPANY DESCRIPTION FOR A PUBLIC STREET RIGHT OF WAY BEING A PORTION THE LANDS DESCRIBED IN THE GRANT DEED RECORDED DECEMBER 13, 2002 AS DOCUMENT NUMBER 16685374, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA MORGAN HILL, CA

**RJA**  
RUGGERI-JENSEN-AZAR  
ENGINEERS • PLANNERS • SURVEYORS

SHEET 1 OF 1

SCALE:  
1"=150'

DATE:  
08/16/2023

JOB NO.:  
162016



**"EXHIBIT E"**  
**LEGAL DESCRIPTION FOR A**  
**PUBLIC UTILITY EASEMENT**

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**Commencing** at the east corner of said Lands, said point being the intersection of the northwesterly line of East Dunne Avenue with the southwesterly line of Depot Street; thence along the northeasterly line of said Lands, N39°22'00"W, a distance of 52.76 feet to the northeast corner of the Street and Public Utility Easement described in the Easement Deed recorded June 7, 1996 as Document Number 13322008, Official Records of Santa Clara County, California, and the **True Point of Beginning**; said point also being the point of cusp, of a curve to the right, from which the radius point bears S50°38'00"W, a radial distance of 30.00 feet; thence along the north line of said Street and Public Utility Easement, southerly along the arc, through a central angle of 41°03'43", a distance of 21.50 feet to a point on a line 7.38 feet southwesterly of, and parallel with, the northeasterly line of said lands; thence along said parallel line, N39°22'00"W, a distance of 201.20 feet; thence leaving said parallel line, N45°35'04"E, a distance of 7.41 feet to the northeasterly line of said Lands; thence along said northeasterly line, S39°22'00"E, a distance of 182.15 feet to the **True Point of Beginning**.

Containing 1,441 square feet, more or less.

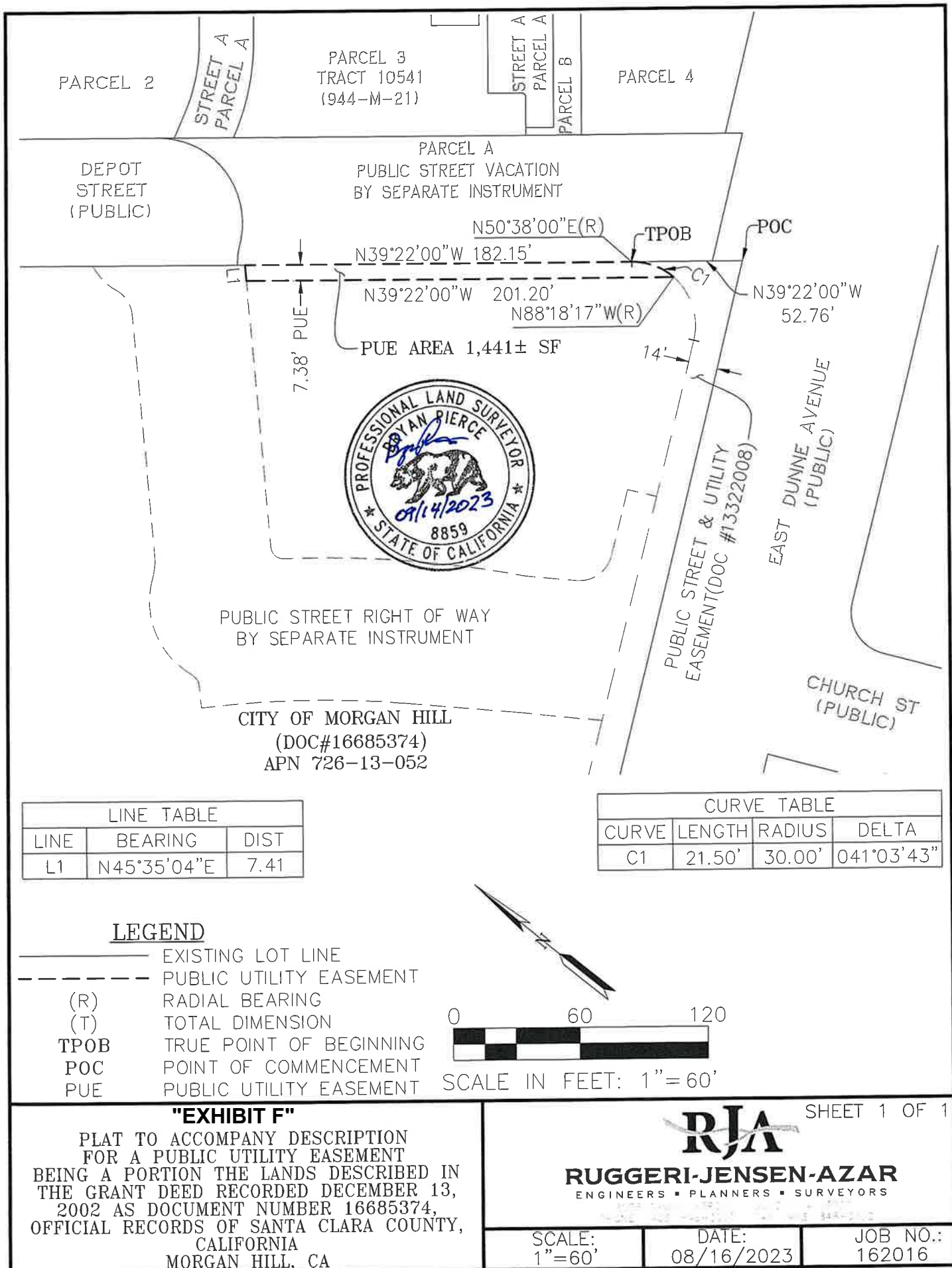
As shown on "Exhibit B" (Plat), attached hereto and made a part hereof.

END OF DESCRIPTION.

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

Bryan Pierce 09/14/2023  
Bryan Pierce, PLS 8859 Date





## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: October 4, 2023**

PREPARED BY:

Inga Alonzo, Management Analyst

APPROVED BY: City Manager

### **APPROVE A THREE-YEAR MAINTENANCE SERVICE AGREEMENT WITH HB RESTORATION, INC. FOR WELL SITE AND BOOSTER STATION PAINTING**

#### **RECOMMENDATION(S)**

1. Award a Maintenance Service Agreement to HB Restoration, Inc. in the not-to-exceed amount of \$180,000 for annual painting of the City's well sites and booster stations; and
2. Authorize the City Manager to execute and administer a three-year agreement with HB Restoration, Inc.

#### **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

#### **REPORT NARRATIVE:**

The City's 10 water booster stations and 16 water well sites require ongoing maintenance and upkeep, including painting. The scope of work consists of industrial maintenance painting of all exposed piping, valves, and metal appurtenances, including the necessary surface preparation work for iron and steel surfaces and the painting of buildings and floors when needed. The selected contractor will be responsible for furnishing all labor, paint and painting supplies, travel time, expenses, and equipment necessary to do the work. The scheduled facilities for this agreement are listed below but are subject to change based on necessity:

FY2024-2026 Painting Schedule

**FY 24**

**FY 25**

**FY26**

|                |             |               |          |
|----------------|-------------|---------------|----------|
| <b>Booster</b> | TBD         | TBD           | TBD      |
| <b>Well</b>    | Butterfield | San Pedro     | Jackson  |
| <b>Well</b>    | Diana #4    | Boys Ranch #1 | Dunne #2 |

A detailed Request for Proposal (RFP) was issued to select a qualified Contractor for the annual maintenance painting of well sites and booster stations on a time and materials basis. The RFP was advertised in the Morgan Hill Times. Additionally, the RFP was posted to both the City's website and the Public Purchase website. The City received six proposals, but one was determined to be non-responsive. Current State of California Department of Industrial Relations (DIR) registration was confirmed before the proposals were reviewed. The remaining five submittals were reviewed by a team of evaluators to score per the scope for Experience, Capability, and References. A score of 30 or higher out of 40 was required to move on to the price scoring. Two contractors had scores that met that qualification. The final bid tabulation is included as Attachment 1.

Staff recommends the award of the three-year annual painting maintenance services contract to HB Restoration, Inc.

#### **COMMUNITY ENGAGEMENT:**

Not applicable since maintenance of the City's water infrastructure is a regular operational function of the City.

#### **ALTERNATIVE ACTIONS:**

City Council could choose to reject the proposals and reissue an RFP. This is not recommended as the formal process was followed per the purchasing policy and a rebid is not likely to result in a contract with added value. City Council could decide not to approve the agreement and direct staff to postpone maintenance painting of these facilities. This is not recommended because not keeping up on the annual maintenance of the water infrastructure can lead to system failure.

#### **PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

On January 23, 2019, Council approved an agreement with Jeffco Painting & Coating, Inc. for annual painting services in the amount of \$120,000.

#### **FISCAL AND RESOURCE IMPACT:**

Funds for this maintenance services agreement were budgeted at \$60,000 annually in the current biennial budget, within the Water Operations Division (650.5710.42510). Subsequent years (Fiscal Years 2025-26) are subject to budget appropriations by the City Council.

#### **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.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Total Average Score Results |                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-------------------------------|
| <b>Painting of Wells and Boosters</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <b>HB Restoraton</b>        | <b>Unified Field Services</b> |
| 1. Experience and Qualifications - Contractor and personell's previous experience painting per the scope of the RFP for like size jurisdictions. Described the Safety program in detail.                                                                                                                                                                                                                                                                                                                                                                 |                             |                               |
| <b>POINTS 20</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 18.00                       | 17.33                         |
| 2. Capability to perform necessary tasks, resolve problems, provide good customer service and provide timely repairs.                                                                                                                                                                                                                                                                                                                                                                                                                                    |                             |                               |
| <b>POINTS 15</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 12.50                       | 14.00                         |
| 3. References Provided references for three like size jurisdictions and                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                             |                               |
| <b>POINTS 5</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 4.33                        | 4.33                          |
| <b>QUALIFICATION, EXPERIENCE, REFERENCE OVERALL SCORE</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <b>34.83</b>                | <b>35.66</b>                  |
| <b>*BID SCHEDULE OVERALL SCORE - POINTS 60</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>55.1</b>                 | <b>31.9</b>                   |
| <b>TOTAL AVERAGE SCORE</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>89.9</b>                 | <b>67.6</b>                   |
| *BID SCHEDULE SCORING - Points are allocated by Line Item. The average cost of the line item over the three year period is calculated per line item. The lowest bidder for each line, receives the full points for that line item. The remaining Contractors receive points for that same line item based on a comparison of their proposed price to the lowest bidder's price. The lowest bidder's average line-item price is divided by each Contractor's average line-item price and multiplied by the number of points available for that line item. |                             |                               |



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**MAINTENANCE SERVICE AGREEMENT  
H.B. RESTORATION, 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 H.B. Restoration, 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 Dec 30, 2026 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 annual painting of well sites and booster stations as further described in **Exhibit A.**
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
  - 4.1. **Amount.** \$180,000.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed One Hundred Eighty Thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for 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](mailto:riskmgmt@morganhill.ca.gov) or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

10. **Compliance with Law.**

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

- 10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- 10.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
- 10.4. Compliance with Wage and Hour Laws: SERVICE PROVIDER, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

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

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

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



order within five (5) days of satisfying the final judgment, decision or order. CITY reserves the right to require SERVICE PROVIDER to enter into an agreement with CITY regarding the manner in which any such final judgment, decision, or order will be satisfied.

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

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

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

11. **Independent Contractor.** SERVICE PROVIDER is an independent contractor and not an agent or employee of CITY.

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

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

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

Address of SERVICE PROVIDER is as follows:

H.B. Restoration Inc.  
5907 26<sup>th</sup> Street  
Rio Linda, CA 95673

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

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Michelle Bigelow  
Print Name

\_\_\_\_\_  
Christina J. Turner  
Print Name

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

H.B. Restoration, Inc.

\_\_\_\_\_  
City Attorney

By: \_\_\_\_\_

\_\_\_\_\_  
Donald A. Larkin  
Print Name

\_\_\_\_\_  
Dimitrios P. Rozakis, CEO  
Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: \_\_\_\_\_

Date: 9/18/2023

By: \_\_\_\_\_

\_\_\_\_\_  
Emmanuel M. Rozakis, Secretary  
Print Name and Title of Signer.

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

Date: 9/14/2023

\_\_\_\_\_  
1034975  
Contractor's License Number(s) (if applicable)

\_\_\_\_\_  
1000055112  
Contractor's DIR Registration Number(s) (if applicable)

Expiration Date(s) 1/31/2024

Expiration Date(s) 06/30/2024

Seal:

## **EXHIBIT A SCOPE OF SERVICES**

The scope of the work for this project includes the painting of water well sites and water booster stations operating by the City of Morgan Hill Utilities Division. There is a total of 27 facilities at this time: 17 water well sites and 10 water booster stations. Over the three-year term of the agreement, a total of nine facilities will require paint maintenance (three each year). The City will select one booster station and two water well sites each year for painting maintenance. The City reserves the right to make substitutions of like facilities to be painted in any given year. The Cotu reserves the right to add possible painting work at any of its Lift Station sites during any given year as part of the agreement.

### **1.00 Contractor's Responsibility**

For each facility the work will consist of painting maintenance of the buildings and all exposed piping, valves, and metal appurtenances, including the necessary surface preparation work for iron and steel surfaces. The selected contractor will be responsible for furnishing any and all labor, paint and painting supplies, travel time, expenses, and equipment necessary to do the work required.

### **2.00 Schedule for Painting of Well Sites and Booster Stations**

The well sites and booster stations are to be painted during the months of October through May in order to minimize any detrimental operational impact during the City's peak water pumping activities during the warm weather periods.

### **3.00 City-wide Listing of City-wide Water Well Sites and Water Booster Stations**

Following is a city-wide listing of the water well sites and water booster stations currently in operation in the City of Morgan Hill:

#### **Water Well Sites and Booster Stations**

| <b>Booster Stations</b> | <b>Water Well Sites</b> |
|-------------------------|-------------------------|
| E. Dunne Booster        | Boys Ranch #1 Well      |
| Easy St. Booster        | Boys Ranch #2 Well      |
| El Toro Booster         | Boys Ranch #3 Well      |
| Encino Booster          | Butterfield Well        |
| Glen Ayre Booster       | Condit Well             |
| Hydro-Pneumatic Booster | Diana #1 Well           |
| Jackson Booster         | Diana #2 Well           |
| Llagas Booster          | Diana #3 Well           |
| Peak & Main Booster     | Diana #4 Well           |
| Woodland Booster        | Dunne Well #1           |
| Dunne Well #2           | Jackson Well            |
| Main Well #1            | Main Well #2            |
| Nordstrom Well          | San Pedro Well          |
| Tennant Well            |                         |

### **4.00 Grouping of Water Well Sites and Water Booster Stations into "Types"**

The water booster stations and the water well sites vary in structure, layout, equipment, and accessories. These booster stations and well sites can be categorized generally as described below:

- **Booster Stations:** These consist of two different general types
- **Water Well Sites:** These consist of one general type

The table below shows the nine facilities (by facility type) that are to be painted over the three-year term of the agreement. Indicated are the equipment and accessories that are part of each facility. It shows the grouping of facilities into "Types" based on general similarities. The total facilities to be painted during this three-year period will be six wells and three booster stations.

Each year, the City will identify the facilities to be painted in the upcoming fiscal year. A tentative three year schedule is below but this schedule is subject to change:

| FY2026-2026 Tentative Painting Schedule |             |               |          |
|-----------------------------------------|-------------|---------------|----------|
|                                         | FY 2024     | FY 2025       | FY 2026  |
| Booster                                 | TBD         | TBD           | TBD      |
| Well                                    | Butterfield | San Pedro     | Jackson  |
| Well                                    | Diana #4    | Boys Ranch #1 | Dunne #2 |

## Painting Specifications

### General

#### 1.01 Scope

This section includes everything necessary for, or incidental to, the painting and coating of: all metal, above ground station piping, well pump motor and discharge head, concrete slabs, concrete masonry units, walls, ceilings, or other surfaces requiring painting.

All necessary ventilation, lighting equipment, and scaffolding shall be furnished and installed by the Contractor. Such scaffolding shall conform to regulations of the State Industrial Accident Commission and local ordinances.

#### 1.02 Submittals

The Contractor shall submit the following items to the Utility Supervisor for review and color selection:

##### A. Color cards

Submit Color cards for all coatings proposed for use showing full range of standard colors.

##### B. Product Data

Submit product data including generic description, complete technical data, surface preparation and application instructions.

##### C. Coating System Data Sheets

Submit Coating System Data Sheets. A sample was included in the RFP specifications.

##### D. Manufacturer's Certification

Submit the manufacturer's certification that coatings comply with specified requirements and are suitable for intended application.

##### E. Warranty

**Submit the manufacturer's standard warranty.**

### **1.03 Surfaces Requiring Painting**

The following items shall be painted on-site. All exposed pump components including the motor; discharge head and base plate; piping, including valves and fittings; electrical conduits; building walls; floors and ceilings, and associated interior and exterior appurtenances.

### **1.04 Work Not Included**

Factory coated equipment such as the motor control center, telemetry, pneumatic components, roofing, and chlorination equipment is not included in this Section.

### **1.05 Quality Assurance**

#### **A. Single Source**

All materials of a paint system, including primer and finish coats, shall be produced by the same paint manufacturer unless otherwise approved by the Project Manager. Thinners, cleaners, driers, and other additives shall be as recommended by the paint manufacturer of the particular coating.

#### **B. Surface Preparation**

Preparation of surfaces and application of coatings shall be in conformance with the applicable AWWA, SSPC, and ASTM specifications, this Specification, and the printed recommendations of the paint manufacturer.

#### **C. Weather**

Prepare surfaces and apply and cure coatings within air and surface temperature range in accordance with the manufacturer's instructions. The surface temperature shall be a minimum of 40-degrees F and 5-degrees above the dew point. Do not prepare surfaces or apply coatings in dust, smoke, rain, fog, or damp or humid weather or if the wind velocity is above the manufacturer's limit. Schedule coating work to avoid excessive dust and airborne contaminants.

#### **D. Ventilation**

Provide ventilation during coating evaporation stage in confined or enclosed areas.

#### **E. Inspection**

The Contractor shall give advance notice of the start of any surface preparation work or coating application work.

Inspection by the Utility Supervisor, or the waiver of inspection of any particular portion of the work, shall not be construed to relieve the Contractor of any responsibility to perform the work in accordance with these Specifications.

For all coatings subject to immersion, full cure must be obtained for the completed system prior to submersion. Consult the coatings manufacturers written instructions for these requirements. The coating shall not be immersed for any purpose until completion of the curing cycle.

### **Materials**

### **2.01 General**

All materials used, except as otherwise specified in carrying out the provisions of this contract, shall be manufactured by the following companies, or approved equals:

- Sherwin Williams
- ICI Devoe
- TNEMEC
- Rain Guard

## **2.02 Paint Materials**

The following surface preparations and paint and coating materials shall apply to this project.

### **A. System Number 1 – Exterior Steel Tanks, Station Piping, Valves, Conduits, Fittings, Pump Discharge Heads, Pump Motors, and Pump Base Plates.**

All exposed steel surfaces including station piping, valves, pump discharge heads, conduits and fittings

that are exposed to weather or are located above grade inside a pump station building shall be coated as follows:

1. Surface Preparation: Clean and Dry
2. Paint Material: Aliphatic Acrylic Polyurethane
  - i. TNEMEC Endura-Shield II Series 1075 @ 3 to 5 mils DFT or
  - ii. Devoe Devthane 379 H @ 2 to 3 mils DFT

### **B. System Number 2 – Factory Primed Steel Doors and Frames**

All exterior and interior steel doors, frames, and miscellaneous equipment that are exposed to weather or are located inside the pump station building shall be coated as follows:

1. Surface Preparation: Clean and Dry
2. Paint Material: High Solids Epoxy @ 4 to 5 mils DFT
  - i. TNEMEC Epoxoline-HS Series V69F or
  - ii. Devoe Bar-Rust 235 H
3. Paint Material-Exterior Applications: Aliphatic Acrylic Polyurethane
  - i. TNEMEC Endura-Shield II Series 1075 @ 3 to 5 mils DFT or
  - ii. Devoe Devthane 379H @ 2 to 3 mils DFT

### **C. System Number 3 – Exterior Ductile and Cast Iron Pipe, Valves, and Fittings**

Ductile iron and cast iron piping, valves, and fittings exposed to weather and ultraviolet light deterioration or underground conditions shall be coated as follows:

1. Surface Preparation: In accordance with manufacturer's instructions.
2. Paint Material - Exterior Applications: Aliphatic Acrylic Polyurethane
  - i. TNEMEC Endura-Shield II Series 1075 @ 3 to 5 mils DFT or
  - ii. Devoe Devthane 379H @ 2 to 3 mils DFT



**D. System Number 4 – Interior Ductile and Cast Iron Pipe Valves and Fittings**  
Ductile iron and cast iron piping, valves, and fittings located in the booster pump station building or exposed to other interior humid conditions shall be coated as follows:

1. **Surface Preparation:** In accordance with manufacturer's instructions
2. **Paint Material:** High Solids Epoxy @ 4 to 5 mils DFT
  - i. TNEMEC Epoxoline HS Series V69F or
  - ii. Devoe Bar-Rust 235 H

**E. System Number 5 – Exterior Concrete Masonry Units and Concrete Walls (Clear Water Repellent Coating)**

The exterior of concrete masonry unit block walls, split face block walls, or concrete walls that are to receive a clear water repellent that are exposed to weather, driving rain and mildew, but are not subject to graffiti shall be coated where called for on the Plans, as follows:

1. **Surface Preparation:** Level protrusions and mortar splatter.
2. **Paint Material:** Water Repellent Siloxane/Silane Blend or Polysilane
  - i. TNEMEC Prime-A-Pell H20 Series 633 or
  - ii. Rain Guard (Do not apply a second coat)

**F. System Number 6 – Exterior Concrete Masonry Units and Concrete Walls (Clear Water Repellent and Anti-Graffiti Coating)**

The exterior of concrete masonry unit block walls, split face block walls, or concrete walls that are in public areas that may be exposed to graffiti and that are exposed to weather, driving rain and mildew, shall be coated with a clear water repellent anti-graffiti coating where called for on the Plans, as follows:

1. **Surface Preparation:** Level protrusions and mortar splatter.
2. **Paint Material:** Co-polymer Graffiti Protectant
  - i. TNEMEC (None required) or
  - ii. Rain Guard VandI-Guard

**G. System Number 7 – Exterior Concrete Masonry Units and Concrete Walls (Water Repellent and Colored Coating)**

The exterior of concrete masonry unit block walls or concrete walls that are to receive a colored coating and are exposed to weather, driving rain and mildew, but are not subject to graffiti shall be coated where called for on the Plans as follows:

1. **Surface Preparation:** Level protrusions and mortar splatter.
2. **Paint Material:** Aliphatic Acrylic Urethane or Waterborne Acrylic Polyurethane @ 2 to 3 mils DFT
  - i. TNEMEC Endura-Shield W.B. Series 1080 or
  - ii. Devoe Devthane 379 H

#### **H. System Number 8 - Interior Concrete Masonry Units and Concrete Walls**

Concrete masonry unit walls and concrete walls in the interior of the pump station building or elsewhere shall be coated as follows:

1. **Surface Preparation:** Level protrusions and mortar splatter. Voids and openings in concrete block surfaces shall be pointed.
2. **Paint Material:** High Solids Epoxy @ 4 to 6 mils DFT
  - i. TNEMEC Epoxoline HS Series V69F or
  - ii. Devoe Bar-Rust 235 H

#### **I. System Number 9 - Sheet Rock**

The sheet rocked walls and ceilings in the interior of the station building shall be coated as follows:

1. **Surface Preparation:** All surfaces shall be clean, dry, and free of oil, grease and other contaminants.
2. **Paint Material:** High Solids Epoxy @ 4 to 6 mils DFT
  - i. TNEMEC Epoxoline HS Series V69F or
  - ii. Devoe Bar-Rust 235 H

#### **J. System Number 10- Chemical Room Protective Coatings (High Chemical Concentrations)**

The concrete masonry unit walls and sheet rocked walls, and moldings of the chemical treatment rooms that are exposed to high concentrations of chlorine, fluoride, or other chemicals that are to be painted grey in color shall be coated as follows. Chemical rooms with low concentrations of chemicals shall be coated per the applicable System 9 - Interior Concrete Masonry Units and Concrete Walls or System 10 – Sheet Rock.

1. **Surface Preparation:** Level protrusions and mortar splatter by sanding or other approved method.
2. **Paint Material:** Novolac Epoxy @ Manufacturer's Recommended DFT
  - i. TNEMEC Tneme-Glaze Series 282 or
  - ii. Devoe Devran 124 or Devmat 111

#### **K. System Number 11 - Interior Concrete Floors**

All concrete floors in the pump station building including the chemical room(s) shall have a non-skid protective coating suitable for moderate chemical exposure and heavy traffic and impact exposure. The Contractor shall be responsible for any preparatory work required by the coating manufacturer.

1. **Surface Preparation:** Verify dryness, followed by Shot Blast or Mechanically Abrade.
2. **Paint Material:** Novolac Epoxy
  - i. TNEMEC-Remove excess silica when dry to foot traffic and then coat with Tneme-Glaze Series 282 @ 6 to 8 mils DFT or

ii. Devoe-Remove excess silica when dry to foot traffic and then coat with Devran 124 @ 20 to 25 mils DFT.

**L. System Number 12 – Exterior Aluminum (Gutters and Downspouts), Non-Ferrous Metals (Copper, Brass, or Bronze), and Galvanized Metal.**

Exterior aluminum materials such as gutters and downspouts, non-ferrous metals such as copper, brass or bronze, and galvanized metal that is to be painted rather than repaired with zinc coating and that are exposed to weather shall be coated as follows:

1. **Surface Preparation:** Remove water-soluble dirt and chemicals with water and detergent and solvent-soluble contaminants with Solvent Clean (SP1). Allow to dry and then Hand Tool (SP2) or Power Tool (SP3) to remove oxides. Scarify to provide a minimum 1-mil profile to aid adhesion.

2. **Paint Material:** Aliphatic Acrylic Urethane or Waterborne Acrylic Polyurethane @ 2 to 3 mils DFT

- i. TNEMEC Endura-Shield W.B. Series 1080 or
- ii. Devoe Devthane 379 H

**M. System Number 13 – Interior Aluminum, Non-Ferrous Metals (Copper, Brass, or Bronze), and Galvanized Metal.**

Interior aluminum materials such as ducting, non-ferrous metals such as copper, brass or bronze, and galvanized metals such as conduits, pipe hangers, and pipe supports that are to be painted rather than repaired with zinc coating and that are exposed to highly humid atmospheres shall be coated as follows:

1. **Surface Preparation:** Remove water-soluble dirt and chemicals with water and detergent and solvent-soluble contaminants with Solvent Clean (SP1). Allow to dry and then Hand Tool (SP2) or Power Tool (SP3) to remove oxides. Scarify to provide a minimum 1-mil profile to aid adhesion.

2. **Paint Material:** High Solids Epoxy @ 6 to 8 mils DFT

- i. TNEMEC Epoxoline HS Series V69F or
- ii. Devoe Bar-Rust 235 H

**N. System Number 14 - Galvanized Metal (Repair)**

Defects in factory applied galvanized items such as galvanized fencing, ladders rain gutters, down spouts, metal doors, door hangers and pipe hangers, shall be coated with a Zinc-Rich coating with a minimum of 14-pounds of metallic zinc content per gallon. The coatings for potable and non-potable applications shall be as follows:

1. **Surface Preparation:** Solvent Clean (SP1), followed by Hand Tool (SP2), Power Tool (SP3) or Brush-off Blast (SP7). Provide a minimum 1-mil profile to aid adhesion.

2. **Paint Material:** Potable Water: NSF Zinc-Rich Urethane @ 2.5 to 3.5 mils DFT

- i. TNEMEC Hydro-Zinc 91-H20
- ii. Devoe Catha-Coat 316

### **3. All Other Applications: Inorganic Zinc-Rich Urethane**

- i. TNEMEC Tneme-Zinc Series 90-97 @ 2.5 to 3.5 mils DFT or**
- ii. Devoe Catha-Coat 302H @ 2 to 4 mils DFT**

### **O. System Number 15 – Exterior Wood**

**Exterior wood such as tails, trim, soffits and all other wood that is exposed to weather or highly humid atmospheres shall be coated as follows:**

- 1. Surface Preparation: Sand rough areas. Seal knots and pitch pockets and fill cracks and nail holes after primer has cured.**
- 2. Paint Material: Acrylic Emulsion**
  - i. TNEMEC Tneme-Crete 180 @ 4 to 10 mils DFT**
  - ii. Devoe 2200 Dulux Professional 100% Acrylic Flat Finish@ 300 to 400 sq ft/gal**

### **P. System Number 16 – Interior Wood**

**Interior wood such as trim, cabinets and all other wood shall be coated as follows:**

- 1. Surface Preparation: Sand rough areas. Seal knots and pitch pockets and fill cracks and nail holes after primer has cured.**
- 2. Paint Material: Acrylic Polymer or Waterborne Epoxy Polyamide**
  - i. TNEMEC Series 28 @ 1.5 to 2.0 mils DFT**
  - ii. Devoe Tru-Glaze 4406 WB Epoxy @ 2 to 4 mils DFT**

## **Execution**

### **3.01 General**

**No paint shall be reduced or applied in any way except as herein specifically called for, or as recommended by the manufacturer. Should conflict occur between specifications and manufacturer's recommendations and/or standard practice, the City shall be notified prior to bid submittal for clarification.**

**It is the responsibility of the Contractor to inspect and provide substrata surfaces that are prepared in accordance with these Specifications and the printed directions and recommendations of the paint manufacturer whose product is to be applied.**

**All doors, windows, trim, moldings, base boards, electrical boxes, light fixture boxes, penetrations through the ceilings, walls or floors, shall be caulked prior to coating.**

### **3.02 Material Delivery and Storage**

**All materials shall be new and shall be delivered to the worksite in unopened containers that plainly show, at the time of use, the designated name, date of manufacturer, and name of manufacturer. Materials shall be stored in a suitable protected area that is heated or cooled as required to maintain temperatures within the range recommended by the manufacturer.**

### **3.03 Air Quality**

All coatings shall conform to the pertinent Volatile Organic Compound (VOC) requirements and any other air quality regulations applicable at the location of use. Coating materials, which cannot be guaranteed by the manufacturer to conform, whether or not specified by product designation, shall not be used.

#### **3.04 Coating Compatibility**

The Contractor shall be responsible for ensuring the compatibility of field coatings with each other or with the coatings on shop coated or previously coated surfaces. Coatings used in the first field coat over shop coated or previously coated surfaces shall cause no wrinkling, lifting, or other damage to underlying coats. Coatings used in successive field coats shall be produced by the same manufacturer.

#### **3.05 Protection of Materials Not to be Painted**

Remove, mask, or otherwise protect hardware, lighting fixtures, switch plates, aluminum surfaces, machined surfaces, couplings, shafts, bearings, nameplates on machinery and other surfaces not intended to be painted. Provide drop cloths to prevent paint materials from falling on or marring any adjacent surfaces. Protect working parts of all mechanical and electrical equipment from damage during surface preparation and painting process. All openings in motors shall be masked to prevent paint and all other materials from entering the motors.

#### **3.06 Paint Mixing**

Multiple-component coatings shall be prepared using all of the contents of the container for each component as packaged by the paint manufacturer. No partial batches will be permitted. Multiple-component coatings that have been mixed shall not be used beyond their pot life.

#### **3.07 Scaffolding**

All necessary scaffolding shall be furnished and installed by the Contractor. Such scaffolding shall conform to regulations of the State Industrial Accident Commission and local ordinances.

#### **3.08 Safety**

Painting shall be performed in strict accordance with the safety recommendations of the paint manufacturer; with the safety recommendations of the National Association of Corrosion Engineers contained in the publication, Manual for Painter Safety; Federal, state, and local agencies having jurisdiction.

All necessary precautions shall be taken to prevent fire. Rags and waste soiled with paint shall be removed from the premises at the end of each day's work or stored in metal containers with metal covers.

#### **3.09 Surface Preparation**

##### **A. Metal Surface Preparation**

All sharp edges and corners shall be ground smooth and all weld spatter, slag burrs, and other objectionable surface conditions must be removed prior to the surface preparation for coating.

No surface preparation blasting will be permitted prior to submission of samples. All workmanship for metal surface preparation as specified shall be in strict conformance with the current Steel Structures Painting Council (SSPC) Specifications as follows:



|                                   |              |
|-----------------------------------|--------------|
| <b>Solvent Cleaning</b>           | <b>SP 1</b>  |
| <b>Hand Tool Cleaning</b>         | <b>SP 2</b>  |
| <b>Power Tool Cleaning</b>        | <b>SP 3</b>  |
| <b>White Metal Blast Cleaning</b> | <b>SP 5</b>  |
| <b>Commercial Blast Cleaning</b>  | <b>SP 6</b>  |
| <b>Brush-Off Blast Cleaning</b>   | <b>SP 7</b>  |
| <b>Pickling</b>                   | <b>SP 8</b>  |
| <b>Near-White Blast Cleaning</b>  | <b>SP 10</b> |

**Coat abrasive blast-cleaned surfaces with primer before visible rust forms on surface. Do not leave blast-cleaned surface uncoated for more than 8-hours.**

**Where OSHA or EPA regulations preclude standard abrasive blast cleaning, wet or vacu-blast methods may be required. Coating manufacturers recommendations for wet blast additives and first coat application shall apply.**

#### **B. Other Surfaces**

**All other surfaces shall be prepared in accordance with these specifications and the manufacture's recommendations.**

### **3.10 Application of Paint**

#### **A. General**

**Manufacturer's written instructions for applying each type of paint or protective coating shall be furnished to the Project Manager prior to application. Cleaned surfaces and all coats shall be inspected prior to the succeeding coat. Schedule such inspection with the Project Manager in advance. Apply all coatings in strict accordance with the paint manufacturer's recommendations, as approved by the Project Manager. Succeeding coats shall be painted in a different color to facilitate inspection. Final color shall be as selected by the Owner. Sufficient time shall be allowed between coats to assure thorough drying of previously applied paint. Coating shall be applied in a neat manner that will produce an even film of uniform and proper thickness, with finished surfaces free of runs, sags, ridges, laps, and brush marks. Units to be bolted together shall be painted prior to assembly or installation, unless otherwise specified.**

#### **B. Shop Primed Surfaces**

**All shop primed items shall be inspected at the jobsite for compliance with these Specifications. Schedule such inspection with the Project Manager in advance. Areas of chipped, peeled, or abraded primer shall be hand or power sanded feathering the edges. The areas shall then be spot primed with the specified primer.**

#### **C. Manufacturer Applied Paint Systems**

**Abraded areas on factory finished items shall be repaired in strict accordance with the manufacturer's directions. Repaired areas shall be carefully blended into the original finish.**

#### **D. Film Thickness**

**Coverage is listed as either total dry film thickness in mils (DFT) or the spreading rate in square feet per gallon (SFPG). The number of coats is the minimum required irrespective of the coating thickness. Additional coats may be required to obtain the minimum required paint thickness, depending on method of application, differences in manufacturers' products, and**

atmospheric conditions. Maximum film build per coat shall not exceed the coating manufacturer's recommendations.

#### **E. Damaged Coatings**

Damaged coatings, pinholes and holidays shall have the edges feathered and repaired in accordance with the recommendations of the paint manufacturer, as approved by the Project Manager. Recoat entire surface where touch-up result is visibly different, either in sheen, texture, or color.

#### **F. Unsatisfactory Application**

Work shall be free of runs, bridges, shiners, laps, delamination, peeled, blistered, cracked, chipped, abraded or other imperfections. Evidence of these conditions shall be cause for rejection. All visible areas of imperfections shall be hand or power sanded feathering the edges. The areas shall then be primed and finish coated in accordance with the Specifications. Depending on the extent of repair and its appearance, a finish sanding and topcoat may be required by the Project Manager.

If the item has insufficient film thickness, the surface shall be cleaned, and then prepared as required by the manufacturer taking into account the recoat window, and top coated with the specified paint material to obtain the specified appearance and coverage. Specific surface preparation requirements shall be determined by the coating manufacturer, as approved by the Project Manager.

All areas of overspray including floors, windows, and equipment shall be cleaned or repainted if unable to be cleaned, to the satisfaction of the Project Manager.

Leave all staging up until areas are inspected and approval is given by the Project Manager, for each surface or coating. Staging removed prior to inspection shall be replaced.

Any defects in the coating system shall be repaired by the Contractor per written recommendations of the coating manufacturer, at no additional cost to the Owner.

### **3.11 Shipping**

In all cases where pre-coated items are to be shipped to the jobsite, all efforts shall be made to protect the coating from damage. Coated items shall be battened to prevent abrasion. Contractor shall use nonmetallic or padded slings and straps in handling. Items will be rejected for excessive damage.

### **3.12 Anniversary Inspection for Tanks**

#### **A. Failure**

Any location where coating has delaminated, peeled, blistered, or cracked; and any location where rusting is evident will be considered a failure of the coating system.

#### **B. Remedial Work**

Repair all failures by removing the deteriorated coating, cleaning the surface, and recoating with the same system in accordance with this Section and the coating manufacturer. With the approval of the City, surface preparation of small failures (areas less than 1 sq./ft.) may be made by cleaning to bare metal in accordance with appropriate SSPC-SP standards.

#### **C. Schedule of Remedial Work**

The City shall establish a starting date and reasonable time of completion for the remedial work. The starting date shall be no more than thirty (30) calendar days after the submittal of the inspection report to the Contractor. Should the Contractor fail to start the remedial work within ten (10) calendar days after the starting date established by the City, the City may at its option perform the remedial work, and the Contractor shall pay to the City the actual cost of such work, plus 20 percent to cover added engineering and administrative cost.

#### **D. Cost**

Warranty inspections of the remedial work shall be at the expense of the Contractor.

#### **Coordinating Work**

1. The Contractor shall provide a work schedule approved by the Utility Supervisor prior to start of work.
2. The Contractor shall schedule his work, in advance, with the Utility Supervisor.
3. The Contractor shall coordinate his schedule with any other work that might interfere or be impacted.

#### **Other On-call Work**

During the term of the agreement, there may be other various painting maintenance or touch up projects throughout the City that surface on an as needed basis. If this occurs, a separate scope for the work will be developed and presented to the contractor for a quote. The City retains the right to accept or reject any quotes.

#### **Term of Service**

The term of the contract will be from October 15, 2023 through December 30, 2026. The contract may be canceled or any portion thereof at any time during the term of service and such cancellations shall be effective upon giving thirty (30) days written notice. The City, at its option, may renew this contract for up to one additional year beginning on January 1, 2027. This option will be exercised only if the contractor has demonstrated superior performance in provision of painting maintenance services to the City.

Pricing entries in Bid Schedule of Proposal Package applies to the period of October 15, 2023 through December 30, 2026. For services beginning on January 1, 2027, the Contractor may request a percentage adjustment to the pricing for all services equal to the Consumer Price Index (CPI) for the San Francisco Bay Area Counties. This request must be in writing ninety (90) days prior to the end of December 30, 2026.

#### **Work Hours**

The work hours for any, and all painting will be scheduled with City Maintenance Staff during regular business hours (7:00 a.m. to 3:00 p.m. Monday through Thursday).

Deviation from the above will not be permitted except by written permission of the City Maintenance Manager or designated representative from the facility. From time to time, the City may take on improvement projects or other construction. The Contractor shall cooperate with the City or its agents while said work is underway.

#### **10.00 Workmanship and Quality level**

**All work shall be performed by staff directly employed and supervised by the Contractor. The Contractor shall provide management and technical supervision through competent supervisors as required to provide the painting. The Contractor shall be responsible for the skills, methods and actions of all employees, subcontractors and for all work done.**

**The Contractor shall cooperate with the representative authorized by the City to enable them to determine the Contractor's conformity with these specifications and the adequacy of the work being performed. The Contractor shall give personal supervision to the work and will meet with the Utility Supervisor or designated City representative as needed.**

#### **Safety**

**The Contractor and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way.**

**EXHIBIT B  
SCHEDULE OF COMPENSATION RATES**

| <b>Task/Item</b>                   | <b>Cost per Sq. Ft.</b> |               |               |
|------------------------------------|-------------------------|---------------|---------------|
| <b>Systems Described in Scope</b>  | <b>Year 1</b>           | <b>Year 2</b> | <b>Year 3</b> |
| 1. Exterior Walls                  | \$7.00                  | \$7.75        | \$8.50        |
| 2. Exterior Trim                   | \$8.00                  | \$9.00        | \$10.00       |
| 3. Interior Wall and Ceiling       | \$7.00                  | \$7.75        | \$8.50        |
| 4. Interior Trimm                  | \$9.00                  | \$10.00       | \$11.00       |
| 5. Interior Floors                 | \$30.00                 | \$35.00       | \$45.00       |
| 6. Interior Piping & Appurtenances | \$6.25                  | \$7.00        | \$7.75        |

The above rates include any and all labor, paint, painting supplies, travel time, expenses and equipment necessary to do the work required.

For any other on-call work and work not listed above- The City shall request a quote from the contractor before work is done. A notice to proceed shall be issued to the contractor if the City agrees on the pricing. The city reserves the right to contract with other contractors for other on-call work or work not listed above if the City feels it would be in the City's best interest.



**EXHIBIT C  
SCHEDULE OF PERFORMANCE**

This is a three year annual on-call agreement. The well sites and booster stations are to be painted during the months of October through May in order to minimize any detrimental operational impact during the City's peak water pumping activities during the warm weather periods. Each year, the City will identify the facilities to be painted in the upcoming fiscal year. A tentative three year schedule is below but this schedule is subject to change:

**2023-2026 Tentative Painting Schedule**

|                | <b>FY 2024</b>     | <b>FY 2025</b>       | <b>FY 2026</b>  |
|----------------|--------------------|----------------------|-----------------|
| <b>Booster</b> | <b>TBD</b>         | <b>TDB</b>           | <b>TBD</b>      |
| <b>Well</b>    | <b>Butterfield</b> | <b>San Pedro</b>     | <b>Jackson</b>  |
| <b>Well</b>    | <b>Diana #4</b>    | <b>Boys Ranch #1</b> | <b>Dunne #2</b> |

## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: October 4, 2023**

PREPARED BY:

Cynthia Iwanaga, Management Analyst

APPROVED BY: City Manager

## **APPROVE HEATING, VENTILATION, AND AIR CONDITIONING (HVAC) MAINTENANCE SERVICE AGREEMENT**

### **RECOMMENDATION(S)**

1. Award a Maintenance Service Agreement to Environmental Systems, Inc. in the total amount of \$662,944 for preventative HVAC maintenance (\$62,944) and repair services (not-to-exceed \$600,000) for a two-year period; and
2. Authorize the City Manager to execute and administer that certain Maintenance Service Agreement with Environmental Systems, Inc.

### **COUNCIL PRIORITIES, GOALS & STRATEGIES**

#### **City Council Ongoing Priorities**

Enhancing Public Safety

#### **2022-2023 Strategic Priorities**

Fiscal Sustainability

### **REPORT NARRATIVE:**

The purpose of this item is to provide the City Council with an opportunity to consider awarding a two-year maintenance service agreement for HVAC preventative maintenance and repair services to Environmental Systems, Inc. (Attachment 1). The City has contracted for professional Heating, Ventilation, and Air Conditioning (HVAC) preventative maintenance and repair services for many years, most recently with A&B Mechanical, Inc. The City's current maintenance service agreement expires on October 31, 2023.

Proposals for the new HVAC maintenance and repair services contract were solicited in July 2023. In soliciting proposals, the City advertised in the Morgan Hill Times on July 14, 2023. The Request for Proposals (RFP) was released on July 14, 2023 on the City website, Public Purchase, and the Builders Exchange of Santa Clara County. Staff also contacted all registered C-20 (HVAC) licensed contractors on the City's Informal Bidder's List.

The proposals were opened on August 14, 2023 and seven proposals were received.

Three of the proposals did not score the minimum 30 out of 40 points on the narrative proposal as stated in the RFP. The narratives were scored for previous experience, work quality and references, qualifications of staff, and organized communication systems. The following four contractors scored 30 or more points on their narrative proposals: ACCO Engineered Systems, Air and Plumbing Systems, Mesa Energy Systems dba EMCOR Services, and Environmental Systems, Inc.

These four proposals were evaluated based on weighted average scoring for the contractors' pricing of the following items: three quarterly maintenance visits and annual maintenance visit. Based on a combination of weighted average scoring for the contractors' pricing and scoring of each contractor's narrative, two contractors were selected to be interviewed. Interviews were conducted with Mesa Energy Systems dba EMCOR Services and Environmental Systems, Inc. Attached is the scoring summary (Attachment 2).

Staff recommends the award of this maintenance service agreement for HVAC maintenance and repair services to Environmental Systems, Inc. for a total not-to-exceed amount of \$662,944 for two years, which is \$31,472 per year for preventative maintenance, subject to future budget appropriations by the City Council. In addition to the \$31,472 per year (\$62,944 for the two-year agreement term) for preventative maintenance, the contract would allow for additional repair costs (labor and materials) to be performed on an as-needed basis upon pre-approval by City maintenance staff in a not-to-exceed amount of \$300,000 annually (not-to-exceed \$600,000 for the two-year agreement term). The City's actual repair costs will be contingent upon the circumstances and frequency of repair needs. With the City's aging building infrastructure, predicting all repair needs is not possible. However, quick responsive repairs are critical for the City's ongoing operations. The new agreement will have a two-year term with authorization for the City Manager to execute three consecutive one-year extensions with the annual price increases not to exceed 5% of the prior year's annual pricing, subject to future budget appropriations by the City Council. If approved, the initial two-year term will be from November 1, 2023 to October 31, 2025.

#### **COMMUNITY ENGAGEMENT:**

As HVAC preventative maintenance and repair services are a regular and expected City service to ensure basic City operations, no efforts were made to inform the community about this proposed agreement.

#### **ALTERNATIVE ACTIONS:**

An alternative action is to not approve this agreement, direct staff to extend the current contract with A&B Mechanical, Inc for a short term, and conduct another Request for Proposals (RFP) process. This alternative is not recommended as it is not expected to result in a better value to the City and would involve additional staff time.

#### **PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

The City Council awarded the prior HVAC maintenance services agreement to A&B Mechanical, Inc on September 16, 2020.

**FISCAL AND RESOURCE IMPACT:**

The \$31,472 in annual HVAC preventative maintenance costs and annual \$300,000 allocation for potential additional repair costs, if needed, would be paid proportionally from the building maintenance budgets in the General Fund (010) and Building Maintenance Fund (740) for the following facilities: Aquatics Center, Centennial Recreation Center, Community and Cultural Center, Playhouse and CCC Building B, City Hall, The Villas, Council Chamber Building, Friendly Inn, Police Department Building including Information Services, and Corporation Yard.

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

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 alterations of existing City facilities involving negligible or no expansion of use of those facilities. Categorical Exemption

City of Morgan Hill

2023 HVAC Maintenance Narrative and Cost Proposal Scores

|                                                              |                          |                  |                         |                          |               |                |                       |                               |  |                       |                  |                         |                          |               |                |                       |                               |  |
|--------------------------------------------------------------|--------------------------|------------------|-------------------------|--------------------------|---------------|----------------|-----------------------|-------------------------------|--|-----------------------|------------------|-------------------------|--------------------------|---------------|----------------|-----------------------|-------------------------------|--|
| 8/31/2023                                                    |                          |                  |                         |                          |               |                |                       |                               |  |                       |                  |                         |                          |               |                |                       |                               |  |
|                                                              | NARRATIVE SCORING        |                  |                         |                          |               |                |                       |                               |  | NARRATIVE SCORING     |                  |                         |                          |               |                |                       |                               |  |
|                                                              |                          |                  |                         |                          |               |                |                       |                               |  | Points Available      | A & B Mechanical | ACCO Engineered Systems | Air and Plumbing Systems | Bay Area HVAC | EMCOR Services | Environmental Systems | One Day Installation & Repair |  |
|                                                              |                          |                  |                         |                          |               |                |                       |                               |  |                       |                  |                         |                          |               |                |                       |                               |  |
| Previous Experience                                          |                          |                  |                         |                          |               |                |                       |                               |  | 15.0                  | 11.7             | 12.7                    | 11.3                     | 8.7           | 12.7           | 14.3                  | 10.8                          |  |
|                                                              |                          |                  |                         |                          |               |                |                       |                               |  |                       |                  |                         |                          |               |                |                       |                               |  |
| Work Quality                                                 |                          |                  |                         |                          |               |                |                       |                               |  | 10.0                  | 6.7              | 7.0                     | 7.0                      | 4.7           | 8.3            | 9.3                   | 6.0                           |  |
|                                                              |                          |                  |                         |                          |               |                |                       |                               |  |                       |                  |                         |                          |               |                |                       |                               |  |
| Qualifications of Staff                                      |                          |                  |                         |                          |               |                |                       |                               |  | 5.0                   | 3.2              | 3.0                     | 4.2                      | 3.3           | 3.5            | 4.7                   | 3.2                           |  |
|                                                              |                          |                  |                         |                          |               |                |                       |                               |  |                       |                  |                         |                          |               |                |                       |                               |  |
| Organized Communication Systems                              |                          |                  |                         |                          |               |                |                       |                               |  | 10.0                  | 6.0              | 8.0                     | 7.5                      | 5.0           | 8.3            | 9.2                   | 6.5                           |  |
| SUBTOTAL- NARRATIVE POINTS                                   |                          |                  |                         |                          |               |                |                       |                               |  | 40.0                  | 27.5             | 30.7                    | 30.0                     | 21.6          | 32.8           | 37.5                  | 26.5                          |  |
|                                                              | COST PROPOSAL            |                  |                         |                          |               |                |                       |                               |  | COST PROPOSAL SCORING |                  |                         |                          |               |                |                       |                               |  |
| Item                                                         | Price from Lowest Bidder |                  |                         |                          |               |                |                       |                               |  | Points Available      |                  |                         |                          |               |                |                       |                               |  |
|                                                              |                          |                  |                         |                          |               |                |                       |                               |  |                       |                  |                         |                          |               |                |                       |                               |  |
| BASE BID:<br>3 Quarterly Inspections and 1 Annual Inspection |                          | A & B Mechanical | ACCO Engineered Systems | Air and Plumbing Systems | Bay Area HVAC | EMCOR Services | Environmental Systems | One Day Installation & Repair |  | 60.0                  | A & B Mechanical | ACCO Engineered Systems | Air and Plumbing Systems | Bay Area HVAC | EMCOR Services | Environmental Systems | One Day Installation & Repair |  |
| SUBTOTAL-PRICING POINTS                                      |                          |                  |                         |                          |               |                |                       |                               |  | 31,472.00             |                  | 76,040.00               | 78,250.00                |               | 80,317.00      | 31,472.00             |                               |  |
| GRAND TOTAL                                                  |                          |                  |                         |                          |               |                |                       |                               |  |                       | 100.0            |                         | 55.5                     | 54.1          |                | 56.3                  | 97.5                          |  |
|                                                              |                          |                  |                         |                          |               |                |                       |                               |  |                       |                  | 3                       | 4                        |               | 2              | 1                     |                               |  |

Point Score is lowest bidder's price divided by each Contractor's price times the number of points available. For example, ACCO's Base Bid Points = 31,472/76,040 X 60 points = 24.8 points out of 60 points



**MAINTENANCE SERVICE AGREEMENT**  
**Environmental 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 Environmental 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 October 31, 2025 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum of three one-year extensions. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be full service maintenance and repair of heating, ventilating, and air conditioning (HVAC) equipment at City facilities as further described in **Exhibit A.**
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
  - 4.1. **Amount.** \$662,944.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Six Hundred Sixty-Two Thousand Nine Hundred Forty- Four dollars for preventative maintenance in the amount of \$62,944 and repair costs in an amount not to exceed \$600,000 to be performed on an as-needed basis and pre-approved by City Maintenance Staff, and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for each subsequent extended one-year term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the immediately preceding prior year of service.
  - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided

in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this Agreement, in whole or in part, on behalf of CITY.

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

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

6. **Performance of Work.** SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of SERVICE PROVIDER'S profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state, and local laws. SERVICE PROVIDER 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](mailto: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:

Environmental Systems, Inc.  
3353 De La Cruz Blvd.  
Santa Clara, CA 95054

Address of CITY is as follows:

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

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

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

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 are on the following 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:

ENVIRONMENTAL SYSTEMS, INC.

\_\_\_\_\_  
City Attorney

By: \_\_\_\_\_

\_\_\_\_\_  
Donald A. Larkin  
Print Name

\_\_\_\_\_  
V.C. Infantino - President

Print Name and Title of Signer.

If Corporate: Chairman, President or  
Vice President

Date: \_\_\_\_\_

Date: 9/21/23

By: \_\_\_\_\_

\_\_\_\_\_  
E.L. Infantino - Corp. Sec.

Print Name and Title of Signer.

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

Date: 9/21/23

\_\_\_\_\_  
422478  
Contractor's License Number(s) (if applicable)

\_\_\_\_\_  
1000001175  
Contractor's DIR Registration Number(s) (if applicable)

Expiration Date(s) 5/31/2024

Expiration Date(s) 6/30/2024

## **EXHIBIT A SCOPE OF SERVICES**

**Contractor will provide full-service HVAC maintenance and repair services and administer the duties and responsibilities set forth in this agreement, in compliance with all applicable laws, regulations, policies and procedures.**

**The work will include the provision of a complete maintenance and management program including, but not limited to the inspection, preventative maintenance, repair, programming and other tasks and services necessary to ensure safe, well maintained HVAC systems providing quality air for City employees and the public. Preventive maintenance and repairs may include, but not be limited to, rooftop variable air volume cooling units, rooftop cooling/heating package units, exhaust fans and water boilers. The successful vendor will be responsible for providing labor, supervision, materials, equipment, transportation, service and the shop facilities necessary to perform high quality work. Vendor will also be responsible for discarding all used materials.**

### **1: SCOPE OF SERVICE**

**The Contractor shall provide full-service HVAC maintenance and repair services to City Facilities as outlined in this document. Contractor shall retain professional personnel who have successfully and competently provided municipal facility HVAC maintenance and repair services on projects of similar scope and complexity. It shall be the Contractor's responsibility to develop and implement a routine maintenance program to effectively maintain, to the satisfaction of the City representative, all aspects of HVAC systems in City defined facilities. For the purpose of this contract, routine preventative HVAC maintenance shall be defined as scheduled routine inspection and proactive servicing of HVAC systems so as to facilitate heating/cooling with a minimal downtime. The routine maintenance and all repairs shall be provided in accordance with the highest standards of the industry, skill, workmanship, applicable trade practices, meet warranties and be in conformance with all applicable laws, codes and regulations. The successful Contractor's maintenance program and repairs shall, at a minimum, include but not limited to the specifications outlined herein.**

### **2: SERVICES TO BE PROVIDED**

**It is the Contractor's responsibility to provide an appropriate level of staffing and provide appropriate tools and vehicles necessary to support all facility HVAC maintenance functions during hours of maintenance and for response after normal working hours. Contractor shall maintain the appropriate CSLB Contractor's license and will comply with all other license, insurance and permit requirements of the City, State and Federal governments, as well as all other requirements of the law. HVAC Preventative Maintenance Specifications as described in Attachment D to the Scope of Services.**

### **3: TERM OF SERVICE**

**The term of the contract will be from November 1, 2023 through October 31, 2025. The contract may be canceled or any portion thereof at any time during the term of service and such cancellations shall be effective upon giving sixty (60) days written notice. The City, at its option, may renew this contract for up to three, one-year periods, beginning on November 1,**



2025. This option will be exercised only if the Contractor has demonstrated superior performance in the provision of HVAC Maintenance and Repair Services to the City.

Pricing applies to the period of November 1, 2023 to October 31, 2025. If the contract is renewed, the annual maximum increase will be tied to the Consumer Price Index (CPI) not to exceed 5%, and allowed for each subsequent year beginning on November 1, 2025.

#### 4: WORK HOURS

Scheduled maintenance and repairs shall typically occur during normal business hours. Facility business hours are:

**Aquatics Center**      Monday through Friday from 5:00 a.m. to 8:00 p. m.,  
Saturdays from 7:00 a.m. to 12:00 p.m. (summer season to 6:30 p.m.),  
Sundays 11:30 a.m. to 6:30 p.m. (summer season only).

**Centennial Recreation Center**      Monday through Friday from 5:00 a.m. to 9:30 p.m.,  
Saturdays from 6:30 a.m. to 5:00 p.m.,  
Sundays from 6:30 a.m. to 5:00 p.m.

**City Hall**      Monday through Friday 8:00 a.m. to 5:00 p.m.

**Community and Cultural Center**      Monday through Friday 8:00 a.m. to 5:00 p.m.  
Saturday and Sunday 8:00 to 5 :00 p.m.

**Community and Cultural Center Building B**      Monday through Friday 8:00 a.m. to 5:00 p.m.

**Friendly Inn**      Monday through Friday 8:00 a.m. to 5:00 p.m.

**Police Department**      Monday through Friday 8:00 a.m. to 5:30 p.m.

**Corporation Yard**      Monday through Friday 7:00 a.m. to 3:30 p.m.

**The Villas**      Monday through Friday 8:00 a.m. to 5:00 p.m.

**Information Services**      Monday through Friday 8:00 a.m. to 5:00 p.m.

#### 5: SERVICE AVAILABILITY

The Contractor shall have trouble-call service available on a twenty-four hours a day, seven days a week basis with a response time not to exceed the following:

**EMERGENCIES.....4-hour response time**

**NON-EMERGENCIES.....24-hour response time**

Time to respond shall start when the City calls the problem into Contractor's designated emergency phone number. Additionally, the Contractor shall provide the ability to respond immediately to situations involving the health and safety of employees and/or the public and the comfort and operational capability of any public meeting space. Routine repairs, service requests or other non-urgent tasks shall be completed by journey level staff within one (1) working day from the date of request by City Representative. Contractor's inability to respond to emergencies in a timely manner will result in a penalty fee of \$100.

## **6: TROUBLE-CALL/REPAIR SERVICE**

Should the City request the Contractor to correct trouble with HVAC equipment between scheduled preventative maintenance service, the City shall be responsible for labor and travel costs associated therewith. Rates shall be firm for the term of the contract.

The City reserves the right to contract with others for trouble calls and repairs.

## **7: TRAVEL TIME FOR PREVENTATIVE MAINTENANCE**

Travel time is included in the Preventative Maintenance Cost as stated in Contractor's "BID SCHEDULE FOR PREVENTATIVE MAINTENANCE FEES INCLUDING TRAVEL TIME".

## **8: TRAVEL TIME FOR REPAIRS**

A flat travel fee of \$50 will be charged for all repair visits.

## **9: BILLABLE WORK**

All work beyond and in addition to the scope of the contract shall be considered billable hours and will require that an estimate for that proposed work be provided to the City Representative for consideration and approval prior to work being completed. The Contractor shall not bill for unnecessary repairs, for repairs that were not completed satisfactorily, for repairs that did not fix an identified problem, or for facility visits that are made by staff unqualified to complete needed repairs.

## **10: STAFFING, WORKMANSHIP AND QUALITY LEVEL**

The Contractor shall provide a staffing level that will provide the desired level of customer service, program support, and HVAC Maintenance and Repair services at designated City facilities. All work shall be performed by journey level staff directly employed and supervised by the Contractor. The Contractor shall provide management and technical supervision through competent supervisors as required. The Contractor shall be responsible for the skills, methods and actions of all employees, Subcontractors and for all work done. The Contractor shall have the knowledge, ability, and technical expertise to remotely monitor, interpret and troubleshoot problems prior to arriving on site utilizing interfaces to any existing or future Energy Management Control System (EMCS), as well as the knowledge, ability, and technical expertise to diagnose and repair components of the EMCS including, but not limited to, sensors, actuators, controllers, man machine interfaces and logic.

## **11: MAINTENANCE AND REPAIR LOCATIONS**

See Attachment A

## **12: TOOLS AND EQUIPMENT**

The Contractor shall furnish and maintain all equipment necessary for properly servicing and maintaining HVAC systems in City buildings. The City of Morgan Hill reserves the right to inspect equipment to be used to perform services under this contract. Any equipment determined to be in poor condition must be replaced immediately, at the Contractor's expense.

Failure to provide suitable equipment for carrying out all requirements of this contract may be grounds for termination.

### **13: PARTS AND MATERIALS**

The Contractor shall furnish all parts and materials necessary for properly maintaining and repairing HVAC systems in City buildings. Mark-up on parts and materials may not exceed 10% of Contractor's cost. Invoices must identify the work performed, cost of labor, parts/materials used, parts/materials cost, and parts/materials mark-up cost.

### **14: ENERGY MANAGEMENT CONTROL SYSTEM**

The Contractor shall interpret and respond to problems and maintenance issues identified by the energy management control systems (EMCS) in place at the Centennial Recreation Center, Community Center and City Hall building. Systems shall be monitored at least weekly, and more frequently when known issues are present or reported. The Contractor shall strive to share the knowledge of the EMCS functions, and have the ability to assist City maintenance staff become more aware of the issues/problems that the EMCS may be indicating, thus minimizing unnecessary service calls. The Contractor shall have the knowledge, ability, and technical expertise to remotely monitor, interpret and troubleshoot problems prior to arriving on site utilizing interfaces to any existing or future EMCS, as well as the knowledge, ability, and technical expertise to diagnose and repair components of the EMCS including, but not limited to, sensors, actuators, controllers, man machine interfaces and logic. Existing energy management systems are varied models and manufacturers and are unique to each building. Contractor must receive authorization from the City Representative before sending staff to respond to EMCS alarms.

### **15: FIRST SERVICE AT EACH FACILITY**

During the first service at each site the Contractor will make recommendations on repairs or upgrades to systems within 60 days. City Representative will respond to these recommendations within 30 days of receiving them.

### **16: INSPECTIONS AND REMEDIES**

So as to ensure consistent quality of the work being performed, the City Representative will perform periodic inspections of HVAC systems to ensure compliance with the contract specifications. Inspections may be made by the City at any time to confirm that work performed meets specifications. If corrective work is required, the City will provide a written list of items and the Contractor shall correct deficiencies as directed. If deficiencies are not corrected in a timely manner, the City may perform the work using others and deduct the cost from the Contractor's payment.

### **17: DAMAGES**

The Contractor will be responsible for all damages to the facility or contents caused by Contractor, their staff or subcontractors during the performance of their duties.

## **18: SAFETY & SECURITY**

The Contractor and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way. The Contractor is responsible for the security of all doors at the conclusion of work in each room. All exterior doors should remain locked at all times. Interior doors that are found open or unlocked shall be left in the same position/condition in which they were found.

## **19: EMERGENCY SITUATIONS**

For medical or public safety emergencies occurring at the Facilities call 9-1-1. For all building maintenance emergencies (water leaks, etc.) contact the Maintenance Manager or designated staff to report the issue immediately (24-hours/day).

## **20: REPORTS / INVOICING**

All invoices to be submitted with a detailed summary of all work and repairs performed. Should a repair need to be made over \$1,000 a quote will need to be provided to the City maintenance staff before any work can be authorized.

**EXHIBIT A-SCOPE OF WORK**

**ATTACHMENT A**

**CITY OF MORGAN  
HVAC FACILITIES LOCATIONS**

| <b>HVAC SYSTEMS TO BE MAINTAINED AT THESE LOCATIONS</b>    |                           |                             |
|------------------------------------------------------------|---------------------------|-----------------------------|
| <b>BUILDING/FACILITY</b>                                   | <b>ADDRESS</b>            | <b>SQUARE FOOTAGE</b>       |
| Aquatics Center (office area)                              | 16200 Condit Road         | 5,294                       |
| Centennial Recreation Center                               | 171 West Edmundson Avenue | 54,000                      |
| City Hall                                                  | 17575 Peak Avenue         | 13,900                      |
| Community and Cultural Center,<br>Building B and Playhouse | 17000 Monterey Road       | 25,000;<br>12,000;<br>5,000 |
| Council Chambers                                           | 17555 Peak Avenue         | 12,104                      |
| Friendly Inn                                               | 17666 Crest Avenue        | 3,168                       |
| Police Department and Information<br>Services              | 16200 Vineyard Boulevard  | 44,886                      |
| Public Works Corporation Yard                              | 100 Edes Court            | 4,583                       |
| The Villas                                                 | 535 Alkire Avenue         | 4,500                       |

## EXHIBIT A-SCOPE OF WORK

### ATTACHMENT B

### HVAC EQUIPMENT LIST

| CITY OF MORGAN HILL HVAC EQUIPMENT LIST                         |                                   |                                            |                                                                        |
|-----------------------------------------------------------------|-----------------------------------|--------------------------------------------|------------------------------------------------------------------------|
| QTY                                                             | MANUFACTURER                      | TYPE                                       | MODEL/SIZE                                                             |
| <b>Aquatics Center - 16200 Condit Road</b>                      |                                   |                                            |                                                                        |
| 1                                                               | Elite Heating Boiler (Main Bldg.) | Water Boiler                               | EL-399NVWH; 399,000 BTU/HR                                             |
| 1                                                               | Trinity (West Building)           | Direct Vent Water Heater                   | Model LX200WH                                                          |
| 1                                                               | Carrier                           | Heater/Air Conditioner                     | 48HJD005-651                                                           |
| 2                                                               | (Events Room)                     | Heater/Air Conditioner                     | Ductless Units split DX 40QKE048                                       |
| 1                                                               | (Kitchen)                         | Air Conditioner                            |                                                                        |
| 1                                                               | (Kitchen)                         | Swamp Cooler                               |                                                                        |
| 2                                                               | (Kitchen)                         | Exhaust Fan                                |                                                                        |
| 1                                                               | Greenheck Cube 480HP-15           | Kitchen (Grease Hood)                      |                                                                        |
| 1                                                               | Greenheck GB-161-3                | Main Locker Room                           |                                                                        |
| 1                                                               | Greenheck GB0141-3                | Team Locker Room                           |                                                                        |
| 1                                                               | Greenheck GB-070-4                | Roof                                       |                                                                        |
| 2                                                               | Exhausto RSV 400                  | Boiler Exhaust Roof                        |                                                                        |
| 1                                                               | Exhausto BSEB 400                 | Locker Rooms                               |                                                                        |
| <b>Centennial Recreation Center – 171 West Edmundson Avenue</b> |                                   |                                            |                                                                        |
| 1                                                               | Trane IntelliPak                  | Air Conditioner (Main Bldg.) AC-1          | SXHFC540745E9BD800100WEOG0000TOY8000; Voltage 460; HZ 60; 3 Phase      |
| 1                                                               | Trane Voyager                     | Air Conditioner (Fitness Room) AC-2        | YCH181C4LOCA; Voltage 460; HZ 60; 3 Phase                              |
| 1                                                               | Trane Voyager                     | Air Conditioner (Gym Room) AC-3            | YCH420A4LTOC6DF400000F0H0000; Voltage 460; 60 HZ; 3 Phase 24 VAC/85AMP |
| 1                                                               | Energy Labs, Inc.                 | Heater/Air Conditioner (Natatorium) IEC-IA | C093228-FHER-L                                                         |
| 1                                                               | Carrier                           | Heater/Air Conditioner (Fitness Expansion) | 48PGLM07-A-60-BB                                                       |
| 1                                                               | Daikin                            | Air Conditioner (East Side)                | RXS12DVJU                                                              |



|                                                                          |                 |                                                          |                                                        |
|--------------------------------------------------------------------------|-----------------|----------------------------------------------------------|--------------------------------------------------------|
| 1                                                                        | Daikin          | Air Conditioner (West Side)                              | RXSO9DVJU                                              |
| 1                                                                        | Reznor          | Swamp Cooler (Kitchen)                                   | RPB-300; MAU, Makeup Unit                              |
| 2                                                                        | LAARS           | Domestic Water Boiler                                    | PNCVO75ONACK28XN; 749,970 BTU/HR                       |
| 1                                                                        | Ajax            | Water Boiler                                             | WRNG-1500; 1,500,000 BTU/HR                            |
| 1                                                                        | Sanyo           | DX Split (Telecom Room)                                  | KS1251                                                 |
| 1                                                                        | Sanyo           | DX Split (Satellite Telecom Room)                        | KS0951                                                 |
| 1                                                                        | Grennheck       | Fan (Locker Room)                                        | G-180-B; Voltage 460/3/60                              |
| 1                                                                        | Grennheck       | Fan (Toilet)                                             | G-131-B; Voltage 115/1/60                              |
| 1                                                                        | Grennheck       | Fan (Kitchen)                                            | Cube-360-XP-10; Voltage 460/3/60                       |
| 1                                                                        | Grennheck       | Fan (Pool Equip)                                         | G-131-C; Voltage 115/1/60                              |
| 1                                                                        | Grennheck       | Fan (Dishwasher)                                         | G-141-B; Voltage 115/1/60                              |
| 1                                                                        | Grennheck       | Fan (Maintenance Receiving)                              | G-09-G; Voltage 115/1/60                               |
| 1                                                                        | Grennheck       | Fan (Electrical Room 134)                                | SQ-100-B; Voltage 115/1/60                             |
| 1                                                                        | Grennheck       | Fan (Electrical Room 123)                                | SQ-140-C; Voltage 115/1/60                             |
| <b>City Hall – 17575 Peak Avenue</b>                                     |                 |                                                          |                                                        |
| 2                                                                        | AC-1 AAON       | Heater/Air Conditioner                                   | RN-025-3-0 EB09-EHL; 25 ton; 460 Voltage; 60 HZ; 3 PH  |
| 1                                                                        | Laars           | Water Boiler                                             |                                                        |
| 1                                                                        | CU-1 Mitsubishi | Air Conditioner                                          | MUY-A17NA                                              |
| 2                                                                        | EF-1            | Exhaust Fan                                              | S/N: 11500620 0009 Mark EF                             |
| <b>Community and Cultural Center and Playhouse – 17000 Monterey Road</b> |                 |                                                          |                                                        |
| 2                                                                        | McQuay          | Heater / Air Conditioner (ACU-1 & ACU-2)                 | RDT070C                                                |
| 1                                                                        | Trane           | Heater / Air Conditioner                                 | TCD180B400GA; Electrical Rating 460/60/3; ten ton unit |
| 1                                                                        | McQuay          | Heater / Air Conditioner (ACU-3)                         | LCA102S                                                |
| 1                                                                        | York            | Heater / Air Conditioner (ACU-4)                         | DHH060                                                 |
| 1                                                                        | Raypak          | Boiler                                                   | 406L-856L                                              |
| 2                                                                        | Penn            | Exhaust Fan                                              | FX14B                                                  |
| 2                                                                        | Penn            | Exhaust Fan                                              | FX18BH                                                 |
| 1                                                                        | Carrier         | Heater/Air Conditioner (Playhouse Stage)                 | 48HJD006-541; 50,000 BTU's/HR                          |
| 2                                                                        | Carrier         | Heater/Air Conditioner (Playhouse Main Auditorium/Lobby) | 48HJF008-541; 180,000 BTU's/HR                         |

|                                                                              |                |                                                     |                                                                             |
|------------------------------------------------------------------------------|----------------|-----------------------------------------------------|-----------------------------------------------------------------------------|
| 3                                                                            | Mitsubishi     | Heater/Air Conditioner (Playhouse Dressing Room)    | PUGH18CKB; 1 phase unit                                                     |
| 4                                                                            |                | Exhaust Fans (Playhouse Dressing Rooms / Restrooms) |                                                                             |
| <b>Council Chambers – 17555 Peak Avenue</b>                                  |                |                                                     |                                                                             |
| 1                                                                            | Trane          | Heater/Air Conditioner                              | YCH180B4I0HB; 460 Volt; 60 HZ; 3 PH                                         |
| 1                                                                            | ARI XB 13      | Air Conditioner                                     | 2TWB3060A1000AA; 208/230 VAC                                                |
| 1                                                                            | Sanyo          | Air Conditioner                                     | C1211; Source 115 Volt; 60 HZ; 1 PH                                         |
| 1                                                                            | Fujitsu        | Air Conditioner                                     | AOV24CL; 208/230 VAC; 60 HZ; 1 PH                                           |
| 1                                                                            | Trane          | Heater/Air Conditioner                              | YFH180B4L0HB; 460 VAC; 60 HZ; 3 PH                                          |
| 1                                                                            | Bryant         | Air Conditioner                                     | 661CP060-C                                                                  |
| 1                                                                            | Carrier        | Air Conditioner                                     | 38QRR060300; 208/230 VAC; 60 HZ; 1PH                                        |
| 1                                                                            | Bradford White | Water Boiler                                        | MII30R6DS13; Capacity 30 gallons; voltage 240; 50/60 HZ                     |
| <b>Community and Cultural Center Building B – 17060 Monterey Road</b>        |                |                                                     |                                                                             |
| 1                                                                            | Trane          | Air Conditioner                                     | 4 ton                                                                       |
| 1                                                                            | Trane          | Water Boiler                                        | 100,000 BTU                                                                 |
| 1                                                                            | Trane          | Heat Pump w/Cooling                                 | 5 ton                                                                       |
| 6                                                                            | Armstrong      | Condensing Unit                                     | SCU10B60C                                                                   |
| 3                                                                            | Armstrong      | Condensing Unit                                     | SCU10B48C                                                                   |
| 1                                                                            | First Company  | Water Heater                                        |                                                                             |
| <b>Friendly Inn – 17666 Crest Avenue</b>                                     |                |                                                     |                                                                             |
| 4                                                                            | Daikin         | Heat Pump                                           | RXYMQ48MVJU; HP=4; 208 Voltage; 1 PH                                        |
| 2                                                                            | Daikin         | Heat Pump                                           | RXYMQ36MVJU; HP=3; 208 Voltage; 1 PH                                        |
| 2                                                                            | Daikin         | Evaporating AC Coil                                 | FXSQ18MVJU; Motor 85W; 208 Voltage; 1 PH                                    |
| 3                                                                            | Daikin         | Evaporating AC Coil                                 | FXSQ12MVJU; Motor 50W; 208 Voltage; 1 PH                                    |
| 1                                                                            | Daikin         | Evaporating AC Coil                                 | FXMQ36MVJU; Motor 270W; 208 Voltage; 1 PH                                   |
| 3                                                                            | Daikin         | Evaporating AC Coil                                 | FXMQ48MVJU; Motor 430W; 208 Voltage; 1 PH                                   |
| 1                                                                            | Greenheck      | Exhaust Fan                                         | SP-A290; Motor 81W; 115 Voltage; 1 PH                                       |
| 1                                                                            | Greenheck      | Exhaust Fan                                         | SP-A200; Motor 48W; 115 Voltage; 1 PH                                       |
| 1                                                                            | Greenheck      | Exhaust Fan                                         | CSP-A110; Motor 51W; 115 Voltage; 1 PH (120 MDF)                            |
| <b>Police Department and Information Services - 16200 Vineyard Boulevard</b> |                |                                                     |                                                                             |
| 5                                                                            | Carrier        | Heater/Air Conditioner                              | Weather Master Series; Package Unit; 48HJD008-641; Voltage 460; 3 PH; 60 HZ |
| 2                                                                            | Carrier        | Heater/Air Conditioner                              | Weather Master Series; Package Unit; 48HJE004-641; Voltage 460; 3 PH; 60 HZ |
| 5                                                                            | Carrier        | Heater/Air Conditioner                              | Weather Master Series; Package Unit; 48HJE007-641; Voltage 460; 3 PH; 60 HZ |
| 2                                                                            | Carrier        | Heater/Air Conditioner                              | Weather Master Series; Package Unit; 48HJD012-641; Voltage 460; 3 PH; 60 HZ |

|                                                       |                     |                                          |                                                                             |
|-------------------------------------------------------|---------------------|------------------------------------------|-----------------------------------------------------------------------------|
| 1                                                     | Carrier             | Heater/Air Conditioner                   | Weather Master Series; Package Unit; 48HJD005-641; Voltage 460; 3 PH; 60 HZ |
| 2                                                     | Carrier             | Heater/Air Conditioner                   | Weather Master Series; Package Unit; 48HGD028AC-6; Voltage 460; 3 PH; 60 HZ |
| 1                                                     | Fujitsu             | Air Conditioner (Server Room)            |                                                                             |
| 1                                                     | Daikin              | Air Conditioner                          | 3-ton                                                                       |
| 1                                                     | Reznor              | Heater Unit                              | FE-75                                                                       |
| 11                                                    | Greenheck           | Exhaust Fan                              |                                                                             |
| <b>Public Works Corporation Yard - 100 Edes Court</b> |                     |                                          |                                                                             |
| 1                                                     | Trane               | Heater/Air Conditioner                   | YCH180B410HB                                                                |
| 1                                                     | Bryant              | Heater/Air Conditioner                   | 601APX060000AAAG; 208 Voltage; 3 PH; 60 HZ                                  |
| 1                                                     | Bryant              | Heater/Air Conditioner                   | 601APX036000AAAF; 208 Voltage; 3 PH; 60 HZ                                  |
| 2                                                     | A O Smith           | Water Boiler                             | DEL 15 102; Capacity 15 gallons                                             |
| 1                                                     | Rheem/York          | Mini split-system/Heater/Air Conditioner | H1DA048S25A; 208/230 Voltage; 1 PH; 60 HZ                                   |
| 1                                                     | Bradford White      | Water Boiler                             | M440T6FBN; D/N:-394; Capacity 40 gallons                                    |
| 1                                                     | Fujitsu Halcyon IAQ | Indoor Air Quality/Air Conditioning Unit |                                                                             |
| 7                                                     |                     | Exhaust Fan                              | (Sewer – 1; Community Service Room – 3; Water Department Room – 3)          |
| <b>The Villas – 535 Alkire Avenue</b>                 |                     |                                          |                                                                             |
| 8                                                     | Bard                | Heat Pump w/Cooling                      | Wall mounted                                                                |

**EXHIBIT A- SCOPE OF WORK  
ATTACHMENT C**

**FILTER LIST**

**Filters must be replaced with MERV13 filters at all facilities.**

| <b>CITY OF MORGAN HILL HVAC EQUIPMENT FILTER LIST</b>                    |  |                       |                     |
|--------------------------------------------------------------------------|--|-----------------------|---------------------|
| <b>FACILITY</b>                                                          |  | <b>TYPE</b>           | <b>CHANGES/YEAR</b> |
| <b>Aquatics Center - 16200 Condit Road</b>                               |  |                       |                     |
|                                                                          |  | Disposable<br>Pleated | Quarterly           |
| <b>Centennial Recreation Center – 171 West Edmundson Avenue</b>          |  |                       |                     |
|                                                                          |  | Disposable<br>Pleated | Quarterly           |
| <b>City Hall – 17575 Peak Avenue</b>                                     |  |                       |                     |
|                                                                          |  | Disposable<br>Pleated | Quarterly           |
| <b>Community and Cultural Center and Playhouse – 17000 Monterey Road</b> |  |                       |                     |
|                                                                          |  | Disposable<br>Pleated | Quarterly           |
| <b>Council Chambers – 17555 Peak Avenue</b>                              |  |                       |                     |
|                                                                          |  | Disposable<br>Pleated | Quarterly           |
| <b>CCC Building B-17060 Monterey Road</b>                                |  |                       |                     |
|                                                                          |  | Disposable<br>Pleated | Quarterly           |
| <b>Friendly Inn – 17666 Crest Avenue</b>                                 |  |                       |                     |
|                                                                          |  | Disposable<br>Pleated | Quarterly           |
| <b>Public Works Corporation Yard – 100 Edes Court</b>                    |  |                       |                     |
|                                                                          |  | Disposable<br>Pleated | Quarterly           |
| <b>Police Department and Information Services-16200 Vineyard Blvd.</b>   |  |                       |                     |
|                                                                          |  | Disposable<br>Pleated | Quarterly           |
| <b>The Villas – 535 Alkire Avenue</b>                                    |  |                       |                     |
|                                                                          |  | Disposable<br>Pleated | Quarterly           |

**Note:** Filter quantities/sizes to be determined during the field review by prospective bidders.

## EXHIBIT A- SCOPE OF WORK

### ATTACHMENT D

#### QUARTERLY AND ANNUAL PREVENTATIVE MAINTENANCE SCHEDULE

Quarterly and Annual Preventative Maintenance Services for all facilities will include a check for proper function of all components and systems, and the following:

|                                                                   |
|-------------------------------------------------------------------|
| <b>Rooftop Variable Air Volume Cooling Units:</b>                 |
| <b>General</b>                                                    |
| Check for safety hazards.                                         |
| Check for debris on the roof and around the equipment and remove. |
| Replace air filters.                                              |
| Check and set time clocks/EMS schedule.                           |
| Check that all equipment panels are secure.                       |
| <b>Compressor Section</b>                                         |
| Check for unusual noise/vibration.                                |
| Check oil sight glass level.                                      |
| Check for visual signs of oil/leaks.                              |
| Check suction line temperature.                                   |
| Check crankcase heater(s).                                        |
| Check for excessive amp draw and current unbalance.               |
| Check for voltage unbalance.                                      |
| <b>Condenser Section</b>                                          |
| Check coil(s) cleanliness/fin condition.                          |
| Check for visual signs of oil/leaks.                              |
| Check fan bracketing and blades for cracks/damage/distortion.     |
| Check all fans are operational and correct rotation.              |
| Amp all fan motors and compare them to nameplate.                 |
| Check that wiring is secure and clear of rotating blades.         |

| <b>Evaporation Section</b>                                                    |  |
|-------------------------------------------------------------------------------|--|
| Check coil(s) cleanliness/fin condition.                                      |  |
| Inspect drain pans for cleanliness/standing water.                            |  |
| Check pan tabs and note if replacement is required.                           |  |
| Check drain line for free flow.                                               |  |
| Check for visual signs of oil/leaks.                                          |  |
| Check TXV bulb secure and insulated.                                          |  |
| Check sight glass/moisture indication.                                        |  |
| Verify proper hot gas bypass valve operation.                                 |  |
| Check motor, drive, and blower for unusual noise/vibration.                   |  |
| Amp motor and compare with nameplate.                                         |  |
| Check v-belt(s) and sheaves condition, alignment, and tension.                |  |
| Lubricate motor bearings (do not over-lubricate!)                             |  |
| Lubricate blower shaft bearings.                                              |  |
| Lubricate vane assemblies (bldg. must be unoccupied if using aerosol!)        |  |
| <b>Economizer Section</b>                                                     |  |
| Check return air/outside air dampers, actuators for free operation.           |  |
| Lubricate dampers and linkage ball joints.                                    |  |
| Verify minimum position properly set.                                         |  |
| Lubricate motor bearings (do not over-lubricate!)                             |  |
| Lubricate blower shaft bearings.                                              |  |
| Amp motor and compare with nameplate.                                         |  |
| Check power exhaust v-belt, sheave, alignment and tension.                    |  |
| <b>Control Panel</b>                                                          |  |
| Check all contactors and points.                                              |  |
| Check for over-heated, burned, or loose wiring/connections.                   |  |
| Check all safety controls.                                                    |  |
| Check operating controls.                                                     |  |
| Cycle discharge air controller through all stages; verify unloader operation. |  |
| Clean panel and components of dirt and debris.                                |  |



**Rooftop Cooling/Heating Package Units:****General**

Check for safety hazards.

Check for debris on roof and around equipment and remove.

Replace air filters.

Check and set time clocks/EMS schedule.

Check that all equipment panels are secure.

**Compressor Section**

Check for unusual noise/vibration.

Check oil sight-glass level.

Check for visual signs of oil/leaks.

Check suction line temperature.

Check crankcase heater(s).

Check for excessive amp draw and current unbalance.

Check for voltage unbalance.

**Condenser Section**

Check coil(s) cleanliness/fin condition.

Check for visual signs of oil/leaks.

Check fan bracketing, rain guard and blades for cracks/damage.

Check all fans are operational and correct rotation.

Amp all fan motors and compare them to nameplate.

Check that wiring is secure and clear of rotating blades.

**Evaporator Section**

Check coil(s) cleanliness/fin condition.

Inspect drain pans for cleanliness/standing water.

Check pan tabs and note if replacement is required.

Check drain line for free flow.

Check for visual signs of oil/leaks.

**Exhaust Fans:**

Inspect belts, bearings and motor operation.

Check flow rate for adequacy using flow meter.

**Water Boilers:**

Open front and rear doors. Clean and vacuum fireside surfaces as required.

Inspect all refractory. Patch and wash coat as required.

Inspect all gasketing on front and rear doors and replace as necessary.

Seal and close front and rear doors properly.

Remove low and auxiliary low water cut off controls, clean and inspect. Then re-install using new gaskets.

Remove plugs in control piping, inspect, clean and re-install.

Replace all hand hole and man hole plates with new gaskets.

Open feedwater tank manway, inspect and clean as required. Replace manway plate with new gasket.

Clean burner and burner pilot.

Check pilot electrode and adjust or replace.

Clean air damper and blower assembly.

Clean motor starter contacts and check operation.

Make necessary adjustments to burner for proper combustion and record all results in service report.

Perform all flame safeguard and safety trip checks and record results in service report.

Check all hand hole plates and man hole plates for leaks at normal operating temperatures and pressures.

Troubleshoot any boiler system problems as requested by on-site personnel.

|                                                                     |
|---------------------------------------------------------------------|
| Check TXV bulb secure and insulated.                                |
| Take coil temperature difference (TD) reading.                      |
| Check motor, drive and blower for unusual noise/vibration.          |
| Check sight glass/moisture indication.                              |
| Check v-belt(s) and sheaves condition, alignment, and tension.      |
| Lubricate motor bearings (do not over-lubricate!)                   |
| Lubricate blower shaft bearings.                                    |
| Amp motor and compare with nameplate.                               |
| <b>Gas Heating Section</b>                                          |
| Inspect heat exchanger from combustion chamber for cracks.          |
| Verify proper operation of combustion blower.                       |
| Verify proper lighting sequence.                                    |
| Inspect burners and combustion chamber cleanliness and condition.   |
| Check pilot and main burner flame quality.                          |
| Check for flame roll-out.                                           |
| <b>Economizer Section</b>                                           |
| Check return air/outside air dampers, actuators for free operation. |
| Lubricate dampers and linkage ball joints.                          |
| Verify minimum position properly set.                               |
| Lubricate blower shaft bearings.                                    |
| Amp motor and compare with nameplate.                               |
| <b>Control Panel</b>                                                |
| Check all contactors, coils and contacts.                           |
| Check for over-heated, burned, or loose wiring/connections.         |
| Check all safety controls.                                          |
| Check operating controls.                                           |
| Cycle unit in all modes and check operation.                        |
| Clean panel and components of dirt and debris.                      |
|                                                                     |

**EXHIBIT B  
SCHEDULE OF COMPENSATION RATES**

**Please see attached.**

**EXHIBIT B-  
SCHEDULE OF COMPENSATION RATES  
HVAC PREVENTATIVE MAINTENANCE FEES  
INCLUDING TRAVEL TIME**

Quarterly and Annual Preventative Maintenance of Heating, Ventilating and Air Conditioning (HVAC) Equipment at City Facilities as described in the technical specifications:

| <b>Bid Item</b> | <b>Description of Bid Item</b>                                                                                                                             | <b>Quarterly<br/>Inspection<br/>Amount</b><br><br><b>Cost for one (1)<br/>quarterly<br/>inspection</b> | <b>Annual<br/>Inspection<br/>Amount</b><br><br><b>Cost for one (1)<br/>annual inspection</b> |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| <b>1</b>        | <b>Aquatics Center:</b> Provide HVAC maintenance (including travel time and all anticipated costs (filters, etc.))                                         | <b>\$ 543.00</b>                                                                                       | <b>\$ 543.00</b>                                                                             |
| <b>2</b>        | <b>Centennial Recreation Center:</b> Provide y HVAC maintenance (including travel time and all anticipated costs (filters, etc.))                          | <b>\$1,778.00</b>                                                                                      | <b>\$1,778.00</b>                                                                            |
| <b>3</b>        | <b>City Hall:</b> Provide HVAC maintenance (including travel time and all anticipated costs (filters, etc.))                                               | <b>\$ 556.00</b>                                                                                       | <b>\$ 556.00</b>                                                                             |
| <b>4</b>        | <b>Community and Cultural Center, Building B and Playhouse:</b> Provide HVAC maintenance (including travel time and all anticipated costs (filters, etc.)) | <b>\$1,024.00</b>                                                                                      | <b>\$1,024.00</b>                                                                            |
| <b>5</b>        | <b>Council Chamber Building:</b> Provide HVAC maintenance (including travel time and all anticipated costs (filters, etc.))                                | <b>\$ 580.00</b>                                                                                       | <b>\$ 580.00</b>                                                                             |
| <b>6</b>        | <b>Friendly Inn:</b> Provide HVAC maintenance (including travel time and all anticipated costs (filters, etc.))                                            | <b>\$ 550.00</b>                                                                                       | <b>\$ 550.00</b>                                                                             |
| <b>7</b>        | <b>Police Department and Information Services:</b> Provide HVAC maintenance (including travel time and all anticipated costs (filters, etc.))              | <b>\$1,960.00</b>                                                                                      | <b>\$1,960.00</b>                                                                            |
| <b>8</b>        | <b>Public Works Corporation Yard:</b> Provide HVAC maintenance (including travel time and all anticipated costs (filters, etc.))                           | <b>\$ 335.00</b>                                                                                       | <b>\$ 335.00</b>                                                                             |

| Bid Item | Description of Bid Item                                                                                                            | Quarterly Inspection Amount           | Annual Inspection Amount           |
|----------|------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|------------------------------------|
|          |                                                                                                                                    | Cost for one (1) quarterly inspection | Cost for one (1) annual inspection |
| 9        | <b>The Villas:</b> Provide HVAC maintenance (including travel time and all anticipated costs (filters, etc.)                       | <b>\$542.00</b>                       | <b>\$542.00</b>                    |
| 10       | <b>Total Amount for One (1) Quarterly Inspection for Bid Items #1-#9</b><br><br>(Add Bid Items #1-#9 -Quarterly Inspection Amount) | <b>\$7,868.00</b>                     |                                    |
| 11       | <b>Total Amount for Three(3) Quarterly Inspections for Bid Items #1-#9</b><br><br>(Multiple Bid Item #10 X 3)                      | <b>\$23,604.00</b>                    |                                    |
| 12       | <b>Total Amount for One (1) Annual Inspection for Bid Items #1-#9</b><br><br>(Add Bid Items #1-#9 – Annual Inspection Amount)      |                                       | <b>\$7,868.00</b>                  |
| 13       | <b>BASE BID TOTAL</b><br><br>For 3 Quarterly Inspections and 1 Annual Inspection<br><br>(Bid Item #11 + Bid Item#12)               | <b>\$31,472.00</b>                    |                                    |



## ANNUAL COIL SERVICE

| Bid Alternate Item | Description of Bid Item      | Annual Inspection Amount<br>(Per Annual Visit) |
|--------------------|------------------------------|------------------------------------------------|
| 1                  | Annual Coil Cleaning Service | \$6,500.00                                     |
|                    | <b>BID ALTERNATE TOTAL</b>   | <b>\$6,500.00</b>                              |

## BID SCHEDULE-HOURLY REPAIR RATES

Hourly Rates for Additional Maintenance and Repair of Heating, Ventilating and Air Conditioning (HVAC) Equipment at City Facilities:

| MISCELLANEOUS CALL OUT/REPAIR RATES*                                                                                                                               |                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| a. 8:00 a.m. to 5:00 p.m.                                                                                                                                          | \$ <u>175.00</u> /hour |
| b. 5:00 p.m. to 8:00 a.m.                                                                                                                                          | \$ <u>225.00</u> /hour |
| c. Weekends & Holidays                                                                                                                                             | \$ <u>225.00</u> /hour |
| *Quantities for Items a., b. & c. cannot be pre-determined, but shall be on an "as needed" basis. A flat travel fee of \$50 will be charged for all repair visits. |                        |

**EXHIBIT C  
SCHEDULE OF PERFORMANCE**

**Three (3) quarterly preventative maintenance visits to be scheduled with the City Maintenance Manager or designated City maintenance staff.**

**Annual preventative maintenance visits to be scheduled with the City Maintenance Manager or designated City maintenance staff.**

**Annual coil cleaning services to be scheduled with the City Maintenance Manager or designated City maintenance staff.**

**Repairs to be scheduled as needed with City Maintenance Manager or designated City Maintenance staff.**



**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*

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**Wednesday, September 6, 2023 5:00 PM**

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

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**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**

The special meeting was called to order at 5:01 pm.

## **ROLL CALL ATTENDANCE**

City Clerk Michelle Bigelow called the roll.

City Clerk Michelle Bigelow called the roll.

|                |                                                                                   |
|----------------|-----------------------------------------------------------------------------------|
| <b>PRESENT</b> | Rene Spring, Gino Borgioli, Yvonne Martinez Beltran, Mark Turner, Marilyn Librers |
| <b>ABSENT</b>  | None                                                                              |

Council Member Yvonne Martinez Beltan arrived at 6:29 pm and participated via posted teleconference on Zoom.

## **DECLARATION OF POSTING AGENDA**

City Clerk Michelle Bigelow declared the posting of the 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)

Claim of DeNova Homes re" Builder's Remedy

## **OPPORTUNITY FOR PUBLIC COMMENT**

Public comment opened at 5:02 pm. There being no requests to speak, public comment closed.

## **ADJOURN TO CLOSED SESSION**

The meeting adjourned to closed session at 5:02 pm.

## **REGULAR MEETING**

6:00 pm

The regular meeting convened at 6:04 pm.

### **SILENT INVOCATION**

### **PLEDGE OF ALLEGIANCE**

### **RECOGNITIONS**

The City of Morgan Hill recognized Ryder Kirk and Rohan Wilmot for earning the honored Eagle Scout Award.

The City of Morgan Hill recognized the Friends of Morgan Hill Senior Center for their outstanding dedication to the Morgan Hill Senior Center.

### **PROCLAMATIONS**

Proclaiming the month of September as National Emergency Preparedness Month  
Proclaiming the month of September as National Hispanic and Latinex Heritage Month  
Proclaiming the month of September as Suicide Prevention Awareness Month  
Proclaiming the month of September as Childhood Cancer Awareness Month

### **CITY COUNCIL REPORTS**

Mayor Turner announced that Caltrain has approved a 4th train that will begin September 25, 2023, running service to Morgan Hill and Gilroy. For information on arrival times and schedules, check the Caltrain website. He announced that he is continuing conversations with the Bay Area Panthers' owners in hopes they will stay local and continue to be headquartered in Morgan Hill.

## **CITY MANAGER'S REPORT**

City Manager Christina Turner gave a presentation to announce newly hired, promoted, and retired employees. She announced that Second Chance week is here in Morgan Hill, kicking it off on Saturday September 9, 2023 with the Citywide garage sale. She also shared that there is a call for volunteers for the Transportation Master Plan Stakeholders Group. We are looking for community members with an interest in or thoughts on public transit. Volunteers will be required to attend 6-8 meetings that will be held over the next year on Wednesday evenings. The first meeting is planned for Wednesday, September 20, 2023 and the second meeting will be held on Wednesday, December 13, 2023.

Presentation for Newly Hired, Promoted, and Retired Employee Recognitions

## **CITY ATTORNEY'S REPORT**

City Attorney Larkin shared that there was no reportable action from the closed session items that were heard earlier in the meeting or from the closed session that took place on August 23, 2023.

## **OTHER REPORTS**

Council Member Borgioli reported on an email that he received advising it is poor etiquette to wear a hat indoors. He explained his reasoning for wearing a hat indoors and asked that if anyone has questions they can reach out directly to him.

## **PUBLIC COMMENT**

Public comment opened at 6:30 pm.

Sharon Luna was called to speak.

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

## **ADOPTION OF AGENDA**

### **MOTION:**

Adopting the agenda moving items 18 and 19 ahead of item 17.

|                  |                                                                                                                      |
|------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>RESULT:</b>   | Passed                                                                                                               |
| <b>MOVER:</b>    | Council Member Borgioli                                                                                              |
| <b>SECONDER:</b> | Mayor Pro Tem Spring                                                                                                 |
| <b>AYES:</b>     | Mayor Pro Tem Spring, Council Member Martinez Beltran, Council Member Borgioli, Mayor Turner, Council Member Librers |
| <b>NAYS:</b>     | None                                                                                                                 |

|                 |      |
|-----------------|------|
| <b>ABSTAIN:</b> | None |
| <b>ABSENT:</b>  | 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 9, 12, and 13.

|                  |                                                                                                                      |
|------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>RESULT:</b>   | Passed                                                                                                               |
| <b>MOVER:</b>    | Mayor Pro Tem Spring                                                                                                 |
| <b>SECONDER:</b> | Council Member Borgioli                                                                                              |
| <b>AYES:</b>     | Mayor Pro Tem Spring, Council Member Martinez Beltran, Council Member Borgioli, Mayor Turner, Council Member Librers |
| <b>NAYS:</b>     | None                                                                                                                 |
| <b>ABSTAIN:</b>  | None                                                                                                                 |
| <b>ABSENT:</b>   | None                                                                                                                 |

#### **1. ACCEPT \$30,000 DONATION FROM THE FRIENDS OF MORGAN HILL SENIOR CENTER**

Recommendation:

1. Accept a \$30,000 donation from the Friends of the Morgan Hill Senior Center to support services at the Centennial Recreation Senior Center; and
2. Authorize the City Manager to execute any agreements necessary for donation acceptance.

#### **2. ACCEPT THE GRANT FUNDING FROM CALIFORNIA HIGHWAY PATROL'S CANNABIS TAX FUND GRANT PROGRAM FOR DUI SATURATION PATROLS AND THE PURCHASING OF EQUIPMENT**

Recommendation:

1. Accept the grant funding from the California Highway Patrol's (CHP) Cannabis Tax Fund Grant Program (CTFGP) and adopt a resolution to amend the City's Fiscal Year 2023-24 General Fund budget, accepting grant funding of \$10,144, and appropriating \$10,144, and;
2. Authorize the City Manager to execute the California Highway Patrol's



(CHP) Cannabis Tax Fund Grant Program's (CTFGP) agreement.

3. **ACCEPT MORGAN HILL RECTANGULAR RAPID FLASHING BEACON (RRFB) AND HIGH INTENSITY ACTIVATED CROSSWALK BEACON (HAWK) PROJECT IN THE AMOUNT OF \$729,046**

Recommendation:

1. Accept as complete the Morgan Hill Rectangular Rapid Flashing Beacon (RRFB) and High Intensity Activated Crosswalk Beacon (HAWK) Project;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

4. **ADOPT ORDINANCE 2348, NEW SERIES, ESTABLISHING CHAPTER 18.29 (MONTEREY CORRIDOR FORM-BASED CODE) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL AND ESTABLISHING THE MONTEREY CORRIDOR FORM-BASED CODE REGULATING PLAN IMPLEMENTING A FORM-BASED CODE ALONG THE MONTEREY ROAD CORRIDOR CREATING A VIBRANT MIXED-USE CORRIDOR THAT ENCOURAGES WALKING AND BIKING AS ENVISIONED WITHIN THE CITY OF MORGAN HILL 2035 GENERAL PLAN**

Recommendation:

Waive the reading, adopt Ordinance No. 2348, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

5. **ADOPT RESOLUTION AMENDING FISCAL YEAR (FY) 2023-24 COUNTYWIDE SOLID WASTE BUDGET FOR ADMINISTRATIVE SERVICES**

Recommendation:

Adopt resolution appropriating an additional \$95,680 to the City's FY 2023-24 budget in the Countywide Solid Waste Administration Fund (246) and the General Fund (010).

6. **APPROVE CONSULTANT AGREEMENT WITH LUHDORFF AND SCALMANINI FOR TWO TEST WELLS**

Recommendation:

1. Approve Consultant Agreement for Design Professionals with Luhdorff and Scalmanini Consulting Engineers for a total not to exceed contract amount of \$347,100; and
2. Authorize the City Manager to execute and administer the Consultant Agreement for Design Professionals with Luhdorff and Scalmanini

7. **APPROVE SECOND AMENDMENT TO THE AGREEMENT WITH DUKE'S ROOT CONTROL**

Recommendation:

Approve and authorize the City Manager to execute a second amendment to the agreement with Duke's Root Control for additional root control treatment for a total agreement not to exceed amount of \$99,185.

8. **APPROVE OBJECTIVE DEVELOPMENT STANDARD WAIVERS FOR THE EDES-ALCINI: AFFORDABLE HOUSING PROJECT AT EDES COURT AND MONTEREY ROAD**

Recommendation:

Adopt Resolution approving the request for waivers for the Edes-Alcini project.

9. **APPROVE THE PURCHASE OF A FIRE APPARATUS FOR THE THIRD FIRE STATION**

Recommendation:

1. Approve the purchase of a fire apparatus for the third fire station with Burton's Fire Inc. in the amount of \$949,080 plus a 5% contingency; and
2. Authorize the City Manager to executive and administer the purchase agreement; and
3. Approve a budget amendment to move the approved funding from FY 2024-25 to FY 2023-24; and
4. Authorize an interfund loan to Public Safety Facilities Impact Fund (315) of \$1.0 million from Local Drainage Impact Fund (303).

12. **AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH GRANITE GOVERNMENT SOLUTIONS FOR CONSOLIDATED TELECOMMUNICATION SERVICES**

Recommendation:

1. Authorize the City Manager to enter into an agreement with Granite Government Solutions for consolidated telecommunication services; and
2. Authorize the City Manager to execute and administer the consultant agreement with Granite Government Solutions.

13. **AWARD SMART IRRIGATION CONTROLLER SYSTEM CONTRACT TO MEDALLION LANDSCAPE MANAGEMENT, INC.**

Recommendation:

1. Award contract to Medallion Landscape Management, Inc. in the amount of \$435,398 for the supply, installation and programming of a Citywide Smart Irrigation Controller System with a 5% contingency not to exceed \$21,770;
2. Authorize the City Manager to execute and administer that certain contract with Medallion Landscape Management, Inc; and
3. Adopt a resolution amending the FY 2023-24 Budget appropriating \$457,168, including \$228,584 from the Water Operations Fund (650) and \$228,584 from the General Fund (010).

#### **ITEM PULLED FOR DISCUSSION**

#### **11. APPROVE THE CONSULTANT AGREEMENT WITH CIVICPLUS, LLC FOR CIVICREC ENTERPRISE RECREATION SOFTWARE**

Recommendation:

1. Approve the consultant agreement with CivicPlus, LLC in the amount of \$472,886 for CivicRec enterprise recreation software; and
2. Adopt a resolution amending the FY 2023-24 General Fund (Fund 010) Budget to appropriate an additional \$108,942; and
3. Authorize the City Manager to execute and administer the consultant agreement with CivicPlus, LLC.

Public comment opened at 6:41 pm. There being no requests to speak, public comment closed.

#### **MOTION:**

Approving the recommended actions.

|                  |                                                                                                                      |
|------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>RESULT:</b>   | Passed                                                                                                               |
| <b>MOVER:</b>    | Mayor Pro Tem Spring                                                                                                 |
| <b>SECONDER:</b> | Council Member Librers                                                                                               |
| <b>AYES:</b>     | Mayor Pro Tem Spring, Council Member Martinez Beltran, Council Member Borgioli, Mayor Turner, Council Member Librers |
| <b>NAYS:</b>     | None                                                                                                                 |
| <b>ABSTAIN:</b>  | None                                                                                                                 |
| <b>ABSENT:</b>   | None                                                                                                                 |

#### **10. APPROVE THE AUGUST 23, 2023 CITY COUNCIL MEETING MINUTES**

Recommendation:  
Approve the August 23, 2023 City Council Meeting Minutes.

**MOTION:**

Approving the recommended action.

|                  |                                                                                                                      |
|------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>RESULT:</b>   | Passed                                                                                                               |
| <b>MOVER:</b>    | Council Member Spring                                                                                                |
| <b>SECONDER:</b> | Mayor Pro Tem Borgioli                                                                                               |
| <b>AYES:</b>     | Mayor Pro Tem Spring, Council Member Martinez Beltran, Council Member Borgioli, Mayor Turner, Council Member Librers |
| <b>NAYS:</b>     | None                                                                                                                 |
| <b>ABSTAIN:</b>  | None                                                                                                                 |
| <b>ABSENT:</b>   | None                                                                                                                 |

**PUBLIC HEARINGS**

**14. ADOPT A CITYWIDE VEHICLE-MILES-TRAVELED (VMT) POLICY INCLUSIVE OF ESTABLISHING VMT AS THE APPROPRIATE METRIC FOR EVALUATING TRANSPORTATION-RELATED IMPACTS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND ESTABLISHING VMT SCREENING CRITERIA, VMT THRESHOLDS OF SIGNIFICANCE, AND TRANSPORTATION DEMAND MANAGEMENT (TDM) STRATEGIES**

Recommendation:

1. Open/close public hearing; and
2. Adopt Resolution adopting Screening Criteria and Thresholds of Significance regarding the City's implementation of State Senate Bill 743 (SB 743) transition from Level-of-Service (LOS) to Vehicle-Miles-Traveled (VMT) as the metric for transportation analysis under the California Environmental Quality Act (CEQA) for development projects.

Principal Planner Adam Paszkowski and Development Services Director Jennifer Carman provided the report and presentation, along with Arthur Tram with TJKM Transportation Consultants.

The meeting recessed at 7:09 pm and reconvened at 7:19 pm.

The public hearing opened at 8:07 pm. The following people were called to speak:

Joe Baranowski (Zoom)

Armando Benavides (Zoom)

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

**SUBSTITUTE MOTION:**

Approving the recommended action, including revisiting the VMT screening criteria. Motion failed for lack of a second.

|                  |                         |
|------------------|-------------------------|
| <b>RESULT:</b>   | Failed                  |
| <b>MOVER:</b>    | Council Member Borgioli |
| <b>SECONDER:</b> | None                    |
| <b>AYES:</b>     | None                    |
| <b>NAYS:</b>     | None                    |
| <b>ABSTAIN:</b>  | None                    |
| <b>ABSENT:</b>   | None                    |

**MOTION:**

Denying the recommended actions and directing staff to come back in 3 to 6 months with a cost analysis and timing along with limited research for a trip reduction plan ordinance and revisit the VMT screening criteria.

|                  |                                                                                                                      |
|------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>RESULT:</b>   | Passed                                                                                                               |
| <b>MOVER:</b>    | Council Member Martinez Beltran                                                                                      |
| <b>SECONDER:</b> | Council Member Librers                                                                                               |
| <b>AYES:</b>     | Mayor Pro Tem Spring, Council Member Martinez Beltran, Council Member Borgioli, Mayor Turner, Council Member Librers |
| <b>NAYS:</b>     | None                                                                                                                 |
| <b>ABSTAIN:</b>  | None                                                                                                                 |
| <b>ABSENT:</b>   | None                                                                                                                 |

**15. ADOPT RESOLUTION AMENDING AND RESTATING THE CITY OF MORGAN HILL'S STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM ("SCIP")**

Recommendation:

1. Open and Close Public Hearing; and
2. Adopt amended and restated resolution

Economic Development Director Matt Mahood provided the report.

The public hearing opened at 8:52 pm. There being no requests to speak, the public hearing closed.

**MOTION:**

Approving the recommended action.

|                  |                                                                                                                      |
|------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>RESULT:</b>   | Passed                                                                                                               |
| <b>MOVER:</b>    | Council Member Librers                                                                                               |
| <b>SECONDER:</b> | Council Member Martinez Beltran                                                                                      |
| <b>AYES:</b>     | Mayor Pro Tem Spring, Council Member Martinez Beltran, Council Member Borgioli, Mayor Turner, Council Member Librers |
| <b>NAYS:</b>     | None                                                                                                                 |
| <b>ABSTAIN:</b>  | None                                                                                                                 |
| <b>ABSENT:</b>   | None                                                                                                                 |

**OTHER BUSINESS**

**16. APPROVE CONDITIONAL FUNDING FOR THE MAGNOLIAS AFFORDABLE HOUSING DEVELOPMENT BY FIRST COMMUNITY HOUSING AND EDEN HOUSING (FCH-EDEN) FROM DESIGNATED HOUSING FUNDS**

Recommendation:

Approve conditional funding for the FCH-Eden Housing Project, “The Magnolias,” in the amount of \$600,000, contingent on FCH-Eden’s ability to obtain the remaining gap funds, and subject to an agreement negotiated by the City Attorney.

Housing Director Rebecca Garcia and Development Services Director Jennifer Carman provided a presentation and report. Louis Liss of Eden Housing answered questions.

Public comment opened at 9:28 pm. The following people were called to speak: Victoria Lam (Zoom), on behalf of County Supervisor Sylvia Arenas  
Joe Baranowski (Zoom)  
Bryan Espiritu (Zoom)  
Kyle Zaylor (Zoom), on behalf of First Community Housing  
There being no further requests to speak, public comment closed.

**MOTION:**

Approving the recommended action.

|                  |                                                                                              |
|------------------|----------------------------------------------------------------------------------------------|
| <b>RESULT:</b>   | Passed                                                                                       |
| <b>MOVER:</b>    | Council Member Martinez Beltran                                                              |
| <b>SECONDER:</b> | Council Member Borgioli                                                                      |
| <b>AYES:</b>     | Mayor Pro Tem Spring, Council Member Martinez Beltran, Council Member Borgioli, Mayor Turner |

|                 |                        |
|-----------------|------------------------|
| <b>NAYS:</b>    | Council Member Librers |
| <b>ABSTAIN:</b> | None                   |
| <b>ABSENT:</b>  | None                   |

**18. APPROVE CODE OF CONDUCT FOR PUBLIC MEETINGS IN THE COUNCIL CHAMBER AND CONFERENCE ROOMS**

Recommendation:

Approve City Council Policy, "Code of Conduct for Public Meetings in the Council Chamber and Conference Rooms"

City Attorney Donald Larkin presented the report.

Public comment opened at 9:54 pm. The following people were called to speak:

Doug Muirhead

Marby Lee

Joe Baranowski (Zoom)

Bryan Espiritu (Zoom)

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

The Council provided feedback to staff. The policy will be reviewed, the feedback will be incorporated, and the policy will be brought back at the mid-year goal review workshop.

**MOTION:**

Continuing this item to the September 27, 2023 City Council meeting.

|                  |                                                                                                                      |
|------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>RESULT:</b>   | Passed                                                                                                               |
| <b>MOVER:</b>    | Mayor Pro Tem Spring                                                                                                 |
| <b>SECONDER:</b> | Council Member Librers                                                                                               |
| <b>AYES:</b>     | Mayor Pro Tem Spring, Council Member Martinez Beltran, Council Member Borgioli, Mayor Turner, Council Member Librers |
| <b>NAYS:</b>     | None                                                                                                                 |
| <b>ABSTAIN:</b>  | None                                                                                                                 |
| <b>ABSENT:</b>   | None                                                                                                                 |

**19. PROVIDE DIRECTION TO STAFF ON PROPOSED FUTURE COUNCIL INITIATED AGENDA ITEMS**

Recommendation:

Determine if the majority of the City Council want the following items agendized at a future meeting for discussion:



1. Consider prohibiting pedestrians on median islands; and
2. Consider restoring the use of natural gas in new construction.

Mayor Turner explained why he asked for the items to come forward.

Public comment opened at 10:09 pm. The following people were called to speak:

Margaret McCann (Zoom)

Steve Chappell

Marby Lee

Diya Kandhra (Zoom)

Dashiell Leeds (Zoom)

Ashley Sailor (Zoom), on behalf of Sofia Ruiz

Matthew Lundy (Zoom)

Bryan Espiritu (Zoom)

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

**MOTION:**

Directing staff to bring both items back for discussion.

|                  |                                                                                                                      |
|------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>RESULT:</b>   | Passed                                                                                                               |
| <b>MOVER:</b>    | Council Member Librers                                                                                               |
| <b>SECONDER:</b> | Council Member Borgioli                                                                                              |
| <b>AYES:</b>     | Mayor Pro Tem Spring, Council Member Martinez Beltran, Council Member Borgioli, Mayor Turner, Council Member Librers |
| <b>NAYS:</b>     | None                                                                                                                 |
| <b>ABSTAIN:</b>  | None                                                                                                                 |
| <b>ABSENT:</b>   | None                                                                                                                 |

**17. PROVIDE DIRECTION REGARDING CITY COUNCIL TERM LIMITS**

Recommendation:

Provide direction to staff regarding the drafting of an ordinance creating term limits that would be submitted to the voters in November 2024.

Public comment opened at 10:37 pm. The following people were called to speak:

Steve Chappell

Marby Lee

Bryan Espiritu (Zoom)

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

**MOTION:**

Continuing this item to a future meeting undetermined.

|                  |                                                                                                                      |
|------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>RESULT:</b>   | Passed                                                                                                               |
| <b>MOVER:</b>    | Mayor Pro Tem Spring                                                                                                 |
| <b>SECONDER:</b> | Council Member Borgioli                                                                                              |
| <b>AYES:</b>     | Mayor Pro Tem Spring, Council Member Martinez Beltran, Council Member Borgioli, Mayor Turner, Council Member Librers |
| <b>NAYS:</b>     | None                                                                                                                 |
| <b>ABSTAIN:</b>  | None                                                                                                                 |
| <b>ABSENT:</b>   | None                                                                                                                 |

### **FUTURE COUNCIL INITIATED AGENDA ITEMS**

None.

### **ADJOURNMENT**

There being no further business, Mayor Turner adjourned the meeting at 10:46 pm.

### **Minutes Prepared by:**

Michelle Bigelow, City Clerk

## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: October 4, 2023**

PREPARED BY:

Matthew Mahood, Economic Development Director

APPROVED BY: City Manager

## **ADOPT RESOLUTION OF INTENTION TO RENEW THE MORGAN HILL TOURISM BUSINESS IMPROVEMENT DISTRICT**

### **RECOMMENDATION(S)**

Adopt Resolution of Intention to Renew the Morgan Hill Tourism Business Improvement District (TBID).

### **COUNCIL PRIORITIES, GOALS & STRATEGIES**

#### **City Council Ongoing Priorities**

Maintaining and Enhancing Infrastructure

#### **2022-2023 Strategic Priorities**

Economic Development

#### **Guiding Documents**

Economic Blueprint

Morgan Hill 2035 General Plan

Bikeways Trails Parks and Recreation Masterplan

Downtown Specific Plan

### **REPORT NARRATIVE:**

On January 23, 2019, the City Council adopted a resolution declaring the results of the majority protest proceedings and established the Morgan Hill Tourism Business Improvement District (MHTBID). The initial formation of the MHTBID was for a 5 year period. The MHTBID assessment, if not renewed, expires on February 28, 2024. The Adoption of this Resolution will result in a public meeting on November 1, 2023 and a public hearing on December 6, 2023 on the renewal of the Morgan Hill Tourism Business Improvement District (MHTBID) and the levy of assessments on lodging businesses. The renewed TBID is proposed to have a ten (10) year life, beginning March 1, 2024.

### **Background**

The MHTBID is a benefit assessment district proposed to continue a revenue source to help fund marketing and sales and sports facility marketing and development programs for Morgan Hill lodging businesses. This approach has been used successfully in other destination areas throughout the state to improve tourism and drive demand for

additional room nights towards assessed lodging businesses. The renewed MHTBID includes all lodging businesses, existing and in the future, available for public occupancy located within the boundaries of the City of Morgan Hill.

Lodging business owners decided to pursue renewal of the MHTBID in order to continue a revenue source devoted to marketing Morgan Hill as a tourist, meeting and event destination. If renewed, the MHTBID would generate approximately \$341,000 on an annual basis for promotion of travel and tourism specific to the City of Morgan Hill.

### **Tourism Business Improvement Districts**

Tourism Business Improvement Districts (TBIDs) utilize the efficiencies of private sector operations in the market-based promotion of tourism. These special assessment districts allow lodging business owners to organize their efforts to increase tourism.

Lodging business owners within the TBID fund the TBID, and those funds are used to provide services that are desired by and benefit the lodging businesses within the TBID.

TBID benefits:

- Funds cannot be diverted for other government programs;
- They are customized to fit the needs of each destination;
- They allow for a wide range of services; including: destination marketing, tourism promotion, and sales lead generation;
- They are designed, created and governed by those who will pay the assessment; and
- They provide a stable funding source for tourism promotion.

In California, TBIDs are primarily formed pursuant to the Property and Business Improvement District Law of 1994 (94 Law). This law allows for the creation of special benefit assessment districts to raise funds within a specific geographic area. The key difference between TBIDs and other special benefit assessment districts is that funds raised are returned to the private non-profit corporation governing the TBID.

### **MANAGEMENT DISTRICT PLAN**

The Management District Plan (Attachment 1) includes the proposed boundary of the MHTBID, a service plan and budget and a proposed means of governance. The MHTBID will include all lodging businesses, existing and in the future, available for public occupancy located within the boundaries of the City of Morgan Hill.

The annual assessment rate is one and one half percent (1.5%) of gross short-term sleeping room rental revenue. During the MHTBID's term, the assessment rate may be increased annually by the Owner's Association upon approval from the Board of Directors by a maximum of one half of one percent (0.5%) of gross short-term sleeping room rental revenue per year. The maximum assessment rate may not exceed three percent (3%) of gross short-term sleeping room rental revenue. If the assessment rate

is increased, it may subsequently be decreased by a maximum of one half of one percent (0.5%) each year, but shall not be decreased below a minimum of one- and one-half percent (1.5%) of gross short-term sleeping room rental revenue. Any proposed assessment rate increase or decrease shall be included in the MHTBID annual report and shall not be effective until approved by the Morgan Hill City Council. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days or stays by any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

The renewed MHTBID will have a ten (10) year life, beginning March 1, 2024 or as soon as possible thereafter, and ending ten (10) years from its start date. The assessment will be implemented beginning March 1, 2024. Once per year, beginning on the anniversary of MHTBID renewal, there is a thirty (30) day period in which business owners paying fifty percent (50%) or more of the assessment may protest and begin proceedings to terminate the MHTBID.

The City will be responsible for collecting the assessment on a monthly basis (including any delinquencies, penalties and interest) from each lodging business located within the boundaries of the MHTBID. The City shall make all reasonable efforts to collect the assessments from each lodging business. The City shall forward the assessments to Visit Morgan Hill, which will have the responsibility of managing MHTBID programs as provided in this Management District Plan. The City shall be paid a fee equal to two percent (2%) of the amount of assessment collected to cover its costs of collection and administration.

### **MHTBID renewal PROCESS**

October 4, 2023      **RESOLUTION OF INTENTION HEARING**

Upon the submission of a written petition, signed by the lodging business owners in the renewed MHTBID who will pay more than fifty percent (50%) of the assessments proposed to be levied, the City Council may initiate proceedings to renew the MHTBID by the adoption of a resolution expressing its intention to renew the MHTBID.

*Petition Status:* Petitions in favor of MHTBID renewal were submitted by 8 lodging businesses, which represent 78.66% of the total MHTBID assessment. This majority petition allows the Council to initiate proceedings for MHTBID renewal at the October 4, 2024 meeting.

By October 21, 2023      **NOTICE**

The 94 Law requires the City to mail a written notice to the owners of all lodging businesses proposed to be assessed within the MHTBID. Mailing the notice begins a mandatory forty-five (45) day period in which owners may protest MHTBID renewal.

November 1, 2023      **PUBLIC MEETING AND INTRODUCTION/FIRST READING OF**

## ORDINANCE

Allow public testimony on the renewal of the MHTBID and levy of assessments.

At the public meeting, the City Council shall introduce and conduct the first reading of the ordinance renewing the MHTBID and continue levying the assessment.

## December 6, 2023 FINAL PUBLIC HEARING AND SECOND READING/ADOPTION OF THE ORDINANCE

If written protests are received from the owners of lodging businesses in the renewed MHTBID which will pay more than fifty percent (50%) of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than fifty percent (50%), no further proceedings to levy the proposed assessment against such businesses shall be taken for a period of one (1) year from the date of the finding of a majority protest by the Council.

If the Council, following a public hearing, decides to establish the renewed MHTBID, the Council shall adopt a resolution of formation.

Following a successful public hearing, the City Council shall convene to hold a second reading of the ordinance renewing the MHTBID and continue levying the assessment. Upon successful passage of the ordinance, the MHTBID shall be renewed, and the ordinance shall go into effect thirty (30) days after successful passage of the ordinance.

### **COMMUNITY ENGAGEMENT:**

Inform. This staff report serves to inform the community of the proposed recommendation to renew the MHTBID.

### **ALTERNATIVE ACTIONS:**

The Council could choose not to adopt the Resolution of Intention. Staff does not recommend this option.

### **PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

On July 18, 2018, the City Council directed staff to proceed with the creation of a Morgan Hill Tourism Business Improvement District (MHTBID).

On November 7, 2018, the City Council approved the original District Management Plan (Plan) that identified the proposed MHTBID's boundary, budget, services, and governance and directed staff to circulate the MHTBID Petition form.

On November 28, 2018, the Council approved the Resolution of Intention which allows

the Council to initiate proceedings for District formation.

On January 23, 2019, the Council adopted a resolution declaring the results of the majority protest proceedings and established the Morgan Hill Tourism Business Improvement District (MHTBID)

**FISCAL AND RESOURCE IMPACT:**

The City will receive a fee of two percent (2%) of the amount collected to cover its costs of administration. Because the MHTBID programs are intended to increase visitation to the City, there may be an increase in transient occupancy tax and sales tax collections.

**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.



2024-2034



# MORGAN HILL TOURISM BUSINESS IMPROVEMENT DISTRICT MANAGEMENT DISTRICT PLAN

*Prepared pursuant to the Property and Business Improvement District Law of 1994, Streets and Highways Code section 36600 et seq.*

September 15, 2023

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Prepared by  
Civitas



## I. OVERVIEW

Developed by the City of Morgan Hill (City) and Morgan Hill lodging businesses, the Morgan Hill Tourism Business Improvement District (MHTBID) is an assessment district proposed to continue to provide specific benefits to payors, by funding sales & marketing and sports facility marketing & development programs for assessed lodging businesses. This approach has been used successfully in other destination areas throughout the country to provide the benefit of increased demand for room night sales directly to payors. The MHTBID was initially created in 2019 for a five (5) year term. The City and Morgan Hill lodging businesses now wish to renew the MHTBID for a ten (10) year term.

*Location:* The Morgan Hill MHTBID includes all lodging businesses, existing and in the future, available for public occupancy located within the boundaries of the City of Morgan Hill, as shown on the map in Section IV.

*Services:* The MHTBID is designed to provide specific benefits directly to payors by increasing awareness and demand for room night sales. Sales & marketing and sports facility marketing & development programs will increase demand for overnight tourism and market payors as tourist, meeting and event destinations, thereby increasing demand for room night sales for assessed lodging businesses.

*Budget:* The total MHTBID annual assessment budget for the initial year of its ten (10) year operation is anticipated to be approximately \$341,000. A similar budget is expected to apply to subsequent years, but this budget is expected to fluctuate as room sales do, as lodging businesses open and close, and if the assessment rate is increased or decreased pursuant to this Plan.

*Cost:* The annual assessment rate is one and one half percent (1.5%) of gross short-term sleeping room rental revenue. During the MHTBID's term, the assessment rate may be increased annually by the Owner's Association upon approval from the Board of Directors by a maximum of one half of one percent (0.5%) of gross short-term sleeping room rental revenue per year. The maximum assessment rate may not exceed three percent (3%) of gross short-term sleeping room rental revenue. If the assessment rate is increased, it may subsequently be decreased by a maximum of one half of one percent (0.5%) each year, but shall not be decreased below a minimum of one- and one-half percent (1.5%) of gross short-term sleeping room rental revenue. Any proposed assessment rate increase or decrease shall be included in the MHTBID annual report and shall not be effective until approved by the Morgan Hill City Council. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days or stays by any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

*Collection:* The City will be responsible for collecting the assessment on a monthly basis (including any delinquencies, penalties and interest) from each lodging business located in the boundaries of the MHTBID. The City shall take all reasonable efforts to collect the assessments from each lodging business.

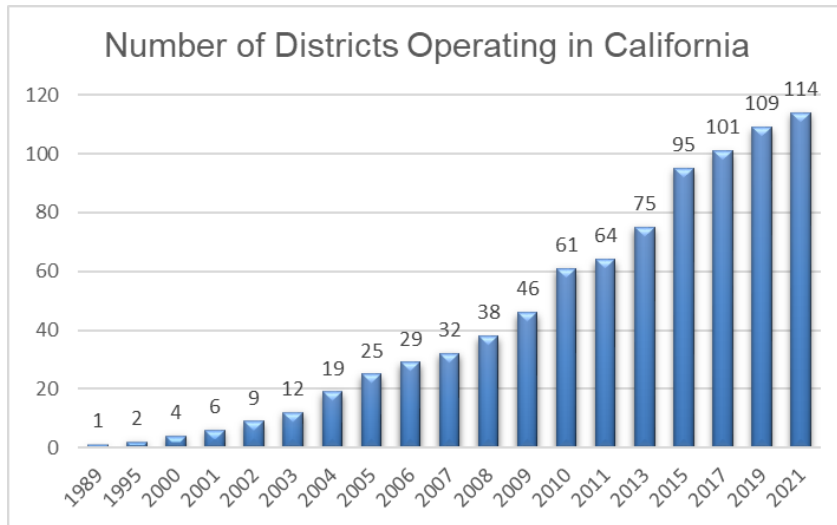
*Duration:* The MHTBID will have a ten (10) year life, beginning March 1, 2024 or as soon as possible thereafter, and ending ten (10) years from its start date. After ten (10) years,

the MHTBID may be renewed pursuant to Streets and Highways Code section 36660, if lodging business owners support continuing the MHTBID programs.

*Management:* Visit Morgan Hill (VMH) shall continue to serve as the MHTBID's Owners' Association. The Owners' Association is charged with managing funds and implementing programs in accordance with this Plan, and must provide annual reports to the City Council within one-hundred and twenty (120) days of the MHTBID's fiscal year (June 30).

## II. BACKGROUND

TBIDs are an evolution of the traditional Business Improvement District. The first TBID was formed in West Hollywood, California in 1989. Since then, over 100 California destinations have followed suit. In recent years, other states have begun adopting the California model – Massachusetts, Montana, South Dakota, Washington, Colorado, Texas and Louisiana have adopted TBID laws. Several other states are in the process of adopting their own legislation. The cities of Wichita, Kansas and Newark, New Jersey used an existing business improvement district law to form a TBID. Additionally, some cities, like Portland, Oregon and Memphis, Tennessee have utilized their home rule powers to create TBIDs without a state law.



California's TBIDs collectively raise over \$300 million annually for local destination marketing. With competitors raising their budgets, and increasing rivalry for visitor dollars, it is important that Morgan Hill lodging businesses continue to invest in stable, commerce-specific marketing programs.

TBIDs utilize the efficiencies of private sector operation in the market-based promotion

of tourism districts. TBIDs allow tourism business owners to organize their efforts to increase commerce. Tourism business owners within the TBID pay an assessment and those funds are used to provide services that increase commerce.

In California, most TBIDs are formed pursuant to the Property and Business Improvement District Law of 1994. This law allows for the creation of a benefit assessment district to raise funds within a specific geographic area. *The key difference between TBIDs and other benefit assessment districts is that funds raised are returned to the private non-profit corporation governing the district.*

There are many benefits to TBIDs:

- Funds must be spent on services and improvements that provide a specific benefit only to those who pay;
- Funds cannot be diverted to general government programs;
- They are customized to fit the needs of payors in each destination;
- They allow for a wide range of services;
- They are ***designed, created and governed by those who will pay*** the assessment; and
- They provide a stable, long-term funding source for tourism promotion.

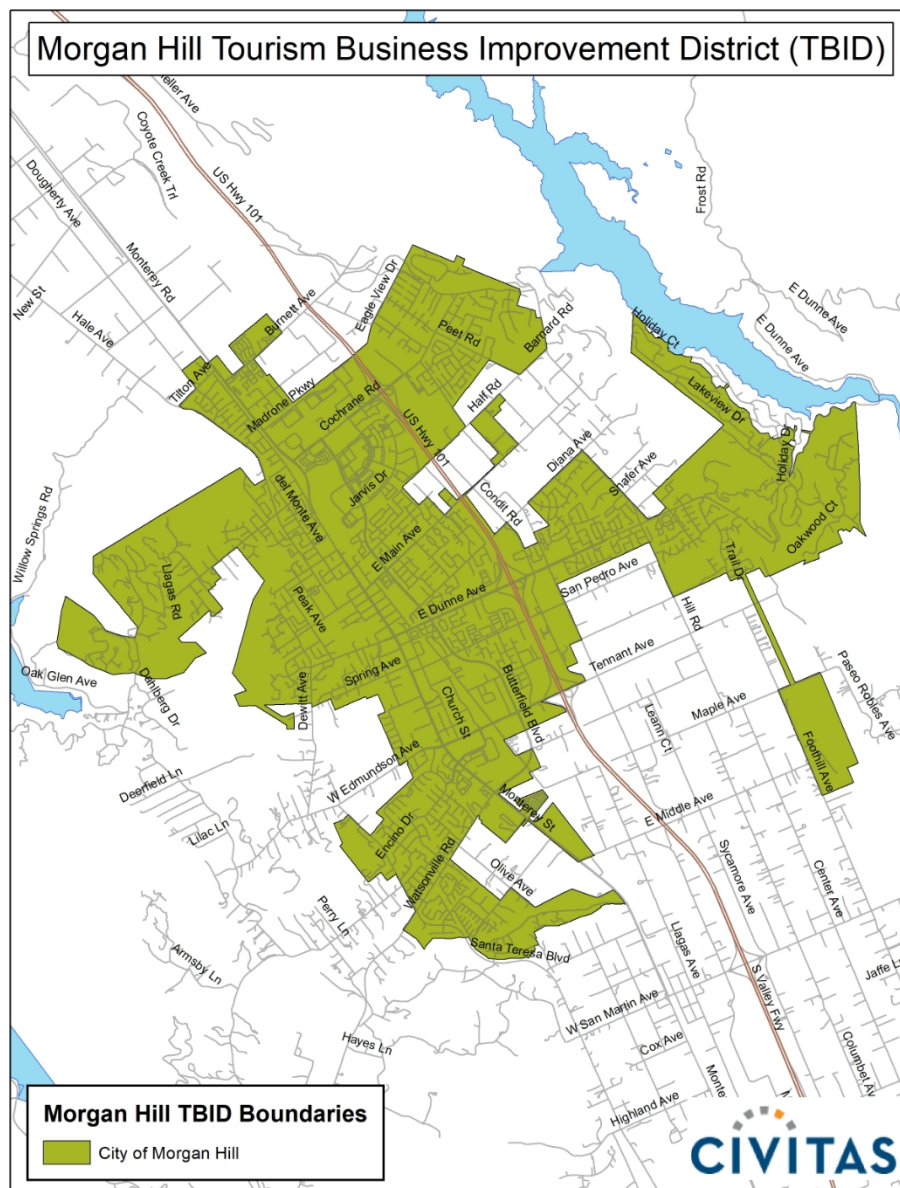


### III. BOUNDARY

The MHTBID will include all lodging businesses, existing and in the future, available for public occupancy within the boundaries of the City of Morgan Hill, as shown in the map below.

Lodging business means: any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transient for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, tourist home or house, dormitory, public or private club, recreational vehicle park, mobile home or house trailer at a fixed location located outside a mobile home park and not occupied by employees, operator or owner of said mobile home park, or other similar structure or portion thereof.

A complete listing of lodging businesses within the MHTBID can be found in Appendix 2.

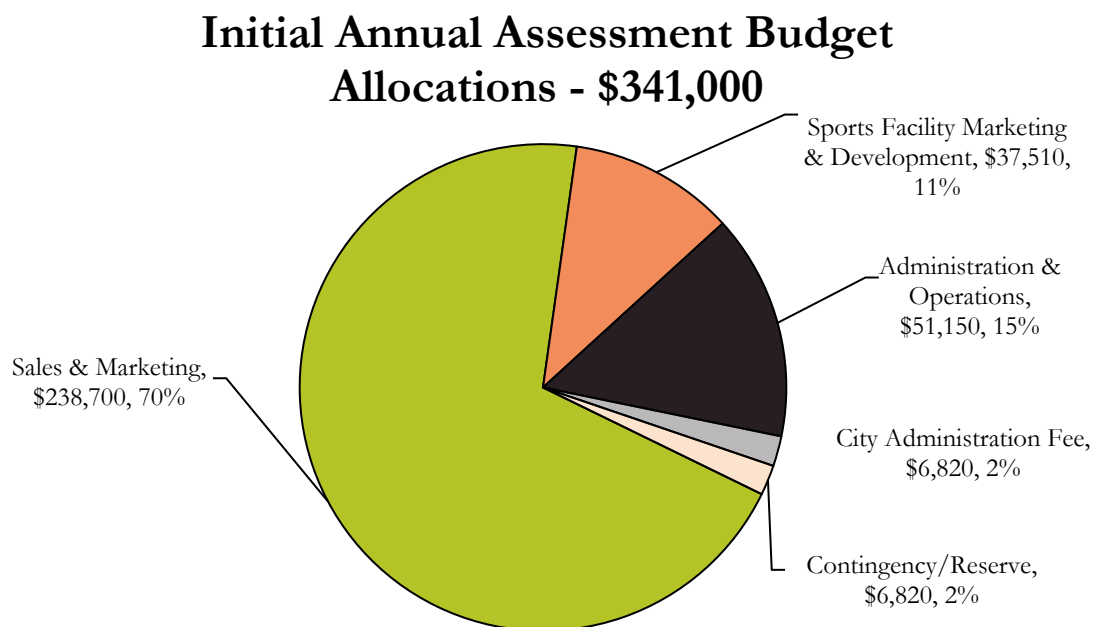


## IV. ASSESSMENT BUDGET AND SERVICES

### A. Annual Service Plan

Assessment funds will be spent to provide specific benefits conferred or privileges granted directly to the payors that are not provided to those not charged, and which do not exceed the reasonable cost to the City of conferring the benefits or granting the privileges. The privileges and services provided with the MHTBID funds are sales & marketing and sports facility marketing & development programs available only to assessed lodging businesses.

A service plan assessment budget has been developed to deliver services that benefit the assessed businesses. A detailed annual assessment budget will be developed and approved by VMH. The table below illustrates the initial annual assessment budget allocations. These activities and allocations will also apply in subsequent years. The total initial assessment budget is estimated to be \$341,000.



Although actual revenues will fluctuate due to market conditions, the proportional allocations of the budget shall remain the same. However, the City and the VMH board shall have the authority to adjust budget allocations between the categories by no more than fifteen percent (15%) of the total budget per year. A description of the proposed improvements and activities for the initial year of operation is below. The same activities are proposed for subsequent years. In the event of a legal challenge against the MHTBID, any and all assessment funds may be used for the costs of defending the MHTBID.

Each budget category includes all costs related to providing that service. For example, the sales & marketing budget includes the cost of staff time dedicated to overseeing and implementing the sales & marketing program. Staff time dedicated purely to administrative tasks is allocated to the administrative portion of the budget. The costs of an individual staff member may be allocated to multiple budget categories. The staffing levels necessary to provide the services below will be determined by VMH on an as-needed basis.

## **Sales and Marketing**

A sales and marketing program will promote assessed lodging businesses as tourist, meeting, and event destinations. The sales and marketing program will have a central theme of promoting Morgan Hill as a desirable place for overnight visits. The program will have the goal of increasing demand for overnight visitation and room night sales at assessed lodging businesses, and may include the following activities:

- Internet marketing efforts to increase awareness and optimize internet presence to drive overnight visitation and room sales to assessed lodging businesses;
- Print ads in magazines and newspapers, television ads, and radio ads targeted at potential visitors to drive overnight visitation and room sales to assessed lodging businesses;
- Regional tourism promotion and marketing to benefit assessed lodging businesses;
- Attendance of trade shows to promote assessed lodging businesses;
- Sales blitzes for assessed lodging businesses;
- Familiarization tours of assessed lodging businesses;
- Preparation and production of collateral promotional materials such as brochures, flyers and maps featuring assessed lodging businesses;
- Owners' Association/Visit Morgan Hill staff attendance of professional industry conferences and affiliation events to promote assessed lodging businesses;
- Lead generation activities designed to attract tourists and group events to assessed lodging businesses;
- Director of Sales and General Manager meetings to plan and coordinate tourism promotion efforts for assessed lodging businesses; and
- Development and maintenance of a website designed to promote assessed lodging businesses.

## **Sports Facility Marketing and Development**

The sports facility marketing and development portion of the budget shall be utilized for the promotion and improvement of sports facilities, with a particular focus on supporting the sales and marketing efforts of lodging businesses in the MHTBID. The primary objective is to increase the desirability of the City of Morgan Hill as a place for overnight visits for sports opportunities, and may include the following activities:

- Sports marketing and promotions designed to increase demand for overnight visitation and room night sales at assessed lodging businesses;
- Financial incentives to maintain and attract new sporting events that have a significant impact on lodging business room night generation;
- Implementing improvements to existing sports facilities, specifically those utilized by overnight visitors, to create a visitor experience that will bring repeat visits to assessed lodging businesses.

Sports facility marketing and development funds shall not be used for ongoing maintenance and operations costs of existing and new sports facilities.

## **Administration and Operations**

The administration and operations portion of the budget shall be utilized for administrative staffing costs, office costs, and other general administrative costs such as insurance, legal, and accounting fees.

## **City Administration Fee**

The City of Morgan Hill shall be paid a fee equal to two percent (2%) of the amount of assessment collected to cover its costs of collection and administration.



### **Contingency/Reserve**

The budget includes a contingency line item to account for uncollected assessments, if any. If there are contingency funds collected, they may be held in a reserve fund or utilized for other program, administration or renewal costs at the discretion of the VMH Board. Policies relating to contributions to the reserve fund, the target amount of the reserve fund, and expenditure of monies from the reserve fund shall be set by the VMH Board. Contingency/reserve funds may be spent on District programs or administrative and renewal costs in such proportions as determined by the VMH Board. The reserve fund may be used for the costs of renewing the MHTBID.

### **B. Annual Budget**

The total ten (10) year assessment budget is projected at approximately \$341,000 annually, or \$6,138,000 through 2034 if the maximum assessment rate increases are adopted. A similar budget is expected to apply to subsequent years, but this budget is expected to fluctuate as room sales do, as lodging businesses open and close, and if the assessment rate is increased or decreased pursuant to this Plan.

The annual assessment rate is one and one half percent (1.5%) of gross short-term sleeping room rental revenue. During the MHTBID's term, the assessment rate may be increased annually by the Owner's Association upon approval from the Board of Directors by a maximum of one half of one percent (0.5%) of gross short-term sleeping room rental revenue per year. The maximum assessment rate may not exceed three percent (3%) of gross short-term sleeping room rental revenue. If the assessment rate is increased, it may subsequently be decreased by a maximum of one half of one percent (0.5%) each year, but shall not be decreased below a minimum of one- and one-half percent (1.5%) of gross short-term sleeping room rental revenue. Any proposed assessment rate increase or decrease shall be included in the MHTBID annual report and shall not be effective until approved by the Morgan Hill City Council.

The table below demonstrates the estimated annual budget with the assumption that the rates will not be increased during the MHTBID's term.

#### **Estimated Annual Budget if Maximum Assessment Rates Are Not Adopted\***

| <b>Year</b>  | <b>Sales &amp; Marketing</b> | <b>Sports Facility Marketing &amp; Development</b> | <b>Administration &amp; Operations</b> | <b>City Administrative Fee</b> | <b>Contingency/ Reserve</b> | <b>Total</b>       |
|--------------|------------------------------|----------------------------------------------------|----------------------------------------|--------------------------------|-----------------------------|--------------------|
| 2024/2025    | \$238,700                    | \$37,510                                           | \$51,150                               | \$6,820                        | \$6,820                     | \$341,000          |
| 2025/2026    | \$238,700                    | \$37,510                                           | \$51,150                               | \$6,820                        | \$6,820                     | \$341,000          |
| 2026/2027    | \$238,700                    | \$37,510                                           | \$51,150                               | \$6,820                        | \$6,820                     | \$341,000          |
| 2027/2028    | \$238,700                    | \$37,510                                           | \$51,150                               | \$6,820                        | \$6,820                     | \$341,000          |
| 2028/2029    | \$238,700                    | \$37,510                                           | \$51,150                               | \$6,820                        | \$6,820                     | \$341,000          |
| 2029/2030    | \$238,700                    | \$37,510                                           | \$51,150                               | \$6,820                        | \$6,820                     | \$341,000          |
| 2030/2031    | \$238,700                    | \$37,510                                           | \$51,150                               | \$6,820                        | \$6,820                     | \$341,000          |
| 2031/2032    | \$238,700                    | \$37,510                                           | \$51,150                               | \$6,820                        | \$6,820                     | \$341,000          |
| 2032/2033    | \$238,700                    | \$37,510                                           | \$51,150                               | \$6,820                        | \$6,820                     | \$341,000          |
| 2033/2034    | \$238,700                    | \$37,510                                           | \$51,150                               | \$6,820                        | \$6,820                     | \$341,000          |
| <b>Total</b> | <b>\$2,387,000</b>           | <b>\$375,100</b>                                   | <b>\$511,500</b>                       | <b>\$68,200</b>                | <b>\$68,200</b>             | <b>\$3,410,000</b> |

\* A similar budget is expected to apply to subsequent years, but this budget is expected to fluctuate as room sales do, as lodging businesses open and close, and if the assessment rate is increased or decreased pursuant to this Plan.

The table below demonstrates the estimated annual budget with the assumption that the assessment rate will be increased at the earliest opportunity. This estimation is a required disclosure and is not the anticipated course of action. Alternate courses of action may be taken in regard to implementing the assessment rate increase other than what is demonstrated in the chart below, within the parameters of this Plan.

#### **Estimated Annual Budget if Maximum Assessment Rates are Adopted\***

| <b>Year</b>  | <b>Sales &amp; Marketing</b> | <b>Sports Facility Marketing &amp; Development</b> | <b>Administration &amp; Operations</b> | <b>City Administrative Fee</b> | <b>Contingency/ Reserve</b> | <b>Total</b>       |
|--------------|------------------------------|----------------------------------------------------|----------------------------------------|--------------------------------|-----------------------------|--------------------|
| 2024/2025    | \$238,700                    | \$37,510                                           | \$51,150                               | \$6,820                        | \$6,820                     | \$341,000          |
| 2025/2026    | \$318,267                    | \$50,013                                           | \$68,200                               | \$9,093                        | \$9,093                     | \$454,667          |
| 2026/2027    | \$397,833                    | \$62,517                                           | \$85,250                               | \$11,367                       | \$11,367                    | \$568,333          |
| 2027/2028    | \$477,400                    | \$75,020                                           | \$102,300                              | \$13,640                       | \$13,640                    | \$682,000          |
| 2028/2029    | \$477,400                    | \$75,020                                           | \$102,300                              | \$13,640                       | \$13,640                    | \$682,000          |
| 2029/2030    | \$477,400                    | \$75,020                                           | \$102,300                              | \$13,640                       | \$13,640                    | \$682,000          |
| 2030/2031    | \$477,400                    | \$75,020                                           | \$102,300                              | \$13,640                       | \$13,640                    | \$682,000          |
| 2031/2032    | \$477,400                    | \$75,020                                           | \$102,300                              | \$13,640                       | \$13,640                    | \$682,000          |
| 2032/2033    | \$477,400                    | \$75,020                                           | \$102,300                              | \$13,640                       | \$13,640                    | \$682,000          |
| 2033/2034    | \$477,400                    | \$75,020                                           | \$102,300                              | \$13,640                       | \$13,640                    | \$682,000          |
| <b>Total</b> | <b>\$4,296,600</b>           | <b>\$675,180</b>                                   | <b>\$920,700</b>                       | <b>\$122,760</b>               | <b>\$122,760</b>            | <b>\$6,138,000</b> |

\* A similar budget is expected to apply to subsequent years, but this budget is expected to fluctuate as room sales do, as lodging businesses open and close, and if the assessment rate is increased or decreased pursuant to this Plan.

### **C. California Constitutional Compliance**

The MHTBID assessment is not a property-based assessment subject to the requirements of Proposition 218. Courts have found Proposition 218 limited the term ‘assessments’ to levies on real property.<sup>1</sup> Rather, the MHTBID assessment is a business-based assessment, and is subject to Proposition 26. Pursuant to Proposition 26 all levies are a tax unless they fit one of seven exceptions. Two of these exceptions apply to the MHTBID, a “specific benefit” and a “specific government service.” Both require that the costs of benefits or services do not exceed the reasonable costs to the City of conferring the benefits or providing the services.

#### **1. Specific Benefit**

Proposition 26 requires that assessment funds be expended on, “a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.”<sup>2</sup> The services in this Plan are designed to provide targeted benefits directly to assessed businesses, and are intended only to provide benefits and services directly to those businesses paying

<sup>1</sup> *Jarvis v. the City of San Diego* 72 Cal App. 4<sup>th</sup> 230

<sup>2</sup> Cal. Const. art XIII C § 1(e)(1)

the assessment. These services are tailored not to serve the general public, businesses in general, or parcels of land, but rather to serve the specific businesses within the MHTBID. The activities described in this Plan are specifically targeted to increase demand for room night sales for assessed lodging businesses within the boundaries of the MHTBID, and are narrowly tailored. MHTBID funds will be used exclusively to provide the specific benefit of increased demand for room night sales directly to the assessees. Assessment funds shall not be used to feature non-assessed lodging businesses in MHTBID programs, or to directly generate sales for non-assessed businesses. The activities paid for from assessment revenues are business services constituting and providing specific benefits to the assessed businesses. Nothing in this Plan limits the ability of the Owners' Association to enter into private contracts with non-assessed lodging businesses for the provision of services to those businesses.

The assessment imposed by this MHTBID is for a specific benefit conferred directly to the payors that is not provided to those not charged. The specific benefit conferred directly to the payors is an increase in demand for room night sales. The specific benefit of an increase in demand for room night sales for assessed lodging businesses will be provided only to lodging businesses paying the district assessment, with marketing & sales and sports facility marketing & development programs promoting lodging businesses paying the MHTBID assessment. The marketing & sales and sports facility marketing & development programs will be designed to increase demand for room night sales at each assessed lodging businesses. Because they are necessary to provide the marketing & sales and sports facility marketing & development programs that specifically benefit the assessed lodging businesses, the administration and contingency services also provide the specific benefit of increased demand for room night sales to the assessed lodging businesses.

Although the MHTBID, in providing specific benefits to payors, may produce incidental benefits to non-paying businesses, the incidental benefit does not preclude the services from being considered a specific benefit. The legislature has found that, "A specific benefit is not excluded from classification as a 'specific benefit' merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific benefit to the payor."<sup>3</sup>

## ***2. Specific Government Service***

The assessment may also be utilized to provide, "a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product."<sup>4</sup> The legislature has recognized that marketing and promotions services like those to be provided by the MHTBID are government services within the meaning of Proposition 26<sup>5</sup>. Further, the legislature has determined that "a specific government service is not excluded from classification as a 'specific government service' merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific government service to the payor."<sup>6</sup>

## ***3. Reasonable Cost***

MHTBID services will be implemented carefully to ensure they do not exceed the reasonable cost of such services. The full amount assessed will be used to provide the services described herein. Funds will be managed by VMH, and reports submitted on an annual basis to the City. Only assessed lodging businesses will be featured in marketing materials, receive sales leads generated from MHTBID-

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<sup>3</sup> Government Code § 53758(a)

<sup>4</sup> Cal. Const. art XIII C § 1(e)(2)

<sup>5</sup> Government Code § 53758(b)

<sup>6</sup> Government Code § 53758(b)

funded activities, be featured in advertising campaigns, and benefit from other MHTBID-funded services. Non-assessed lodging businesses will not receive these, nor any other, MHTBID-funded services and benefits.

The MHTBID-funded programs are all targeted directly at and feature only assessed lodging businesses. It is, however, possible that there will be a spill over benefit to non-assessed businesses. If non-assessed lodging businesses receive incremental room nights, that portion of the promotion or program generating those room nights shall be paid with non-MHTBID funds. MHTBID funds shall only be spent to benefit the assessed lodging businesses, and shall not be spent on that portion of any program which directly generates incidental room nights for non-assessed businesses.

#### **D. Assessment**

The annual assessment rate is one and one half percent (1.5%) of gross short-term sleeping room rental revenue. During the MHTBID's term, the assessment rate may be increased by the Owners' Association to a maximum rate of three percent (3%) of gross short-term sleeping room rental revenue for assessed lodging businesses. The maximum increase or decrease in any year shall be one half of one percent (0.5%). If the assessment rate is increased, it may subsequently be decreased by a maximum of one half of one percent (0.5%) each year, but shall not be decreased below a minimum of one and one half percent (1.5%) of gross short-term sleeping room rental revenue. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days or stays by any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

The assessment was calculated based on the total cost of the activities to be provided for the benefit of the lodging businesses within the MHTBID with costs allocated based on the proportional benefit conferred to each lodging business. Activities funded by the MHTBID are specifically targeted to increase demand for room nights at assessed lodging businesses. All room night sales do not represent the same benefit to the payors. For example, a higher priced room night is of greater benefit than a lower priced room night because the assessee derives greater revenue. To account for this benefit differential and to make sure the benefits are proportional, an assessment formula based on a percentage of revenue has been selected. The proposed formula accurately reflects greater benefit to assessed lodging businesses with higher priced room nights.

The term "gross short-term sleeping room rental revenue" as used herein means: the consideration charged, whether or not received, for the occupancy of space in a lodging business valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits and property, and services of any kind or nature, without any deduction therefrom whatsoever. Gross short-term sleeping room rental revenue shall not include any federal, state or local taxes collected, including but not limited to transient occupancy taxes.

The assessment is levied upon and a direct obligation of the assessed lodging business. However, the assessed lodging business may, at its discretion, pass the assessment on to transients. The amount of assessment, if passed on to each transient, shall be disclosed in advance and separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business. If the MHTBID assessment is identified separately it shall be disclosed as the "MHTBID Assessment." As an alternative, the disclosure may include the amount of the MHTBID assessment and the amount of the assessment imposed pursuant to the California Tourism Marketing Act, Government Code §13995 et seq. and shall be disclosed as the "Tourism Assessment." The assessment is imposed solely upon, and is the sole obligation of the assessed lodging business

even if it is passed on to transients. The assessment shall not be considered revenue for calculation of transient occupancy taxes.

Bonds shall not be issued.

#### **E. Penalties and Interest**

The MHTBID shall reimburse the City of Morgan Hill for any costs associated with collecting unpaid assessments. If sums in excess of the delinquent MHTBID assessment are sought to be recovered in the same collection action by the City, the MHTBID shall bear its pro rata share of such collection costs. Assessed lodging businesses which are delinquent in paying the assessment shall be responsible for paying:

1. *Original Delinquency:* Any lodging business that fails to remit any assessment imposed within the time required shall pay a penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment.
2. *Continued Delinquency:* Any lodging business that fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment and the ten percent (10%) penalty first imposed.
3. *Fraud:* If the City determines that the nonpayment of any remittance due is due to fraud, a penalty of twenty-five percent (25%) of the amount of the assessment shall be added thereto in addition to the penalties stated in paragraphs in 1 and 2 of this subsection E.
4. *Interest:* In addition to the penalties imposed, any lodging business who fails to remit any assessment imposed shall pay interest at the rate of one-half of one percent (0.5%) or fraction thereof on the amount the assessment, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

#### **F. Audits**

The City may audit those records kept by the lodging business at any time upon reasonable notice to the lodging business. If the audit reveals an underpayment of assessments in excess of ten percent (10%) of the total amount owed to the City for any consecutive three (3) month period during the audit period, the lodging business shall pay the City's actual costs to perform the audit as well as the full amounts, plus penalties and interest of assessment, that the audit reveals should have been remitted to the City.

#### **G. Time and Manner for Collecting Assessments**

The MHTBID assessment will be implemented beginning March 1, 2023, or as soon as possible thereafter, and will continue for ten (10) years from the start date. The City will be responsible for collecting the assessment on a monthly basis (including any delinquencies, penalties and interest) from each lodging business. The City shall take all reasonable efforts to collect the assessments from each lodging business. The City shall forward the assessments collected to the Owners' Association.

## **V. GOVERNANCE**

### **A. Owners' Association**

The City Council, through adoption of this Management District Plan, has the right, pursuant to Streets and Highways Code §36651, to identify the body that shall implement the proposed program, which shall be the Owners' Association of the MHTBID as defined in Streets and Highways Code §36612. The City Council has determined that Visit Morgan Hill will continue to serve as the Owners' Association for the MHTBID.

The VMH Board shall be comprised of seven (7) or nine (9) directors. Among the directors:

- Up to four (4) but not less than three (3) directors shall be owners or approved managers of lodging businesses paying the MHTBID assessment; and
- Two (2) directors shall be City of Morgan Hill staff members representing Community Services and Economic Development and shall be appointed by the Morgan Hill City Council; and
- Up to three (3) but not less than one (1) director(s) shall represent:
  - A winery located in the Morgan Hill region, be in good standing with the Wineries Association of Santa Clara County; and/or
  - An entity associated with sports recreation tourism involved in Morgan Hill; and/or
  - The community at large with an interest in tourism.

### **B. Brown Act and California Public Records Act Compliance**

An Owners' Association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. The Owners' Association is, however, subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act. These regulations are designed to promote public accountability. The Owners' Association acts as a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of the Board and certain committees must be held in compliance with the public notice and other requirements of the Brown Act. Accordingly, the Owners' Association shall publicly report any action taken and the vote or abstention on that action of each member present for the action. The Owners' Association is also subject to the record keeping and disclosure requirements of the California Public Records Act.

### **C. Annual Report**

VMH shall present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code §36650 (see Appendix 1) within one hundred-twenty (120) days of the MHTBID's fiscal year (June 30). The annual report shall include:

- Any proposed changes in the boundaries of the improvement district or in any benefit zones or classification of businesses within the district.
- The improvements and activities to be provided for that fiscal year.
- An estimate of the cost of providing the improvements and the activities for that fiscal year.
- The method and basis of levying the assessment, including any assessment rate increases or decreases and implementation date, in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
- The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

## APPENDIX 1 – LAW

\*\*\* THIS DOCUMENT IS CURRENT THROUGH THE 2023 SUPPLEMENT \*\*\*  
(ALL 2022 LEGISLATION)

### STREETS AND HIGHWAYS CODE DIVISION 18. PARKING PART 7. PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994

#### CHAPTER 1. General Provisions

#### ARTICLE 1. Declarations

##### **36600.** Citation of part

This part shall be known and may be cited as the “Property and Business Improvement District Law of 1994.”

##### **36601.** Legislative findings and declarations; Legislative guidance

The Legislature finds and declares all of the following:

- (a) Businesses located and operating within business districts in some of this state’s communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.
- (b) It is in the public interest to promote the economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses, and prevent the erosion of the business districts.
- (c) It is of particular local benefit to allow business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements.
- (d) Assessments levied for the purpose of conferring special benefit upon the real property or a specific benefit upon the businesses in a business district are not taxes for the general benefit of a city, even if property, businesses, or persons not assessed receive incidental or collateral effects that benefit them.
- (e) Property and business improvement districts formed throughout this state have conferred special benefits upon properties and businesses within their districts and have made those properties and businesses more useful by providing the following benefits:
  - (1) Crime reduction. A study by the Rand Corporation has confirmed a 12-percent reduction in the incidence of robbery and an 8-percent reduction in the total incidence of violent crimes within the 30 districts studied.
  - (2) Job creation.
  - (3) Business attraction.
  - (4) Business retention.
  - (5) Economic growth.
  - (6) New investments.
- (f) With the dissolution of redevelopment agencies throughout the state, property and business improvement districts have become even more important tools with which communities can combat blight, promote economic opportunities, and create a clean and safe environment.
- (g) Since the enactment of this act, the people of California have adopted Proposition 218, which added Article XIII D to the Constitution in order to place certain requirements and restrictions on the formation of, and activities, expenditures, and assessments by property-based districts. Article XIII D of the Constitution provides that property-based districts may only levy assessments for special benefits.
- (h) The act amending this section is intended to provide the Legislature’s guidance with regard to this act, its interaction with the provisions of Article XIII D of the Constitution, and the determination of special benefits in property-based districts.
  - (1) The lack of legislative guidance has resulted in uncertainty and inconsistent application of this act, which discourages the use of assessments to fund needed improvements, maintenance, and activities in property-based districts, contributing to blight and other underutilization of property.
  - (2) Activities undertaken for the purpose of conferring special benefits upon property to be assessed inherently produce incidental or collateral effects that benefit property or persons not assessed. Therefore, for special benefits to exist as a separate and distinct category from general benefits, the



incidental or collateral effects of those special benefits are inherently part of those special benefits. The mere fact that special benefits produce incidental or collateral effects that benefit property or persons not assessed does not convert any portion of those special benefits or their incidental or collateral effects into general benefits.

(3) It is of the utmost importance that property-based districts created under this act have clarity regarding restrictions on assessments they may levy and the proper determination of special benefits. Legislative clarity with regard to this act will provide districts with clear instructions and courts with legislative intent regarding restrictions on property-based assessments, and the manner in which special benefits should be determined.

### **36602. Purpose of part**

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within property and business improvement districts, to ensure that those assessments conform to all constitutional requirements and are determined and assessed in accordance with the guidance set forth in this act. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

### **36603. Preemption of authority or charter city to adopt ordinances levying assessments**

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

### **36603.5. Part prevails over conflicting provisions**

Any provision of this part that conflicts with any other provision of law shall prevail over the other provision of law, as to districts created under this part.

### **36604. Severability**

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

## **ARTICLE 2. Definitions**

### **36606. “Activities”**

“Activities” means, but is not limited to, all of the following that benefit businesses or real property in the district:

- (a) Promotion of public events.
- (b) Furnishing of music in any public place.
- (c) Promotion of tourism within the district.
- (d) Marketing and economic development, including retail retention and recruitment.
- (e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
- (f) Other services provided for the purpose of conferring special benefit upon assessed real property or specific benefits upon assessed businesses located in the district.

### **36606.5. “Assessment”**

“Assessment” means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and providing activities that will provide certain benefits to properties or businesses located within a property and business improvement district.

### **36607. “Business”**

“Business” means all types of businesses and includes financial institutions and professions.

### **36608. “City”**

“City” means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the public member agencies of which includes only cities, counties, or a city and county, or the State of California.

### **36609. “City council”**

“City council” means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

### **36609.4. “Clerk”**

“Clerk” means the clerk of the legislative body.

### **36609.5. “General benefit”**

“General benefit” means, for purposes of a property-based district, any benefit that is not a “special benefit” as defined in Section 36615.5.

### **36610. “Improvement”**

“Improvement” means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

- (a) Parking facilities.
- (b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (c) Trash receptacles and public restrooms.
- (d) Lighting and heating facilities.
- (e) Decorations.
- (f) Parks.
- (g) Fountains.
- (h) Planting areas.
- (i) Closing, opening, widening, or narrowing of existing streets.
- (j) Facilities or equipment, or both, to enhance security of persons and property within the district.
- (k) Ramps, sidewalks, plazas, and pedestrian malls.
- (l) Rehabilitation or removal of existing structures.

### **36611. “Management district plan”; “Plan”**

“Management district plan” or “plan” means a proposal as defined in Section 36622.

### **36612. “Owners’ association”**

“Owners’ association” means a private nonprofit entity that is under contract with a city to administer or implement improvements, maintenance, and activities specified in the management district plan. An owners’ association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners’ association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners’ association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code), for all records relating to activities of the district.

### **36614. “Property”**

“Property” means real property situated within a district.

**36614.5. “Property and business improvement district”; “District”**

“Property and business improvement district,” or “district,” means a property and business improvement district established pursuant to this part.

**36614.6. “Property-based assessment”**

“Property-based assessment” means any assessment made pursuant to this part upon real property.

**36614.7. “Property-based district”**

“Property-based district” means any district in which a city levies a property-based assessment.

**36615. “Property owner”; “Business owner”; “Owner”**

“Property owner” means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. “Business owner” means any person recognized by the city as the owner of the business. “Owner” means either a business owner or a property owner. The city council has no obligation to obtain other information as to the ownership of land or businesses, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this part requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient. Wherever this part requires the signature of the business owner, the signature of the authorized agent of the business owner shall be sufficient.

**36615.5. “Special benefit”**

(a) “Special benefit” means, for purposes of a property-based district, a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large. Special benefit includes incidental or collateral effects that arise from the improvements, maintenance, or activities of property-based districts even if those incidental or collateral effects benefit property or persons not assessed. Special benefit excludes general enhancement of property value.

(b) “Special benefit” also includes, for purposes of a property-based district, a particular and distinct benefit provided directly to each assessed parcel within the district. Merely because parcels throughout an assessment district share the same special benefits does not make the benefits general.

**36616. “Tenant”**

“Tenant” means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

**ARTICLE 3. Prior Law**

**36617. Alternate method of financing certain improvements and activities; Effect on other provisions**

This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

**CHAPTER 2. Establishment**

**36620. Establishment of property and business improvement district**

A property and business improvement district may be established as provided in this chapter.

**36620.5. Requirement of consent of city council**

A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

### **36621. Initiation of proceedings; Petition of property or business owners in proposed district**

- (a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.
- (b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:
  - (1) A map showing the boundaries of the district.
  - (2) Information specifying where the complete management district plan can be obtained.
  - (3) Information specifying that the complete management district plan shall be furnished upon request.
- (c) The resolution of intention described in subdivision (a) shall contain all of the following:
  - (1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities, and the location and extent of the proposed district.
  - (2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

### **36622. Contents of management district plan**

The management district plan shall include, but is not limited to, all of the following:

- (a) If the assessment will be levied on property, a map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district. If the assessment will be levied on businesses, a map that identifies the district boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the district boundaries. If the assessment will be levied on property and businesses, a map of the district in sufficient detail to locate each parcel of property and to allow a business owner to reasonably determine whether a business is located within the district boundaries.
- (b) The name of the proposed district.
- (c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected property and businesses included, which may be made by reference to any plan or map that is on file with the clerk. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.
- (d) The improvements, maintenance, and activities proposed for each year of operation of the district and the estimated cost thereof. If the improvements, maintenance, and activities proposed for each year of operation are the same, a description of the first year's proposed improvements, maintenance, and activities and a

statement that the same improvements, maintenance, and activities are proposed for subsequent years shall satisfy the requirements of this subdivision.

(e) The total annual amount proposed to be expended for improvements, maintenance, or activities, and debt service in each year of operation of the district. If the assessment is levied on businesses, this amount may be estimated based upon the assessment rate. If the total annual amount proposed to be expended in each year of operation of the district is not significantly different, the amount proposed to be expended in the initial year and a statement that a similar amount applies to subsequent years shall satisfy the requirements of this subdivision.

(f) The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against their property or business. The plan also shall state whether bonds will be issued to finance improvements.

(g) The time and manner of collecting the assessments.

(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

(i) The proposed time for implementation and completion of the management district plan.

(j) Any proposed rules and regulations to be applicable to the district.

(k)

(1) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof.

(2) In a property-based district, the proportionate special benefit derived by each identified parcel shall be determined exclusively in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the activities. An assessment shall not be imposed on any parcel that exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and a property-based district shall separate the general benefits, if any, from the special benefits conferred on a parcel. Parcels within a property-based district that are owned or used by any city, public agency, the State of California, or the United States shall not be exempt from assessment unless the governmental entity can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit. The value of any incidental, secondary, or collateral effects that arise from the improvements, maintenance, or activities of a property-based district and that benefit property or persons not assessed shall not be deducted from the entirety of the cost of any special benefit or affect the proportionate special benefit derived by each identified parcel.

(3) In a property-based district, properties throughout the district may share the same special benefits. In a district with boundaries that define which parcels are to receive improvements, maintenance, or activities over and above those services provided by the city, the improvements, maintenance, or activities themselves may constitute a special benefit. The city may impose assessments that are less than the proportional special benefit conferred, but shall not impose assessments that exceed the reasonable costs of the proportional special benefit conferred. Because one or more parcels pay less than the special benefit conferred does not necessarily mean that other parcels are assessed more than the reasonable cost of their special benefit.

(l) In a property-based district, a detailed engineer's report prepared by a registered professional engineer certified by the State of California supporting all assessments contemplated by the management district plan.

(m) Any other item or matter required to be incorporated therein by the city council.

### **36623. Procedure to levy assessment**

(a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with Section 53753 of the Government Code.

(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with Section 54954.6 of the Government Code, except that notice shall be mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the

public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners or authorized representatives of businesses in the proposed district that will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

(c) If a city council proposes to conduct a single proceeding to levy both a new or increased property assessment and a new or increased business assessment, the notice and protest and hearing procedure for the property assessment shall comply with subdivision (a), and the notice and protest and hearing procedure for the business assessment shall comply with subdivision (b). If a majority protest is received from either the property or business owners, that respective portion of the assessment shall not be levied. The remaining portion of the assessment may be levied unless the improvement or other special benefit was proposed to be funded by assessing both property and business owners.

#### **36624. Changes to proposed assessments**

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements, maintenance, and activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

#### **36625. Resolution of formation**

(a) If the city council, following the public hearing, decides to establish a proposed property and business improvement district, the city council shall adopt a resolution of formation that shall include, but is not limited to, all of the following:

- (1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property, businesses, or both within the district, a statement on whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities and the location and extent of the proposed district.
- (2) The number, date of adoption, and title of the resolution of intention.
- (3) The time and place where the public hearing was held concerning the establishment of the district.
- (4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.
- (5) A statement that the properties, businesses, or properties and businesses in the district established by the resolution shall be subject to any amendments to this part.
- (6) A statement that the improvements, maintenance, and activities to be conferred on businesses and properties in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements, maintenance, or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district. Notwithstanding the foregoing, improvements and activities that must be provided outside the district boundaries to create a special or specific benefit to the assessed parcels or businesses may be provided, but shall be limited to marketing or signage pointing to the district.

(7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements, maintenance, and activities funded by the proposed assessments, and, for a property-based district, that property within the district will receive a special benefit.

(8) In a property-based district, the total amount of all special benefits to be conferred on the properties within the property-based district.

(b) The adoption of the resolution of formation and, if required, recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

### **36627. Notice and assessment diagram**

Following adoption of the resolution establishing district assessments on properties pursuant to Section 36625, the clerk shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

### **36628. Establishment of separate benefit zones within district; Categories of businesses**

The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

### **36628.5. Assessments on businesses or property owners**

The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements, maintenance, and activities, provided that any property-based assessment conforms with the requirements set forth in paragraph (2) of subdivision (k) of Section 36622.

### **36629. Provisions and procedures applicable to benefit zones and business categories**

All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category of business, follow the procedure to establish, modify, or disestablish a property and business improvement district.

### **36630. Expiration of district; Creation of new district**

If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and the district may be renewed pursuant to this part.

## **CHAPTER 3. Assessments**

### **36631. Time and manner of collection of assessments; Delinquent payments**

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution levying the assessment. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part may be charged interest and penalties.

### **36632. Assessments to be based on estimated benefit; Classification of real property and businesses; Exclusion of residential and agricultural property**

- (a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.
- (b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.
- (c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

#### **36633. Time for contesting validity of assessment**

The validity of an assessment levied under this part shall not be contested in an action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36625. An appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

#### **36634. Service contracts authorized to establish levels of city services**

The city council may execute baseline service contracts that would establish levels of city services that would continue after a property and business improvement district has been formed.

#### **36635. Request to modify management district plan**

The owners' association may, at any time, request that the city council modify the management district plan. Any modification of the management district plan shall be made pursuant to this chapter.

#### **36636. Modification of plan by resolution after public hearing; Adoption of resolution of intention**

- (a) Upon the written request of the owners' association, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section 36623. Notice of all other public hearings pursuant to this section shall comply with both of the following:
  - (1) The resolution of intention shall be published in a newspaper of general circulation in the city once at least seven days before the public hearing.
  - (2) A complete copy of the resolution of intention shall be mailed by first class mail, at least 10 days before the public hearing, to each business owner or property owner affected by the proposed modification.
- (b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

#### **36637. Reflection of modification in notices recorded and maps**

Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

### **CHAPTER 3.5. Financing**

#### **36640. Bonds authorized; Procedure; Restriction on reduction or termination of assessments**



(a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.

(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36625, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.

(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

#### **CHAPTER 4. Governance**

##### **36650. Report by owners' association; Approval or modification by city council**

(a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements, maintenance, and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.

(2) The improvements, maintenance, and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements, maintenance, and activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.

(5) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.

The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

##### **36651. Designation of owners' association to provide improvements, maintenance, and activities**

The management district plan may, but is not required to, state that an owners' association will provide the improvements, maintenance, and activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

#### **CHAPTER 5. Renewal**

**36660. Renewal of district; Transfer or refund of remaining revenues; District term limit**

- (a) Any district previously established whose term has expired, or will expire, may be renewed by following the procedures for establishment as provided in this chapter.
- (b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.
- (c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

**CHAPTER 6. Disestablishment**

**36670. Circumstances permitting disestablishment of district; Procedure**

- (a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:
  - (1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.
  - (2) During the operation of the district, there shall be a 30-day period each year in which assesseses may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of real property or the owners or authorized representatives of businesses in the district who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.
- (b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

**36671. Refund of remaining revenues upon disestablishment or expiration without renewal of district; Calculation of refund; Use of outstanding revenue collected after disestablishment of district**

- (a) Upon the disestablishment or expiration without renewal of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished or expires. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.
- (b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

## APPENDIX 2 – ASSESSED BUSINESSES

| Business Name           | Business Address    | City, State, ZIP        |
|-------------------------|---------------------|-------------------------|
| Airbnb Corporate*       | 888 Brannan St.     | San Francisco, CA 94103 |
| Budget Inn              | 19240 Monterey Rd.  | Morgan Hill, CA 95037   |
| California Inn          | 16525 Condit Rd.    | Morgan Hill, CA 95037   |
| Comfort Inn             | 16225 Condit Rd.    | Morgan Hill, CA 95037   |
| Courtyard by Marriott   | 18610 Madrone Pkwy. | Morgan Hill, CA 95037   |
| Economy Inn             | 15080 Monterey Rd.  | Morgan Hill, CA 95037   |
| Executive Inn           | 16505 Condit Rd.    | Morgan Hill, CA 95037   |
| Extended Stay America   | 605 Jarvis Rd.      | Morgan Hill, CA 95037   |
| Granada Hotel           | 17440 Monterey Rd.  | Morgan Hill, CA 95037   |
| Hampton Inn Morgan Hill | 16115 Condit Rd.    | Morgan Hill, CA 95037   |
| Holiday Inn Express     | 17035 Condit Rd.    | Morgan Hill, CA 95037   |
| Holiday Motel           | 16210 Monterey Rd.  | Morgan Hill, CA 95037   |
| La Quinta Inn           | 17043 Condit Rd.    | Morgan Hill, CA 95037   |
| Maple Leaf RV Park      | 15200 Monterey Rd.  | Morgan Hill, CA 95037   |
| Microtel Inn and Suites | 16245 Condit Rd.    | Morgan Hill, CA 95037   |
| Morgan Hill Inn         | 16250 Monterey Rd.  | Morgan Hill, CA 95037   |
| Paradise Motel          | 16310 Monterey Rd.  | Morgan Hill, CA 95037   |
| Rancho Motel            | 19040 Monterey Rd.  | Morgan Hill, CA 95037   |
| Residence Inn           | 18620 Madrone Pkwy. | Morgan Hill, CA 95037   |

\*Pursuant to an agreement executed between the City of Morgan Hill and Airbnb, Airbnb shall be responsible for collecting assessment remittances from short-term rentals within the MHTBID that are registered with Airbnb. Airbnb shall remit the collected assessment revenue to the City.

**RESOLUTION NO. 2023 - \_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MORGAN HILL DECLARING ITS INTENTION TO RENEW THE  
MORGAN HILL TOURISM BUSINESS IMPROVEMENT  
DISTRICT (MHTBID) AND FIXING THE TIME AND PLACE OF A  
PUBLIC MEETING AND A PUBLIC HEARING THEREON AND  
GIVING NOTICE THEREOF**

**WHEREAS**, the City of Morgan Hill (City) created the MHTBID on January 23, 2019 by Resolution No. 19-004; and

**WHEREAS**, the MHTBID was created for a five (5) year term which ends on February 29, 2024, and

**WHEREAS**, the Property and Business Improvement Law of 1994, Streets and Highways Code §36600 et seq., authorizes the City to renew business improvement districts for the purposes of promoting tourism; and

**WHEREAS**, Visit Morgan Hill, lodging business owners, and representatives from the City have met to consider the renewal of the MHTBID; and

**WHEREAS**, Visit Morgan Hill has drafted a Management District Plan (Plan) which sets forth the proposed boundary of the MHTBID, a service plan and budget, and a proposed means of governance; and

**WHEREAS**, lodging businesses who will pay more than fifty percent (50%) of the assessment under the MHTBID have petitioned the City Council to renew the MHTBID.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL THAT:**

1. The recitals set forth herein are true and correct.
2. The City Council finds that lodging businesses that will pay more than fifty percent (50%) of the assessment proposed in the Plan have signed and submitted petitions in support of the renewal of the MHTBID. The City Council accepts the petitions and adopts this Resolution of Intention to renew the MHTBID and to levy an assessment on lodging businesses within the MHTBID boundaries in accordance with the Property and Business Improvement District Law of 1994.
3. The City Council finds that the Plan satisfies all requirements of Streets and Highways Code § 36622.
4. The City Council declares its intention to renew the MHTBID and to levy and collect assessments on lodging businesses within the MHTBID boundaries pursuant to the Property and Business Improvement District Law of 1994.

5. The MHTBID shall include all lodging businesses, existing and in the future, available for public occupancy located within the boundaries of the City of Morgan Hill, as shown in the map attached as Exhibit A.
6. The name of the district shall be Morgan Hill Tourism Business Improvement District (MHTBID).
7. The annual assessment rate is one and one half percent (1.5%) of gross short-term sleeping room rental revenue. During the MHTBID's term, the assessment rate may be increased annually by the Owner's Association upon approval from the Board of Directors by a maximum of one half of one percent (0.5%) of gross short-term sleeping room rental revenue per year. The maximum assessment rate may not exceed three percent (3%) of gross short-term sleeping room rental revenue. If the assessment rate is increased, it may subsequently be decreased by a maximum of one half of one percent (0.5%) each year, but shall not be decreased below a minimum of one-and one-half percent (1.5%) of gross short-term sleeping room rental revenue. Any proposed assessment rate increase or decrease shall be included in the MHTBID annual report and shall not be effective until approved by the Morgan Hill City Council. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days or stays by any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.
8. The assessments levied for the MHTBID shall be applied toward sales and marketing and sports facility marketing & development programs to market assessed lodging businesses in Morgan Hill as tourist, meeting, and event destinations, as described in the Plan. Funds remaining at the end of any year may be used in subsequent years in which MHTBID assessments are levied as long as they are used consistent with the requirements of this resolution and the Plan.
9. The renewed MHTBID will have a ten (10) year life, beginning March 1, 2024 or as soon as possible thereafter, and ending ten (10) years from its start date, unless renewed pursuant to Streets and Highways Code § 36660.
10. Bonds shall not be issued.
11. The time and place for the public meeting to hear testimony on establishing the MHTBID and levying assessments are set for November 1, 2023 at 6:00 PM, or as soon thereafter as the matter may be heard, at the City Council Chamber Building located at 17555 Peak Ave., Morgan Hill, CA 95037. Following the public meeting, the City Council shall move to introduce and conduct the first reading of the Ordinance to renew the MHTBID and continue the levy of assessments.
12. The time and place for the public hearing to establish the MHTBID and the levy of assessments are set for December 6, 2023, at 6:00 PM, or as soon thereafter as the matter may be heard, at the City Council Chamber Building located at 17555 Peak Ave., Morgan Hill, CA 95037. The City Clerk is directed to provide written notice to the lodging businesses subject to assessment

of the date and time of the meeting and hearing, and to provide that notice as required by Streets and Highways Code §36623, no later than October 21, 2023.

13. At the public meeting and hearing the testimony of all interested persons for or against the renewal of the MHTBID may be received. If at the conclusion of the public hearing, there are of record written protests by the owners of the lodging businesses within the renewed MHTBID that will pay more than fifty percent (50%) of the estimated total assessment of the entire MHTBID, no further proceedings to renew the MHTBID shall occur for a period of one (1) year.
14. Following a successful public hearing, at the same City Council meeting on December 6, 2023, held at the City Council Chamber Building located at 17555 Peak Ave., Morgan Hill, CA 95037, the City Council may conduct a second reading of the Ordinance to renew the MHTBID and to continue the levy of assessments. At the conclusion of the second reading of the Ordinance, the City Council may adopt the Ordinance, renewing the MHTBID and levying the assessments.
15. The complete Plan is on file with the City Clerk and may be reviewed upon request.
16. This resolution shall take effect immediately upon its adoption by the City Council.

**PASSED AND ADOPTED THIS 4<sup>TH</sup> DAY OF OCTOBER 2023, AT A REGULAR MEETING OF THE CITY COUNCIL BY THE FOLLOWING VOTE:**

|                 |                         |
|-----------------|-------------------------|
| <b>AYES:</b>    | <b>COUNCIL MEMBERS:</b> |
| <b>NOES:</b>    | <b>COUNCIL MEMBERS:</b> |
| <b>ABSTAIN:</b> | <b>COUNCIL MEMBERS:</b> |
| <b>ABSENT:</b>  | <b>COUNCIL MEMBERS:</b> |

**APPROVED:**

**ATTEST:**

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**MARK TURNER, Mayor**

---

**MICHELLE BIGELOW, City Clerk**

**⌘ CERTIFICATION ⌘**

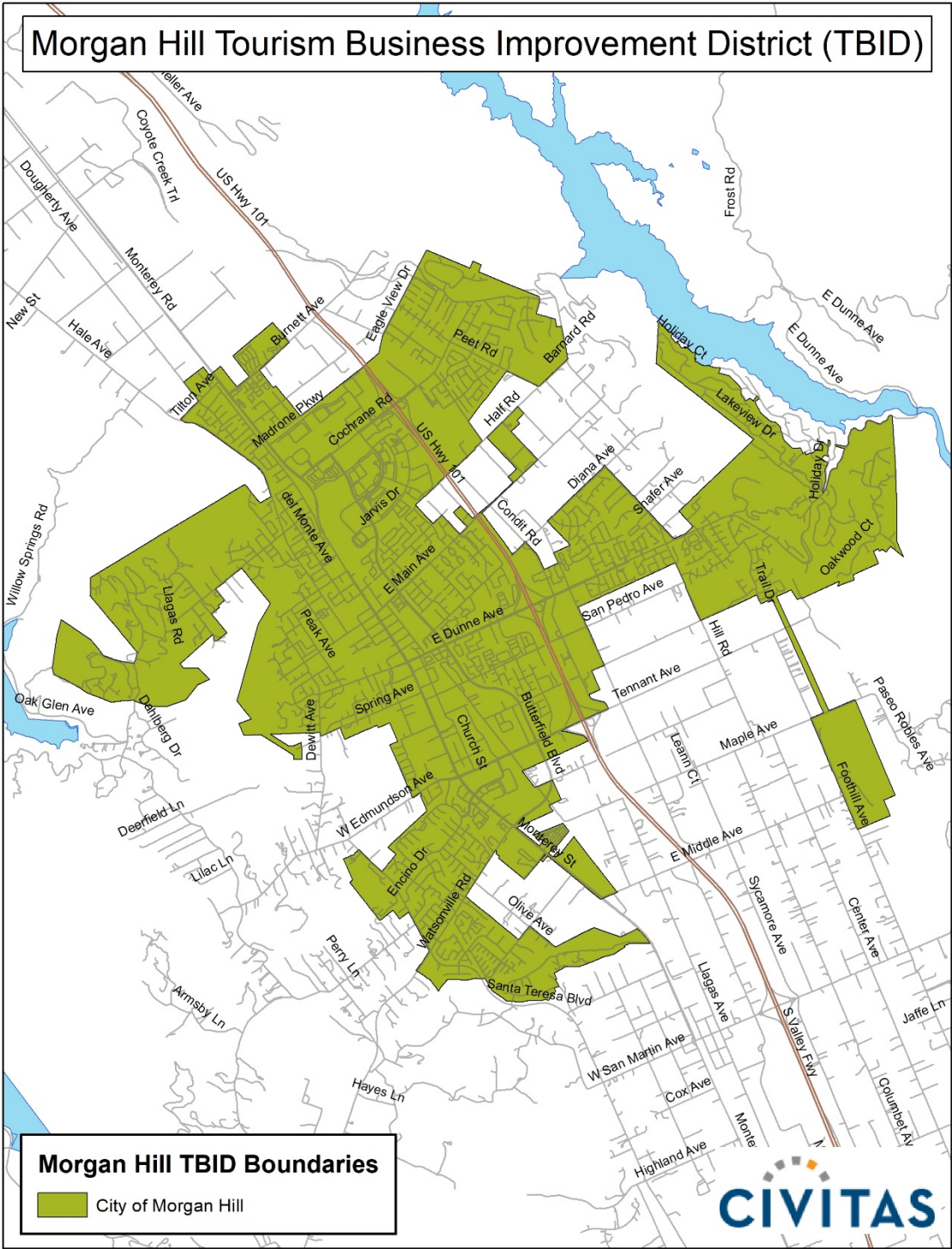
**I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California,** do hereby certify that the foregoing is a true and correct copy of Resolution No. 23-\_\_\_\_ adopted by the City Council at the meeting held on the 4<sup>th</sup> day of October 2023.

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

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**MICHELLE BIGELOW, City Clerk**

**EXHIBIT A**  
**District Boundaries**





## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: October 4, 2023**

PREPARED BY:

Lynette Kong, Associate Engineer

APPROVED BY: City Manager

## **AWARD COMMUNITY PARK PICKLEBALL COURTS PROJECT TO EF&S CONCRETE, INC.**

### **RECOMMENDATION(S)**

1. Approve Community Park Pickleball Courts plans and specifications;
2. Award contract to EF&S Concrete, Inc. in the amount of \$307,120;
3. Authorize expenditure of construction contingency funds not-to-exceed \$61,424; and
4. Authorize the City Manager to execute and administer the construction contract with EF&S Concrete, Inc.

### **COUNCIL PRIORITIES, GOALS & STRATEGIES**

#### **City Council Ongoing Priorities**

Maintaining and Enhancing Infrastructure

Supporting our Youth, Seniors, and Entire Community

#### **2022-2023 Strategic Priorities**

Economic Development

#### **Guiding Documents**

Bikeways, Trails, and Recreation Master Plan

### **REPORT NARRATIVE:**

The Community Park Pickleball Courts Project is located south of the Magical Bridge playground and west of the basketball court and consists of new, dedicated outdoor public pickleball court facilities at the park.

The project's scope of work is described as follows, but not limited to: the installation of four regulation outdoor pickleball courts; application of court surfacing and striping treatments; installation of court posts, nets, windscreens, gates, and perimeter fencing; site clearing and grubbing; site earthwork and grading; asphalt concrete paving; installation of surface drainage facilities; installation of post-stormwater control biotreatment measures; and all other work related to the above items and as shown and detailed on the project plans and specifications.

The bid opening was held on September 19, 2023 and the seven (7) bids received are listed below:

| Bidder:                         | Base Bid Total: |
|---------------------------------|-----------------|
| EF&S Concrete, Inc.             | \$307,120.00*   |
| Guerra Construction Group       | \$343,547.00*   |
| Tri Valley Excavating Co., Inc. | \$349,886.00    |
| Dryco Construction, Inc.        | \$357,785.00    |
| Silicon Valley Paving           | \$381,500.00    |
| 101 Builders, Inc.              | \$431,707.00*   |
| Galeb Paving                    | \$451,540.00    |

\* The construction base bid total was corrected due to calculation error.

EF&S Concrete, Inc.'s bid of \$307,120 is approximately 5.5% lower than the engineer's estimate of \$325,000. EF&S Concrete, Inc. is an experienced contractor and has the necessary qualifications to perform this project. Staff recommends the award of the contract to EF&S Concrete, Inc. in the amount of \$307,120 with a 20% contingency for this project. The project is scheduled to begin in November 2023 and be completed by winter/spring 2024, pending construction delays due to weather.

The plans and specifications are available for review on the City's [webpage](#).

### **COMMUNITY ENGAGEMENT:**

#### **Involve and Inform**

This project was brought forward by community members interested in developing outdoor pickleball courts in Morgan Hill due to the sport's high demand by residents who provided input on interim and permanent court locations to the City's Parks and Recreation Commission.

Prior to and during construction, staff is committed to inform the community regarding the progress of this project using media, social media, and the City's website. The Morgan Hill Pickleball Club has been involved with the court design and will share information with the community on construction of the new courts.

### **ALTERNATIVE ACTIONS:**

City Council may elect not to award this construction contract and request the project be rebid. Staff does not recommend this alternative as this project was competitively bid with 7 bids being received by the City. Rebidding the project is not likely to result in significant savings and it will delay the project approximately three to four months.

### **PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

- On July 20, 2017, the City Council adopted the Bikeways, Trails, Parks and Recreation Master Plan.
- On June 15, 2022, the City Council adopted the FY2022-23 through 2027-28 Capital Improvement Program Budget.
- On March 15, 2022, the City Parks and Recreation Commission provided input on interim locations and long term development options.
- On October 18, 2022, the City Parks and Recreation Commission recommended the priority location for future Pickleball Courts.

#### **FISCAL AND RESOURCE IMPACT:**

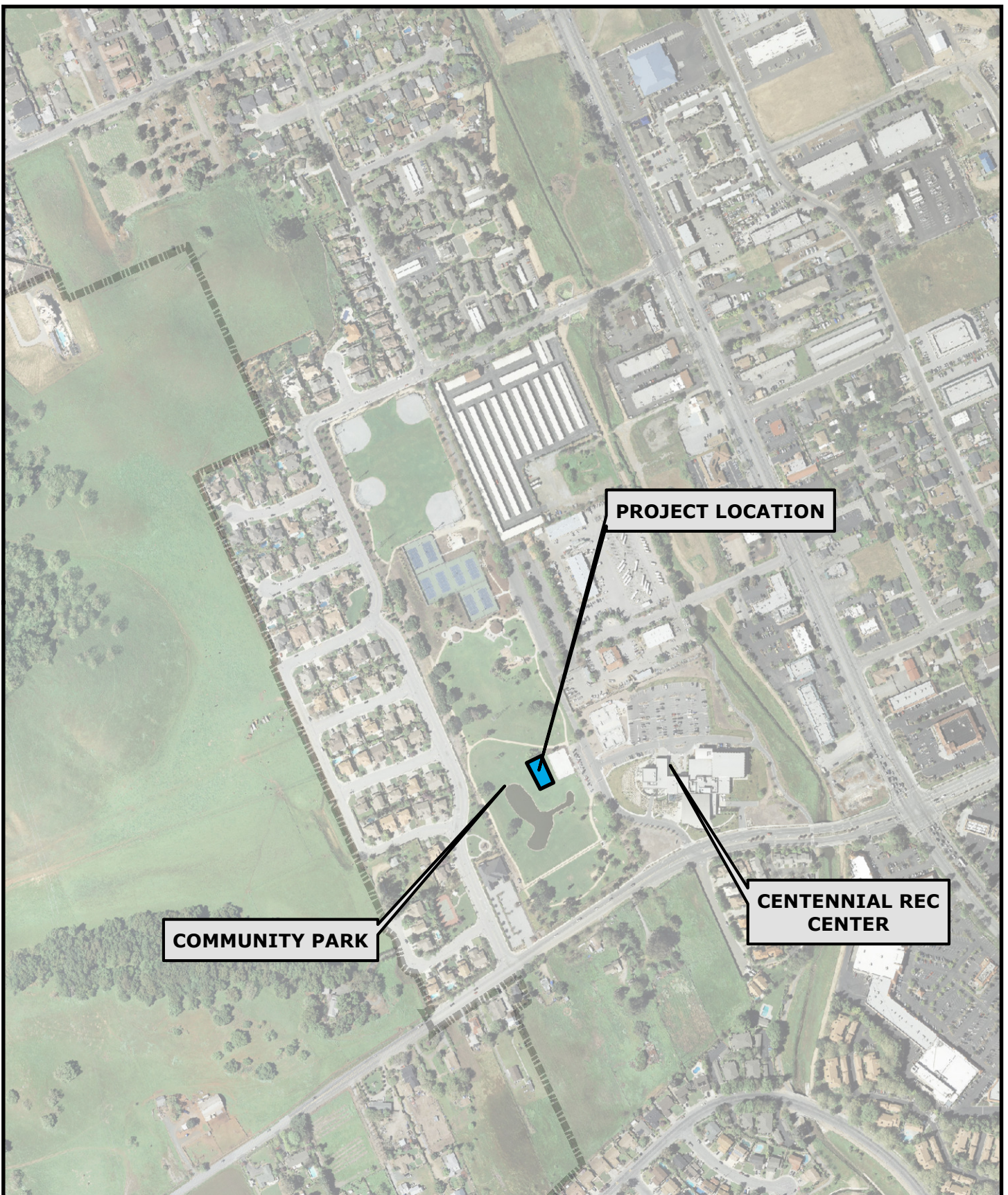
If approved, the total authorization of this project shall be \$368,544 which includes a 20% contingency of \$61,424. There are sufficient funds within the FY2023-24 Budget for this project (118020). Funding for new pickleball courts will be funded from the Quimby Fee Fund (375).

#### **CEQA (California Environmental Quality Act):**

Categorical Exemption

Categorically exempt from the requirements of the California Environmental Quality Act (CEQA) Guidelines pursuant to: 1) Section 15301 Class 1 “Existing Facilities” for the replacement or reconstruction of existing facilities and paths where the new facilities will be located on the same site as the area replaced and will have substantially the same purpose and capacity, 2) Section 15304 Class 4 “Minor Alterations to Land” for the construction of new pathways, bicycle paths, changes to existing landscaping, grading, and cut and fill of soils, and 3) Section 15311 Class 11 “Accessory Structures” for the construction of appurtenant structures in a publicly owned park. Furthermore, the project design complies with the City’s Engineering Standards and accepted landscape architectural practices.





CITY OF MORGAN HILL

**Engineering and Utilities Department  
Capital Improvement Division**

G:\R-14\Proj\GIS\Agustin\Pickleball\PLM.mxd

## **MORGAN HILL COMMUNITY PARK PICKLEBALL COURTS PROJECT**



0 187.5 375 750 1,125 1,500  
Feet



## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: October 4, 2023**

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

## **APPROVE SUBORDINATION AGREEMENT FOR CITY OPEN SPACE EASEMENT WITH THE SANTA CLARA VALLEY HABITAT AGENCY**

### **RECOMMENDATION(S)**

Authorize the City Manager to execute a subordination agreement for a City Open Space Easement with the Santa Clara Valley Habitat Agency.

### **COUNCIL PRIORITIES, GOALS & STRATEGIES**

#### **City Council Ongoing Priorities**

Protecting the Environment and Preserving Open Space and Agricultural Land  
Advancing Regional Initiatives

### **REPORT NARRATIVE:**

The City holds an open space easement that was obtained in 1996 in association with residential development located just east of Castle Lake Drive in the northeast area of the City. The easement specifically applies to a portion of the 45 acre parcel of land (APN 764-30-001). The purpose of the 1996 Open Space Easement is to maintain the property in perpetuity “in its natural, scenic, historical and unused condition for the enjoyment of the aesthetic pleasure which is experienced by Grantees in such condition of the land.”

The property has been purchased by the Santa Clara Valley Habitat Agency (SCVHA) with the intent of permanently conserving the entirety of this property and adjacent property through an easement with the Land Trust of Santa Clara Valley (LTSCV). The purpose of the conservation easement is to ensure that the existing and future natural values and associated wildlife and habitat values of the easement area will be forever protected by preventing any use of the property that would impair or interfere with the property’s wildlife, habitat values, and associated open space values.

In order for the Conservation Easement to be conveyed from the SCVHA to LTSCV the City must allow subordination of its 1996 Open Space Easement. In light of similar purposes of the easements and the City’s long term goal of Protecting the Environment, City staff recommend approval of the subordination agreement, which will allow the land to be used for the wildlife habitat.

### **COMMUNITY ENGAGEMENT:**

Not Applicable

The property is currently operated by SCVHA and the subordination of the open space easement will not change existing uses.

**ALTERNATIVE ACTIONS:**

The City Council could choose to not allow the subordination of the open space easement in association with a transfer of development rights.

**PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

There have been no recent actions taken in association with the open space easement.

The City received the easement in June 1996 in association with a transfer of development rights.

**FISCAL AND RESOURCE IMPACT:**

There is no significant fiscal impact associated with the subordination agreement. Minimal resources in the City Attorney's Office and Public Services Department were spent reviewing and preparing the associated subordination agreement and staff report.

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

Categorical Exemption

The subordination of the open space easement to the conservation easement is exempt from the requirements of the California Environmental Quality Act pursuant to Public Resources Code Section 21080.28(a)(1)(A), which exempts the transfer of interest in land by a public agency for the preservation of natural conditions existing at the time of acquisition, including plant and animal habitats.

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

**When recorded, return original to:**

Edmund Sullivan, Executive Officer  
Santa Clara Valley Habitat Agency  
535 Alkire Ave., Suite 100  
Morgan Hill, CA 95037

**Return one conformed copy to:**

Land Trust of Santa Clara Valley  
605 Tennant Avenue, Suite H  
Morgan Hill, CA 95037

**Return one conformed copy to:**

City of Morgan Hill  
17575 Peak Ave  
Morgan Hill, CA 95037

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§ 6103, 27383

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APN 764-30-001

SPACE ABOVE FOR RECORDER'S USE

**SUBORDINATION AGREEMENT**

This Subordination Agreement ("Subordination Agreement") is by and between the CITY OF MORGAN HILL a California municipal corporation (the "City"), and the SANTA CLARA VALLEY HABITAT AGENCY, a California Joint Powers Authority (the "Habitat Agency"). The City and Habitat Agency are collectively referred to herein as the Parties, and individually as a Party.

**RECITALS**

A. The City holds a Deed of Open Space Easement that was recorded with the Santa Clara County Recorder on June 20, 1996 (Document No. 13338719) ("1996 Open Space Easement"), which applies to a portion of Parcel 764-30-001, currently owned by the Habitat Agency, depicted on Exhibit A. The purpose of the 1996 Open Space Easement is to maintain the property in perpetuity "in its natural, scenic, historical and unused condition for the enjoyment of the aesthetic pleasure which is experienced by Grantees in such condition of the land."

B. The Habitat Agency intends to enter into a Conservation Easement Agreement with the Land Trust of Santa Clara Valley ("LTSCV") pursuant to which the Habitat Agency will convey a Conservation Easement over Parcel 764-30-001 to the LTSCV in furtherance of the Habitat Plan Reserve System established pursuant to the Santa Clara Valley Habitat Plan dated August 2012 ("Habitat Plan") prepared pursuant to section 10 of the Endangered Species Act, of 1973, 16 U.S.C. Section 1531 *et seq.*, and the California Natural Community Conservation Planning Act, California Fish and Game Code Section 2800 *et seq.* The purpose of the Conservation Easement Agreement is to ensure that the existing and future natural values and associated wildlife and habitat values of the easement area will be forever protected by preventing any use of the Easement Area that would impair or interfere with the property's wildlife, habitat values, and associated open space values (Exhibit B).

C. The United States Fish and Wildlife Service ("USFWS") and the California Department of Fish and Wildlife ("CDFW"), third-party beneficiaries to the Conservation Easement Agreement, requested that the 1996 Open Space Easement be subordinated to the Conservation Easement Agreement for the portion of Parcel 764-30-001 that is currently subject to the Open Space Easement.

D. In light of the parallel purposes of the Conservation Easement Agreement between the Habitat Agency and LTSCV and the 1996 Open Space Easement, the City agrees to subordinate the 1996 Open Space Easement to the Conservation Easement Agreement.

## **AGREEMENT**

1. **Subordination.** The Conservation Easement Agreement between the Santa Clara Valley Habitat Agency and the Land Trust of Santa Clara Valley recorded with the Santa Clara County Recorder on \_\_\_\_\_ (date), (Document No. \_\_\_\_\_) ("Conservation Easement Agreement"), and any and all renewals, modifications permitted hereunder, extensions, or protective advances thereunder (including interest thereon), are and will remain at all times, a lien, claim, or charge on the Conservation Easement Property prior and superior to the 1996 Open Space Easement. The City acknowledges that it has had an opportunity to review the Conservation Easement Agreement, and that it intentionally subordinates the 1996 Open Space Easement.

2. **Indemnification.**

2.1 The Habitat Agency shall to the fullest extent permitted by law, indemnify, defend and hold harmless City and LTSCV, their elected or appointed officials, volunteers, boards, agencies, officers, agents, employees, and volunteers from and against all claims, liabilities, expenses, liens or damages of any nature and including reasonable attorney's fees and expenses, that arise out of, pertain to, or relate to any challenge filed by a third party about this Agreement or the failure to comply with any obligations contained in the 1996 Open Space Easement. The Habitat Agency is not required to indemnify City or LTSCV against liability for any loss, damage or expense arising from the sole negligence or willful misconduct of the City or LTSCV.

2.2 The Habitat Agency shall to the fullest extent permitted by law, indemnify, defend and hold harmless LTSCV, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers from and against all claims, liabilities, expenses, liens or damages of any nature and including reasonable attorney's fees and expenses, that arise out of, pertain to, or relate to any challenge filed by a third party about this Agreement or the failure to comply with any obligations contained in the 1996 Open Space Easement. The Habitat Agency is not required to indemnify LTSCV against liability for any loss, damage or expense arising from the sole negligence or willful misconduct of the LTSCV.

3. **Amendments Require Consent.** The Habitat Agency agrees that it will not amend or modify the Conservation Easement Agreement in a manner that would adversely affect the 1996 Open Space Easement without the prior written consent of the City.

4. **Integration; No Waiver.** This Subordination Agreement is the whole and only agreement with regard to the subordination of the terms and conditions of the 1996 Open Space Easement to the Conservation Easement Agreement. This Subordination Agreement may not be modified or amended except by a written agreement signed by the Parties. No waiver shall be deemed to be made by any Party of any of its rights hereunder unless the waiver shall be in writing signed by such Party, and each such waiver, if any, shall be a waiver only with respect to the specific matter or matters to which the waiver relates and shall in no way impair the rights or obligations of any Party in any other respect or at any other time.

5. **Successors and Assigns.** This Subordination Agreement is binding on and inures to the benefit of the legal representatives, successors, and assigns of the Parties.

6. **Governing Law.** This Subordination Agreement shall be governed by, and construed in accordance with, the laws of the State of California without regard to California choice of law rules, except to the extent that any of such laws may now or hereafter be preempted by federal law. The Parties consent to the jurisdiction of any federal or state court having jurisdiction within the County of Santa Clara, California, submit to venue in such jurisdiction, and also consent to service of process by any means authorized by California law or federal law. Without limiting the generality of the foregoing, the Parties hereby waive and agree not to assert by way of motion, defense, or otherwise in such suit, action, or proceeding, any claim that (i) any such Party is not subject to the jurisdiction of the courts of the State of California or the United States



District Court for such jurisdiction, or (ii) such suit, action, or proceeding is brought in an inconvenient forum, or (iii) the venue of such suit, action, or proceeding is improper.

7. **Notices.** All notices given under this Subordination Agreement shall be in writing and be given by personal delivery, overnight receipted courier (such as Airborne, UPS, or Federal Express), or by registered or certified United States mail, postage prepaid, sent to the Party at its address appearing below. Notices shall be effective upon the first of the following to occur: receipt; when proper delivery is refused; or the expiration of forty-eight (48) hours after deposit in registered or certified United States mail as described above. The following addresses may be changed by any Party by providing notice to the other Parties in accordance with this Section.

City of Morgan Hill  
City Manager  
17575 Peak Ave  
Morgan Hill, CA 95037

Santa Clara Valley Habitat Agency  
Edmund Sullivan, Executive Officer  
Santa Clara Valley Habitat Agency  
535 Alkire Ave., Suite 100  
Morgan Hill, CA 95037

Land Trust of Santa Clara Valley  
605 Tennant Avenue, Suite H  
Morgan Hill, CA 95037  
Attn: Executive Director

8. **Counterparts.** This Subordination Agreement may be executed in counterparts, all of which shall together constitute one and the same document.

**IN WITNESS WHEREOF**, the parties have executed this Subordination Agreement as of the date first above written.

**CITY OF MORGAN HILL**

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**SANTA CLARA VALLEY HABITAT AGENCY**

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Edmund Sullivan  
Executive Officer

By: \_\_\_\_\_  
Valerie J. Armento  
General Counsel

## 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 )  
 ) ss  
County of Santa Clara )

On \_\_\_\_\_, 2021, before me, \_\_\_\_\_,  
(Name of Notary)

notary public, 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.

(Notary Signature)

## 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 )  
 ) ss  
County of Santa Clara )

On \_\_\_\_\_, 2020, before me, \_\_\_\_\_,  
(Name of Notary)

notary public, 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.

(Notary Signature)

Exhibit A

**1996 Deed of Open Space Easement**



Fees.... \* No Fees  
Taxes...  
Copies...  
AMT PAID

Recording requested by and  
when recorded please return to:

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

BRENDA DAVIS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
City

RDE # 008  
6/20/1996  
8:09 AM

Recorded at NO FEE PER Government Code 6103.

### DEED OF OPEN SPACE SCENIC EASEMENT

1. This grant deed of an open space scenic easement is made this 5th day of June, 1996 by the undersigned Grantors who are the owners of certain real property ("Property") located in the City of Morgan Hill, County of Santa Clara, State of California, which is more particularly described in exhibit A, attached hereto.

2. The Property is in a substantially undisturbed, natural and open space condition and exhibits natural, scenic and open space features of outstanding scenic value, being a portion of the scenic amenity commonly known as Llagas Valley, an area of distinctive beauty and historical significance, the essence of whose scenic and historic value lies in its essentially unimproved and natural condition.

3. As a Condition to the approval of the transfer of development rights from a portion of assessor parcel number 764-30-001 of the City of Morgan Hill as described in attached exhibit A, Grantor has agreed to grant to the City of Morgan Hill and the residents of the State of California the scenic open-space easement in the Property which is described hereafter. This easement is an

easement in gross, not an easement appurtenant, and runs to the benefit of the City of Morgan Hill and to each and every resident of the State of California. Any attempts to abandon said easement or any failure to enforce said easement by the City of Morgan Hill or any resident of the State of California shall not void the obligation of Grantors or their successors-in-interest to the Property to any other Grantees of this easement.

4. This easement is perpetual in duration.

5. This easement is negative in nature, granting no rights of entry, occupancy or use of the Property to anyone, but rather imposing restrictions upon the Grantors and their successors-in-interest upon the use of said Property.

6. The purpose of this easement is to maintain the property in its natural, scenic, historical and unused condition for the enjoyment of the aesthetic pleasure which is experienced by Grantees in such condition of the land. Accordingly, Grantors warrant and agree as the terms of this easement that they and their successors-in-interest are forever prohibited from making any use of the land other than personally entering upon it on foot.

Notwithstanding the above, Grantors, their successors and assigns shall:

(a) Have the right and all appurtenant rights to eject trespassers and/or remove any encroachment on any of the above property as if not subject to encumbrance by this easement.

(b) Retain the right and all appurtenant rights to enter upon the land in order to maintain a fire break which shall act as a buffer to the portion of the property subject to said open space

easement. Said fire break shall conform to the written conditions as set forth by the Fire Chief of the City of Morgan Hill, a copy of which is attached and incorporated herein as Exhibit "B".

7. Without limiting the generality and inclusivity of the foregoing prohibition preventing Grantors and their successors in-interest from making any use of the Property other than entering upon it on foot, Grantors state that the following uses and practices, though not an exhaustive recital, are uses and practices which are inconsistent with Grantors' intent and the purpose of this easement, and are, therefore, prohibited by it:

- (a) Any residential, commercial or industrial use;
- (b) Any cultivation;
- (c) The construction of buildings, structures or other improvements of any nature,

including but not limited to fences;

- (d) Entry upon the land by vehicles of any sort;
- (e) Exploration or extraction of minerals, hydrocarbons, soil or other materials

on or below the surface of the Property;

- (f) The dumping or disposal of waste or refuse of any kind on the property;
- (g) Any use or activity that presents a risk of causing soil erosion;
- (h) The cutting of trees or plants of any sort;
- (I) Any movement or removal of the existing earth or the addition of any fill

earth.

8. Grantors shall retain liability for any and all real property taxes and assessment levied by any competent authority on the Property.

9. The easement granted herein shall be enforceable in any action at law or in equity in any court of competent jurisdiction. An action to enforce said easement may be brought by any Grantee thereof, namely, the City of Morgan Hill or any resident of the State of California. Any forbearance by any Grantee to exercise its rights hereunder in the event of any breach hereof by Grantors or their successors-in-interest shall not be deemed or construed to be a waiver of any other Grantee's breach.

10. In any action brought to enforce the terms of this easement, the provisions of Code of Civil Procedure Section 1021.5 providing for an award of attorney's fees shall apply. The provisions of Civil Code Section 1717 providing for an award of attorney's fees shall not apply, and Grantors hereby waive, for themselves and their successors-in-interest, any right that they may now have or in the future accrue an award of attorney's fees in any action brought on account of a threatened or accomplished breach of this easement.

11. If any provision of this easement or the application thereof to any person or circumstances found to be invalid, the remainder of the provisions of this easement and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.



12. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States Certified Mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

13. Grantors warrant and agree that the terms, conditions, restrictions and purpose of this easement will be inserted by them in any subsequent deed or legal instrument by which Grantors divest themselves of any interest in the Property.

TO HAVE AND TO HOLD unto the Grantees, its successors and assigns forever. The covenants, terms, conditions, restrictions and purposes imposed in this grant shall not only be binding upon Grantors but also their agents, personal representatives, heirs, assigns and all other successors to them in interest, and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantors have set their hands on the day and year first written above.

*Charles A. Daniels*  
*Asst. Mayor*  
~~*By Charles A. Daniels*~~  
*like attorney in fact*

*Harold Simmons*  
*Honorable "Simmons"*

*Rosemarie K. Peoples*

*Charles J. Peoples*

*David M. J. Jinkens* 6/6/96

Dated: May 31, 1996

CITY MANAGER - David M. Jinkens  
 City of Morgan Hill

Approved as to Form:

Attest:

*Gary M. Baum*  
 Gary M. Baum, City Attorney

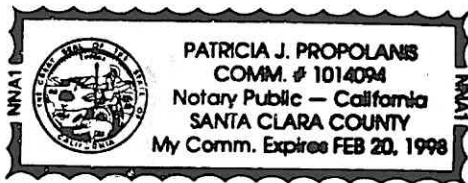
*Bonnie G. Gawf*  
 Bonnie Gawf  
 City Clerk

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of CALIFORNIACounty of SANTA CLARAOn MAY 7, 1996 before me, PATRICIA J. PROPOLANIS, NOTARY PUBLIC,  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"personally appeared HAROLD SIMMONS AND FLORENCE SIMMONS,  
NAME(S) OF SIGNER(S)

☒ personally known to me - **OR** - ☐ 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.



WITNESS my hand and official seal.

*Patricia J. Propolans*  
SIGNATURE OF NOTARY

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER<sup>S</sup>**

- ☒ INDIVIDUAL  
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL  
☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

**SIGNER IS REPRESENTING:**  
 NAME OF PERSON(S) OR ENTITY(IES)

**DESCRIPTION OF ATTACHED DOCUMENT**DEED OF OPEN SPACE SCENIC EASEMENT

TITLE OR TYPE OF DOCUMENT

8

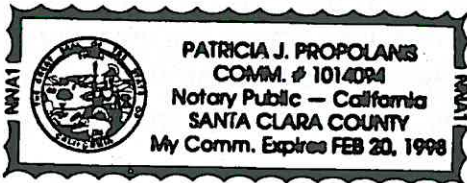
NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**State of CALIFORNIACounty of SANTA CLARAOn MAY 7, 1996 before me, PATRICIA J. PROPOLANIS, NOTARY PUBLIC,  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"personally appeared CHARLES W. DAVIDSON,  
NAME(S) OF SIGNER(S)

☒ personally known to me - **OR** - ☐ 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.



WITNESS my hand and official seal.

*Patricia J. Propolans*  
SIGNATURE OF NOTARY

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

- ☒ INDIVIDUAL  
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED  
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☒ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

**SIGNER IS REPRESENTING:**  
 NAME OF PERSON(S) OR ENTITY(IES)

ANITA DAVIDSON**DESCRIPTION OF ATTACHED DOCUMENT**DEED OF OPEN SPACE SCENIC EASEMENT

TITLE OR TYPE OF DOCUMENT

8

NUMBER OF PAGES

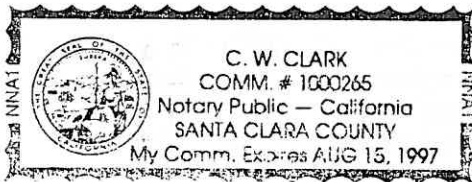
DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**State of CaliforniaCounty of Santa ClaraOn 5-8-90 before me, C. W. Clark, Notary  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")personally appeared Charles J. Peoples & Rosemarie H. Peoples  
Name(s) of Signer(s)

☒ personally known to me — OR — ☐ 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.



WITNESS my hand and official seal.

  
Signature of Notary Public
**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**Title or Type of Document: Deed of Open Space Scenic EasementDocument Date: Signature date 5-8-90 Number of Pages: 8Signer(s) Other Than Named Above: yes Simmons, David**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- ☒ Individual  
☐ Corporate Officer

Title(s): \_\_\_\_\_

- ☐ Partner — ☐ Limited ☐ General  
☐ Attorney-in-Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer

Title(s): \_\_\_\_\_

- ☐ Partner — ☐ Limited ☐ General  
☐ Attorney-in-Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

## EXHIBIT A-1

## 'LEGAL DESCRIPTION'

BEING a portion of Lot 13 and Lot 14, as said Lots are shown upon that certain Map entitled "Morgan Hill Ranch Map No. 3", which Map is filed in Book 'G' of Maps at Page 20, Santa Clara County Records and being more particularly described as follows:

BEGINNING at the northern most corner of said Lot 13 and running thence along the northeasterly boundary line thereof, South 40°14'47" East, 248.34 feet; thence leaving said northeasterly boundary line, South 07°49'44" West, 921.44 feet; thence South 72°26'18" East, 175.79 feet; thence North 49°47'51" East, 243.54 feet; thence South 30°37'16" East, 765.56 feet to a point that is northwesterly of and 110.00 feet distant, measured at right angles, from the southeasterly boundary line of that land described in that grant deed conveyed to Harold L. Simmons, et al, recorded November 25, 1992 in Book M507 at Page 0722, Santa Clara County Official Records; thence running parallel with and 110.00 distant from said southeasterly boundary line, South 49°45'00" West, 243.63 feet to a point; thence South 40°15'00" East, 87.35 feet to a point in the southern most boundary line of said lands of Simmons, et al; thence running along said southern most boundary line, South 70°26'00" West, 267.77 feet to the eastern most corner of 'Tract No. 7679 - Castle Hill Unit No. 4', which Map was filed in Book 548 of Maps at Pages 42, 43 and 44, Santa Clara County Records; thence along the eastern boundary lines of said 'Tract No. 7679 - Castle Hill Unit No. 4', North 46°23'07" West, 801.41 feet and North 33°46'09" West, 1111.50 feet to the northern most corner thereof, being also the northwestern corner of Lot 14, as said Lot is shown upon that said aforementioned Map entitled 'Morgan Hill Ranch Map No. 3'; thence along the northwesterly boundary line of said Lot 14 and said Lot 13, North 58°31'53" East, 955.69 feet more or less to the point of beginning and containing therein 28.44 acres more or less.

LW\QW\91110\1

# TRACT NO. 8382 - LLAGAS CREEK ESTATES

627 - M - 25, 26, 27 & 28

POINT OF BEGINNING

N 40°14'47" W (PER TRACT NO. 8382) 1877.70'

S 58°31'53" W (CALC'D) 955.69'

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S 40°15'E, 87.35'

S 30°37'16"E 765.58'

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S 33°46'09" E 1111.50' (PER TRACT NO. 8679)

248.34'

507°49'44"W

921.44'

N 49°47'51"E

243.54'

M 507

Q 122

O. R.

LANDS OF SIMMONS

25.84 ACRES

PER

BAIRD

110'

30' WGR/EGR & P.S.E.

SAKAI

SWIGER

DAHL

RIEHL

PINO

EXHIBIT A-2

548 - M - 42, 43 & 44

TRACT NO. 7679 - CASTLE HILLS UNIT NO.4

TRACT NO. 8382 - LLAGAS CREEK ESTATES

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M 50

**EXHIBIT B****FIRE BREAK MAINTENANCE**

Any person owning, leasing, controlling, operating, or maintaining the property described as Exhibit A attached hereto shall maintain an effective fire break between the property described in the Open Space Easement to which this Exhibit (Exhibit B) is attached, according to the provisions of the Uniform Fire Code, Hazardous Fire Area, adopted and as time to time amended by the City of Morgan Hill.



Exhibit B

**Conservation Easement**

**RECORDING REQUESTED BY  
AND FOLLOWING RECORDING  
MAIL TAX STATEMENTS TO:**

Santa Clara Valley Habitat Agency  
535 Alkire Avenue, Suite 100  
Morgan Hill, CA 95037  
Attention: Executive Officer

**And a conformed copy to:**

Land Trust of Santa Clara Valley  
605 Tennant Avenue, Suite H  
Morgan Hill, CA 95037

No fee for recording pursuant to  
Government Code Section 27383

Space Above Line for Recorder's Use Only

**CONSERVATION EASEMENT AGREEMENT**

THIS CONSERVATION EASEMENT AGREEMENT (the "Agreement" or "Conservation Easement") for reference dated \_\_\_\_\_, 2023, is by and between the Santa Clara Valley Habitat Agency, a California Joint Powers Authority ("Landowner" or "Habitat Agency" or "Implementing Entity"), and the Land Trust of Santa Clara Valley, a California 501(c)3 nonprofit corporation ("Easement Holder"). Landowner and Easement Holder are also referred to herein individually as a "Party" and collectively as the "Parties."

**RECITALS**

A. Landowner is the fee owner of certain real property commonly known as the Davidson Parcels, 764-28-007 and 764-30-001 containing approximately 93 acres of land located in Santa Clara County, State of California, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property") and depicted on the map attached hereto as **Exhibit B** and incorporated herein by this reference.

B. This Agreement is being executed and delivered to satisfy certain habitat conservation requirements set forth in the following documents (collectively, the "Habitat Plan

Davidson Parcels Conservation Easement

Instruments”):

(i) The Santa Clara Valley Habitat Plan (“Habitat Plan”), dated August 2012, prepared by County of Santa Clara (“County”), City of San Jose (“San Jose”), City of Gilroy (“Gilroy”), City of Morgan Hill (“Morgan Hill”), Santa Clara Valley Water District (“Valley Water”), and Santa Clara Valley Transportation Authority (“VTA”), and approved by the United States Fish and Wildlife Service (“USFWS”) under Section 10 of the federal Endangered Species Act of 1973 (16 U.S.C. Section 1531 *et seq.*, as it may be amended from time to time) (“ESA”), and by California Department of Fish and Wildlife (“CDFW”) under the California Natural Community Conservation Planning Act (California Fish and Game Code Section 2800 *et seq.*, as it may be amended from time to time) (“NCCPA”); and

(ii) The Implementing Agreement for the Habitat Plan (the “Implementing Agreement”), dated August 14, 2012, by and among USFWS and CDFW (collectively, the “Wildlife Agencies”), Santa Clara Valley Habitat Plan Implementing Agency, a Joint Powers Authority (“JPA” or “Implementing Entity”), County, San Jose, Gilroy, Morgan Hill, Water District, and VTA (collectively, JPA, County, San Jose, Gilroy, Morgan Hill, Water District, VTA, are referred to herein as “Permittees”); and

(iii) The federal incidental take permit issued by USFWS to Permittees for the Habitat Plan pursuant to Section 10 of ESA; and

(iv) The state incidental take permit issued by CDFW to Permittees for the Habitat Plan pursuant to the NCCPA.

C. CDFW has jurisdiction, pursuant to Fish and Game Code Section 1802, over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of those species, and CDFW is authorized to hold easements for these purposes pursuant to Civil Code Section 815.3, Fish and Game Code Section 1348, and other provisions of California law.

D. USFWS is an agency of the United States Department of the Interior and is authorized by Federal law to be a third-party beneficiary of the Conservation Easement and to administer the Federal Endangered Species Act, 16 U.S.C. § 1531 *et seq.* (“ESA”), the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-666c, and the Fish and Wildlife Act of 1956, 16 U.S.C. § 742(f) *et seq.*

E. The Easement Holder is authorized to hold conservation easements pursuant to, among other provisions of law, California Civil Code Section 815.3.

F. Habitat Agency serves as the “Implementing Entity” of the Habitat Plan, and as such, is responsible for overseeing implementation of the Habitat Plan Instruments, including carrying out planning and design, habitat restoration, monitoring, adaptive management programs, and periodic coordination with the USFWS and CDFW.

Davidson Parcels Conservation Easement

G. The Property possesses wildlife, habitat values, and associated open space values that are of great importance to Habitat Agency, Easement Holder, the people of Santa Clara County and the people of the State of California and of the United States (the “Conservation Values”). The Initial Conservation Values, described in **Exhibit C** attached hereto and incorporated herein by reference, are those Conservation Values that are identified in the Habitat Plan and present on the Property at the time of the execution of the Agreement.

H. Following recordation of this Agreement, the Property will be incorporated into the Reserve System (as such term is defined in the Habitat Plan) (“Reserve System”) and will count toward the land acquisition requirements set forth in the Habitat Plan.

I. The Habitat Agency will develop a management plan, known as the “Davidson Management and Monitoring Plan” or the “Management Plan,” as referenced interchangeably. The Management Plan will serve as the management plan for the Property for Habitat Plan purposes. The Management Plan will be developed in accordance with the applicable requirements of the Habitat Plan Instruments, and may be combined as a joint management plan with the Baird Management Plan.

J. The Management Plan, upon completion, will be incorporated herein by reference. Landowner and Easement Holder recognize that changes (e.g., in weather cycles, natural resource management technologies, conservation practices) may dictate an adaptation in the management of the Property, consistent with the purposes of this Conservation Easement and the Habitat Plan Instruments. It may be revised from time to time with the written approval of the Landowner, Easement Holder, and the Wildlife Agencies, so long as the revisions are consistent with the requirements of the Habitat Plan Instruments. A full and complete copy of the Management Plan, including any such revisions, shall be kept on file at the offices of the Implementing Entity. The Property will be managed in accordance with the applicable requirements of the Habitat Plan until the Management Plan is developed.

K. The State of California recognizes the public importance and validity of conservation easements by enactment of California Civil Code Section 815 *et seq.*

## **AGREEMENTS**

NOW, THEREFORE, in consideration of the above and mutual covenants, terms, conditions and restrictions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the laws of the State of California, including California Civil Code Section 815 *et seq.*, Landowner hereby voluntarily grants and conveys to Easement Holder, its successors and assigns, a conservation easement in perpetuity on, over and across the Property described in Exhibit A and depicted on Exhibit B (the “Conservation Easement”), subject to the terms and conditions set forth herein, restricting forever the uses which may be made of the Property, and the Parties agree as follows:

Davidson Parcels Conservation Easement

1. **Purpose.** The purpose of this Conservation Easement is to ensure that existing and future natural values and associated wildlife and habitat values of the Property will be forever protected by preventing any use of the Property that would impair or interfere with the Conservation Values. Landowner intends that this Conservation Easement will confine the use of the Property to such activities that are consistent with the purposes set forth herein, including, without limitation, those involving the preservation, restoration, and enhancement of the Property's Covered Species, as defined in the Habitat Plan, and their habitats.

2. **Baseline Documentation Report.** The Parties acknowledge that a Baseline Documentation Report (the "Report") has been prepared for the Property and approved in writing by Landowner and Easement Holder. A copy of the Report is on file with Landowner and Easement Holder at their respective addresses for notices set forth below. The parties agree that the Report contains an accurate representation of the biological and physical condition of the Property at the time this Agreement is recorded in the Official Records of Santa Clara County ("Official Records"), including an inventory of all of the Property's Covered Species and natural communities found thereon. Notwithstanding the foregoing, if a controversy arises with respect to the nature and extent of the physical or biological condition of the Property or the Allowed Uses of the Property, the Parties shall not be foreclosed from utilizing any and all other relevant documents, surveys or other evidence or information to assist in the resolution of the controversy.

3. **Rights of Easement Holder.** To accomplish the purposes of this Conservation Easement, Landowner hereby grants and conveys the following rights to Easement Holder:

(a) To preserve, protect, sustain, restore, and enhance the Conservation Values for the Property described in Exhibit C or which develop on the Property in accordance with the Management Plan and the terms and conditions of this Conservation Easement;

(b) To enter upon the Property to monitor Landowner's compliance with, and to otherwise enforce the terms of, this Conservation Easement, and for scientific research necessary to support monitoring and in order to support adaptive management of the Conservation Values; *provided*, that Easement Holder shall not unreasonably interfere with Landowner's allowed uses and quiet enjoyment of the Property;

(c) To enter upon the Property to carry out, those management and monitoring requirements applicable to the Property that are set forth in the Management Plan and in Habitat Plan Chapters 5 and 7, *provided*, that Easement Holder shall use reasonable good faith efforts to conduct such management and monitoring activities in a manner that does not unreasonably interfere with Landowner's allowed uses and quiet enjoyment of the Property;

(d) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use that is inconsistent with the purposes of this Conservation Easement;

Davidson Parcels Conservation Easement

(e) To require that all mineral, air and water rights held by Landowner that Easement Holder deems necessary to preserve, protect and sustain the biological resources and Conservation Values of the Property, shall remain a part of and be put to beneficial use upon the Property, consistent with the purposes of this Conservation Easement;

(f) To erect and maintain signs or other appropriate markers in one or more prominent locations on the Property acceptable to Landowner, bearing information indicating that the Property is protected by the Easement Holder. The wording of the information shall be determined by the Easement Holder. The Easement Holder shall be responsible for the costs of erecting and maintaining such signs or markers;

(g) All present and future development rights and wind power rights allocated, implied, reserved or inherent in the Property are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property. Landowner and Easement Holder both understand and agree that nothing in this Conservation Easement relieves Landowner of any obligation or restriction in relation to the development or use of the Property imposed by law, including but not limited to local land use restrictions; and

(h) Except where there is an imminent threat to the Property or its Conservation Values, Easement Holder and its employees, contractors or agents will only enter the Property at reasonable times and with at least forty-eight (48) hours advance notice to Landowner. The Landowner may waive these requirements in whole or in part by written notice to Easement Holder.

4. **Rights of Wildlife Agencies.** The USFWS and CDFW are each a third-party beneficiary of this Agreement (collectively, “Third-Party Beneficiaries”) for the sole purpose of enforcing the terms of this Agreement.

5. **Prohibited Uses.** Any activity on or use of the Property that adversely affects the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, Landowner, Landowner’s personal representatives, heirs, successors, assigns, employees, agents, lessees, licensees and invitees are expressly prohibited from doing or allowing any of the following uses and activities on the Property, unless, and then only to the extent that, a generally prohibited activity set forth below is: (i) an allowed use or practice (e.g., agricultural, rangeland or site visit uses) set forth in **Exhibit D** attached hereto and incorporated herein by reference; (ii) a management practice set forth in the Management Plan; (iii) necessary in connection with the performance of any of the conservation actions described in Habitat Plan Chapter 5; or (iv) otherwise necessary to maintain or enhance the Conservation Values:

- (a) Unseasonal watering;
- (b) Use of fertilizers, pesticides, biocides, herbicides or other chemicals, except for non-native invasive plant species management and infrastructure and facilities management as specifically provided for in the Management Plan or Allowed Uses;
- (c) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways, excepting off-road vehicle use required to conduct any allowed management practice set forth in the Management Plan or as provided in the Allowed Uses;
- (d) Except as set forth in 3(f) above, any construction, reconstruction, relocation or placement of any road, building, billboard, fencing, or sign, or any other structure or improvement of any kind, or altering the surface or general topography of the Property without written approval by the Easement Holder and Wildlife Agencies unless otherwise allowed in the Management Plan or Allowed Uses;
- (e) Agricultural uses, including, without limitation, vineyards, nurseries, or intensive livestock use (e.g., dairy, feedlot) except as may be provided for in the Management Plan (e.g., prescribed grazing) or Allowed Uses;
- (f) Any legal or de facto division, subdivision or partitioning of the Property or any fee transfer of less than the entire Property;
- (g) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials;
- (h) Planting, introduction, or dispersal of nonnative plant or animal species, except as approved by the California Department of Food and Agriculture's Biological Control Program for control of invasive species as specifically provided in the Management Plan or with the approval of the Wildlife Agencies;
- (i) Filling, dumping, excavating, draining, dredging, mining, drilling, removing, or exploring for or extraction of minerals, loam, soil, sands, gravel, rocks, or other material on or below the surface of the Property, and granting or authorizing any surface entry for any of these purposes except as identified in the Management Plan or for Allowed Uses;
- (j) Removing, destroying, or cutting of trees, shrubs, or other vegetation except as allowed by **Exhibit D** or required by law for (i) fire breaks and/or fuels treatment, (ii) maintenance of existing roads, (iii) maintenance and installation of grazing infrastructure necessary to implement the Management Plan; or (iv) prevention or treatment of disease as specifically provided in the Management Plan;
- (k) Manipulating, impounding, or altering any water course, body of water, or water circulation on the Property, and activities or uses detrimental to water quality,



including but not limited to degradation or pollution of any surface or subsurface waters and future creation or habitat enhancement of the Property for sensitive, threatened, or endangered species as specifically provided for in the Management Plan or Allowed Uses;

(l) Recreational activities, including, but not limited to, horseback riding, biking (including e-bikes), fishing, dog walking, with the exception of any site visits specifically allowed in **Exhibit D**;

(m) Commercial, industrial, residential, or institutional uses, with the exception of the Allowed Uses;

(n) Altering the surface or general topography of the Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Property with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Management Plan or as permitted by the Allowed Uses; and

(o) Without the prior written consent of Easement Holder, which Easement Holder may reasonably withhold, transferring, encumbering, selling, leasing or otherwise separating the mineral, air or water rights for the Property owned by Landowner; changing the place or purpose of use of the water rights owned by Landowner; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights or other rights in and to the use of water historically used on or otherwise appurtenant to the Property that are owned by Landowner, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Property.

6. **Unlawful Entry.** Landowner shall undertake all reasonable actions to prevent the unlawful entry and trespass on the Property by persons whose uses or activities may degrade or harm the Conservation Values or are otherwise inconsistent with the purposes of this Conservation Easement.

7. **Landowner's Reserved Rights and Responsibilities; Allowed Uses.**

(a) Landowner reserves to itself, and to its representatives, agents, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including without limitation, the following (collectively, the "Allowed Uses"): (i) those specific uses and activities identified in the Management Plan or detailed in **Exhibit D** attached hereto, and (ii) all other uses of the Property that are not expressly prohibited or limited by this Agreement and are consistent with the purposes of this Conservation Easement as set forth in Section 1. Landowner shall have the right to exercise any of the Allowed Uses directly or to allow or invite others to engage in any of the Allowed Uses. Landowner is obligated under

this Agreement to perform the management and monitoring actions set forth in the Management Plan. Landowner's exercise of the Allowed Uses shall be conducted in a manner that is consistent with the Habitat Plan, Management Plan and Conservation Values.

(b) To accomplish the purposes of this Conservation Easement, Landowner, as Implementing Entity, retains the following rights, and accepts the following responsibilities, including financial responsibilities:

- (i) To preserve, protect, sustain, restore, and enhance the Conservation Values for the Property described in Exhibit C or which develop on the Property in accordance with the Management Plan and the terms and conditions of this Conservation Easement;
- (ii) To allow scientific research necessary to support monitoring and adaptive management of the Conservation Values;
- (iii) To enter upon the Property and be responsible for the management requirements applicable to the Property that are set forth in the Management Plan and in the Habitat Plan, Chapters 5 and 7;
- (iv) To manage all grazing-related matters, including the design and execution of any improvements related to grazing, and all grazing contracts, including the retention of revenue, according to the management plan and consistent with maintaining the conservation values of this Conservation Easement; and
- (v) To manage all invasive species control, both plant and animal (including pig management).

8. **Easement Holder & Third-Party Beneficiary's Remedies.** If Easement Holder or any Third-Party Beneficiary determines there is a violation of the terms of this Agreement or that such violation is threatened, written notice of such violation and a demand for corrective action sufficient to cure the violation shall be given to Landowner, with a copy provided to Easement Holder and each other Third-Party Beneficiary. The notice of violation shall specify the measures the Landowner must take to cure the violation.

**(a) Opportunity to Cure.** If Landowner fails to cure the violation within thirty (30) days after receipt of written notice and demand from Easement Holder or any Third-Party Beneficiary, as applicable; or if the cure reasonably requires more than thirty (30) days to complete and Landowner fails to begin the cure within such thirty (30) day period; or Landowner fails to continue diligently to complete the cure, Easement Holder or any Third-Party Beneficiary may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement, to recover any damages to which Easement Holder and the Third-Party Beneficiaries may be entitled for violation of the terms of this Agreement or for any injury to the Conservation Values, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any such violation or injury. Without limiting Landowner's liability therefor, any damages

recovered may be applied to the cost of undertaking any corrective action on the Property at the election of the party receiving such damages.

**(b) Emergencies.** If Easement Holder or any Third-Party Beneficiary, each in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values, Easement Holder and/or any Third-Party Beneficiary may pursue its remedies under this section without prior notice to Landowner or without waiting for the period provided for cure to expire. The rights of Easement Holder and the Third-Party Beneficiaries under this section apply equally to actual or threatened violations of the terms of this Agreement. Landowner agrees that Easement Holder's and Third-Party Beneficiaries' remedies at law for any violation of the terms of this Agreement are inadequate and that Easement Holder and/or any Third-Party Beneficiary shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Easement Holder and the Third-Party Beneficiaries may be entitled, including specific performance of the terms of this Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity; including but not limited to, the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Easement Holder or any Third-Party Beneficiary to discover a violation or to take immediate legal action in response to such action shall not bar such party from taking legal action at a later time.

**(c) Costs of Enforcement.** Any reasonable costs incurred by the Easement Holder or any Third-Party Beneficiary, where it is the prevailing party, in enforcing the terms of this Conservation Easement against the Landowner, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by Landowner's negligence or breach of this Agreement shall be borne by Landowner. In any action where an agency of the United States is a party, the right to recover fees and costs shall be governed by federal law.

**(d) Enforcement Discretion.** Enforcement of the terms of this Agreement against Landowner shall be at the respective discretion of Easement Holder and each of the Third-Party Beneficiaries, and any forbearance by any such party to exercise its rights under this Agreement in the event of any breach of any term of this Agreement shall not be deemed or construed to be a waiver by such party of such term or of any subsequent breach of the same or any other term of this Agreement or of any of such party's rights under this Agreement. No delay or omission by Easement Holder or any Third-Party Beneficiary in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

**(e) Acts Beyond Landowner's Control.** Nothing contained in this Agreement shall be construed to, or shall entitle, Easement Holder or any Third-Party Beneficiary to bring any action against Landowner for any injury to or change in the Property resulting from

(i) any natural cause beyond Landowner's control, including, but not limited to, climate change, fire not caused by Landowner, flood, storm, and earth movement, or any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; (ii) acts by Easement Holder or any Third-Party Beneficiary or any of their employees, contractors or agents; or (iii) acts by persons that entered the Property lawfully or unlawfully whose activities degrade or harm the Conservation Values of the Property or whose activities are otherwise inconsistent with this Conservation Easement where Landowner has undertaken all reasonable actions to discourage or prevent such activities.

(f) **Third Party Beneficiary Rights.** The parties intend for each Implementing Entity (during any such period, if any, that Implementing Entity does not also constitute Easement Holder), USFWS and CDFW (collectively, "Third-Party Beneficiaries") to be a third-party beneficiary of this Agreement. All rights and remedies conveyed to Easement Holder under this Agreement shall extend to and are enforceable by each of the Third-Party Beneficiaries in accordance with the terms hereof. Landowner and Easement Holder acknowledge that, as third-party beneficiaries of this Conservation Easement, the Third-Party Beneficiaries shall have the same rights of access to the Property granted to Easement Holder in Section 3 above, and with rights to enforce all of the provisions of this Agreement. If at any time in the future Landowner uses, allows the use, or threatens to use or allow use of, the Property for any purpose that is inconsistent with or in violation of this Agreement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and each Third-Party Beneficiary has standing as an interested party in any proceeding affecting the Conservation Easement. These rights are in addition to, and do not limit, the rights of enforcement under the Habitat Plan Instruments. In addition, if CDFW reasonably determines that the Property is not being held, monitored, or stewarded for conservation purposes in the manner specified in this Agreement, the Habitat Plan Instruments, or the Management Plan, the Conservation Easement shall revert to the State of California or another entity as described in California Government Code Section 65967, subdivisions (b) and (c), and subject to approval by CDFW. Such reversion may only be effective after Third-Party Beneficiaries provide Easement Holder with a minimum of thirty (30) days written notice and an opportunity to cure any defects.

9. **Public Access.** Nothing contained in this Agreement gives or grants to the public an independent right to enter upon or use the Property or any portion thereof. Nor shall this Agreement extinguish any public right to enter upon or use the Property.

10. **Costs and Liabilities.** Except for those specific rights granted to Easement Holder under Section 3 above, Landowner shall retain all responsibilities and shall bear all costs and liabilities of any kind related to Landowner's ownership, operation, management and maintenance activities on and relating to the Property. Landowner agrees that neither the Easement Holder nor Third Party Beneficiaries shall have any duty or responsibility for the operation or maintenance of the Property, the monitoring of hazardous conditions thereon, or the protection of Landowner, the public or any third parties from risks relating to conditions on the Property. The Landowner and

Easement Holder shall remain responsible for obtaining any applicable governmental permits and approvals for any of their activity or allowed use on the Property under this Agreement, and each shall undertake all allowed activities and uses of the Property in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements. Landowner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Agreement, and shall furnish Easement Holder with satisfactory evidence of payment, or exemption from payment, upon request. Landowner and Easement Holder shall keep the Property free from any liens, including those arising out of any obligations incurred by such Party for any labor or materials furnished or alleged to have been furnished to or for such Party or for use on the Property.

#### 11. **Indemnification.**

(a) **Indemnification by Landowner.** Landowner shall hold harmless, protect and indemnify Easement Holder and the Third-Party Beneficiaries, and their respective members, directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each an "Easement Holder Indemnified Party" and, collectively, the "Easement Holder Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' and experts' fees and costs), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) the activities of Landowner on the Property; (ii) the inaccuracy of any representation or warranty made by Landowner in this Agreement; (iii) the breach by Landowner of any provision of this Agreement; (iv) any injury to or the death of any person, or physical damage to any Property resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, unless such injury or death or physical damage to any Property relates to an activity on, or use of, the Property by Easement Holder, including without limitation, those activities performed under the Management Plan, or negligent or willful misconduct of the Easement Holder Indemnified Party; or (v) any violation of, or failure to comply with, any state, federal or local law, regulation or requirement, by Landowner, or by any entity, other than one of the Easement Holder Indemnified Parties, acting at the time upon permission from Landowner, in any way affecting, involving or relating to the Property. If any action or proceeding is brought against Easement Holder or any of the Easement Holder Indemnified Parties because of any such Claim, Landowner shall, at the election of and upon written notice from Easement Holder and the Third-Party Beneficiaries, defend such action or proceeding by counsel acceptable to the Easement Holder or any of the Easement Holder Indemnified Parties.

(b) **Indemnification by Easement Holder.** Easement Holder shall hold harmless, protect, and indemnify Landowner and the Third-Party Beneficiaries, and their respective members, directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each, a

“Landowner Indemnified Party,” and collectively, the “Landowner Indemnified Parties”) from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' and experts' fees and costs), causes of action, claims, demands, orders, liens or judgments (each a “Claim” and, collectively, “Claims”), arising from or in any way connected with: (i) the activities of Easement Holder on the Property, including without limitation the Easement Holder’s performance of monitoring activities set forth in the Management Plan; (ii) breach by Easement Holder of any provision of this Agreement; (iii) any injury to or the death of any person, or physical damage to any Property occurring on or about the Property resulting from any act, omission, condition, or other matter related to, an activity on, or use of, the Property by Easement Holder, unless due solely to the negligence or willful misconduct of the Landowner Indemnified Parties; and (iv) any violation of, or failure to comply with, any state, federal or local law, regulation or requirement, by Easement Holder in any way affecting, involving or relating to the Property. If any action or proceeding is brought against the Landowner or any of the Landowner Indemnified Parties because of any such Claim, Easement Holder shall, at the election of and upon written notice from Landowner, defend such action or proceeding by counsel acceptable to the Landowner or any Landowner Indemnified Party.

12. **Extinguishment.** The Conservation Easement created by this Agreement constitutes a property right. It is the Parties’ intention that this Agreement shall be carried out in perpetuity. Liberal construction is expressly required for purposes of effectuating the Conservation Easement in perpetuity, notwithstanding economic hardship or changed conditions of any kind. If circumstances arise in the future that render the purposes of this Agreement impossible to accomplish, this Agreement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction. In addition, no such extinguishment shall affect the value of Easement Holder’s interest in the Property, and if the Property, or any interest therein, is sold, exchanged or taken by power of eminent domain after such extinguishment, Easement Holder shall be entitled to receive the fair market value of the Conservation Easement at the time of such extinguishment. If such extinguishment occurs with respect to fewer than all acres of the Property, the amounts described above shall be calculated based on the actual number of acres subject to extinguishment.

13. **Condemnation.** Pursuant to California Code of Civil Procedure Section 1240.055, this Conservation Easement is “property appropriated to public use,” as used in Article 6 (commencing with section 1240.510) and Article 7 (commencing with section 1240.610) of Chapter 3 of Title 7 of the Code of Civil Procedure. A person authorized to acquire property for public use by eminent domain shall seek to acquire the Property, if at all, only as provided in Code of Civil Procedure section 1240.055. CDFW is a public entity that imposed conditions on approval of a project that were satisfied, in whole or in part, by the creation of this Conservation Easement. If any person seeks to acquire the Property for public use, Grantee shall provide notice to CDFW and comply with all obligations of the holder of a conservation easement under Code of Civil Procedure section 1240.055. If the Conservation Easement is condemned, the net proceeds from the condemnation shall be used in compliance with Government Code section 65966(j).

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14. **Transfer of Conservation Easement.** This Agreement may be transferred by Easement Holder upon written approval of the Third-Party Beneficiaries, which approval shall not be unreasonably withheld or delayed; provided, that Easement Holder shall give the Third-Party Beneficiaries at least sixty (60) calendar days prior written notice of the proposed assignment or transfer. Easement Holder may transfer its rights under this Agreement only to an entity or organization: (a) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and California Government Code Section 65967 (and any successor or other provisions then applicable), or the laws of the United States; and (b) otherwise reasonably acceptable to the Third-Party Beneficiaries. Easement Holder shall require the transferee to record the conveyance in the Official Records of Santa Clara County. The failure of Easement Holder to perform any act provided in this section shall not impair the validity of this Agreement or limit its enforcement in any way. Any transfer under this section shall be subject to the requirements of Section 15 below.

15. **Transfer of Property.** Landowner agrees to incorporate the terms of this Agreement by reference in any deed or other legal instrument by which Landowner divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Landowner further agrees to give written notice to Easement Holder and the Third-Party Beneficiaries of the intent to transfer any interest at least thirty (30) calendar days prior to the date of such transfer. Easement Holder and the Third-Party Beneficiaries shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the covenants, terms, conditions, and restrictions of this Agreement. The failure of Landowner to perform any act provided in this section shall not impair the validity of this Agreement or limit its enforceability in any way. Any successor in interest of Landowner, by acceptance of a deed, lease, or other document purporting to convey an interest in the Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Agreement.

16. **Notices.**

(a) Any notice, demand, request, consent, approval, or communication that Landowner, Easement Holder, or any Third-Party Beneficiary desires or is required to give to the others shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class mail, postage fully prepaid, addressed as follows:

To Landowner: Santa Clara Valley Habitat Agency  
535 Alkire Avenue, Suite 100  
Morgan Hill, CA 95037  
Attn: Executive Officer

With Copy To: Santa Clara Valley Habitat Agency  
535 Alkire Avenue, Suite 100

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Morgan Hill, CA 95037  
Attn: General Counsel

To Easement Holder: Land Trust of Santa Clara Valley  
605 Tennant Avenue, Suite H  
Morgan Hill, CA 95037  
Attn: Executive Director

To USFWS: United States Fish and Wildlife Service  
Sacramento Fish and Wildlife Office  
Coast-Bay Division  
2800 Cottage Way, Room W-2605  
Sacramento, CA 95825  
Attn: Coast-Bay Division Supervisor

To CDFW: California Department of Fish and Wildlife  
Bay Delta Region  
2825 Cordelia Road, Suite 1000  
Fairfield, CA 94534  
Attn: Regional Manager

With a copy to: California Department of Fish and Wildlife  
Office of the General Counsel  
715 P Steet  
Sacramento, California 95814  
Attn: General Counsel

or to such other address as a Landowner, Easement Holder or Third-Party Beneficiary shall designate by written notice to the others. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) calendar days after deposit into the United States mail.

(b) Coordinating Communication. Communication related to advance notice and approval for property access by Easement Holder for the purpose of conducting actions as outlined in the Management Plan may be provided and responded to electronically (e.g., email). Easement Holder's request to access the property shall be provided with enough advanced notice for Landowner to reasonably review the request.

17. **Amendment.** This Agreement may not be amended, modified or otherwise changed in any manner, except by a written amendment executed by the parties hereto, or their successors in interest, it being understood that no easement holder or landowner will ever be obligated to negotiate or enter into any such amendment; and no discretionary approval that this Agreement may allow to be made from time to time by a party will operate to amend or modify any of the terms of this

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Agreement to any extent or in any manner. Any such amendment shall be subject to the prior written consent of the Third-Party Beneficiaries; any amendment made without such consent is void and without effect. Any such amendment shall be consistent with the purposes of the Conservation Easement and shall not affect the perpetual duration of the Conservation Easement. Any such amendment must refer to this Agreement by reference to its recordation data, and must be recorded in the Official Records of Santa Clara County.

18. **Merger.** The doctrine of merger shall not operate to extinguish the Conservation Easement if the Conservation Easement and the Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, a replacement conservation easement, with a new Easement Holder identified by the Implementing Entity and approved by the Third-Party Beneficiaries, containing the same protections embodied in this Agreement shall be recorded against the Property.

19. **No Hazardous Materials Liability.** Landowner represents and warrants that, after reasonable review of Landowner's records as of the date of this Agreement, Landowner has no knowledge or notice of any Hazardous Materials (as defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Property, or transported to or from or affecting the Property. Landowner further represents and warrants that Landowner shall comply with all Environmental Laws (as defined below) in using the Property and that Landowner shall keep the Property free of any material environmental defect, including, without limitation, contamination from Hazardous Materials (as defined below). Without limiting the obligations of Landowner under this Agreement, Landowner hereby releases and agrees to indemnify, protect and hold harmless the Easement Holder Indemnified Parties (as defined in Section 11(a)) from and against any and all Claims (as defined in Section 11(a)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed or released by Easement Holder Indemnified Parties, or their employees or agents. This release and indemnification include, without limitation, Claims for (a) injury to or death of any person or physical damage to any Property; and (b) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (as defined below). If any action or proceeding is brought against any of the Easement Holder Indemnified Parties because of any such Claim, Landowner shall, at the election of and upon written notice, defend such action or proceeding by counsel acceptable to the Easement Holder Indemnified Party.

Despite any contrary provision of this Agreement, the parties do not intend this Agreement to be, and this Agreement shall not be, construed such that it creates in or gives to Easement Holder or the Third Party Beneficiaries any of the following:

- (a) The obligations or liability of a "Landowner" or "operator," as those terms are defined and used in Environmental Laws (as defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 *et seq.*; hereinafter, "CERCLA"); or

(b) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or

(c) The obligations of a responsible person under any applicable Environmental Laws; or

(d) The right to investigate and remediate any Hazardous Materials associated with the Property; or

(e) Any control over Landowner's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 *et seq.*; hereinafter "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 *et seq.*; hereinafter "HTA"); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 *et seq.*; hereinafter "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 25300 *et seq.*; hereinafter "HAS"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Agreement.

The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials.

20. **Representations and Warranties.** Landowner hereby makes the following representations and warranties for the benefit of Easement Holder and the Third-Party Beneficiaries:

(a) **Authority.** Landowner has good and sufficient title to the Property (including all appurtenances thereto, including, without limitation, all minerals and mineral rights and all water and water rights, and Landowner has full right and authority to enter into this Agreement and convey the Conservation Easement to Easement Holder. There are no monetary liens and encumbrances recorded against the Property, except as expressly identified in **Exhibit E**. All deeds of trust and mortgages, if any, recorded against the Property, or any portion thereof, are and shall continue to be subordinated to this Conservation Easement. A subordination agreement regarding the use restrictions applicable to a portion of the Easement Area set forth in Document No. 13338719 recorded June 20, 1996, in the Official Records of the Santa Clara County Recorder ("Official Records") will be recorded simultaneously with this Agreement; documentation of such subordination is contained in **Exhibit E-1**.

(b) **Compliance with Laws.** Landowner has not received notice of, and has no knowledge of, any material violation of any federal, state, county or other governmental or quasi-governmental statute, ordinance, regulation, law or administrative or judicial order with respect to the Property.

(c) **No Litigation.** There is no action, suit or proceeding which is pending or threatened against the Property or any portion thereof relating to or arising out of the Landownership or use of the Property, or any portion thereof, in any court or in any federal, state, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality.

## 21. **General Provisions.**

(a) **Controlling Law; Jurisdiction; Venue.** The interpretation and performance of this Agreement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state, and by applicable federal law. Any suit, mediation, arbitration, litigation, hearing or proceeding relating to this Agreement shall be brought only in Santa Clara County, California.

(b) **Liberal Construction.** It is the intent of this Agreement to preserve the condition of the Property and each of the Conservation Values protected herein, notwithstanding economic, or other hardship or changes in circumstances or conditions. The provisions of this Agreement shall be liberally construed to effectuate the purposes of the Conservation Easement and to allow Landowner's use and enjoyment of the Property to the extent consistent with such purposes. Liberal construction is expressly required for purposes of effectuating this Agreement in perpetuity, notwithstanding changed conditions of any kind. The Conservation Easement created by this Agreement is the intended best and most productive use of the Property. No remedy or election given by any provision in this Agreement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Agreement. In the event of any conflict between the provisions of this Agreement and the provisions of any use and zoning restrictions of the State of California, the County of Santa Clara, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) **Meet and Confer.** In the event either party determines there is a need to meet and confer to resolve any discrepancy of findings related to, or to validate or determine compliance with, this Conservation Easement, then authorized representatives from all affected parties will act in good faith to meet and confer in order to resolve the discrepancy

or issue in a timely manner, before any additional adverse action, finding or litigation is pursued.

(d) **Severability.** If a court of competent jurisdiction voids or invalidates on its face any provision of this Agreement, such action shall not affect the remainder of this Agreement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Agreement to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

(e) **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Agreement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 17.

(f) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Landowner's title, rights, or interest in or to the Property in whole or in part, in any respect.

(g) **Successors.** The covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Property.

(h) **Termination of Rights and Obligations.** A party's rights and obligations under this Agreement terminate upon transfer of the party's interest in the Agreement, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(i) **Captions and Headings.** The captions and headings used in this Agreement have been inserted solely for convenience of reference and are not a part of this Agreement and shall have no effect upon its construction or interpretation.

(j) **Additional Easements.** Landowner shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is subordinate to this Agreement) or grant or otherwise abandon or relinquish any water right or agreement relating to the Property, without first obtaining the written consent of Easement Holder and the Third-Party Beneficiaries. Easement Holder and the Third-Party Beneficiaries may withhold such consent if it determines that the proposed interest or transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values. This section shall not prohibit transfer of a fee or leasehold interest in the Property that is subject to this Agreement and complies with Section 15.

(k) **Recording.** Easement Holder shall record this Agreement in the Official Records of Santa Clara County and may re-record it at any time as Easement Holder deems necessary to preserve its rights hereunder.

(l) **Authority.** Each person executing this Agreement on behalf of a Party to this Agreement warrants and represents that he or she is duly authorized to execute and deliver this Agreement on such Party's behalf.

(m) **Compliance with Laws.** Easement Holder, the Easement Holder Indemnified Parties, Landowner, the Landowner Indemnified Parties, and the Third-Party Beneficiaries shall at all times comply with all local, state, and federal laws while on, in or about the Property.

(n) **Counterparts.** The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

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IN WITNESS WHEREOF, Landowner and Easement Holder have executed this Agreement the day and year first above written.

**LANDOWNER:**  
**Santa Clara Valley Habitat Agency, a California Joint Powers Authority**

By: \_\_\_\_\_  
Name: Edmund Sullivan  
Title: Executive Officer

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: Valerie Armento  
Title: General Counsel for SCVHA

**EASEMENT HOLDER:**  
**Land Trust of Santa Clara Valley, a California 501(c)3 Non-Profit Corporation**

By: \_\_\_\_\_  
Name: Trina Hineser  
Title: Executive Director

**EXHIBITS:**

- Exhibit A -- Legal Description of the Property**
- Exhibit B -- Maps of the Property**
- Exhibit C -- Initial Conservation Values**
- Exhibit D -- Allowed Uses**
- Exhibit E -- Title Exceptions**
- Exhibit E -1 Subordination Agreement**

## **Exhibit A**

### **Legal Description of the Property**

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

**PARCEL A:**

LOTS 11 AND 12, AS SHOWN ON THAT CERTAIN MAP ENTITLED, MORGAN HILL RANCH MAP NO. 3 WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON SEPTEMBER 21, 1892, IN BOOK G OF MAPS PAGE(S) 20 AND 21.

EXCEPTING THEREFROM ALL THAT PORTION LYING WITHIN THE BOUNDS OF TRACT 8382, WHICH MAP WAS FILED FOR RECORD ON JULY 2, 1991 IN BOOK 627 OF MAPS, PAGES 25 THROUGH 28.

**PARCEL B:**

**PARCEL ONE:**

PORTION OF LOTS 13, 14 AND 15, "MORGAN HILL RANCH MAP NO. 3", RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON SEPTEMBER 21, 1892, IN BOOK G OF MAPS PAGE(S) 20, SANTA CLARA COUNTY RECORDS, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN UNDERGROUND GRANITE MONUMENT MARKED "B" STANDING IN THE CENTER LINE OF LLAGAS AVENUE AND LINE BETWEEN SAID LOTS 15 AND 16 OF MAP NO. 3 ABOVE REFERRED TO AND BEING ALSO THE WESTERN TERMINUS OF THAT PART OF SAID LLAGAS AVENUE LAID OUT 100 LINKS WIDE, AND RUNNING THENCE ALONG THE LINE BETWEEN SAID LOTS 15 AND 16 AND CENTER LINE OF LLAGAS AVENUE LAID OUT 40 FEET WIDE NORTH 84° WEST 4.00 CHAINS SOUTH 66° WEST 2.67 CHAINS SOUTH 29° WEST 1.57 CHAINS AND SOUTH 1/4° EAST 0.86 CHAINS TO THE CORNER BETWEEN SAID LOTS 15 AND 16 IN SAID CENTER LINE, FROM WHICH CORNER A WHITE OAK 5 FEET IN DIAMETER AND MARKED B.T.16 BEARS NORTH 25° WEST 1.80 CHAINS AND A 2" X 3" WHITE WITNESS POST IN NORTHERN LINE OF SAID LLAGAS AVENUE AND MARKED "W.P.15" AND "16" BEARS NORTH 55° WEST 37 LINKS; THENCE LEAVING SAID AVENUE AND CONTINUING ALONG THE LINE BETWEEN SAID LOTS 15 AND 16 NORTH 55° WEST 10.99 CHAINS TO THE CENTER OF RAVINE "C" AT THE LAUREL STAKE IN MOUND OF ROCKS MARKED "15 AND 16A" FROM WHICH STAKE A WITNESS POST ON SOUTHWEST SIDE OF RAVINE MARKED "M.W.P. 16 AND 15" BEARS SOUTH 55° EAST 23 LINKS, AND FROM WHICH WITNESS POST A LIVE OAK 16" IN DIAMETER MARKED B.T.W.P. 16 BEARS SOUTH 78° 35' WEST 74 LINKS; THENCE STILL ALONG THE LINE BETWEEN SAID LOTS 15 AND 16 AND ALONG SAID CENTER LINE OF SAID RAVINE "C" NORTH 52° 36' WEST 12.11 CHAINS AND NORTH 19° WEST 3.43 CHAINS TO THE POINT OF INTERSECTION OF SAID CENTER LINE OF SAID RAVINE "C" WITH THE NORTHERN LINE OF RANCHO OJO DE AGUA DE LA COCHE FROM WHICH POINT A 2" X 3" WHITE WITNESS POST MARKED W.P. 15 AND STANDING ON EASTERN BANK OF SAID RAVINE WHICH BEARS NORTH 58° EAST 10 LINKS; THENCE ALONG SAID NORTHERN RANCHO LINE, BEING ALSO THE NORTH LINE OF SAID LOTS 15 AND 14 AND 13 OF SAID MAP NO. 3, NORTH 58° EAST 36.91 CHAINS TO A 2" X 3" WHITE STAKE MARKED "HILL 12 AND 13" AND SET FOR COMMON CORNER FOR LOTS 12 AND 13 OF SAID MAP NO. 3, IN SAID NORTHERN RANCHO LINE; THENCE LEAVING SAID RANCHO LINE AND RUNNING ALONG THE LINE BETWEEN SAID LOTS 12 AND 13, SOUTH 40°

Davidson Parcels Conservation Easement



15' EAST 28.45 CHAINS TO A STAKE NEAR FOOT OF HILLS MARKED "LINE 12 AND 13" AND SET FOR THE NORTHERNMOST CORNER OF THE 14 ACRE VALLEY TRACT IN LOT 13; THENCE ALONG THE NORTHWEST LINE OF SAID 14 ACRE TRACT, SOUTH 49° 45' WEST 10 CHAINS TO A 2" X 3" WHITE STAKE MARKED "LINE 13 AND 14" AND SET FOR THE WESTERNMOST CORNER OF SAID 14 ACRE TRACT AND ALSO THE NORTHERNMOST CORNER OF THE 25.24 ACRE TRACT IN LOTS 14 AND 15, AND THENCE ALONG THE NORTHWESTERLY LINE OF SAID 25.24 ACRE TRACT, SOUTH 70° 26' WEST 16.04 CHAINS TO THE POINT OF COMMENCEMENT.

EXCEPTING THEREFROM SO MUCH THEREOF AS GRANTED TO CASWIL, A CO-PARTNERSHIP BY DEED RECORDED MAY 29, 1964 IN BOOK 6523, PAGE 286 OFFICIAL RECORDS, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN UNDERGROUND GRANITE MONUMENT MARKED "B" STANDING IN THE CENTER LINE OF LLAGAS AVENUE, AND LINE BETWEEN SAID LOTS 15 AND 16, AS SAID LOTS ARE SHOWN UPON THAT CERTAIN MAP ENTITLED, "MORGAN HILL RANCH MAP NO. 3" SAID MAP BEING FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON SEPTEMBER 21, 1892 IN BOOK "G" OF MAPS, PAGES 20 AND 21; THENCE ALONG THE LINE BETWEEN SAID LOTS 15 AND 16 AND CENTER LINE OF LLAGAS AVENUE, 40.00 FEET WIDE, NORTH 84° WEST 264.00 FEET, SOUTH 65° WEST 176.22 FEET, SOUTH 29° WEST 103.62 FEET; THENCE SOUTH 0° 15' EAST 36.76 FEET TO THE CORNER BETWEEN LOTS 15 AND 16; THENCE LEAVING SAID CENTER LINE OF LLAGAS AVENUE AND CONTINUING ALONG THE LINE BETWEEN SAID LOTS 15 AND 16, NORTH 55° WEST 725.34 FEET, NORTH 52° 36' WEST 799.26 FEET, NORTH 19° WEST 226.38 FEET TO A POINT ON THE NORTHERLY LINE OF RANCHO OJO DE AGUA DE LA COCHE; THENCE ALONG SAID NORTHERLY LINE BEING ALSO THE NORTHERLY LINE OF SAID LOTS 15, 14 AND 13 OF SAID MORGAN HILL RANCH MAP NO. 3, NORTH 58° EAST 1481.04 FEET; THENCE SOUTH 32° 49' 81" EAST 1103.07 FEET, SOUTH 46° 23' 57" EAST 800.85 FEET TO A POINT IN THE NORTHERLY LINE OF THE 25.24 ACRE TRACT IN LOTS 14 AND 15; THENCE ALONG THE NORTHERLY LINE OF SAID 25.24 ACRE TRACT, SOUTH 70° 26' WEST 712.14 FEET TO THE POINT OF BEGINNING AND BEING A PORTION OF THE RANCHO OJO DE AGUA DE LA COCHE, SANTA CLARA COUNTY, CALIFORNIA.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES OVER A STRIP OF LAND 30.00 FEET IN WIDTH, THE NORTHEASTERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE DIVIDING LINE OF LOTS 13 AND 14, WITH THE CENTER LINE OF LLAGAS AVENUE, AS SAID LOTS AND AVENUE ARE SHOWN UPON THAT CERTAIN MAP ENTITLED, "MORGAN HILL RANCH MAP NO. 3", RECORDED ON SEPTEMBER 21, 1892 IN BOOK "G" OF MAPS, PAGES 20 AND 21, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING, NORTH 40° 15' WEST ALONG THE DIVIDING LINE BETWEEN LOTS 13 AND 14 FOR A DISTANCE OF 924.00 FEET AND THE TERMINUS OF SAID EASEMENT.

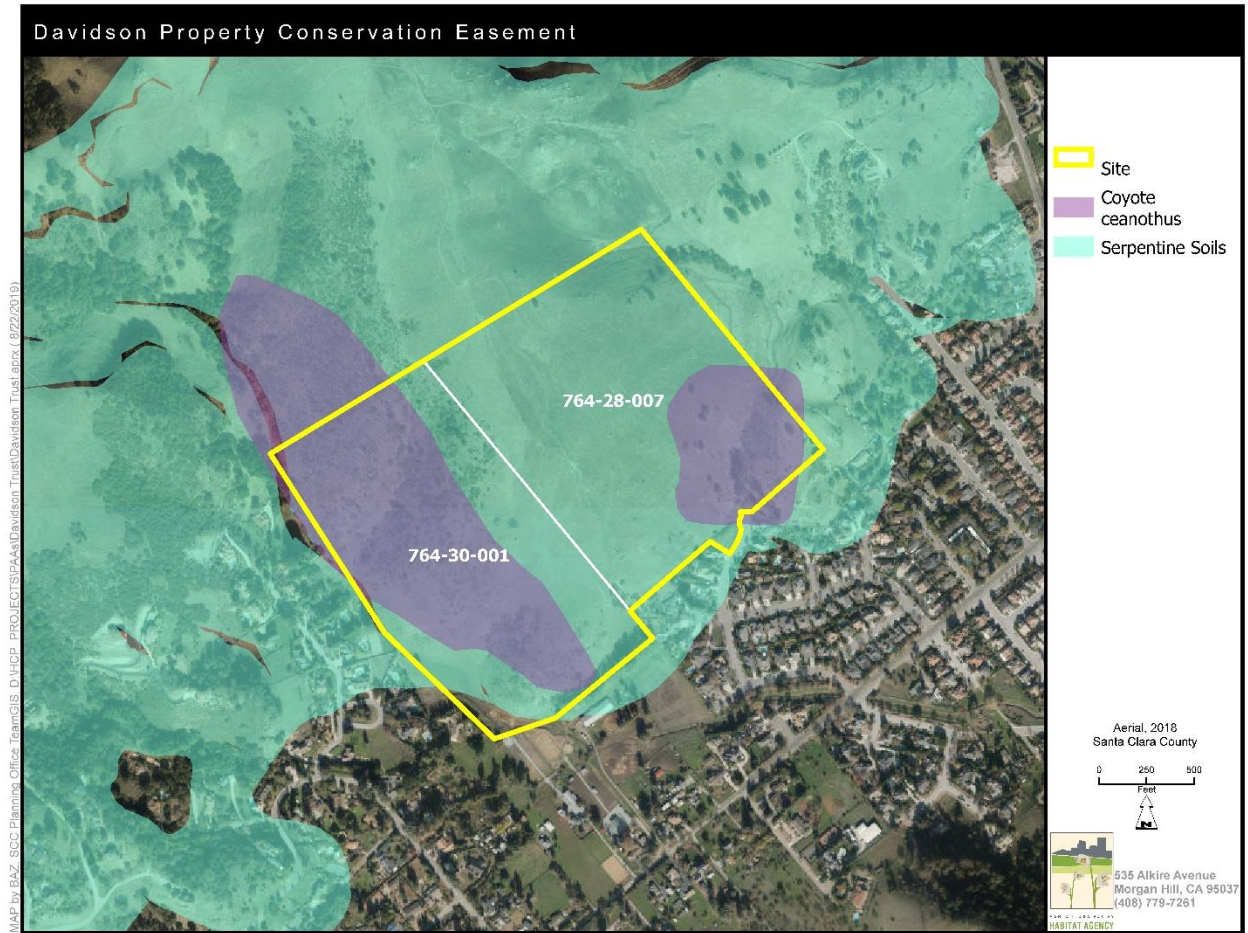
THE NORTHWESTERLY TERMINUS OF SAID EASEMENT HAVING A BEARING OF NORTH 79° 26' EAST, SAID EASEMENT BEING RESERVED IN THE DEED FROM ANDRE L. POIREE, ET UX TO EDWARD DAHL, JR., ET UX, RECORDED DECEMBER 10, 1976 IN BOOK C467 OFFICIAL RECORDS, PAGE 343, SANTA CLARA COUNTY RECORDS.

APN: 764-28-007 (PARCEL A) AND 764-30-001 (PARCEL B)

Davidson Parcels Conservation Easement

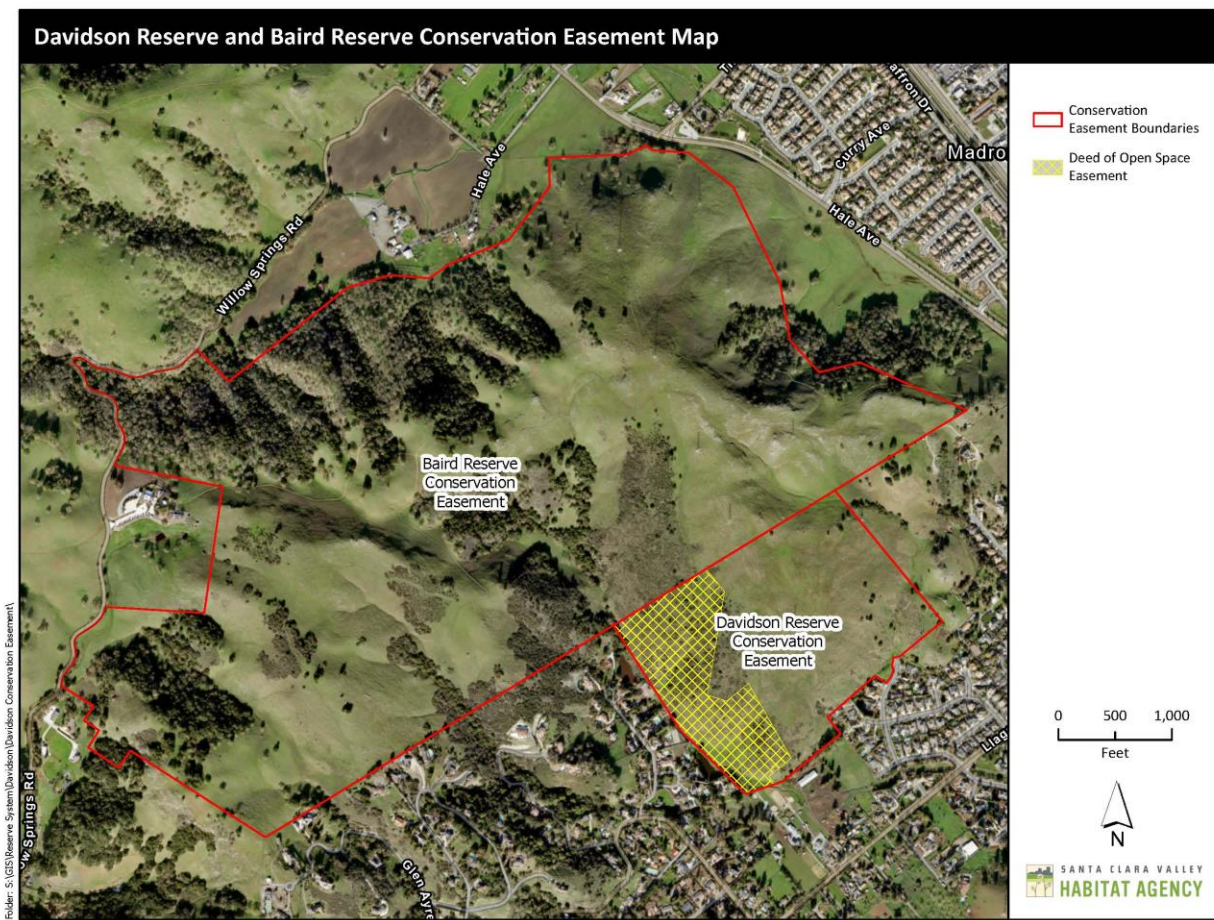
## Exhibit B

### Maps of the Property



Davidson Parcels Conservation Easement

B-1



Davidson Parcels Conservation Easement

B-2

## Exhibit C

### Initial Conservation Values

In accordance with Habitat Plan Section 8.6.3, this Exhibit C sets forth the following land-cover types and covered species habitat described in Habitat Plan Chapter 3 that are present on the Property. The Pre Acquisition Analysis and the Baseline Report which provide additional detail are on file with the Landowner and Easement holder and are incorporated herein by reference. (“Acres Rec” is acreage recorded on title and “Acres Calc” is acreage determined by GIS).

|                                 |              |              |            |
|---------------------------------|--------------|--------------|------------|
| APN                             | Owner        | Acres_Rec    | Acres_Calc |
| 76430001                        | SCVHA        | 44.96        | 44.96      |
| 76428007                        | SCVHA        | 0.01         | 48.94      |
|                                 |              |              |            |
| land_cover_name                 | ACRES        |              |            |
| Mixed Serpentine Chaparral      | 38.0         |              |            |
| Rural Residential               | 0.4          |              |            |
| Serpentine Bunchgrass Grassland | 54.4         |              |            |
| Urban - Suburban                | 1.1          |              |            |
|                                 |              |              |            |
| Stream Length (miles)           | 0.4          |              |            |
|                                 |              |              |            |
| Con_Area_Name                   | unit_num     | reserve_alt1 | ACRES      |
| Llagas                          | 3            | Low          | 65.673619  |
|                                 |              |              |            |
|                                 |              |              |            |
| Landcover by CAZ, Llagas 3 Low  |              |              |            |
| land_cover_name                 | ACRES        |              |            |
| Mixed Serpentine Chaparral      | 10.25484     |              |            |
| Rural Residential               | 0.235996     |              |            |
| Serpentine Bunchgrass Grassland | 54.373343    |              |            |
| Urban - Suburban                | 0.80944      |              |            |
|                                 |              |              |            |
|                                 |              |              |            |
| Habitat Units                   |              |              |            |
| CNAME                           | UNIT_NUM     | UNIT_NAME    | Acres      |
| CALIFORNIA TIGER SALAMANDER     | None Present |              |            |
|                                 |              |              |            |
| CNAME                           | UNIT_NAME    | UNIT_NUM     | ACRES      |
| BAY CHECKERSPOT BUTTERFLY       | Hale         | 10           | 91.823594  |
|                                 |              |              |            |
| CNAME                           | UNIT_NAME    | Acres        |            |
| CALIFORNIA RED-LEGGED FROG      | None Present |              |            |

|                                                                      |                       |             |               |
|----------------------------------------------------------------------|-----------------------|-------------|---------------|
| Modeled Habitat                                                      |                       |             |               |
| species_name                                                         | habitat_type          | ACRES       |               |
| Bay Checkerspot Butterfly                                            | NA                    | 54.447289   |               |
| California Red-legged Frog                                           | Dispersal Habitat     | 83.800773   |               |
| California Red-legged Frog                                           | Primary Habitat       | 0.425491    |               |
| California Red-legged Frog                                           | Refugia Habitat       | 8.262932    |               |
| California Tiger Salamander                                          | Secondary Habitat     | 92.413363   |               |
| Fragrant fritillary                                                  | Primary Habitat       | 53.626261   |               |
| Loma Prieta hoita                                                    | Secondary Habitat     | 37.970819   |               |
| Metcalf Canyon jewelflower                                           | Primary Habitat       | 53.626261   |               |
| Most beautiful jewelflower                                           | Primary Habitat       | 92.413363   |               |
| Smooth lessingia                                                     | Primary Habitat       | 54.442544   |               |
| Tricolored Blackbird                                                 | Secondary Habitat     | 54.442544   |               |
| Western burrowing owl                                                | Overwintering Habitat | 53.428294   |               |
| Western pond turtle                                                  | Primary Habitat       | 13.430565   |               |
| Western pond turtle                                                  | Secondary Habitat     | 64.399648   |               |
|                                                                      |                       |             |               |
| Used CNDDDB March 2019 with Accuracies of "specific" and "80 meter." |                       |             |               |
| Covered Plant Occurrences                                            |                       |             |               |
| cnddb, Current Date                                                  |                       |             |               |
| Common Name                                                          | Locational Accuracy   | Survey Date | Observed Date |
| most beautiful jewelflower                                           | specific area         | 20020504    | 20020504      |
| smooth lessingia                                                     | specific area         | 19881022    | 19881022      |
| Santa Clara Valley dudleya                                           | specific area         | 20060726    | 20060726      |
| Coyote ceanothus                                                     | specific area         | 201102XX    | 201102XX      |
|                                                                      |                       |             |               |
| Used "species_occurrences_2012_otherSources."                        | None present          |             |               |
|                                                                      |                       |             |               |
| Used Habitat Agency OccurrenceData.gdb.                              | None present          |             |               |
|                                                                      |                       |             |               |
| Occurrences from the Plan, Table 5-16                                |                       |             |               |
| source                                                               | species_name          | Account     | ICF_ID        |
| CNDDDB                                                               | Coyote ceanothus      | Yes         | 1             |
|                                                                      |                       |             |               |

## **Exhibit D**

### **Allowed Uses**

1. Grazing – Cattle grazing is allowed on the Property as a land management tool to support healthy serpentine plant communities, control invasive species, and for fire suppression purposes. Cattle grazing will be managed by Landowner, as Implementing Entity and shall be conducted in a manner so as not to degrade the conservation values.
2. Site Visits - Both Easement Holder (in coordination with Landowner) and Landowner shall have the right to enter for the purposes of site visits to board members, prospective donors, employees, contractors, or other agents or guests, and may document such visits for promotional purposes.

**Exhibit E**

**Title Report Including Exceptions**

**Exhibit E-1**

**Subordination Agreement**



## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: October 4, 2023**

PREPARED BY:

Shane Palsgrove, Police Chief

APPROVED BY: City Manager

## **CARRYING A CONCEALED WEAPON LICENSE UPDATE**

### **RECOMMENDATION(S)**

Accept report.

### **COUNCIL PRIORITIES, GOALS & STRATEGIES**

#### **City Council Ongoing Priorities**

Enhancing Public Safety

Supporting our Youth, Seniors, and Entire Community

Preserving and Cultivating Public Trust

Advancing Regional Initiatives

#### **2022-2023 Strategic Priorities**

Fiscal Sustainability

### **REPORT NARRATIVE:**

The City Council adopted a Carrying Concealed Weapons (CCW) license fee schedule on April 5, 2023. CCW license information can be found at <https://www.morganhill.ca.gov/2373/Carry-Concealed-Weapon-License>.

The City Council instructed the Police Department to revisit the CCW license fee structure in September 2023 and provide the City Council with a comparison of the estimated time and the actual time it takes to process a CCW license application. The Police Department has processed the following number of CCW licenses as of September 29, 2023:

- CCW License Applications Received: 17
- CCW Licenses Issued/Approved: 5
- CCW License Applications Denied or Withdrawn: 4
- CCW License Applications Currently Under Investigation: 8

Staff estimated it costs the City \$807 to process an application for a new CCW license; however, \$800 was established as the processing recovery fee as calculated from the full burdened rate of department personnel's time totaling eight hours collectively (Community Service Officer, Police Sergeant and Police Captain (totaling six hours, one

hour and one hour, respectively).

Note, only applicants who are approved to receive a CCW license are required to pay the full processing amount pursuant to Penal Code Section 26190(b)(2). The law only allows 20% (\$144.00) of this fee to be collected upon the filing of the initial CCW license application, with the remaining balance collected *only* upon the issuance of the license. In this manner, applicants who are denied a CCW license are not charged the remaining 80% (\$656.00) balance of the City's processing fees. It should also be noted the City is not recuperating time spent on applications that are not issued.

### **Fees for New CCW License**

Various fees associated with obtaining a CCW license are collected at three separate times: fingerprinting, application submission, and CCW license issuance.

Fees paid to the City of Morgan Hill are payable by credit or debit card, check, or cash to the City.

### **Standard CCW License \$957, valid for 2 years**

- **\$113** if fingerprinted at the Morgan Hill Police Department. This amount is collected in full at the time the applicant is fingerprinted. The fee is comprised of: \$44 DOJ Firearm Eligibility Report, \$49 DOJ & FBI Live Scan reports, \$20 MHPD fingerprint fee (this fee may vary if fingerprinted elsewhere). This fee is non-refundable and has no bearing on the issuance or denial of a CCW license.
- **\$188** Initial Fee to be paid through Permitium at the time the application is submitted. The fee is comprised of: \$44 DOJ License fee, \$144 City fees. This fee is non-refundable and has no bearing on the issuance or denial of a CCW license.
- **\$656** Issuance fee to be paid through Permitium by applicants who are issued their CCW license. The fee is comprised of: \$656: the balance of the City fees related to the recovery of cost and/or processing, issuing the license, and enforcing the license [[PC 26190\(b\)\(1\)](#)].

### **Judge, Magistrate, Full-time Commissioner \$979, valid for 3 years**

- **\$113** if fingerprinted at the Morgan Hill Police Department, this amount is collected in full at the time the applicant is fingerprinted. The fee is comprised of: \$44 DOJ Firearm Eligibility Report, \$49 DOJ & FBI Live Scan reports, \$20 MHPD fingerprint fee (this fee may vary if fingerprinted elsewhere). This fee is non-refundable and has no bearing on the issuance or denial of a CCW license.
- **\$210** Initial Fee to be paid through Permitium at the time the application is submitted. The fee is comprised of: \$66 DOJ License fee and \$144 City fees.

This fee is non-refundable and has no bearing on the issuance or denial of a CCW license.

- **\$656** Issuance fee to be paid through Permitium by applicants who are issued their CCW license. The fee is comprised of: \$656 the balance of the City fees related to the recovery of cost and/or processing, issuing the license, and enforcing the license [[PC 26190\(b\)\(1\)](#)].

### **Reserve Peace or Custodial Officer \$1,001, valid for 4 years**

- **\$113** if fingerprinted at the Morgan Hill Police Department. This amount is collected in full at the time the applicant is fingerprinted. The fee is comprised of: \$44 DOJ Firearm Eligibility Report, \$49 DOJ & FBI Live Scan reports, \$20 MHPD fingerprint fee (this fee may vary if fingerprinted elsewhere). This fee is non-refundable and has no bearing on the issuance or denial of a CCW license.
- **\$232** Initial Fee to be paid through Permitium at the time the application is submitted. The fee is comprised of: \$88 DOJ License fee and \$144 City fees. This fee is non-refundable and has no bearing on the issuance or denial of a CCW license.
- **\$656** Issuance fee to be paid through Permitium by applicants who are issued their CCW License. The fee is comprised of \$656 for the balance of the City fees related to the recovery of cost and/or processing, issuing the license, and enforcing the license [[PC 26190\(b\)\(1\)](#)].

### **Renewal Application**

- Payment of Renewal application fees, pending City Council approval at a date to be determined, are collected at the time of submitting the application through Permitium:
  - Standard CCW Renewal License: \$52 DOJ + Undetermined City cost/recovery processing fee.
  - Judge, Magistrate, Full-time Commissioner Renewal License: \$74 DOJ + Undetermined City cost/recovery processing fee.
  - Reserve Peace or Custodial Officer Renewal License: \$96 DOJ + Undetermined City cost/recovery processing fee.

### **Time Study**

A time study has been completed for each application. The following is the average time spent processing a single CCW license application, separated between those

whose application was either approved or denied:

- Approved CCW Applicants (n=5): 496 minutes (approximately 8 hrs., 15 min.)
- Denied CCW Applicants (n=4): 338 minutes (approximately 5 hrs., 35 min.)

Note, the Police Chief's time is not included in the time study.

Time was recorded upon communication with all applicants through phone and email exchanges, application and legal document review, in-person meetings, background questions and checks, reviewing and examining a variety of documents and systems including but not limited to:

Residence Check and Confirmation of Residing within the Morgan Hill Police Department's Boundary  
 Driver's License  
 Department of Justice and FBI  
 National Crime Information Center and Wanted Persons System  
 Automated Firearms System  
 Missing and Unidentified Persons  
 California Restrained Persons System  
 Santa Clara County Court Portal  
 Armed and Prohibited Persons  
 Supervised Release File  
 Mental Health Firearms Prohibited Persons  
 Santa Clara County Justice Information Center  
 California Sex and Arson Registry  
 Record Management Systems  
 Calls for Service check in current or prior jurisdictions  
 Military Certificate of Release or Discharge from Active Duty  
 Social Media Inquiries  
 Interviewing all Character References  
 Interviewing the Applicant  
 Contacting and Reviewing Psychological Decisions  
 Firearms Proficiency and Qualification Certificates  
 Presentation of all Applicants to the Police Department's Command Staff by the Lead Processor with Approval or Denial Recommendations

### **Recommendations**

Staff recommends continuing with the current fee schedule as previously adopted by City Council.

Additionally, Santa Clara County and most of the cities in the county are in the process of updating their CCW license fee schedule to better reflect the full burdened rate of their department personnel's time to process CCW licenses. San Jose Police Department recently completed updating their fee schedule and their CCW license fee is now \$1,290.

Furthermore, introducing a "fee reduction" for applicants is not recommended by staff.

The license process, including staff's time, is the same for each applicant whether they are ultimately issued a CCW license or not. It is not appropriate to introduce other factors into the license process to determine the amount of the licensing fee an applicant will pay. For example, pursuant to the Buren case, applicants cannot be asked why they want a CCW license nor do they have to demonstrate good cause or special need, so it would not be pertinent to consider these factors in a decision to issue a CCW license.

**COMMUNITY ENGAGEMENT:**

City Council adopted a CCW license fee schedule on April 5, 2023.

**ALTERNATIVE ACTIONS:**

City Council can propose a policy to recuperate only a percentage of staff time.

**PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

City Council adopted a Carrying Concealed Weapons license fee schedule on April 5, 2023.

**FISCAL AND RESOURCE IMPACT:**

This CCW license fee update is part of the Police Department's workplan.

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

Not a Project

## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: October 4, 2023**

PREPARED BY:

Maria Angeles, Senior Civil Engineer

APPROVED BY: City Manager

### **SECOND AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT WITH HARRIS & ASSOCIATES, INC. FOR ON-CALL ENGINEERING PLAN REVIEW AND TECHNICAL SUPPORT SERVICES FOR LAND DEVELOPMENT ENGINEERING**

#### **RECOMMENDATION(S)**

1. Approve the Second Amendment to the professional service agreement with Harris & Associates, Inc. for on-call engineering plan review and technical support services for Land Development Engineering to add \$180,000 to contract amount for a total not-to-exceed amount of \$631,000 with the term of the agreement unchanged; and
2. Authorize the City Manager to execute the Second Amendment.

#### **COUNCIL PRIORITIES, GOALS & STRATEGIES**

##### **City Council Ongoing Priorities**

Protecting the Environment and Preserving Open Space and Agricultural Land

##### **2022-2023 Strategic Priorities**

Fiscal Sustainability

#### **REPORT NARRATIVE:**

The City has a current contract with Harris & Associates, Inc. (Harris) for staff augmentation services to assist the Land Development Engineering section of the Engineering Utilities Department with engineering plan reviews, stormwater design reviews, and for stormwater program support. The services performed by Harris are on an as-needed basis and have been heavily focused on post-construction stormwater design reviews of land development projects for the past few years. All new or redevelopment projects that create, and/or replace 2,500 square feet or more of impervious surface are subject to the post-construction stormwater requirements contained in the California Regional Water Quality Control Board's Central Coast Region Resolution No. R3-2013-0032. A project may be required to meet one or more of the following post-construction or performance requirements: site design and runoff reduction; water quality treatment; runoff retention; and peak management.

On August 5, 2020, City Council approved Harris' original two-year contract that expired on June 30, 2022 and with an original contract amount of \$220,000. Harris was selected as one of the on-call consultants from the Request for Qualifications issued by Land Development Engineering on May 19, 2020.

As allowed by the original contract, a subsequent First Amendment was approved by the City Manager to extend the term of the contract for another two years (until June 30, 2024), and to increase the contract amount by \$231,000. The First Amendment increased the total not-to-exceed contract amount to \$451,000. To date, the total contract amount has been used up.

The purpose of this proposed Second Amendment to Harris' contract is to increase the total not-to-exceed contract amount by \$180,000 for FY 2023-24 which will result in a total not-to-exceed contract amount of \$631,000. This new amendment will not change the current terms of the agreement.

Harris' services will continue to focus on stormwater design reviews of land development projects and on any needed stormwater program support. Land Development Engineering expects to receive more development applications, especially for residential projects, and will need Harris' specialized stormwater services and staffing capacity to ensure stormwater compliance by all regulated projects and to meet review deadlines.

The contracts of Land Development Engineering's various on-call consultants will end on or prior to June 30, 2024. Land Development Engineering will be issuing a new Request for Qualifications in November/December 2023 and new contracts for selected on-call consultants will be presented for approval to City Council in early 2024.

### **COMMUNITY ENGAGEMENT:**

Inform

This report serves to inform the community of the recommended amendment to the contract for on-call engineering plan review and technical support services with Harris & Associates, Inc.

### **ALTERNATIVE ACTIONS:**

The Council could decide not to approve this amendment. This will be an infeasible alternative as the Land Development Engineering team does not have sufficient expertise to perform the required stormwater design reviews and may result in project designs that do not fully comply with the post-construction stormwater requirements. This could also result in violations and fines against the City by the Central Coast Water Board.

### **PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

On August 5, 2020, City Council approved and authorized the City Manager to execute and administer four professional service agreements for three types of on-call services:

- 1) On-Call Engineering Plan Review and Technical Support Services for Land

Development Engineering; 2) On-Call Map Review and City Surveyor Services also for Land Development Engineering, and 3) On-Call Project Management and Inspection for various Capital Improvement Program Projects. Harris was one of two consultants with agreements for on-call engineering plan review and technical support services that required Council approval.

**FISCAL AND RESOURCE IMPACT:**

The current agreement with Harris & Associates expires on June 30, 2024 and has a total not-to-exceed amount of \$451,000. If the requested appropriation and Second Amendment are approved, the total not-to-exceed amount will be increased to \$631,000, an increase of \$180,000. There are sufficient funds programmed in this year's budget in the Development Services Fund (Fund 206).

**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 are exempted from environmental review under Section 15061(b)(3) of the State CEQA Guidelines. The contract is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.



**SECOND AMENDMENT TO AGREEMENT  
HARRIS & ASSOCIATES, INC.**

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on \_\_\_\_\_ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and HARRIS & ASSOCIATES, INC., a California Corporation ("CONSULTANT"), hereinafter referred to collectively as the "Parties".

**RECITALS**

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_.
2. The CITY and CONSULTANT entered into that "SERVICE AGREEMENT FOR DESIGN PROFESSIONALS" made as of August 18, 2020, for consultant services for a maximum compensation of Two Hundred Twenty Thousand Dollars (\$220,000.00) ("SERVICE AGREEMENT FOR DESIGN PROFESSIONALS").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of July 12, 2022, under which the maximum compensation under the CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was increased to Four Hundred Fifty-One Thousand Dollars (\$451,000.00) and the term extended. The SERVICE AGREEMENT FOR DESIGN PROFESSIONALS and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

**AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed SIX HUNDRED THIRTY-ONE THOUSAND DOLLARS (\$631,000.00) and shall be billed based on the rate and basis set forth in **Exhibit B, Exhibit B dated June 21, 2022, and Exhibit B dated October 5, 2023.**"

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

3. **Conflicts.** In the event of a conflict between the terms and provisions of this SECOND AMENDMENT to Agreement and the terms and provisions of the CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS or any earlier amendment, the terms of this SECOND AMENDMENT to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

\_\_\_\_\_  
Michelle Bigelow, City Clerk

Date: \_\_\_\_\_

\_\_\_\_\_  
Christina Turner, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

**HARRIS & ASSOCIATES, INC.**

\_\_\_\_\_  
Donald A. Larkin, City Attorney

Date: \_\_\_\_\_

\_\_\_\_\_  
By:

Title: \_\_\_\_\_

Print Name and Title of Signer.

If Corporate: Chairman, President,  
or Vice President

Date: \_\_\_\_\_

\_\_\_\_\_  
By:

Title: \_\_\_\_\_

Print Name and Title of Signer.

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

Date: \_\_\_\_\_

**EXHIBIT B**  
**DATED OCTOBER 5, 2023**  
**SCHEDULE OF COMPENSATION RATES**

CONSULTANT'S services will be billed on a time-and-materials basis according to the Standard Rates shown below effective October 5, 2023 – June 30, 2024.

|                           | Hourly Rates |       |
|---------------------------|--------------|-------|
|                           | 2023         | 2024  |
| Principal-in-Charge       | \$290        | \$300 |
| Senior Project Manager    | \$250        | \$260 |
| Project Manager           | \$220        | \$230 |
| Assistant Project Manager | \$190        | \$200 |
| Traffic Engineer          | \$260        | \$280 |
| Senior Project Engineer   | \$190        | \$200 |
| Project Engineer          | \$170        | \$180 |
| Design Engineer           | \$155        | \$165 |

FIRST AMENDMENT TO AGREEMENT  
HARRIS & ASSOCIATES, INC.

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 7/12/2022 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and HARRIS & ASSOCIATES, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

- 1. This First Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on August 5, 2020.
- 2. The CITY and CONSULTANT entered into that "SERVICE AGREEMENT FOR DESIGN PROFESSIONALS" made as of August 18, 2020, for consultant services for a maximum compensation of Two Hundred Twenty Thousand Dollars (\$220,000.00) ("SERVICE AGREEMENT FOR DESIGN PROFESSIONALS"). The SERVICE AGREEMENT FOR DESIGN PROFESSIONALS is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from August 18, 2020, until June 30, 2024."

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed FOUR HUNDRED FIFTY-ONE THOUSAND AND NO/00 DOLLARS (\$451,000.00) and shall be billed based on the rate and basis set forth in **Exhibit B** AND Exhibit B dated June 21, 2022."

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Signatures on the Next Page

2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

**ATTEST:**

DocuSigned by:

*Michelle Bigelow*

Michelle Bigelow, City Clerk

Date: 7/12/2022

**APPROVED AS TO FORM:**

DocuSigned by:

*Cynthia Harrison*

Donald A. Larkin, City Attorney

Date: 7/12/2022

**CITY OF MORGAN HILL**

DocuSigned by:

*Christina Turner*

Christina Turner, City Manager

Date: 7/12/2022

**HARRIS & ASSOCIATES, INC.**

DocuSigned by:

*Michelle White*

By: 109DFD66CDE4AE...

Title: Michelle White COO

Print Name and Title of Signer.

If Corporate: Chairman, President,  
or Vice President

Date: 6/30/2022

DocuSigned by:

*Frank Lopez*

By: 302888E2C8D142A...

Title: Frank Lopez VP

Print Name and Title of Signer.

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

Date: 7/5/2022

## EXHIBIT 1

## SERVICE AGREEMENT FOR DESIGN PROFESSIONALS HARRIS & ASSOCIATES, INC.

**THIS AGREEMENT** is entered into and becomes effective on 8/18/2020 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and HARRIS & ASSOCIATES, 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 August 5, 2020.

2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2022 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of two years. 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 On-Call Engineering Plan Review & Technical Support Services for Land Development Engineering as further described in **Exhibit A**.

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

4.1. **Amount.** \$220,000. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred Twenty Thousand dollars, except as provided in Section 4.1.1 "Additional Compensation", and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to two years pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation for two years of service during the initial term of this Agreement, notwithstanding the Additional Compensation set forth in Section 4.1.1 below.

4.1.1. **Additional Compensation.** Additional compensation during the initial term of this Agreement that exceeds the compensation amount listed in Section 4.1 of this Agreement may be approved by the City Manager through a written amendment so long as City Council has appropriated sufficient funds therefor. The City Manager shall have the authority to approve additional compensation in an amount not to exceed thirty percent (30%) of the total compensation amount listed in Section 4.1 of this Agreement, for a combined total maximum compensation amount of \$286,000.

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 acknowledges 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. If such modification results in additional cost to the CONSULTANT and the CITY requires CONSULTANT to obtain the additional coverage, the CITY and CONSULTANT will negotiate the additional cost of the insurance.

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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. Certificates, including renewal certificates, may be mailed electronically to [riskmgmt@morganhill.ca.gov](mailto: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 and CONSULTANT. No official or employee of CITY and CONSULTANT shall be personally liable for any default or liability under this Agreement.

9. Compliance with Law.

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

9.2. Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable



federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

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

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

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

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

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

**Notice to City Related to Wage Theft Prevention:** Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. The Notice provisions

of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

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

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

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

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

Address of CONSULTANT is as follows:

HARRIS & ASSOCIATES, INC.  
450 Lincoln Avenue, Suite 103  
Salinas, CA 93901

Address of CITY is as follows:

Maria Angeles  
Senior Civil 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

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. Any modifications made by the City or any agents of the City, to any of the CONSULTANT's work products or any partial use or reuse of these work products without the express written consent of the CONSULTANT will be at the CITY'S sole risk and without liability to the CONSULTANT.
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. CONSULTANT shall not be responsible for delays caused by circumstances beyond its reasonable sole control.
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 or any of the INDEMNITEES.
  - 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.

*[Signatures on Next Page]*

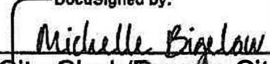
28. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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

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

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

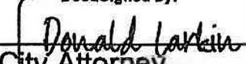
**ATTEST:**

DocuSigned by:  
  
 Michelle Bigelow  
 City Clerk/Deputy City Clerk

Michelle Bigelow  
 Print Name

Date: 8/18/2020

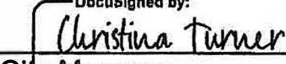
**APPROVED AS TO FORM:**

DocuSigned by:  
  
 Donald A. Larkin  
 City Attorney

Donald A. Larkin  
 Print Name

Date: 8/18/2020

**CITY OF MORGAN HILL**

DocuSigned by:  
  
 Christina J. Turner  
 City Manager

Christina J. Turner  
 Print Name

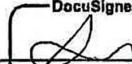
Date: 8/18/2020

**HARRIS & ASSOCIATES, INC.**

DocuSigned by:  
  
 Steven Winchester - Sr. Vice President

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

Date: 7/30/2020

DocuSigned by:  
  
 Steven Winchester - CFO

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

Date: 7/30/2020



## **EXHIBIT A SCOPE OF SERVICES**

Under the direct supervision of a Land Development Engineering staff, the CONSULTANT will provide On-Call Engineering Plan Review & Technical Support Services for an initial term of two years (Fiscal Year 2020-21 and FY 2021-22).

The following are the types of tasks that are included in the CONSULTANT'S scope of services:

- Standard and Expedited engineering plan review of improvement plans for conformance with adopted City standards, approved conditions of approval, and/or accepted industry practice
- Review storm drain and/or sanitary sewer hydraulic calculations for conformance with City standards and/or accepted industry practice
- Review the civil engineering and site planning aspects of tentative maps and other land development applications for conformance with City standards as part of the City's entitlement process
- Review of Post-Construction Stormwater Runoff Management Plans (SWRMPs) and Stormwater Control Plans submitted by private development projects; inspections and other program management functions to comply with the City's National Pollutant Discharge Elimination System (NPDES) permit requirements
- Prepare flood studies, review floodplain proposals, Flood Program management support, and other related functions as needed
- Transportation/traffic engineering-related services
- Other general engineering services as needed

**EXHIBIT B**  
**SCHEDULE OF COMPENSATION RATES**

CONSULTANT'S services will be billed on a time-and-materials basis according to the Standard Rates shown below effective July 2, 2020 – June 30, 2022.

|                           | Hourly Rates |       |       |
|---------------------------|--------------|-------|-------|
|                           | 2020         | 2021  | 2022  |
| Principal-in-Charge       | \$260        | \$270 | \$280 |
| Senior Project Manager    | \$210        | \$220 | \$230 |
| Project Manager           | \$190        | \$200 | \$210 |
| Assistant Project Manager | \$160        | \$170 | \$180 |
| Traffic Engineer          | \$230        | \$240 | \$250 |
| Senior Project Engineer   | \$160        | \$170 | \$180 |
| Project Engineer          | \$140        | \$150 | \$160 |
| Design Engineer           | \$125        | \$135 | \$145 |

*Note: Rates are subject to adjustment due to promotions during the effective period of this schedule. Hourly rates include most direct costs such as travel, equipment, computers, communications and reproduction (except large plan sets).*

**EXHIBIT C**  
**SCHEDULE OF PERFORMANCE**

CONSULTANT'S services will be on an as needed, on-call basis.

**EXHIBIT D**  
**Third Party Data Use Agreement**

1. CONSULTANT agrees that it shall not use any information provided by CITY for any purpose other than for PROJECT without the prior express written consent of CITY. CONSULTANT also hereby acknowledges that the data delivered by CITY is for use by CONSULTANT only, and is not to be released to any other party by any means whatsoever, including the Internet, without prior written consent of CITY. CONSULTANT shall provide written notice to CITY of any subcontractor with whom Geographic Information System data (GIS DATA) is shared for purposes of completing the PROJECT.
2. All data and files are intended for the use within the ordinary course of users' business and may not be sold, placed on the internet or otherwise provided to other parties. All data shall comply with all statutes such as California State Law, Government Code section 6254.21 which prohibits any state or local agency from posting the home address or telephone number of any "elected or appointed official," residing spouse, or child on the internet, and Revenue and Taxation Code sections 408, 408.1, 408.3, and 409 permitting the County Assessor to collect fees for certain information.
3. CITY, as rightful owners, shall retain all rights, title, interest, and copyright of the data. Any products using the GIS DATA must give credit to CITY as the source of the information. Any and all derivative products of the GIS DATA are owned by CITY and may not be used for any purpose other than the PROJECT without prior written permission of CITY. All derivative products and resulting data shall be provided to CITY Project Manager and CITY GIS Manager at the completion of the PROJECT.
4. CONSULTANT and CITY understand and agree that the information provided pursuant to this Agreement is the product of professional services paid for by CITY and shall remain property of CITY. CONSULTANT may retain copies, including copies stored on magnetic media, only for information and reference, in connection with CONSULTANT'S use for PROJECT.
5. All of the above terms and conditions apply to any subcontractor retained by CONSULTANT.
6. In the event of a conflict between the terms and provisions of this Third Party Data Use Agreement and the terms and provisions of the SERVICE AGREEMENT, the terms of the SERVICE AGREEMENT shall govern and control.

## SCHEDULE OF HOURLY RATES

### Harris & Associates, Inc.

| ENGINEERING SERVICES         | HOURLY RATE |
|------------------------------|-------------|
| Director/Principal-in-Charge | \$260-\$320 |
| Technical Lead/QC Manager    | \$240-\$280 |
| Senior Project Manager       | \$220-\$260 |
| Project Manager              | \$180-\$220 |
| Senior Project Engineer      | \$160-\$200 |
| Project Engineer             | \$130-\$170 |
| Senior Design Engineer       | \$120-\$150 |
| Design Engineer              | \$110-\$130 |
| Administration               | \$110-\$120 |
| Construction Manager         | \$180-\$220 |

Identifiable non-salary costs that are directly attributable to the project, such as subconsultant, travel, mileage and reproduction costs, are billed at actual cost plus 10 percent to cover overhead and administration.

Billing rates are valid through December 31, 2022. An updated rate table will be provided on January 1, 2023, and on the 1st of January every year thereafter, and will be escalated in alignment with the Consumer Price Index (CPI).

## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: October 4, 2023**

PREPARED BY:

Matthew Mahood, Economic Development Director

APPROVED BY: City Manager

### **ACCEPT MORGAN HILL TOURISM BUSINESS IMPROVEMENT DISTRICT (MHTBID) OWNERS ASSOCIATION ANNUAL REPORT (DBA VISIT MORGAN HILL)**

#### **RECOMMENDATION(S)**

Accept and file the Visit Morgan Hill Annual Report.

#### **COUNCIL PRIORITIES, GOALS & STRATEGIES**

##### **City Council Ongoing Priorities**

Maintaining and Enhancing Infrastructure

Preserving and Cultivating Public Trust

##### **2022-2023 Strategic Priorities**

Fiscal Sustainability

Economic Development

##### **Guiding Documents**

Bikeways, Trails, and Recreation Master Plan

Economic Blueprint

Morgan Hill 2035 General Plan

#### **REPORT NARRATIVE:**

Every year, Visit Morgan Hill, the Owners' Association of the Morgan Hill Tourism Business Improvement District (TBID) is required to present an annual report at the end of each year of operation to the Morgan Hill City Council pursuant to Streets and Highways Code §36650. The purpose of this staff report is to present the MHTBID's Annual Report (Attachment 1) for acceptance by the City Council.

#### **Background:**

On January 23, 2019, the City Council adopted a resolution establishing a Morgan Hill Tourism Business Improvement District (MHTBID). The MHTBID provides for the collection of a 1.5% assessment of gross short-term room rental revenue, separate from and in addition to the City's Transient Occupancy Tax (TOT) of 11%. The City's 11% TOT are public funds that support the General Fund. In comparison, the 1.5% MHTBID assessments are public funds managed by a non-profit board and are used for marketing and sales promotions and sports facility improvements/programs designed to



market the area as a tourism and event destination and increase room night sales at assessed lodging businesses.

The Streets and Highways Code 36650 requires the MHTBID to provide the City Council an Annual Report that articulates the following:

- Any proposed changes in the boundaries of the improvement district or any benefit zones or classification of businesses within the district.
- The improvements and activities to be provided for that fiscal year.
- An estimate of the cost of providing the improvements and the activities for that fiscal year.
- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against their business for that fiscal year.
- The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

#### **Management District Plan:**

A Management District Plan (Plan) identifies the MHTBID's boundary, budget, services, and governance. Below is a summary of the parameters of the MHTBID's Plan:

- **Boundary:** All lodging businesses located within the boundaries of the City of Morgan Hill.
- **Term:** Five (5)-year assessment beginning March 1, 2019, through February 29, 2024, with an annual 30-day period of protest for termination by assessed businesses.
- **Budget:** Annual assessment rate of 1.5% (on top of the existing TOT) of gross short-term room rental revenue producing an annual budget of approximately \$410,000 (estimated pre-COVID-19).
- **Mission:** Marketing and sales promotions as well as sports facility improvements/programs designed to market the area as a tourism and event destination and increase room night sales at assessed lodging businesses.
- **Governance:** A non-profit corporation, Visit Morgan Hill, serves as the "Owners' Association" charged with the management of funds and implementation of the MHTBID Management District Plan. An annual report is required to be provided to the City Council within 120 days of the MHTBID's fiscal year (October 30).

The district has a five (5) year life—dated January 23, 2019, with a new District start date of March 1, 2019, and ending February 29, 2024. The assessment began on March 1, 2019. The City is responsible for collecting the assessment on a monthly basis from each lodging business located in the District boundaries. The City forwards the assessments to the Owners' Association, known as Visit Morgan Hill (VMH), a nonprofit



corporation in charge of managing District programs as provided in the Management District Plan. The City gets paid a fee equal to two percent (2%) of the amount of assessment collected to cover its collection and administration costs.

**Owners' Association Makeup (Visit Morgan Hill Board of Directors):**

The Owners' Association, VMH, is a private entity separate from the City of Morgan Hill. The make-up of the VMH Board of Directors includes up to four (4) but not less than (3) lodging representatives, two (2) City of Morgan Hill representatives, and up to three (3) but not less than (1) community representatives within the areas associated with wineries, sports recreation, and the community at large with interest in tourism. Currently, the Assistant City Manager serves on the VMH Board as Secretary and the Public Services Director as Treasurer.

**Annual Report**

The Owners' Association is required to present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code §36650 within one hundred-twenty (120) days of the MHTBID's fiscal year or October 30. VMH has provided an Annual Report for the City Council's review and acceptance (Attachment 1).

VMH's Annual Report does not propose any changes to the boundaries, benefit zones, or classifications of businesses. A list of activities and accomplishments undertaken by the district are listed in the Annual Report, including the implementation of a Strategic Plan, Brand Marketing, and other various visitor marketing and promotions efforts.

In Fiscal Year 2022/2023, VMH's income for July 1, 2022 – June 30, 2023, was \$345,844. The City collects 2% of the MHTBID for management and administration. Pre-pandemic, the MHTBID was expected to collect approximately \$410,000 annually. However, the COVID-19 restrictions and travel limitations have made a significant impact on lodging. Hotels continued to have depressed occupancy and rate levels within FY 2022/2023. VMH's income was 21.9% greater year-over-year for FY 2022/2023, and about 94% of the income for FY 19-20.

**COMMUNITY ENGAGEMENT:**

Inform

The Visit Morgan Hill board of directors meets every other month and conforms with Brown Act noticing requirements. These meetings are open to the public, and meeting records are kept at [visitmorganhill.org](http://visitmorganhill.org).

**ALTERNATIVE ACTIONS:**

No alternative action is recommended, as this is an annual report on activities which have already occurred.

**PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

On July 18, 2018, the City Council directed staff to proceed with the creation of a Morgan Hill Tourism Business Improvement District (MHTBID).

On November 7, 2018, the City Council approved the Management District Plan that identifies the MHTBID's boundary, budget, services, and governance and directed staff to circulate the MHTBID Petition Form.

On November 28, 2018, the Council approved the Resolution of Intention that directed staff to issue MHTBID Public Notice.

On January 23, 2019, the City Council voted to establish the MHTBID and adopted the Management Plan previously approved.

On November 4, 2020, the City Council approved VMH's first Annual Report and approved the Resolution of Intention to amend the Management District Plan to change the reporting schedule to conform with the California Streets and Highways Code.

On October 6, 2021, the City Council accepted the 2020-21 Visit Morgan Hill Annual Report.

On October 19, 2022, the City Council accepted the 2021-22 Visit Morgan Hill Annual Report.

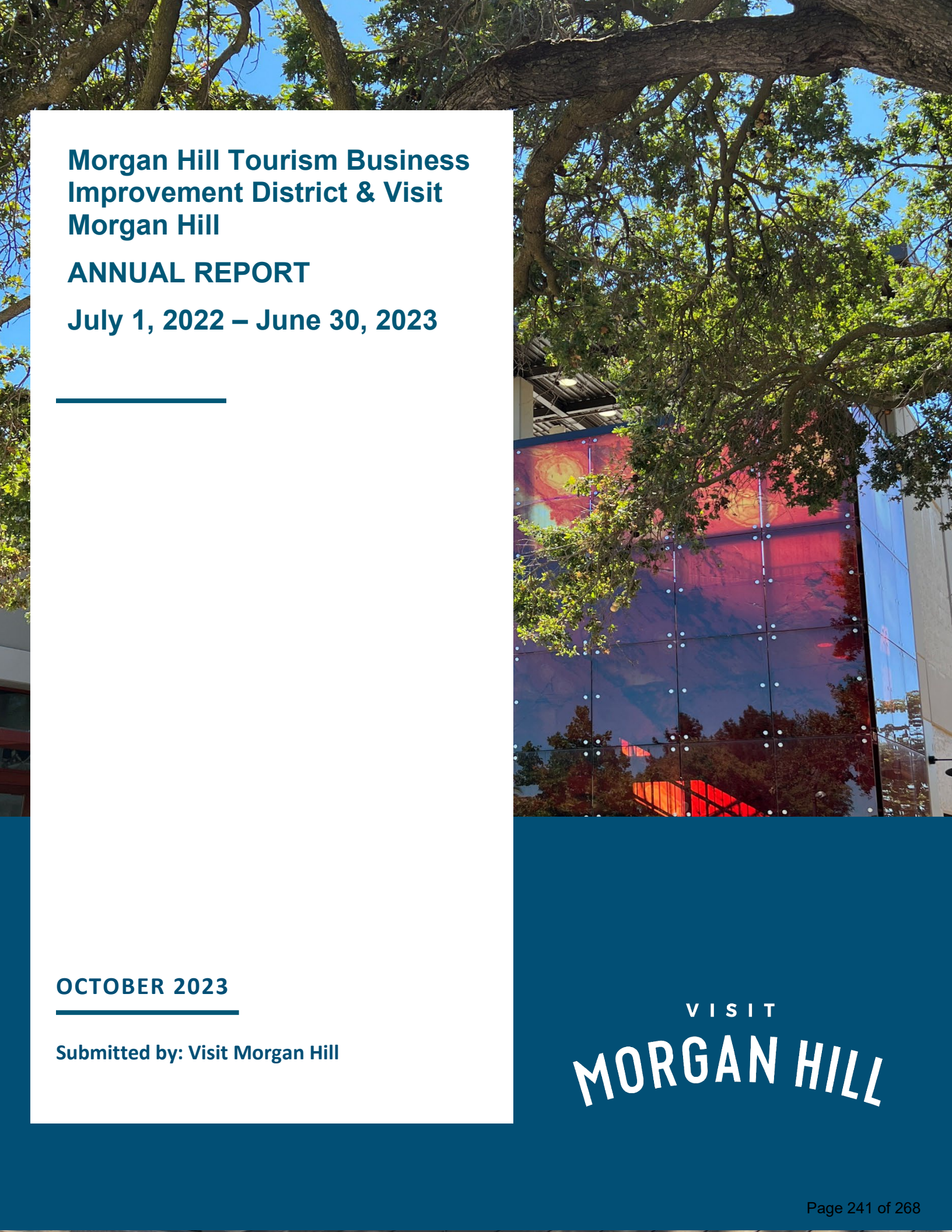
#### **FISCAL AND RESOURCE IMPACT:**

The City collects a 1.5% gross short-term room rental assessment rate on behalf of the MHTBID. The City retains a fee equal to two percent (2%) of the amount of assessment collected to cover its collection and administration costs. These revenues are separate from and in addition to the City's Transient Occupancy Tax (TOT) of 11%. The TBID funds are public funds managed by a non-profit board (VMH). They are used for marketing and sales promotions and sports facility improvements/programs designed to market the area as a tourism and event destination and increase room night sales at assessed lodging businesses.

#### **CEQA (California Environmental Quality Act):**

##### **Categorical Exemption**

Pursuant to CEQA, organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment are exempt activities.



# Morgan Hill Tourism Business Improvement District & Visit Morgan Hill

## ANNUAL REPORT

July 1, 2022 – June 30, 2023

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**OCTOBER 2023**

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Submitted by: Visit Morgan Hill

VISIT  
**MORGAN HILL**

# ANNUAL REPORT

This report serves as the Annual Report from Visit Morgan Hill (VMH), responsible for the Morgan Hill Tourism Business Improvement District (MHTBID), to the Morgan Hill City Council.

## MHTBID BACKGROUND

The MHTBID assessment was implemented beginning March 1, 2019 and will continue for five (5) years through February 29, 2024. The assessment collects 1.5% of hotel tax revenue for the purpose of marketing and promoting Morgan Hill as an overnight sports, recreation, and wine tourism destination.

## VISIT MORGAN HILL

The Owners’ Association responsible for the MHTBID is known as the Visit Morgan Hill Board of Directors (known as the advisory body) and is made up of three to four hotel representatives, 2) up to three community members representing the wineries, sports, and community at large; and 3) two representatives from the City of Morgan Hill representing Public Services and Economic Development. VMH was formed in March 2019.

As of June 30, 2023, the Visit Morgan Hill Board members, their representation areas, and terms are:

| Representative   | Industry          | Appointment Term (2023) |
|------------------|-------------------|-------------------------|
| Michael Meredith | Hotel             | 2023-2025               |
| Chris Ghione     | City              | N/A                     |
| Edith Ramirez    | City              | N/A                     |
| Gene Guglielmo   | Winery            | 2023-2025               |
| Alexis Solis     | Hotels            | 2023-2025               |
| Doug Hall        | Sports Recreation | 2023-2024               |
| David Dworkin    | Hotels            | 2023-2024               |
| John McKay       | Community         | 2023-2024               |

The initial appointment terms beginning at VMH’s formation in March 2019 are as follows:

| Representative   | Industry | Initial Term (2019) |
|------------------|----------|---------------------|
| Michael Meredith | Hotel    | 2019-2021           |
| Chris Ghione     | City     | N/A                 |
| Edith Ramirez    | City     | N/A                 |



|                  |                   |           |
|------------------|-------------------|-----------|
| Andrew Firestone | Hotel             | 2019-2021 |
| Gene Guglielmo   | Winery            | 2019-2021 |
| Carrie Benjamin* | Sports/Recreation | 2019-2021 |
| Karen Mendes     | Hotels            | 2019-2020 |
| Frank Leal       | Community         | 2019-2020 |
| Bina Roy Desai   | Hotels            | 2019-2020 |

*\*Formerly David Eadie*

## METHOD AND BASIS OF LEVYING ASSESSMENT

The annual MHTBID assessment rate is one and a one-half of percent (1.5%) of gross short-term room rental revenue. Assessments are not collected on stays of more than thirty (30) consecutive days or stays by any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty. The City will be responsible for collecting the assessment on a monthly basis (including any delinquencies, penalties and interest) from each lodging business located in the boundaries of the MHTBID. The MHTBID has a five (5) year life, beginning March 1, 2019 through February 29, 2024. Pursuant to Streets and Highways Code §36670, once per year, beginning on the anniversary of MHTBID formation, there is a thirty (30) day period in which owners paying fifty percent (50%) or more of the assessment may protest and initiate a City Council hearing on MHTBID termination.

## IMPROVEMENTS AND ACTIVITIES

*See Appendix Item A*

A summary is provided here. Please see detailed overview in Appendix Item A (pgs. 5-14).

- Developed and Implemented Annual Budget and Work Plan
- Conducted Required Tax, Insurance, and Administrative Filings
- Maintained Visitor Information & Business Listings on [www.visitmorganhill.org](http://www.visitmorganhill.org)
- Maintained Online Public Event Calendar
- Implemented Digital Advertising Campaigns, TV Commercials & Other Paid Media
- Generated Direct Partner Referrals (click throughs) to Hotels & Businesses
- Hosted Journalists and Influencers and Secured Travel Publication Articles
- Published Organic Social Media Campaigns and Routine Posting
- Generated 50+ Group Event Leads for Hotel Room Blocks and Venue Rentals
- Secured Host City Partnership Contract with Bay Area Panthers Team in MH
- Developed Print Tourism Brochure and Distributed at Travel Centers
- Maintained Travel Consumer Email Marketing Program

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## **COST OF PROVIDING IMPROVEMENTS AND ACTIVITIES**

*See Appendix Items B & D (pgs. 15-16)*

For the fiscal year July 1, 2022 – June 30, 2023, operating expenses totaled \$218,790.24.

## **INCOME STATEMENT**

*See Appendix Item B (pg. 15)*

VMH's income for July 1, 2022 – June 30, 2023 was \$345,844.21. This amount is made up solely of TBID funds. There is a 2-month processing period before VMH receives monthly TBID funds. May and June 2022 TBID collections are distributed to VMH in July and August 2022, respectively. For July 1, 2022 – June 30, 2023 the TBID income collected, but not all distributed to VMH within FY 22-23 was \$342,303.33.

## **BALANCE SHEET**

*See Appendix Item C (pg. 16)*

## **ESTIMATED AMOUNT OF SURPLUS OR DEFICIT REVENUES CARRIED OVER**

*See Appendix Item D (pg. 16)*

A \$300,145.68 balance was carried over into FY 2023-2024.

## **CASH SUMMARY**

*See Appendix Item D (pg. 16)*

## **TAXES WERE PREPARED WITHOUT AUDIT**

Visit Morgan Hill's 2022 Federal Return of Organization Exempt from Income Tax has been electronically filed and accepted with the Internal Revenue Service, Federal and State. No tax is payable with the filing of this return. Visit Morgan Hill's 2022 California Exempt Organization Annual Information Return was also electronically filed. No audit conducted.

## **OTHER CONTRIBUTIONS**

No other financial contributions to Visit Morgan Hill were made.

## **PROPOSED CHANGES**

There are no proposed changes to the boundaries of the improvement district or to any of the benefit zones or classification of businesses within the district.

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## APPENDIX Item A: IMPROVEMENTS AND ACTIVITIES DETAIL

Below are the improvements and activities of Visit Morgan Hill July 1, 2022 – June 30, 2023.

### Strategy

Visit Morgan Hill has a multi-year Strategic Plan which serves as the long-term guide for the Improvements and Activities the organization implements. The strategy includes a comprehensive tourism asset analysis, opportunities/gaps, market assessments, key priorities, and tactical approach. The tourism goals and priorities may be summarized as:

1. Leisure Market Development (culinary, downtown, winery, farm, recreation, nature)
2. Sports & Private Event Group Development (flat field tournaments, family occasions)
3. Public Events & Product Development (advocacy and partnership for tourism assets)

### Work Plan

Visit Morgan Hill establishes an Annual Work Plan & Budget, based on the Strategic Plan and market research. The Work Plan outlines the targeting and prioritization of limited staff and funds, for maximum efficiency and effectiveness. The Director reports monthly to the Board of Directors and leverages market and performance data on an ongoing basis.

### Performance Indicators

The success of the MHTBID and the Activities and Improvements provided by VMH may be informed by a) high-level market indicators and b) tactical performance metrics:

Market Indicators show the health of the tourism industry but are influenced by economic factors and market fluctuations, outside of VMH's work. Indicators may include local, regional, and state hotel revenue figures such as local MHTBID & TOT income, Occupancy and ADR rates, and Travel-related Spending Figures.

Performance Metrics are varied in context, but directly attributed to VMH's activities, such as: website metrics, social media data, subscribers, advertising campaign click through rates, outbound referrals, leads generated, room block actualization, completed physical projects, etc. Sales/purchase transactions are not handled by VMH, so it is important for local hotels to monitor customer origin (referrals from VMH), and/or to set up mechanisms for reporting.

## MARKET INDICATORS

### The State of the Local Travel Industry

In FY 22-23, the local lodging industry continued to grapple with a declined business travel market due to COVID-19, inflation, and labor costs. Morgan Hill hotels have encountered a

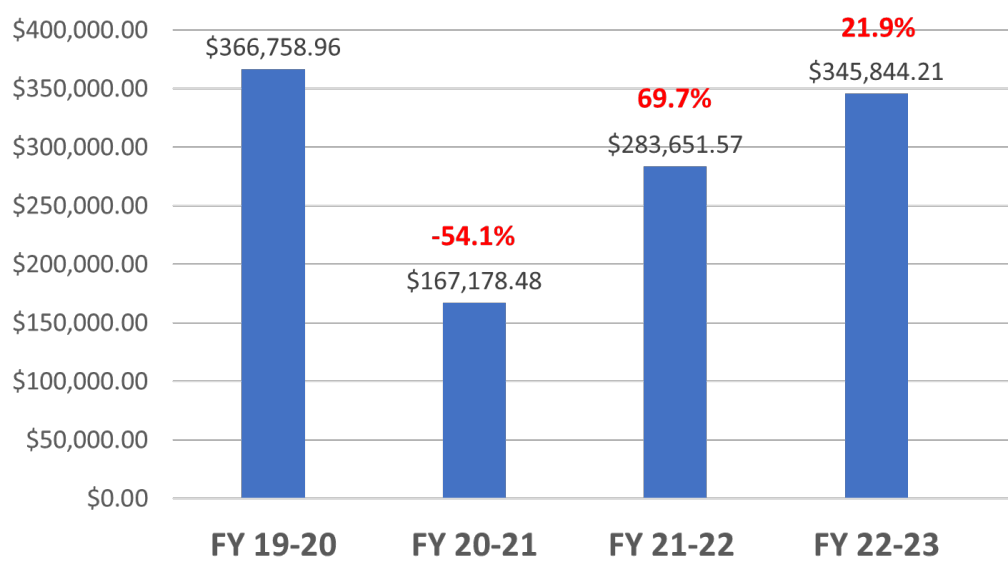


shift in market mix with increased shares of leisure visitors, sports and private event groups, and construction-related travel. While Occupancy levels approach “normal” (64.9%\*), rate peaks are inconsistent with prior patterns, resulting in lower Average Daily Rate (\$124.25\*). Monthly TBID analysis shows lower monthly revenue during the non-summer seasons, when outdoor group events are less frequent due to weather. This reinforces VMH’s strategy to promote Morgan Hill to non-group, leisure travel markets that are not venue, weather, or event dependent.

*\* Figures provided are YTD averages as of July 2023.*

**Budget Analysis**

In FY 22-23, Visit Morgan Hill received about 94% of FY 19-20’s income. However, the income remained short of the original District Management Plan estimate of \$410,000. The projected expense budget was lower than actual income, resulting in increased carry-over funds. Two other factors also contributed to the carryover: postponement of marketing agency services and the tourism symposium event.



**Morgan Hill Visitor Spending**

Visit Morgan Hill’s subscription-based data illuminates the representative value of visitor spending within tourism-related merchant categories in the city of Morgan Hill. Visitors make up substantial percentages of lodging, entertainment, restaurants, and retail spending. Each area had YOY increases, indicating a positive trend for spending at hotels, retail, restaurants, and entertainment. See chart:

### Tourism Related Market Segment Spending (Representative Sample)

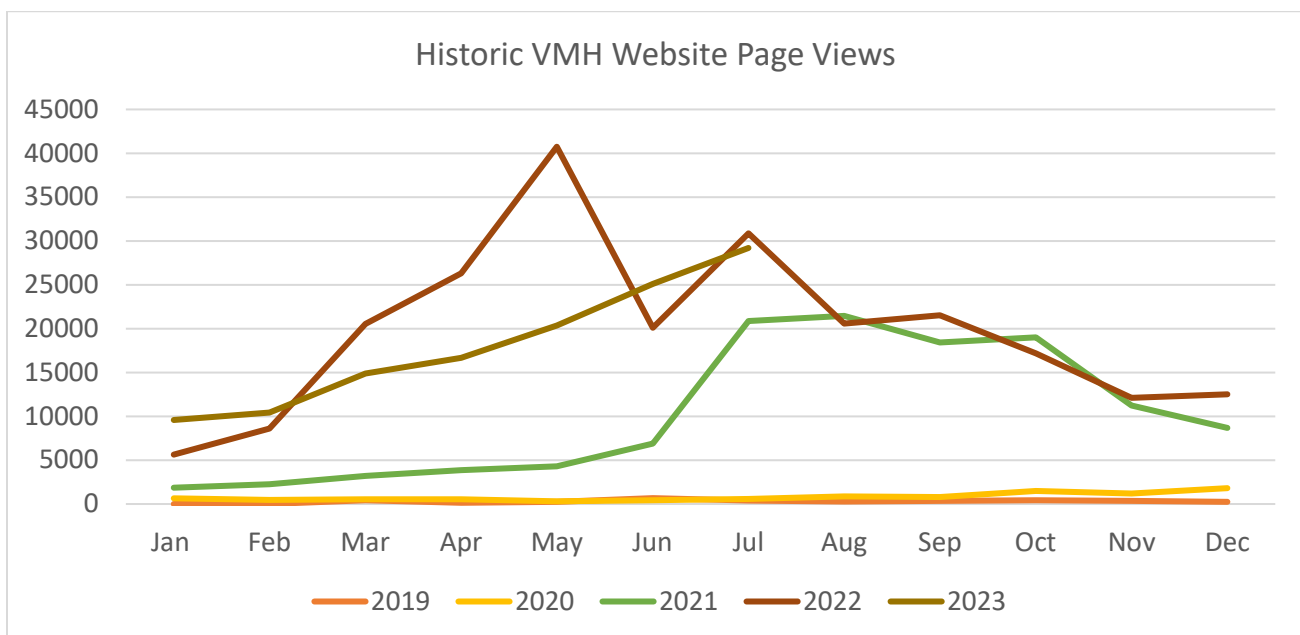
|                     | Total Spend Increase FY 21-22 to FY 22-23 (Visitor & Resident) | Visitor Share of Total Spend (FY 22-23) |
|---------------------|----------------------------------------------------------------|-----------------------------------------|
| Hotel & Lodging     | 12%                                                            | 75%                                     |
| Entertainment       | 6%                                                             | 63%                                     |
| Restaurant & Dining | 6%                                                             | 45%                                     |
| Retail              | 10%                                                            | 42%                                     |

## PERFORMANCE METRICS

### Digital Visitor Content

Visit Morgan Hill positions itself as the marketing authority for visitor information by increasing “discoverability” online, the predominant platform used for travel research and booking. This augments awareness of Morgan Hill as a travel destination and provides local business conversions. In addition to tourism business listings, VMH published 14 blogs and hundreds of local Event Calendar listings. This year’s approach was 100% organic, versus investing in paid search ads. The prior year, demonstrated by the red and green lines below, shows our brand launch campaign, a significant paid search investment from July 2021 to May 2022. VMH now maintains relative performance on a (mostly) unpaid strategy, shown by the brown line.

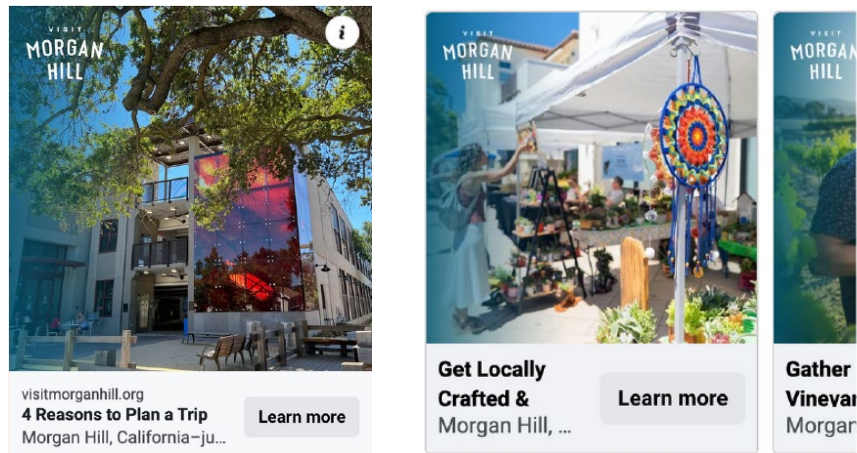
- **137,000** web visits
- **113,000** unique web visitors
- **211,000** page views
- **5,472** referrals from other websites
- **5,411** referrals from social media
- **16,959** referrals/click throughs to business partners



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## Fall-Winter Campaign

Tapping into the Unique Community theme, VMH crafted a Fall-Winter Instagram and Facebook ad campaign at a very affordable rate. The campaign delivered inspiring ads to San Francisco and Pacific Northwest “workationers,” teasing *4 Reasons to Plan a Trip to Morgan Hill* during the fall and winter. We highlighted what makes Morgan Hill special during the season: a conveniently accessible location, connected culinary culture, farms and vineyards, and the locally crafted and curated markets. Ads linked to a blog with more information and path to hotel page. The campaign captured interest at a 3.6% click through rate (4x the industry average) thanks to its substance, intrigue, and intentional targeting.



## Instagram Boosts

We leveraged 5 strategic Instagram boosts, which is a paid method of pushing organic posts (versus “ads”) to a wider, targeted audience. Boosts supplement post frequency and are rewarded by Instagram, supporting overall account growth. Boost performance increased from double digits to triple over the course of the year.

## Panthers Sponsorship & Marketing Package

Visit Morgan Hill played an instrumental role in securing the Bay Area Panthers 2023 HQ. VMH coordinated and conducted the introductory site tours and meetings with stakeholders. VMH presented one cohesive Morgan Hill package for the foundational facility requirements. By closely coordinating with the Morgan Hill Outdoor Sports Center and City of Morgan Hill to craft an enticing offer, VMH closed the deal and secured a significant marketing package:

- (18) :30 TV Commercials on KBCW-TV See Here (closing logos VMH, City, and MHOSC)
- (2) :15 TV Commercials on CBS Sports Network at Championship See Here
- (36) :30 Radio commercials on 95.7 The Game
- (9) Full Page Logo “Home of the Panthers” in Programs (VMH, City, and MHOSC)
- (4) LED Digital In-Arena Banner Logo (VMH, City, and MHOSC)
- (2) End Zone Logo Barrier Pads In-Arena (VMH and MHOSC)

- (2) Sideline Logo Barrier Pads In-Arena (VMH and MHOSC)
  - (2) Gameday Logo Giveaways – Plush Panther, Can Cozys
  - (1) Logo & Link on Bay Area Panthers Website
  - (1) Social Media Video Reel Post and Tags in Dozens of Team Posts
  - (1) 10-Yard Line Logo Barrier Pad
  - (2) Logo and Link on IFL & IFL Championship Websites
- PLUS, numerous indirect Morgan Hill mentions and VMH logo appearances in media outlets*

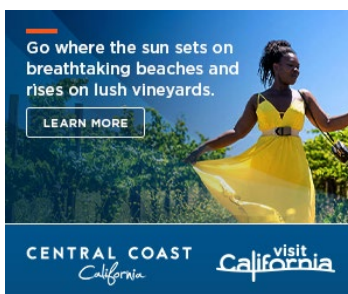


The Panthers agreement also included the coordination of 3 events – Meet the Coach, Meet the Players, and Morgan Hill Monday game. Additionally, Morgan Hill hosted an impromptu parade and ceremony, to celebrate the team winning the Championship. Alongside Visit Morgan Hill and the City, the Chamber of Commerce came into the fold as a fundamental community and event partner, with additional support from MHDA and Kiwanis.

*For Panthers room night and economic generation, see the Business Development Section.*

## Regional Partnership

VMH leveraged Visit California’s rural region grant program to participate in additional marketing opportunities. The program grants “rural” regions with funding for self-managed promotion. Though Morgan Hill is in the “South Bay,” Visit California groups Morgan Hill with the rural Central Coast. Therefore, Morgan Hill may benefit from the program. VMH plays an influential role in the region’s marketing and was selected as a host location for a video shoot. This provides Morgan Hill with extra exposure through the regional promotions, as well as our own video inventory. VMH imagery was selected for a Visit California ad campaign and Visit California and Central Coast websites are among our top [visitmorganhill.org](http://visitmorganhill.org) referral sources.



Visit Morgan Hill put Morgan Hill “on the map” in a prominent “Hidden Gem” spot on the award-winning Central Coast map. The map has a circulation of 200,000, with distribution in 20 California Welcome Centers, California, Phoenix, and Seattle Airports, Washington Ferries, Oregon Welcome Centers, San Jose/Santa Clara Hotels/Visitor Centers, San Francisco Hotels, Los Angeles Hotels/Visitor Center, and Central Valley Hotels/Visitor Centers. VMH also joined several Central California destinations in a discounted cooperative 2-page spread in Visit California’s Road Trip Guide. This piece has a 1 million print circulation, with 600,000 inserted in magazines: Travel + Leisure, Better Homes & Gardens, Food & Wine, and Real Simple. 400K are distributed direct to consumers plus there is an online digital version.





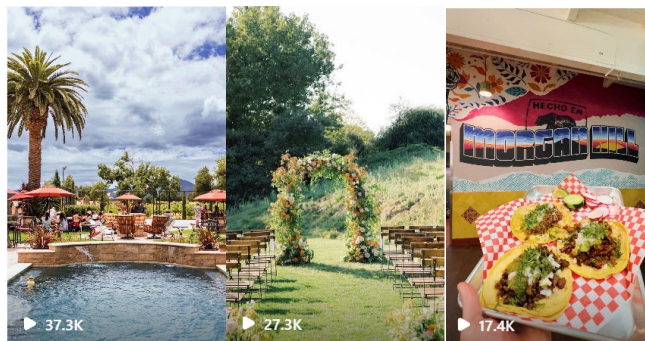
## Media Story Pitching & Pickup

VMH conducted monthly proactive and reactive story pitching of themed Morgan Hill content to Visit California, Central Coast, and individual targeted journalists. This resulted in a record number of mentions and articles in travel related print and online publications. This brings massive additional exposure to Morgan Hill and its attributes in the context of trending travel themes.

- Visit California – 10 features (distributed to Visit California’s media list of 1000)
- Local and Regional Media – 20 features (examples – SFGate, 7x7, KRON, etc.)
- Central Coast Newsletters & Blog – 6 features (600 subscribers)

## Social Media

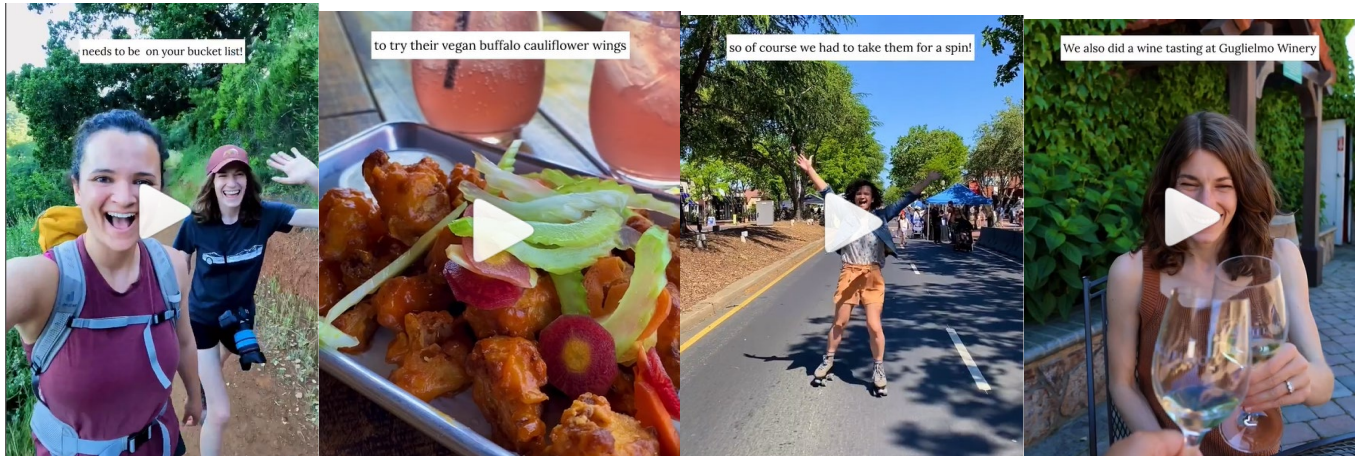
This year’s social media was all about *video*, with dedicated focus on in-house (and agency-supported) production of 43 social media reels. Two campaign themes “Things To Do” and “Hidden Gems” produced high quality, long lifespan, engagement-driving, new reach-generating content. Instagram is the most significant platform, with a 52.4% YOY increase in followers, a 6.43% average engagement rate (up from 4.55% YOY), and 341,735 impressions. Reels and posts are repurposed across several social media channels.



## Social Media Influencers

VMH continued to see the fruits of its June 2022 “Influencer FAM Tour” with 3<sup>rd</sup> party content publishing into this reporting fiscal year. Examples include professionally written blog pieces

and a feature article in Cycle California magazine. In May 2023, VMH hosted a successful social media influencer partnership with travel couple, Gwyn & Ami, generating new reach for VMH and engagement with a targeted NorCal and PNW audience.



## Google Story Network

VMH also participates in the Google Story Network, serving up visual content in online search (versus within a social media app) which strengthens VMH’s digital visibility through location tags and click throughs. This content has a longer lifespan than social media in terms of impressions and engagement. Our “story” collection had 168K impressions and a 2% click through rate. VMH was also shouted out by Visit California for having a top engagement post.



## Morgan Hill Brochure

VMH revamped its print brochure this year, with a professional design and distribution company. The print run of 20,000 is stocked in racks at 5 California Welcome Centers, San Jose

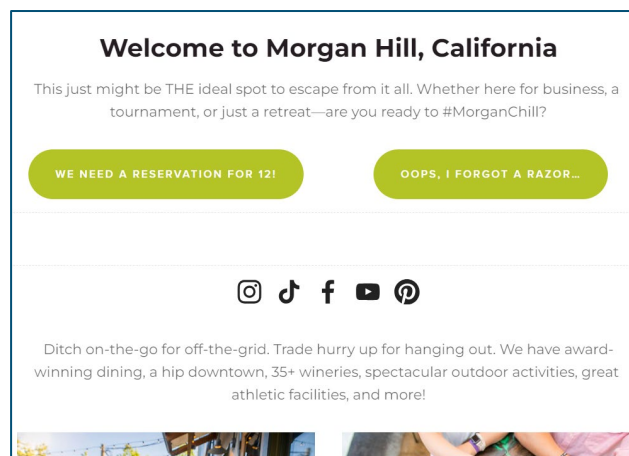


and Oakland Airports, and +200 San Francisco hotels, car rentals, and airport. The brochure is also in digital format online as well as a clickable banner ad.



## Sporting & Event Business Development

VMH played a part in several group sporting events this year. Most notably were the NCAA Men's Golf Regionals and the Bay Area Panthers. VMH assisted San Jose Sports Authority with the NCAA hotel selection process, created info inserts for attendee packets, published a guest web page with group dining options, and hotel lobby signs. The event generated about 500 room nights in Morgan Hill. The Morgan Hill Aquatics Center also hosted 2 major West Coast swim meets, with a cumulative 8,000 attendees from nationwide and Canada. For 2023, the MHOSC and Aquatic Center will host 40 sporting events representing approximately 119,000 visitors (*not including daily practice/local use; counting multi-day event attendees just once*).



## The Bay Area Panthers Team Headquarters partnership resulted in:

- ~500 Room Nights (Group Room Blocks and Recurring Individual Stays)
- ~20 weeks of MHOSC Field Rental
- ~40 CRC & Aquatic Memberships
- Office Space & Apartment Rentals
- Job Creation
- Patrons of Local Businesses & Services (restaurants, storage, barber, etc.)

## Leads/RFPs

VMH lists event venues and facilities on the website, which serves as an online lead generator for group room blocks. VMH generated 52 leads representing 1,548 room nights this year.

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Leads are sent to hotels and venues/facilities, requesting rate quotes for the client. Long lead, relationship development efforts are also ongoing with key clients. VMH maintains partnership with local facility partners – the City Parks & Rec Department and Morgan Hill Outdoor Sports Center—and conducts recurring meetings keeping track of facility bookings, upcoming events, and facility planning. Our Sports Facility Calendar remains a popular tool for hotels and local businesses, as well as tournament attendees seeking rooms. The MHOSC is back to a full calendar of tournaments, meaning we take a more tailored and strategic approach to “tournament” lead generation.

### **Community Industry Partnership**

Visit Morgan Hill provides advocacy around issues that impact the tourism and lodging industry. This term, VMH provided various levels of feedback, support letters, and/or comment on the Hotel Incentive Policy, the MOHI Hotel Project, USA BMX at Butterfield Park, Grade Separations and Quiet Zones, Downtown Parklet, and the T Mobile Hometown Grant Request. When aligned, the Chamber of Commerce, Downtown Association, and Visit Morgan Hill collaborate on letters. VMH also attends recurring board and/or committee meetings across partner organizations to provide report outs. VMH also collaborates with the City of Morgan Hill Economic Development Department and the Wineries of Santa Clara Valley. VMH served on the Wine Auction event committee (MHCF), advised on a Morgan Hill Historical Society video project, and posts events hosted by local groups such as LCAC.

### **Conclusion**

The Activities and Improvements provided by VMH in FY 22-23 have increased Morgan Hill’s relevance and recognition as a travel destination, with notable broadcast and digital exposure. VMH’s early development of high-quality, branded visual assets created the ability to quickly seize commercial opportunities with the Bay Area Panthers and IFL. By introducing dedicated public relations efforts, VMH showcases Morgan Hill in a travel-specific context to a wider audience than ever before. VMH’s social media has matured in both quality and metrics, with enviable engagement rates. Being the first full fiscal year without pandemic restrictions on group events, VMH was also able to benchmark its generation of event and room night leads fitting for local sports facilities and hotels. Lastly, VMH has expanded partnership with community organizations. Thus, creating a more unified local base contributing to the vision of tourism growth that complements and enriches the community.

*More information is available by request to Krista Rupp, Executive Director of Visit Morgan Hill at [executivedirector@visitmorganhill.org](mailto:executivedirector@visitmorganhill.org) or visit our website at [www.visitmorganhill.org](http://www.visitmorganhill.org).*

## APPENDIX Item B: INCOME STATEMENT

### Visit Morgan Hill

#### Income Statement

July 1, 2022 - June 30, 2023

#### Income

|      |              |
|------|--------------|
| TBID | \$345,844.21 |
|------|--------------|

---

|                     |                     |
|---------------------|---------------------|
| <b>Total Income</b> | <b>\$345,844.21</b> |
|---------------------|---------------------|

#### Operating Expenses

##### Administrative

|                                                 |              |
|-------------------------------------------------|--------------|
| Salaries                                        | \$138,560.22 |
| Tax Services                                    | \$750.00     |
| Employer tax                                    |              |
| Employee tax                                    |              |
| Payroll service fees & wire fees                | \$719.05     |
| Insurance                                       | \$2,791.00   |
| Softwares, Systems (adobe, office, squarespace) | \$1,536.98   |
| Dues and subscriptions data                     | \$3,500.00   |
| Office Supplies, hardware, postage, misc        | \$1,234.43   |

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\$149,091.68

##### Marketing Communications

|                                    |             |
|------------------------------------|-------------|
| Agency Fees & Campaign Development | \$35,755.43 |
| Additional Advertising             | \$9,059.19  |
| Content/Materials                  | \$6,514.84  |

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\$51,329.46

##### Business Development & Industry

|                            |             |
|----------------------------|-------------|
| Sports & Event Development | \$580.94    |
| Hosting Fees               | \$1,790.39  |
| Sponsorship                | \$15,575.00 |

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\$17,946.33

##### Industry & Community Relations

|                                |          |
|--------------------------------|----------|
| Local Partnership Campaigns    | \$0.00   |
| Partner & Industry Development | \$422.77 |

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\$422.77

#### Total Operating Expense

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**\$218,790.24**

#### Net Income

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**\$127,053.97**

## APPENDIX Item C: BALANCE SHEET

### Visit Morgan Hill

#### Balance Sheet

June 30th, 2023

#### Assets

|                      |          |              |
|----------------------|----------|--------------|
| Current Assets       | Checking | \$300,145.68 |
|                      | AR       | \$0.00       |
| Total Current Assets |          | \$300,145.68 |

#### Liabilities & Equity

|             |        |
|-------------|--------|
| Liabilities | \$0.00 |
|-------------|--------|

|        |               |              |
|--------|---------------|--------------|
|        | Balance       |              |
| Equity | 7.1.22        | \$173,091.71 |
|        | Year Earnings | \$345,844.21 |
|        | Less Op Exp   | \$218,790.24 |
|        | Net           | \$300,145.68 |

|                            |              |
|----------------------------|--------------|
| Total Liabilities & Equity | \$300,145.68 |
|----------------------------|--------------|

## APPENDIX Item D: CASH SUMMARY

### Visit Morgan Hill

#### Cash Summary

Year Ending June 30th, 2023

#### Income

|       |              |
|-------|--------------|
| TBID  | \$345,844.21 |
| Total | \$345,844.21 |

#### Less Operating Expenses

|                                 |              |
|---------------------------------|--------------|
| Administrative & Salary         | \$145,591.68 |
| Dues & Subscriptions            | \$3,500.00   |
| Agency & Digital Campaign       | \$35,755.43  |
| Additional Ads & Promo Material | \$15,574.03  |
| Business Development            | \$17,946.33  |
| Industry & Community Relations  | \$422.77     |
| Total                           | \$218,790.24 |

#### Summary

|                         |              |
|-------------------------|--------------|
| Opening Balance 7.1.22  | \$173,091.71 |
| Cash Movement           | \$127,053.97 |
| Closing Balance 6.30.23 | \$300,145.68 |

## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: October 4, 2023**

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

## **APPROVE OR DENY COMMUNITY FUNDING REQUESTS FOR DIA DE LOS MUERTOS AND HOLIDAY POSADA EVENTS**

### **RECOMMENDATION(S)**

The City Council may approve or deny the requests.

### **COUNCIL PRIORITIES, GOALS & STRATEGIES**

#### **City Council Ongoing Priorities**

Supporting our Youth, Seniors, and Entire Community

#### **2022-2023 Strategic Priorities**

Community Outreach, Engagement, and Messaging

### **REPORT NARRATIVE:**

On August 31, City staff received a community funding request from Sentinals Soccer Club for a fee waiver and funding for events at the Community and Cultural Center (CCC). The events are the Dia de los Muertos Altar Lighting and Celebration (October 28, 2023) and the Annual Holiday Posada (December 10, 2023). The request is for a fee waiver and funding totaling \$7,900 (\$3,100 for the Dia De Los Muertos and \$4,800 for the Posada). Additional information is included in the attached funding request applications. Both events have been held previously and received Community Funding.

The City Council has approved Council Policy CP-21-02 City Council Funding Requests (Attachment 3). The policy requires that Community Funding applications be received in March to allow funding requests to be reviewed holistically by the Council during the annual budget process. At the time of budget, these requests were not submitted for consideration. However, the policy allows for Councilmembers to bring forward requests to the City Council for consideration after the initial deadline as long as the request is made to the City Manager 90 days prior to the event. Councilmember Yvonne Martinez Beltran brought the request to the City Manager at the time it was made, on August 31. The request for the Annual Holiday Posada was made more than 90 days in advance and the request for the Dia de los Muertos Altar Lighting and Celebration was not made more than 90 days in advance.

### **COMMUNITY ENGAGEMENT:**

Not Applicable

This is a Councilmember initiated request related to specific events. City staff has not performed any specific engagement related to this request.

**ALTERNATIVE ACTIONS:**

The City Council could choose to provide community funding for one, both, or neither of the events. The Council could also choose to provide partial funding for the events. To approve the Dia De Las Muertos funding, the Council would need to provide an exception to its policy, as the request is less than 90 days in advance. Any funding provided will require an appropriation of funds from the General Fund.

**PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

The Council previously approved Community Funding for a number of organizations with approval of the mid-cycle Budget amendments in June 2023.

**FISCAL AND RESOURCE IMPACT:**

If the Council elects to provide funding for these events, an appropriation equal to the funding provided must be made from the General Fund.

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

Categorical Exemption

Normal uses of the Community and Cultural Center such as this fall within the CEQA categorical exemption of Class 1, Existing Facilities.





## MORGAN HILL CITY COUNCIL COMMUNITY FUNDING APPLICATION

Annually, the City Council considers funding requests from local non-profit organizations that host community wide events, host community supporting events at City facilities, and provide services to the community.

To be considered for this annual funding the following criteria must be met:

- a. The organization requesting funding must be a nonprofit.
- b. The program, event, or activity provides a direct benefit to the Morgan Hill community.
- c. Programs in alignment with the City Council's Goals and Priorities shall be given priority. City Council priorities are established by the City Council in January of each year.
- d. Each organization must submit an inclusivity statement describing how the organization and/or the proposed activity is inclusive of the entire community.
- e. Existing programs and events may be given priority.

Applications will be reviewed by City staff. Funding applications and details will be included annually in the City's Budget Development or Mid-Cycle Budget Review process. The City Council shall award and include final funding within the budget. Requests received after the deadline will not be accepted by City staff. **To be considered for funding in FY 2023-2024 please complete and return this form by 5:00 pm on Friday, March 17, 2023, to:**

Nichole Martin  
Community Services Supervisor  
17575 Peak Avenue  
Morgan Hill, CA 95037  
[nichole.martin@morganhill.ca.gov](mailto:nichole.martin@morganhill.ca.gov)

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### A. Organizer Information

1. Organization Name: Sentinels Soccer Club as Fiscal Sponsor for Nueva Esperanza
2. Organization Address: [REDACTED], Morgan Hill, CA 95037
3. Contact Person Name: Delia Gomez
4. Telephone Number: [REDACTED]
5. Email Address: [REDACTED]
6. Organization's Inclusivity Statement:

We believe families and community are stronger, safer, and more economically sound when we provide opportunities to learn about each others backgrounds, to socially connect, to share and to celebrate our cultures and traditions in order to be more inclusive. Nueva Esperanza is committed to providing opportunities to appreciate and enhance diversity and inclusion and promote equity.

Nueva Esperanza is a community organization formed by different groups merging together to bring cultural and social events, awareness and opportunities to the Latinx and greater community. We are community members that are proud to be part of Morgan Hill, interested in civic involvement and contributing to our community.



7. How is your organization supporting your inclusivity statement? What is your organization doing in line with the inclusivity statement?

We do lots of outreach via social media for our events and meetings inviting all to join us and get involved, we have attended City events such as National Night Out and Fiestas Patrias tabling with flyers, sponsored women's events, worked with other community groups, done group hikes and involved youth, encouraged their leadership and supported their ideas in our efforts to be as inclusive as possible. We aim to share cultural and social activities to share the Latino culture with the community.

8. Is your organization a nonprofit? Yes ☒ No ☐

## B. Event Information

1. Name of the Event: 4th Annual Holiday Posada
2. Date of the Event: December 17, 2023
3. Location of the Event: Morgan Hill Community and Cultural Center, Hiram Room

**Important:** If you plan to host your event at a city park, facility, or other public space, this space must be reserved. This application process does not reserve the space or location of the event or activity.

4. Anticipated Event Attendance (total): 300
5. Anticipated Event Attendance (single day): 300

## C. Budget Information

1. Estimated Event Expenses: 7675
2. Estimated Event Revenue: 875  
(Do not include amount of Council funding requested)
3. Amount of Council Funding Requested: 4800
4. How will funding be used if awarded? Please include specific examples.

Funding will be used for event location, sound equipment, entertainment (DJ), Decorations, food/drink, banners, signs, program

**Important:** Funding awards for community events are reimbursement based. Organization must provide receipts for funding use with the report for reimbursement from the City of Morgan Hill. Requests for funding disbursement prior to the event will be considered on a case-by-case basis by the City. Formal requests for consideration must be submitted as part of this application. Please use the space below.

We are requesting funding disbursement prior to the event as we need to make payments to secure locations, decorations, equipment, deposits and programing and supplies well before the event takes place. Thank you.

## D. Council Funding Request Information

### 1. Description of the Event:

This is a Holiday Event with caroling, food, music, entertainment- mariachi, baile folkorico, dancing, pinata, treats and crafts and plenty of family fun.

### 2. Why should the City Council consider funding this event?

The Posada is an important Latin American cultural event enjoyed by families all throughout Latin America and helps celebrate our diversity, and to share and learn other cultures. The Holiday Posada is a traditional and joyous family event to celebrate the holidays in community. There is singing in Spanish and English, traditional food, and cultural music providing an evening of fun and crafts, treats and gifts. Everyone who attends is sure to feel part of the community and enjoy some Latin holiday spirit and warmth.

### 3. What Council priority is supported by your event?

Please select all that apply.

- |                                                                                                  |                                                                              |
|--------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| <input type="radio"/> Enhancing Public Safety                                                    | <input checked="" type="radio"/> Fostering a Positive Organizational Culture |
| <input type="radio"/> Protecting the Environment and Preserving Open Space and Agricultural Land | <input checked="" type="radio"/> Preserving and Cultivating Public Trust     |
| <input type="radio"/> Maintaining and Enhancing Infrastructure                                   | <input checked="" type="radio"/> Preserving our Community History            |
| <input checked="" type="radio"/> Supporting our Youth, Seniors, and Entire Community             | <input checked="" type="radio"/> Enhancing Diversity and Inclusiveness       |
|                                                                                                  | <input type="radio"/> Advancing Regional Initiatives                         |

## E. Recognition of Sponsorship

The City of Morgan Hill shall recognize the City as a sponsor in all related communications and onsite materials (as appropriate for the level of funding awarded). A copy of the City of Morgan Hill logo will be provided upon request. Yes

## F. Other Required Documents

The Applicant must submit with this application proof of its current standing as a nonprofit organization. Applications that do not provide the required documentation at the time of submission will be considered incomplete and may not be selected to receive funding. Yes

Is your organization a nonprofit organization currently recognized by the IRS? Yes ☒ No ☐

## G. Reporting Requirements and Acknowledgement

The Applicant agrees to provide a report to City staff within 30 days following the conclusion of the funded activity. The Applicant must submit a report to the City including pertinent information related to the activity. For ongoing activities, an annual report must be submitted by July 30 for the prior Fiscal Year. The report must include a record of the use of City funds and statistics and information that provides details on the activity's impact to the community. This report must also include a narrative summary of the activity as well as attendance numbers, and how awarded funding was used. Yes

## H. Insurance

For funding awards of \$10,000 or more, the recipient organization must provide theft insurance. Yes

## Applicant Certification for Funding Request Application

The Applicant agrees to indemnify and hold harmless the City of Morgan Hill for any and all claims regarding the below named event. The Applicant agrees to protect, defend, and hold harmless the City of Morgan Hill, its elective or appointed boards, officers, agents, and employees from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property. This applies to the Applicant, Applicant's agents, officers, or employees, subcontractors, or independent contractors hired by the Applicant.

This hold harmless agreement shall apply to all liability, regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Applicant.

The person signing this Certification declares that he/she has the authority to bind the Applicant, and that Applicant is bound by all terms of this Certification. The person signing this Certification agrees that they will provide a copy of this Certification to the governing board and director of the Applicant, and to the Applicant's insurers. In the event that the signatory lacks such duly granted authority, said undersigned signatory personally assumes all liability for fees, costs and damages.

The Applicant further agrees to repay the City for any and all incurred costs, damage and clean-up to parks, streets, facilities, buildings or other property owned by the City which result from the below named event.

The Applicant agrees to comply with the permit issuance conditions as stipulated in Section 12.16050 of the City of Morgan Hill Municipal Code, and any other requirements of the City of Morgan Hill.

***In submitting our request for City Council funding, we understand that the City Council will consider funding of its City Council Community Funding budget as part of the FY 2023-2024 budget development process. Final approval of the city budget takes place in June of 2023.***

4th Annual Holiday Posada

Print Name of Event

Nueva Esperanza/Sentinel Soccer Club

Print Applicant or Organization Name

Delia Gomez

Applicant/Organization Signature

8/26/23

Date





## MORGAN HILL CITY COUNCIL COMMUNITY FUNDING APPLICATION

Annually, the City Council considers funding requests from local non-profit organizations that host community wide events, host community supporting events at City facilities, and provide services to the community.

To be considered for this annual funding the following criteria must be met:

- a. The organization requesting funding must be a nonprofit.
- b. The program, event, or activity provides a direct benefit to the Morgan Hill community.
- c. Programs in alignment with the City Council's Goals and Priorities shall be given priority. City Council priorities are established by the City Council in January of each year.
- d. Each organization must submit an inclusivity statement describing how the organization and/or the proposed activity is inclusive of the entire community.
- e. Existing programs and events may be given priority.

Applications will be reviewed by City staff. Funding applications and details will be included annually in the City's Budget Development or Mid-Cycle Budget Review process. The City Council shall award and include final funding within the budget. Requests received after the deadline will not be accepted by City staff. **To be considered for funding in FY 2023-2024 please complete and return this form by 5:00 pm on Friday, March 17, 2023, to:**

Nichole Martin  
Community Services Supervisor  
17575 Peak Avenue  
Morgan Hill, CA 95037  
[nichole.martin@morganhill.ca.gov](mailto:nichole.martin@morganhill.ca.gov)

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### A. Organizer Information

1. Organization Name: Sentinels Soccer Club as Fiscal Sponsor for Nueva Esperanza
2. Organization Address: [REDACTED] Dr., Morgan Hill, CA 95037
3. Contact Person Name: Delia Gomez
4. Telephone Number: [REDACTED]
5. Email Address: [REDACTED]
6. Organization's Inclusivity Statement:

We believe families and community are stronger, safer, and more economically sound when we provide opportunities to learn about each others backgrounds, to socially connect, to share and to celebrate our cultures and traditions in order to be more inclusive. Nueva Esperanza is committed to providing opportunities to appreciate and enhance diversity and inclusion and promote equity.

Nueva Esperanza is a community organization formed by different groups merging together to bring cultural and social events, awareness and opportunities to the Latinx and greater community. We are community members that are proud to be part of Morgan Hill, interested in civic involvement and contributing to our community.

7. How is your organization supporting your inclusivity statement? What is your organization doing in line with the inclusivity statement?

We do lots of outreach via social media for our events and meetings inviting all to join us and get involved, we have attended City events such as National Night Out and Fiestas Patrias tabling with flyers, sponsored women's events, worked with other community groups, done group hikes and involved youth, encouraged their leadership and supported their ideas in our efforts to be as inclusive as possible. We aim to share cultural and social activities to share the Latino culture with the community.

8. Is your organization a nonprofit? Yes ☒ No ☐

## B. Event Information

1. Name of the Event: 3rd Annual Morgan Hill Dia De Los Muertos Alter Lighting Celebration & Movie
2. Date of the Event: 10/28/23 - 11/2/23
3. Location of the Event: Morgan Hill Community & Cultural Center, Corner, Hiram Room & Amphitheater

**Important:** If you plan to host your event at a city park, facility, or other public space, this space must be reserved. This application process does not reserve the space or location of the event or activity.

4. Anticipated Event Attendance (total): 350
5. Anticipated Event Attendance (single day): 350

## C. Budget Information

1. Estimated Event Expenses: 5100
2. Estimated Event Revenue: 300  
(Do not include amount of Council funding requested)
3. Amount of Council Funding Requested: 3100
4. How will funding be used if awarded? Please include specific examples.

Funding will be used for event location, sound equipment, entertainment (DJ & Lighting), Decorations, flowers, movie license, banners, etc

**Important:** Funding awards for community events are reimbursement based. Organization must provide receipts for funding use with the report for reimbursement from the City of Morgan Hill. Requests for funding disbursement prior to the event will be considered on a case-by-case basis by the City. Formal requests for consideration must be submitted as part of this application. Please use the space below.

We are requesting funding disbursement prior to the event as we need to make payments to secure locations, decorations, equipment, deposits and programing and supplies well before the event takes place. Thank you.



## D. Council Funding Request Information

### 1. Description of the Event:

There will be an altar on the corner of Monterey and Dunne that will be decorated, illuminated and displayed, a dia de los muertos demonstration, Music, Crafts and Art, Food, and a Movie showing.

### 2. Why should the City Council consider funding this event?

Dia De Los Muertos is one of the largest holidays celebrated by families all across Latin America to honor and celebrate the lives of those who are no longer with us and have passed. The community builds an altar together, shares stories and leaves offerings to loved ones and it is a beautiful way to share and give thanks for your ancestors. It has been growing in success every year and the community has asked to have it return and grow.

### 3. What Council priority is supported by your event? Please select all that apply.

- |                                                                                                  |                                                                              |
|--------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| <input type="radio"/> Enhancing Public Safety                                                    | <input checked="" type="radio"/> Fostering a Positive Organizational Culture |
| <input type="radio"/> Protecting the Environment and Preserving Open Space and Agricultural Land | <input checked="" type="radio"/> Preserving and Cultivating Public Trust     |
| <input type="radio"/> Maintaining and Enhancing Infrastructure                                   | <input checked="" type="radio"/> Preserving our Community History            |
| <input checked="" type="radio"/> Supporting our Youth, Seniors, and Entire Community             | <input checked="" type="radio"/> Enhancing Diversity and Inclusiveness       |
|                                                                                                  | <input checked="" type="radio"/> Advancing Regional Initiatives              |

## E. Recognition of Sponsorship

The City of Morgan Hill shall recognize the City as a sponsor in all related communications and onsite materials (as appropriate for the level of funding awarded). A copy of the City of Morgan Hill logo will be provided upon request. Yes ☐

## F. Other Required Documents

The Applicant must submit with this application proof of its current standing as a nonprofit organization. Applications that do not provide the required documentation at the time of submission will be considered incomplete and may not be selected to receive funding. Yes ☐

Is your organization a nonprofit organization currently recognized by the IRS? Yes ☒ No ☐

## G. Reporting Requirements and Acknowledgement

The Applicant agrees to provide a report to City staff within 30 days following the conclusion of the funded activity. The Applicant must submit a report to the City including pertinent information related to the activity. For ongoing activities, an annual report must be submitted by July 30 for the prior Fiscal Year. The report must include a record of the use of City funds and statistics and information that provides details on the activity's impact to the community. This report must also include a narrative summary of the activity as well as attendance numbers, and how awarded funding was used. Yes

## H. Insurance

For funding awards of \$10,000 or more, the recipient organization must provide theft insurance. Yes

## Applicant Certification for Funding Request Application

The Applicant agrees to indemnify and hold harmless the City of Morgan Hill for any and all claims regarding the below named event. The Applicant agrees to protect, defend, and hold harmless the City of Morgan Hill, its elective or appointed boards, officers, agents, and employees from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property. This applies to the Applicant, Applicant's agents, officers, or employees, subcontractors, or independent contractors hired by the Applicant.

This hold harmless agreement shall apply to all liability, regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Applicant.

The person signing this Certification declares that he/she has the authority to bind the Applicant, and that Applicant is bound by all terms of this Certification. The person signing this Certification agrees that they will provide a copy of this Certification to the governing board and director of the Applicant, and to the Applicant's insurers. In the event that the signatory lacks such duly granted authority, said undersigned signatory personally assumes all liability for fees, costs and damages.

The Applicant further agrees to repay the City for any and all incurred costs, damage and clean-up to parks, streets, facilities, buildings or other property owned by the City which result from the below named event.

The Applicant agrees to comply with the permit issuance conditions as stipulated in Section 12.16050 of the City of Morgan Hill Municipal Code, and any other requirements of the City of Morgan Hill.

***In submitting our request for City Council funding, we understand that the City Council will consider funding of its City Council Community Funding budget as part of the FY 2023-2024 budget development process. Final approval of the city budget takes place in June of 2023.***

3rd Annual Morgan Hill Dia De Los Muertos Alter Lighting  
Celebration & Movie

**Print Name of Event**

Nueva Esperanza

**Print Applicant or Organization Name**

Delia Gomez

**Applicant/Organization Signature**

8/26/23

**Date**



# **CITY OF MORGAN HILL**

## **CITY COUNCIL POLICIES AND PROCEDURES**

**CP-21-02**

**SUBJECT: CITY COUNCIL FUNDING REQUESTS**

**EFFECTIVE DATE: NOVEMBER 3, 2021**

**REVISED DATE: NA**

**ORIGINATING DEPARTMENT: COMMUNITY SERVICES DEPARTMENT**

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### **Purpose**

The purpose of this policy is to establish a process for community organizations to request funding to support fee waivers, event sponsorship, and other funding requests from the City Council. The policy is intended to allow the City Council to fully evaluate all funding requests at one time along with budget appropriation.

### **Policy**

1. Applicant Criteria
  - a. The organization requesting funding must be a nonprofit.
  - b. The program, event, or activity provides a direct benefit to the Morgan Hill community.
  - c. Programs in alignment with the City Council's Goals and Priorities shall be given priority. City Council priorities are established by the City Council in January of each year.
  - d. Each organization must submit an inclusivity statement describing how the organization and/or the proposed activity is inclusive of the entire community.
  - e. Existing programs and events may be given priority.
2. Application Availability and Deadline
  - a. Applications for the next Fiscal Year (July-June) will be available on the City's website annually in February.
  - b. Completed applications will be due annually in March.
3. Review and Approval Process
  - a. Applications will be reviewed by the City staff.
  - b. Funding applications and details will be included annually in the Budget Development or Mid-Cycle Budget Review process.
  - c. The City Manager will make recommendations on funding to the City Council based on established Council priorities and funding constraints.
  - d. The City Council shall award and include final funding within the Budget.
4. Reporting Requirements

- a. Within thirty days following the conclusion of the funded activity, the organization must submit a report to the City reporting out pertinent information related to the activity. For ongoing activities, an annual report must be submitted by July 30 for the prior fiscal year.
  - b. The report shall include a record of the use of City funds and statistics and information that provides details on the activity's impact to the community.
5. Late Requests
  - a. Requests received after the deadline shall not be accepted by City staff.
6. Council Member Initiated Event and Fee Waiver Requests
  - a. A member of the City Council may request a fee waiver or funding be provided for an event by applying with the above application process by the March deadline.
  - b. All Council Member initiated requests occurring after the March deadline must be provided to the City Manager 90 days in advance of the event to allow sufficient time to bring to City Council for approval.
  - c. The City Staff shall prepare a report for the City Council for approval of any Council Member initiated requests.

**This policy shall remain in effect until modified by the City Council.**

**APPROVED:**

DocuSigned by:  
  
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**RICH CONSTANTINE, MAYOR**