



Regular Meeting Agenda
City Council

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

Wednesday, January 17, 2024 6:00 PM

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

Morgan Hill City Council meetings are held in person with the option for the public to attend in-person or view 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 view the meetings remotely may do so by joining virtually at: <https://bit.ly/MHCityCouncilMeeting>, by calling (669) 900-9128, then enter the webinar id: 873 3200 8380# or on our website at <https://www.morganhill.ca.gov/2101/Agendas-Minutes>.

Public comment may only be provided in the following ways:

- In-person at the City Council Meeting;
- In writing
 - o Via email to ccpubliccomment@morganhill.ca.gov; or
 - o Hard copy hand delivered 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. It is recommended that you do not include any personal information that you do not want to be posted on the web.

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PRESENTATIONS

YAC Presentation

Trusted Response Urgent Support Team (TRUST) Presentation

CITY COUNCIL REPORTS

Mayor Turner

CITY MANAGER'S REPORT

New Hire, Promoted, and Retired Employee Recognitions

CITY ATTORNEY'S REPORT

OTHER REPORTS

PUBLIC COMMENT

This opportunity for public comment is for items that are not on the agenda. If you would like to make comments on an item that is on the agenda, please wait until we get to that item to offer your comments. Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the City Council is prohibited from discussing or taking action on any item not appearing on the posted agenda. Public comment is intended for comments. Questions posed during public comment are not generally answered. If you have questions, please send them to the City Clerk at ccpubliccomment@morganhill.ca.gov to receive a response. (See additional noticing at the end of this agenda)

Public Comment

ADOPTION OF AGENDA

CONSENT CALENDAR

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

1. **ADOPT ORDINANCE 2351, NEW SERIES, AMENDING SECTIONS 2.04.020 SALARY OF COUNCIL MEMBERS AND 2.04.030 SALARY OF THE MAYOR OF THE CHAPTER 2.04 CITY COUNCIL OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL**

Recommendation:

Waive the reading, adopt Ordinance No. 2351, New Series, and declare that said title which appears on the agenda, shall be determined to have been read by title and further reading waived.

2. **APPROVE ARTIST AND ARTWORK FOR GALVAN PARK RESTROOM**

Recommendation:

1. Approve the selection of artist Abigail Dunnivan and artwork on the Galvan Park Restroom; and

2. Authorize the City Manager to execute and administer artist agreement for the artwork.

3. **APPROVE SECOND AMENDMENT TO ON-CALL REPAIR CONTRACT WITH GOLDEN BAY CONSTRUCTION FOR A NEW TOTAL COMPENSATION UP TO \$950,000**

Recommendation:

Authorize the City Manager to execute a second amendment to the on-call water and sewer repair contract with Golden Bay Construction with compensation up to \$950,000.

4. **APPROVE THE FINAL MAP FOR THE LUMBER YARD PHASE 2 PROJECT – TRACT NO. 10621 (DEPOT STREET AND EAST DUNNE AVENUE), AND THE FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENTS AGREEMENT FOR THE LUMBER YARD PHASE 1 – TRACT NO. 10541**

Recommendation:

1. Approve the Final Map for the Lumber Yard Phase 2 Project (Tract No. 10621);
2. Authorize the recordation of the Lumber Yard Phase 2 Final Map;
3. Approve the First Amendment to the Subdivision Improvements Agreement for the Lumber Yard Phase 1 Project (Tract No. 10541);
4. Authorize the City Manager to execute the First Amendment to the Lumber Yard Phase 1 Subdivision Improvements Agreement with MH LUMBERYARD 49, LLC; and
5. Authorize the recordation of the First Amendment to the Subdivision Improvements Agreement.

5. **APPROVE THE FINAL MAP FOR THE KERLEY RESIDENTIAL PROJECT - TRACT NO. 10609 (19380 MONTEREY ROAD WITH ASSESSOR PARCEL NUMBERS 726-42-001 AND 726-42-002) AND RELATED SUBDIVISION IMPROVEMENTS AGREEMENT**

Recommendation:

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with CIVIC MONTEREY ROAD, LLC; and
3. Authorize the recordation of the Final Map and Subdivision Improvements Agreement.

6. **APPROVE THE DECEMBER 6, 2023 CITY COUNCIL MEETING MINUTES**

Recommendation:
Approve Minutes.

7. **AUTHORIZE THE CITY MANAGER TO EXECUTE AGREEMENT WITH ACT PRIVATE SECURITY & INVESTIGATIONS INC. FOR SECURITY SERVICES**

Recommendation:

Authorize the City Manager to execute and administer a two and a half year agreement with ACT Private Security & Investigations Inc, in the amount of \$155,000 for security services.

8. **AWARD AQUATICS CENTER RECREATION POOL REPLASTERING PROJECT**

Recommendation:

1. Award contract to Earl Adams Tile - Coving & Plastering, Inc. dba Adams Pool Solutions in the amount of \$137,262 and contingency funds not to exceed \$27,452; and
2. Authorize the City Manager to execute and administer that certain construction contract with Earl Adams Tile - Coving & Plastering, Inc. dba Adams Pool Solutions.

9. **AWARD COMMUNITY PARK DG PATHWAYS PROJECT**

Recommendation:

1. Award Decomposed Granite (DG) Pathways Project to Angkor Engineering, Inc. in the amount of \$51,825 and contingency funds not to exceed \$25,913; and
2. Authorize the City Manager to execute and administer that certain construction contract with Angkor Engineering, Inc.

10. **PAVEMENT CONDITION UPDATE AND PAVEMENT REHABILITATION PLANNING UPDATE**

Recommendation:

Receive updates.

11. **PURCHASE OF MOBILE OFFICE SPACE FOR AQUATICS CENTER AND OUTDOOR SPORTS CENTER USE**

Recommendation:

1. Approve the purchase of mobile office space for \$100,000; and
2. Authorize the City Manager to execute necessary agreements to complete the purchase with approval of the City Attorney.

12. RECEIVE MONTHLY BUDGET UPDATE AND NOVEMBER 2023 FINANCIAL AND INVESTMENT REPORTS

Recommendation:

Accept and file report.

13. APPROVE STATE OF CALIFORNIA, OFFICE OF EMERGENCY SERVICES' UNIVERSAL RESOLUTION DESIGNATING APPLICANT'S AGENT FOR DISASTER ASSISTANCE

Recommendation:

1. Designate City Manager, Finance Director, or Senior Accountant to submit for Disaster Assistance to the State of California, Office of Emergency Services, for the purpose of obtaining certain federal financial assistance; and
2. Direct the City Clerk to certify the Designation of Applicant's Agency Resolution to the State of California, Office of Emergency Services.

OTHER BUSINESS

14. ADOPT RESOLUTION FOR AN EXCEPTION TO THE 180-DAY WAITING PERIOD TO APPOINT RETIRED ANNUITANT, ANDREW CRABTREE, TO SERVE AS TEMPORARY EXTRA HELP (GOVERNMENT CODE SECTIONS 7522.56 AND 21224) IN THE DEVELOPMENT SERVICES DEPARTMENT TO PERFORM WORK AS A RETIRED ANNUITANT

Recommendation:

Adopt Resolution for an exception to the 180-day waiting period to appoint Andrew Crabtree, a retired annuitant, to serve as temporary extra help (Government Code Sections 7522.56 and 21224) in the Development Services Department to perform work as a Retired Annuitant.

15. PROVIDE DIRECTION REGARDING CITY COUNCIL TERM LIMITS AND MAYORAL TERM

Recommendation:

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

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

CLOSED SESSION

THREAT TO PUBLIC SERVICES OR FACILITIES (§ 54957)

Consultation with: Morgan Hill Police Department, Chief of Police

OPPORTUNITY FOR PUBLIC COMMENT

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 request an item on the agenda for a future City Council meeting. Council discussion or action may not be taken until your item appears on an agenda. This procedure is in compliance with the California Public Meeting Law (Brown Act) Government Code §54950.

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

SUSTAINABLE MORGAN HILL



Vision

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



Choose Morgan Hill

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



City Council Ongoing Priorities

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



2022-2023 Strategic Priorities

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



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





January

Developmental Asset #14:

Adult Role Model

Parent(s) and other adults model positive, responsible behavior.



January Complementary Asset:

Navigate—Guide me through hard situations and systems.

Sofia Ruiz-McGinty, YAC Active Member

My Inspiration

- ◆ Learning the value of hard work
- ◆ Trial and error
- ◆ My future goals



Doris Chiang, YAC Board Member



A Living Example

- ◆ Finding one's true calling
- ◆ Choosing personal values
- ◆ Inspiring, not telling

Arya Vaid, YAC Board Member



The Right Path

- ◆ Stepping out of my comfort zone
- ◆ Open to try new things
- ◆ Confidence

“A role model in the flesh provides more than inspiration; his or her very existence is confirmation of possibilities one may have every reason to doubt, saying, yes, someone like me can do this.”

Sonia Sotomayor



From: [D. Muirhead](#)
To: [CC Public Comment](#)
Subject: [EXTERNAL] non-agenda comment for next City Council meeting
Date: Thursday, January 11, 2024 11:12:55 AM

Happy New Year to the City Administration and City Council Teammates,

This is a non-agenda comment for the next City Council meeting.

I feel that the process for evaluating whether or not to put an item on a future agenda was not followed with respect to the recent agenda distribution topic. My understanding is that you discuss if you want staff to spend time on preparing an item and not the pros and cons of the item itself. Those would come in the staff report and presentation and Council discussion.

So the Mayor's objection on this agenda proposal, that it might cause incomplete material, should have been addressed when the item was put on an agenda and not as a reason to vote against putting it on an agenda.

I don't assume that all the work for a meetings agenda item is done in the 2-3 weeks preceding that meeting. I would have liked to hear from staff how an agenda item is prepared and why that prevents giving the public more time to consider the material being presented at a Council meeting. Since other agencies manage to give the public longer lead times, this could have been an opportunity to explain why the City Administration process should not change.

Regards, Doug Muirhead, Morgan Hill resident

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CITY COUNCIL STAFF REPORT

MEETING DATE: January 17, 2024

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

ADOPT ORDINANCE 2351, NEW SERIES, AMENDING SECTIONS 2.04.020 SALARY OF COUNCIL MEMBERS AND 2.04.030 SALARY OF THE MAYOR OF THE CHAPTER 2.04 CITY COUNCIL OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2351, New Series, and declare that said title which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Fiscal Sustainability

Community Outreach, Engagement, and Messaging

REPORT NARRATIVE:

On December 6, 2023, the City Council introduced Ordinance No. 2351 New Series, by the following roll call vote: AYES: Librers, Martinez Beltran,Turner, Spring; NOES: None; ABSTAIN: None; ABSENT: Borgioli.

On June 29, 2023, Governor Gavin Newsom signed Senate Bill 329 (SB 329) into law, which amends Section 36516 of the Government Code, allowing for the first city council member pay cap increases in nearly four decades. SB 329 increases the maximum amounts of salary that can be approved by city ordinance, based on the population of the city. For cities with populations over 35,000 up to and including 50,000, the salary limit for councilmembers is \$1,275 per month. The salary limit may be increased from the 2024 cap in an amount not exceeding the greater of either 5% for each calendar year from the operative date of the last adjustment of the salary or an amount equal to inflation since January 1, 2024, based on the California Consumer Price Index (not to exceed 10% per calendar year).

SB 329 does not set a maximum salary for the mayor. Staff recommends that the mayor receives a salary increase at the same percentage as the City Council or \$3,397 per month.

COMMUNITY ENGAGEMENT:

Inform

A 10-day public hearing notice for the December 6, 2023 City Council meeting was published on Friday, November 24, 2023 in the edition of the Morgan Hill Times.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 21, 2006, the City Council adopted Ordinance 1780 New Series, setting the salary of Council Members at \$313/month and the salary of the Mayor at \$834/month.

FISCAL AND RESOURCE IMPACT:

The fiscal impact of the proposed salary adjustment is approximately \$80,000/year to the General Fund.

CEQA (California Environmental Quality Act):

Not a Project

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

ORDINANCE NO. 2351, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING SECTIONS 2.04.020 (“SALARY OF COUNCIL MEMBERS”) AND 2.04.030 (“SALARY OF THE MAYOR”) OF TITLE 2 (“ADMINISTRATION AND PERSONNEL”), CHAPTER 4 (“CITY COUNCIL), OF THE MORGAN HILL MUNICIPAL CODE TO ADJUST THE SALARIES OF COUNCIL MEMBERS AND THE MAYOR

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

Section 1. Section 2.04.020 of Chapter 4 of Title 2 of the Municipal Code is amended to read as follows:

“2.04.020--Salary of council members.

Pursuant to the provisions of Section 36516 of the Government Code, each of the members of the city council shall receive a monthly salary of one thousand-two hundred seventy-five dollars (\$1,275) at the same intervals as other city employees are paid.

Pursuant to Section 36516.5 of the Government Code, this section shall take effect whenever one or more members of the city council begins a new term of office, after the adoption of the ordinance codified in this section.

Section 2. Section 2.04.030 of Chapter 2 of Title I of the Municipal Code is amended to read as follows:

2.04.030--Salary of the mayor.

Pursuant to Section 36516.1 of the Government Code, which permits a mayor elected pursuant to Sections 34900 to 34904, inclusive, of the Government Code to be provided with compensation in addition to that which he or she receives as a council member, the mayor of the city shall receive an additional monthly salary of two thousand-one hundred twenty-two dollars (\$2,122)

Pursuant to Section 36516.5 of the Government Code, this section shall take effect whenever one or more members of the city council begins a new term of office, after the adoption of the ordinance codified in this section.

Section 2. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 3. Effective Date; Posting. This ordinance shall become effective on the 31st day after adoption. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6th DAY OF DECEMBER 2023, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 17th DAY OF JANUARY 2024, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

ATTEST:

MARK TURNER, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATE OF THE CITY CLERK ∞

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2351, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on January 17, 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: January 17, 2024

PREPARED BY:

Keri Russell, Maintenance Manager

APPROVED BY: City Manager

APPROVE ARTIST AND ARTWORK FOR GALVAN PARK RESTROOM

RECOMMENDATION(S)

1. Approve the selection of artist Abigail Dunnivan and artwork on the Galvan Park Restroom; and
2. Authorize the City Manager to execute and administer artist agreement for the artwork.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

REPORT NARRATIVE:

In August 2023, the City of Morgan Hill, issued a call for artists to submit proposals for the design, fabrication, and installation of public art at the new Galvan Park Restroom. This project seeks to create a new mural on the new restroom building with a Latinx theme. The City of Morgan Hill has a budget of \$5,000 to create an art piece on the newly installed restroom. The City and Commission has previously worked with an artist to complete artwork on a similar restroom at both Magical Bridge Playground and Railroad Park. The funding is intended to cover all project costs including design, fabrication, and installation.

The City received five proposals from artists. The proposals received can be viewed utilizing the following links:

- Abigail Dunnivan - <https://morganhill.ca.gov/DocumentCenter/View/46257/Abigail-Dunnivan-Application>
- Jose Maya - <https://morganhill.ca.gov/DocumentCenter/View/46268/Jose-Maya-Application->

- Lina Velasquez - <https://morganhill.ca.gov/DocumentCenter/View/46259/Lina-Velasquez-Application->
- Sheryl Cathers - <https://morganhill.ca.gov/DocumentCenter/View/46261/Sheryl-Cathers-Application->
- Teresa Anguiano - <https://morganhill.ca.gov/DocumentCenter/View/46262/Teresa-Anguiano-Application-?bidId=>

A sub-committee of the Library, Culture and Arts Commission and City Teammates provided the initial review of the artwork. While the committee thought many of the art pieces would work they had a strong recommendation to recommend Abigail Dunnivan's piece based on how it represents the Latinx Community, tells a full story across all sides of the restroom, and uses strong vibrant colors in the design.

On December 5, 2023, the Library, Culture and Arts Commission reviewed the artwork. The Commission liked the piece but felt like it did not represent all Latinx Communities. The Commission accepted the concept art but requested the artist include other Latinx cultures through native flowers. The artwork has been revised to meet the recommendations of the Commission and included as Attachment 1.

COMMUNITY ENGAGEMENT:

Empowered local artists to design the mural.

ALTERNATIVE ACTIONS:

The Council may choose not to move forward with the recommended actions or provide other alternative direction to City staff.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Library, Culture and Arts Commission recommended approval for the artist and artwork on December 5, 2023.

FISCAL AND RESOURCE IMPACT:

The proposed artist agreement would include funding of \$5,000 for the restroom art work. Funding for the artwork is included in the Park Maintenance budget.

CEQA (California Environmental Quality Act):

Categorical Exemption

Minor alterations to existing City facilities fall within the CEQA categorical exemption of Class 1, Existing Facilities.

Galvan Park Mural Design



Side 1



Side 2



Side 3



Side 4



CITY COUNCIL STAFF REPORT

MEETING DATE: January 17, 2024

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

APPROVE SECOND AMENDMENT TO ON-CALL REPAIR CONTRACT WITH GOLDEN BAY CONSTRUCTION FOR A NEW TOTAL COMPENSATION UP TO \$950,000

RECOMMENDATION(S)

Authorize the City Manager to execute a second amendment to the on-call water and sewer repair contract with Golden Bay Construction with compensation up to \$950,000.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Protecting the Environment and Preserving Open Space and Agricultural Land

Maintaining and Enhancing Infrastructure

REPORT NARRATIVE:

In August 2023, the City entered into a contract with Golden Bay Construction, in addition to Anderson Pacific Engineering Construction, to provide on-call underground construction work supporting water, wastewater and storm water work. The intent of having multiple on-call contractors is to undertake emergency repairs while at the same time ensuring the best value for the City. The City requests cost estimates from on-call contractors prior to initiating work when possible.

Immediately following the contract, the City utilized Golden Bay to replace a sewer main below Main Avenue. The City had just received CCTV video noting that the major sewer line between Main Avenue and the railroad tracks was in need of repair/replacement. The on-call contract with Golden Bay was utilized to complete this work quickly ahead of the pavement work that was scheduled to occur this month. This was done to prevent severe damage to the new pavement in the future. During the work, additional unforeseen needs were discovered that required work on lines connecting to the main. The entirety of the work was completed in October at a cost of approximately \$295,000. This left \$105,000 on the on-call contract with Golden Bay.

The City has been working with contractors on numerous repairs relating to the storms that occurred in early 2023. The majority of repairs have been completed. However, going into October, one very difficult repair had not been completed. This repair was a damaged sewer main that was damaged due to a major hillside landslide. For five

months, the City has been attempting to find contractors to complete this work, but had been unsuccessful due to the difficulty in accessing the site. Staff had contacted all City on-call contractors and multiple other contractors that specialized in the type of work. Golden Bay provided notice to the City that the company could complete the work. Due to the nearing rainy season, City staff considered this work an emergency and authorized Golden Bay to move forward with the work.

On November 15, 2023, the City Council approved increasing the contract with Golden Bay Construction to \$750,000. The intent was to complete the work and leave some funds on the on-call contract with Golden Bay. At the time of the Council report, the restoration work for the landslide and sewer line repair project was not complete. However, staff estimated costs to complete the work at approximately \$350,000. Unfortunately, restoration work was much more significant than anticipated due to significant damage to private roadways that were needed to access the site. This resulted in the costs totaling approximately \$480,000. City staff have been working with FEMA and the City's insurance pool on this project and other projects from the 2023 storms and believe reimbursement of funds for this specific project will be received directly from FEMA.

While the project is complete, it has depleted the on-call contract with Golden Bay. Golden Bay has been the City's most responsive and available contractor for emergency work. They were the only contractor willing to take on the complicated landslide work and provide on-call rates that are competitive. When performing on-call work, the City requests quotes and estimates from the pool of on-call contractors the City has under contract. The City staff recommend increasing the contract with Golden Bay to \$950,000 to allow the City to continue soliciting estimates for other small emergency on-call work projects.

COMMUNITY ENGAGEMENT:

Not Applicable

Ongoing maintenance of City infrastructure, including emergency response, is an expected service provided by the City.

ALTERNATIVE ACTIONS:

The Council could choose to only fund the emergency work with Golden Bay without additional funding for future needs. This would result in Golden Bay not being able to provide on-call work for the City.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council previously approved the initial on-call contracts with Golden Bay Construction on August 23, 2023 and amended the contract on November 15, 2023.

FISCAL AND RESOURCE IMPACT:

Funding for the past work performed comes from the Sewer Repair and Replacement Project, funded through the Sewer Capital Project Fund 643. Reimbursement of these costs is anticipated. Future on call work may be funded through various City

infrastructure funds.

CEQA (California Environmental Quality Act):

Categorical Exemption

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

**SECOND AMENDMENT TO AGREEMENT
GOLDEN BAY CONSTRUCTION, 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 GOLDEN BAY CONSTRUCTION, INC., a California Corporation ("SERVICE PROVIDER"), hereinafter referred to collectively as the "Parties".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of September 8, 2023, for services for a maximum compensation of Four Hundred Thousand Dollars (\$400,000.00) ("SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of November 26, 2023, under which the maximum compensation under the SERVICE AGREEMENT, as amended, was increased to Seven Hundred Fifty Thousand Dollars (\$750,000.00). The SERVICE AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"4.1. Amount. Compensation under this Agreement shall not exceed NINE HUNDRED FIFTY THOUSAND DOLLARS (\$950,000.00) and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to 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."

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[Signatures on the Next Page]

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Date: _____

Christina Turner, City Manager

Date: _____

APPROVED AS TO FORM:

GOLDEN BAY CONSTRUCTION, INC.

Donald Larkin, City Attorney

Date: _____

By: Johnny Zanette - President

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

Date: 1/11/2024

By: Brent Zanette - Secretary

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

Date: 1/11/2024

EXHIBIT 1

**FIRST AMENDMENT TO AGREEMENT
GOLDEN BAY CONSTRUCTION, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 11/26/2023 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and GOLDEN BAY CONSTRUCTION, INC., a California Corporation ("SERVICE PROVIDER"), hereinafter referred to collectively as the "Parties".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on November, 15, 2023.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of September 8, 2023, for services for a maximum compensation of Four Hundred Thousand Dollars (\$400,000.00) ("SERVICE AGREEMENT"). The SERVICE AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00) and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to 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.

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[Signatures on the Next page]

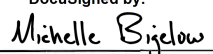
2. **Electronic Signatures.** Unless otherwise prohibited by law or CITY policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of 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 First Amendment to Agreement and the terms and provisions of the SERVICE AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

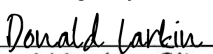
TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

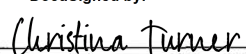
ATTEST:

DocuSigned by:

 Michelle Bigelow, City Clerk
 Date: 11/27/2023

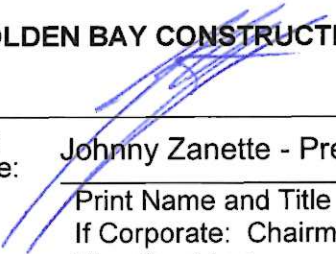
APPROVED AS TO FORM:

DocuSigned by:

 Donald Larkin, City Attorney
 Date: 11/22/2023

CITY OF MORGAN HILL

DocuSigned by:

 Christina Turner, City Manager
 Date: 11/26/2023

GOLDEN BAY CONSTRUCTION, INC.

By: 
 Title: Johnny Zanette - President
 Print Name and Title of Signer.
 If Corporate: Chairman, President or Vice President

Date: 11/10/2023

By: 
 Title: Brent Zanette - Secretary
 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 11/10/2023

EXHIBIT 1

**MAINTENANCE SERVICE AGREEMENT
GOLDEN BAY CONSTRUCTION, INC.**

THIS AGREEMENT is entered into and becomes effective on 9/8/2023 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Golden Bay Construction, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on August, 23, 2023.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 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 on-call water and sewer repairs as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$400,000. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Four Hundred Thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

6. **Performance of Work.** SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of SERVICE PROVIDER'S profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state, and local laws. SERVICE PROVIDER is liable for any property damage caused by SERVICE PROVIDER or its Subcontractors during performance of the services and shall notify the CITY of damage within 24 hours of the occurrence. SERVICE PROVIDER must promptly repair or replace any real or personal property damage and must promptly restore the property to its original or intended condition. CITY may repair or replace the real or personal property damage if SERVICE PROVIDER fails to do so, and the cost of the repairs or replacement may be deducted or offset from any compensation due to SERVICE PROVIDER.

- 6.1. **Schedule.** SERVICE PROVIDER shall perform all work and services under this Agreement in conformance with the time schedule set forth on **Exhibit C**, "Schedule of Performance," attached hereto and incorporated herein by this reference. The City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement.
- 6.2. **Storage of Service Provider's Equipment.** If SERVICE PROVIDER desires to leave or store any of SERVICE PROVIDER'S equipment at a CITY site while SERVICE PROVIDER is performing work or service pursuant to this Agreement, SERVICE PROVIDER will first obtain the consent of the City Manager, or his/her delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at SERVICE PROVIDER'S sole risk.

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

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

8.1. **Insurance Types and Amounts.**

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

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

8.1.5. Professional Liability.

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

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

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

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

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

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

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

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

8.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

10. Compliance with Law.

10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon any basis prohibited by State or Federal law, including but not limited to, race, color, creed, religion, gender, marital status, age, sexual

orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

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

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

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

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

judgment, decision or order. SERVICE PROVIDER and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. CITY reserves the right to require SERVICE PROVIDER to enter into an agreement with CITY regarding the manner in which any such final judgment, decision, or order will be satisfied.

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

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

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

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

Address of SERVICE PROVIDER is as follows:

Golden Bay Construction, Inc.
3826 Depot Road
Hayward, CA 94545

Address of CITY is as follows:

Utilities Division	with a copy to:
City of Morgan Hill	City Clerk
100 Edes St.,	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 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:

DocuSigned by:



City Clerk/Deputy City Clerk

Michelle Bigelow

Print Name

Date: 9/8/2023

APPROVED AS TO FORM:

DocuSigned by:



City At

Donald A. Larkin

Print Name

Date: 9/6/2023

CITY OF MORGAN HILL

DocuSigned by:



City Manager

Christina J. Turner

Print Name

Date: 9/8/2023

Golden Bay Construction, Inc.

By:

Johnny Zanette - President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 8/15/2023

By:

Brent Zanette - Secretary

Print Name and Title of Signer.

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

Date: 8/15/2023

451401

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

Expiration Date(s) 1/31/2024

Seal:

1000002870

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

Expiration Date(s) 6/30/2025

EXHIBIT A SCOPE OF SERVICES

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

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

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

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

City Responsibilities

City's personnel will identify and assess specific projects or repairs. The City will notify Contractor of general locations requiring construction or repair, and a general description of the field conditions at repair locations, and materials to be provided by the City. The City's Project Manager or designated representative will direct the general process to be followed but shall not generally direct the means or methods to be used by the Contractor. The City will provide base maps or record drawings of facilities when they are requested and available. All work to be completed will be agreed upon prior

to the commencement of work with a general scope of services. Drawings will be provided if applicable. The City will issue a written task order and attach the contractor's scope of work for projects that are not an emergency. Notification of residents whose service may be interrupted will be the responsibility of the City.

Contractor's Responsibilities

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

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

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

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

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

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

Repair Standards

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

Materials and Supplies

At the time of notification, the City will provide the Contractor with a list of City supplied materials. The Contractor is responsible for having a reliable supply chain in place to obtain, in a timely manner, all additional materials and supplies needed for the required repair. All materials and supplies obtained by the Contractor for the work must be new and free from defects. There will be no mark-up or other cost charged to the City for materials and supplies used from the City's inventory. The City will deliver small materials and fittings such as repair clamps, corp stops, etc. to the project site. Any bulk materials such as aggregate base, temporary asphalt paving, etc. provided by the City shall be picked up by the Contractor at the City's Corporation Yard.

Disposal of Materials

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

Response Schedule

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

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

Physical Location of Underground Utilities

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

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

Facilities Not Shown or Indicated - If an Underground Utility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the City's water and sewer system base maps and not otherwise made known to the Contractor prior to excavation, which the Contractor could not reasonably have been expected to be aware of based on the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the repair, the Contractor shall identify the owner of such Underground Utility and give written notice thereof to the City in accordance with the requirements of the next section, Protection of Existing Facilities. In the event that the Contractor damages any existing utility lines that are not shown or the locations of which are not made known to the Contractor prior to excavation, a written report thereof shall be made immediately to the City. If directed by the City, repairs shall be made by the Contractor.

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

Protection of Existing Facilities

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

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

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

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

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

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

Utilities to be Removed/Relocated - Where the proper completion of the repair work requires the temporary or permanent removal and/or relocation of an existing utility or other improvement that is

shown, the Contractor shall remove and, without unnecessary delay, temporarily replace or relocate such utility or facility. In all cases of such temporary removal or relocation, restoration to the former location shall be accomplished by the Contractor in a manner that will restore or replace the utility or improvement as nearly as possible to its former location and to as good or better condition than found prior to removal.

Restoration of Pavement:

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

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

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

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

Notification by the City - For routine repairs, the City shall notify Underground Service Alert (1-800-642-2444) forty-eight (48) hours prior to any excavation in the vicinity of any existing underground facilities, including all water, sewer, storm drain, gas, petroleum products, or other pipelines; all buried electric power, communications, or television cables; all traffic signal and street lighting facilities; and all roadway and state highway rights-of-way.

Facility Access

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

Water Quality Protection and Stormwater Quality

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

Trench Excavation

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

Underground Facilities

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

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

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

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

Working Hours

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

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

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

Noise Abatement

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

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

Warranty and Scheduled Maintenance

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

The Contractor shall respond within four (4) hours of City's emergency service call after receipt of notice from the City, and promptly make all repairs arising out of defective materials, workmanship, or equipment. If a service response does not occur within four (4) hours, or diligent efforts are not made to effect repairs, the City will notify the Contractor (by fax or voice mail if no representative is available) of its intent to secure another service provider. Thereafter, the City is authorized to make such repairs, and the Contractor shall be liable for the cost thereof. In case of emergency, where, in

the opinion of the City, delay could cause serious loss or damage, repairs may be made without notice being sent to the Contractor, and the expense in connection t The Contractor shall direct all of its equipment suppliers and/or manufacturers to promptly provide to it and to the City any and all information concerning product defects or other problems and shall promptly forward to the City any such information received, whether before, during, or after the warranty period.

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

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

On-Call Services for Water and Sewer Repairs

Per Page 6 of this RFP, this work is subject to prevailing wage. **The hourly wages to be paid laborers, workers, or mechanics shall not be less than the DIR prevailing wage rates for an hour's work in the same trade or occupation in Santa Clara County.** Prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>.

<u>Description</u>	<u>Unit</u>	<u>Hourly Rate</u>
1. LABOR		
a. Project Manager	Hour	\$ <u>163.00</u>
b. Foreman/Superintendent	Hour	\$ <u>128.00</u>
c. Equipment Operator	Hour	\$ <u>122.00</u>
d. Journeyman	Hour	\$ <u>105.00</u>
e. Laborer or Equivalent	Hour	\$ <u>98.00</u>
2. EQUIPMENT		
a. Boom Truck	Hour	\$ <u>N/A</u>
b. Service Vehicle (utility body pickup) or Equivalent	Hour	\$ <u>37.00</u>
c. Backhoe (Case 580E or comparable)	Hour	\$ <u>65.00</u>
d. Welder	Hour	\$ <u>N/A</u>
e. Compressor (150 cfm)	Hour	\$ <u>19.00</u>
f. 5 yd Dump Truck	Hour	\$ <u>51.00</u>
g. 24-inch Vibratory Smooth Drum Roller	Hour	\$ <u>33.00</u>
3. MOBILIZATION AND DEMOBILIZATION		

Mobilization and Demobilization	<u>7</u> % (Fill In)
4. OVERHEAD AND PROFIT	
Overhead and Profit	<u>20</u> % (Fill In)
5. MATERIALS MARKUP	
Materials Markup - Cannot exceed 25%	<u>15</u> % (Fill In)
6. SUBCONTRACTOR MARKUP	
Subcontractor Markup	<u>15</u> % (Fill In)

EXHIBIT C SCHEDULE OF PERFORMANCE

This is an on-call as needed agreement.

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

CITY COUNCIL STAFF REPORT

MEETING DATE: January 17, 2024

PREPARED BY:

Maria Angeles, Senior Civil Engineer

APPROVED BY: City Manager

APPROVE THE FINAL MAP FOR THE LUMBER YARD PHASE 2 PROJECT – TRACT NO. 10621 (DEPOT STREET AND EAST DUNNE AVENUE), AND THE FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENTS AGREEMENT FOR THE LUMBER YARD PHASE 1 – TRACT NO. 10541

RECOMMENDATION(S)

1. Approve the Final Map for the Lumber Yard Phase 2 Project (Tract No. 10621);
2. Authorize the recordation of the Lumber Yard Phase 2 Final Map;
3. Approve the First Amendment to the Subdivision Improvements Agreement for the Lumber Yard Phase 1 Project (Tract No. 10541);
4. Authorize the City Manager to execute the First Amendment to the Lumber Yard Phase 1 Subdivision Improvements Agreement with MH LUMBERYARD 49, LLC; and
5. Authorize the recordation of the First Amendment to the Subdivision Improvements Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment and Preserving Open Space and Agricultural Land

Guiding Documents

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

The Lumber Yard Project is a two-phased, mixed-use development consisting of 40 attached townhome style units, and one mixed-use building with office space on the ground floor and 9 condominium units on the second and third floors. The proposed development has a total of 49 residential units and is located on the former Hale Lumber site on the east side of Depot Street, between Fifth Street and East Dunne Avenue (see attached Site Map – Attachment 1).

In conjunction with the Lumber Yard Project and pursuant to City Council's approval on September 1, 2021 of a second amendment to the Disposition and Development

Agreement (DDA) between the Subdivider/Developer, MH Lumber Yard 49, LLC, and the City, the Developer was required to realign Depot Street through the Morgan Hill Community & Cultural Center (CCC) parking lot then connect to Church Street. Also pursuant to the DDA, after construction of the mixed-use building, the building's ground floor office space will be conveyed by the Developer to the City for future City use.

The Depot Street realignment was substantially completed in Spring 2023 and has resulted in approximately 0.29 acres of excess Depot Street right-of-way. Pursuant to the DDA, this excess right-of-way area will be conveyed to the Developer and the area will be incorporated into Phase 2 of the project. On September 6, 2023, the City Council approved and adopted Resolution 23-043 that declared the summary vacation of the excess Depot Street right-of-way. A Quitclaim Deed was recorded on November 3, 2023 which conveyed the vacated area to the Developer.

Lumber Yard Phase 2 Final Map (Tract No. 10621)

The Phase 2 Final Map (Tract No. 10621 and shown as Attachment 2) being recommended for City Council approval shows 20 of the project's 49 total residential units and the mixed-use building. The other residential units were part of the previously-approved Final Map for Phase 1 (Tract No. 10541).

The Developer has furnished the City with the necessary documents to complete the processing of the Phase 2 Final Map and has made provisions with a Title Company for the recordation of the map. The Final Map conforms to the requirements of the Subdivision Map Act, and conditions of approval have been met. Staff recommends that City Council approve the Phase 2 Final Map.

Lumber Yard Phase 1 Final Map and Subdivision Improvements Agreement (Tract No. 10541)

The Phase 1 Final Map (Tract No. 10541) and related Subdivision Improvements Agreement (SIA) were approved by the City Council on December 1, 2021.

The original developer of the Lumber Yard Project, The Latala Group, LLC, and the original property owners/original subdivider, Robert V. Hammond and Linda Hammond, Trustees of the Robert V. Hammond and Linda Hammond Revocable Trust dated May 28, 1991, Robert V. Hammond, Jr., and Robert M. Traurig, jointly executed the SIA with the City on December 6, 2021 requiring the public improvements of the project be completed within eighteen (18) months from the date of the recording of the Phase 1 Final Map (no later than June 9, 2023). The SIA also allowed the City Manager to extend the agreement by not more than six (6) months.

On December 21, 2021, a Grant Deed was recorded with the Santa Clara County Recorder that transferred the property from the original subdivider to the current Developer/Owner, MH LUMBERYARD 49, LLC.

MH LUMBERYARD 49, LLC has requested an extension of the SIA due to construction delays caused by the arson fire incident that occurred in June 2023 which destroyed the project's model Building 2 that was under construction. The building's framing and

foundation, and adjacent Depot Street frontage improvements had to be removed and rebuilt. The project also experienced delays finalizing the construction of the Depot Street realignment improvements and with PG&E involving the undergrounding of the existing overhead utility lines fronting the project along Depot Street. As previously mentioned, the Depot Street realignment has been substantially completed and has been open for public use since last spring. The remaining public improvements to be completed include the undergrounding of the overhead utility lines and completing the project's frontage improvements along Depot Street and East Dunne Avenue.

Staff recommends an extension of the SIA and the completion of the public improvements by an additional 18 months from the original completion date of June 9, 2023. If the extension is approved, the new expiration date of the SIA will be December 9, 2024.

Staff recommends that City Council authorize the City Manager to sign and record the First Amendment to the SIA (Attachment 3) on behalf of the City.

COMMUNITY ENGAGEMENT:

Involve and Inform

On September 10, 2019, the Planning Commission approved the project's Tentative Map. Residents within a 300 foot radius were informed of the Planning Commission's intent to approve the Tentative Map for the project, in which a public hearing was held to allow the public to be involved and voice their concerns over Tentative Map requirements.

On September 19, 2019, Planning staff presented the project's Design Review permit request to the Downtown Association. In addition, residents within a 300-foot radius were informed of the City Council's intent to approve the Design Review Permit for the project, in which another public hearing was held.

This report also serves to inform the community of the recommended amendment to the project's Subdivision Improvements Agreement.

ALTERNATIVE ACTIONS:

There is no feasible alternative action on the Final Map approval as the Developer has met the requirements of the Tentative Map conditions approved by the Planning Commission to file for the Phase 2 Final Map approval.

On the recommended amendment to the SIA, City Council could decide not to approve the amendment. The Developer will then be required to enter into a new Subdivision Improvements Agreement with the City to complete the remaining public improvements required of the project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

September 10, 2019 – Planning Commission approved the Tentative Map for the project

and recommended approval of the Design Review Permit to City Council.

October 2, 2019 – City Council reviewed and approved the Design Review Permit for the project.

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 this project.

December 1, 2021 – City Council approved the Phase 1 Final Map (Tract No. 10541) and related Subdivision Improvements Agreement.

September 6, 2023 – City Council approved and adopted Resolution 23-043 that (1) declared the Summary Vacation of the excess Depot Street right-of-way; (2) established the new Depot Street right-of-way; and (3) added a Public Utility Easement at the CCC.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

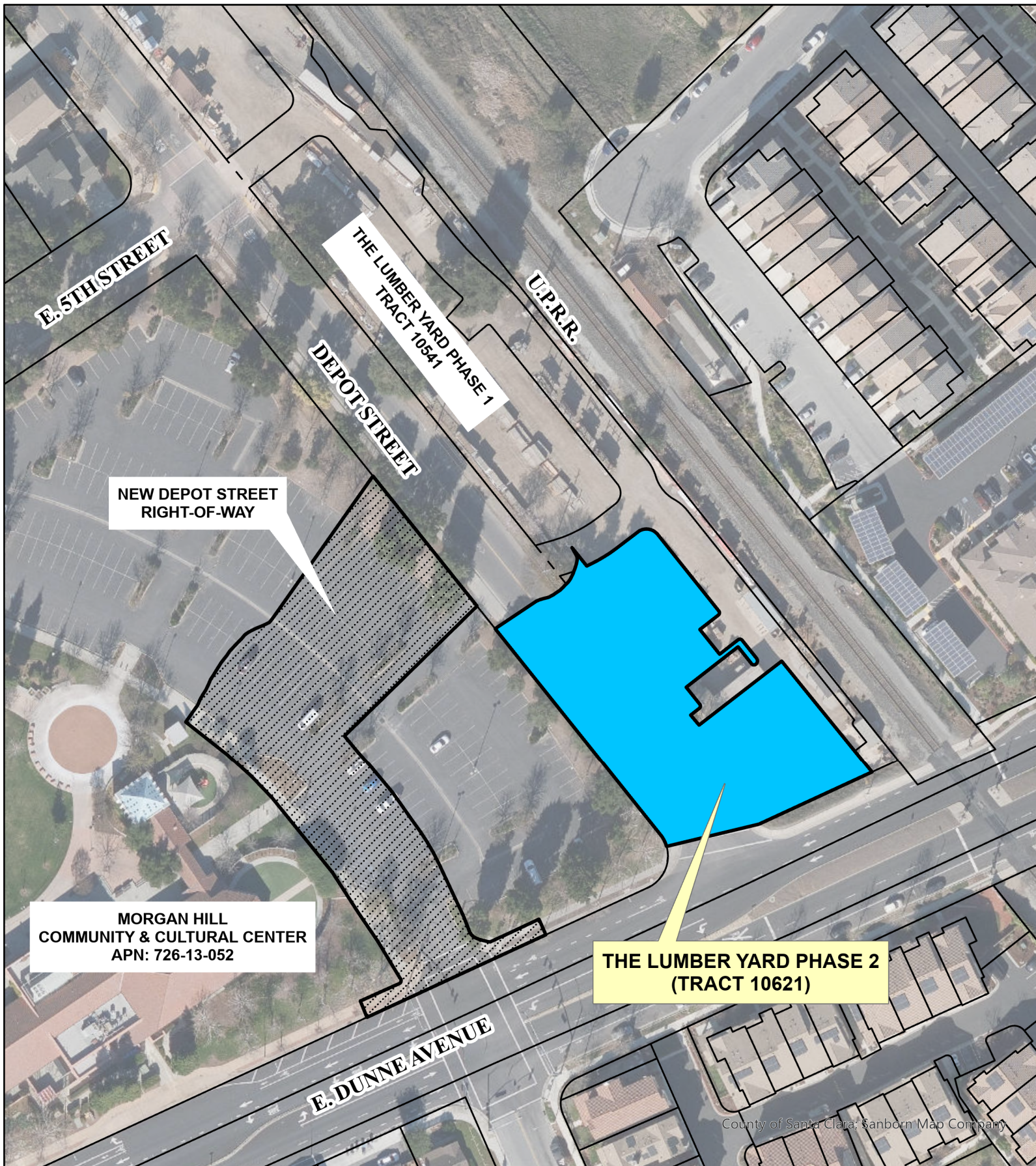
Project

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.



County of Santa Clara: Sanborn Map Company



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

Site Map Tract 10621 The Lumber Yard Phase 2

0 25 50 100 150 200
Feet



Page 63 of 370

OWNERS' STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY SHOWN ON THE SUBDIVISION WITHIN THE DISTINCTIVE SYMBOL LINE OF THIS MAP ENTITLED "TRACT 10621, THE LUMBER YARD", CONSISTING OF FOUR (4) SHEETS, THIS STATEMENT BEING ON SHEET ONE (1) THEREOF; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE HAVE CAUSED SAID MAP TO BE PREPARED FOR RECORD, AND DO CONSENT TO THE MAKING AND FILING OF SAID MAP.

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

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

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE PARCELS WITHIN THE DISTINCTIVE SYMBOL LINE OF THIS MAP, EASEMENTS OVER THOSE CERTAIN AREAS DESIGNATED AS "INGRESS AND EGRESS EASEMENT" (IEE) FOR RECIPROCAL RIGHTS OF INGRESS AND EGRESS, SAID EASEMENT SHALL BE CONVEYED TO THE HOMEOWNERS ASSOCIATION CREATED FOR "THE LUMBER YARD"; MAINTENANCE OF SAID EASEMENTS AS STATED IN THE COVENANTS, CONDITIONS, AND RESTRICTIONS, FOR "THE LUMBER YARD".

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE PARCELS WITHIN THE DISTINCTIVE SYMBOL LINE OF THIS MAP FOR THE INSTALLATION AND MAINTENANCE OF LANDSCAPING FACILITIES AND STORM DRAIN FACILITIES OVER THOSE CERTAIN AREAS DESIGNATED AS "LANDSCAPE EASEMENT" (LSE), SAID EASEMENT SHALL BE CONVEYED TO THE HOMEOWNERS ASSOCIATION CREATED FOR "THE LUMBER YARD"; MAINTENANCE OF SAID EASEMENTS AS STATED IN THE COVENANTS, CONDITIONS, AND RESTRICTIONS, FOR "THE LUMBER YARD".

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE PARCELS WITHIN THE DISTINCTIVE SYMBOL LINE OF THIS MAP, "PARCEL B" AND "PARCEL C," FOR "PRIVATE STREET" PURPOSES, SAID PARCELS SHALL BE CONVEYED TO THE HOMEOWNERS ASSOCIATION CREATED FOR "THE LUMBER YARD", MAINTENANCE OF SAID PARCEL AS STATED IN THE COVENANTS, CONDITIONS, AND RESTRICTIONS, FOR "THE LUMBER YARD".

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

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

OWNER: MH LUMBERYARD 49, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY
BY: VAN DAELE HOMES OF NORTHERN CALIFORNIA, INC., A CALIFORNIA CORPORATION
ITS: MANAGING MEMBER

BY: [Signature]
NAME: Jeffery M. Hack
TITLE: President / CEO

OWNER ACKNOWLEDGMENT

I, A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE, HEREBY CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT I HAVE EXAMINED THE SIGNATURE OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA,
COUNTY OF Riverside } ss.

ON January 4, 2024, BEFORE ME, Jessica Lusca, A NOTARY PUBLIC

PERSONALLY APPEARED Jeffery M. Hack 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 CAPACITIES, AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND.

NOTARY'S SIGNATURE: Jessica Lusca
NAME OF NOTARY (PLEASE PRINT): Jessica Lusca
PRINCIPAL COUNTY OF BUSINESS: Riverside
MY COMMISSION NUMBER: 2385710
MY COMMISSION EXPIRES: Dec. 8, 2025



BENEFICIARY STATEMENT

WE, COMERICA BANK, AS BENEFICIARY UNDER THAT CERTAIN DEED OF TRUST RECORDED DECEMBER 21, 2021 AS DOCUMENT NO. 25200594, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, DOES HEREBY CONSENT TO THE PREPARATION AND FILING OF THIS MAP, "TRACT 10621, THE LUMBER YARD", AND JOINS IN ALL DEDICATIONS THEREON.

IN WITNESS WHEREOF, THE UNDERSIGNED HAS EXECUTED THIS STATEMENT ON January 8, 2024 BY ITS DULY AUTHORIZED OFFICERS AS BENEFICIARY:

COMERICA BANK
BY: [Signature]
NAME: Jonathan Ward
ITS: VP-Western Market

BENEFICIARY ACKNOWLEDGMENT

I, A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE, HEREBY CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT I HAVE EXAMINED THE SIGNATURE OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA,
COUNTY OF Orange } ss.

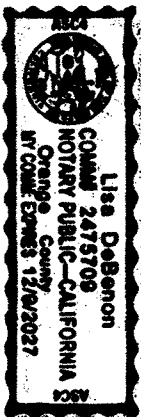
ON January 8, 2024, BEFORE ME, Lisa Debenon, NOTARY PUBLIC

PERSONALLY APPEARED Jonathan Ward 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 CAPACITIES, AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND.

NOTARY'S SIGNATURE: [Signature]
NAME OF NOTARY (PLEASE PRINT): Lisa Debenon
PRINCIPAL COUNTY OF BUSINESS: Orange
MY COMMISSION NUMBER: 2475709
MY COMMISSION EXPIRES: 12/19/2027



SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF MH LUMBERYARD 49, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, COMPLETED IN FEBRUARY 2023. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS BEFORE JANUARY 2026, AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP. I HEREBY STATE THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN.

DATE: 01/02/2024

[Signature]
BRYAN PIERCE, PLS 8859



CITY SURVEYOR'S STATEMENT

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

DATE: _____

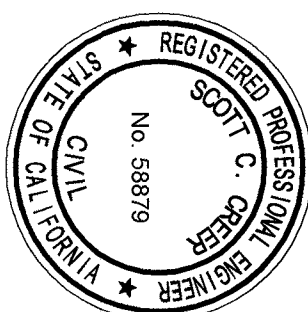


JOHN K. KING
ACTING CITY SURVEYOR - HANNA & BRUNETTI
P.L.S. NO. 6809

CITY ENGINEER'S STATEMENT

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

DATE: _____



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

RECORDER'S STATEMENT

FILE NO. _____ FEE \$ _____ PAID. ACCEPTED FOR RECORD AND FILED IN BOOK _____ OF MAPS AT PAGES _____, SANTA CLARA COUNTY RECORDS, THIS _____ DAY OF _____, 20____ AT _____ M., AT THE REQUEST OF CHICAGO TITLE COMPANY.
REGINA ALCONDEGRAS, RECORDER
SANTA CLARA COUNTY, CALIFORNIA BY _____ DEPUTY

TRACT 10621
THE LUMBER YARD
FOR CONDOMINIUM PURPOSES
1 COMMERCIAL UNIT AND 20 RESIDENTIAL UNITS
SANTA CLARA COUNTY, CALIFORNIA
A SUBDIVISION OF ALL OF "PARCEL 3", "PARCEL 4" AND "PARCEL B", AS SHOWN ON THE MAP ENTITLED "TRACT 10641, THE LUMBER YARD" FILED DECEMBER 9, 2021 IN BOOK 944 OF MAPS, AT PAGES 21 THROUGH 26, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA AND THE LANDS DESCRIBED IN THE QUITCLAIM DEED RECORDED NOVEMBER 03, 2023 AS DOCUMENT NO. 25654370, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA

Prepared By: RUGGERI-JENSEN-AZAR
8056 Camino Arroyo, Gilroy, CA 95020

STATEMENT OF THE PLANNING COMMISSION

I HEREBY STATE THAT THE TENTATIVE MAP FOR THE WITHIN FINAL MAP SHOWN HEREON WAS CONDITIONALLY APPROVED BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL ON SEPTEMBER 10, 2019, BY RESOLUTION NUMBER 19--13, APPLICATION NUMBER SD2018--0007.

DATE: _____

JENNIFER CARMAN
SECRETARY
CITY OF MORGAN HILL, CALIFORNIA

STATEMENT OF THE CITY CLERK

I HEREBY STATE THAT THIS FINAL MAP, CONSISTING OF FOUR (4) SHEETS, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL AT A MEETING OF SAID COUNCIL HELD ON THE _____ DAY OF _____, 2024, AND THAT SAID COUNCIL DID ACCEPT, SUBJECT TO THEIR IMPROVEMENT IN ACCORDANCE WITH CITY STANDARDS, ON BEHALF OF THE PUBLIC, THE DEDICATION OF THE "PUBLIC SERVICE EASEMENT" (PSE), AND THE "EMERGENCY VEHICLE ACCESS EASEMENT" (EVAE), FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE DEDICATION, AS SHOWN ON THIS MAP.

DATE: _____

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

NOTES:

- 1.) THE DISTINCTIVE SYMBOL LINE INDICATES THE BOUNDARIES OF THE LAND SUBDIVIDED BY THIS FINAL MAP.
- 2.) THE AREA WITHIN THE DISTINCTIVE SYMBOL LINE IS 29,127 SQUARE FEET OF LAND, MORE OR LESS.
- 3.) MEASURED DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
- 4.) A GEOTECHNICAL INVESTIGATION FOR PROPOSED NEW RESIDENTIAL DEVELOPMENT, 17020 DEPOT STREET, MORGAN HILL, CALIFORNIA, PREPARED FOR LATALA HOMES, BY HARO, KASUNICH & ASSOCIATES, INC., PROJECT NO. SCL11615, DATED APRIL 2019, AND IS ON FILE WITH THE CITY OF MORGAN HILL.
- 5.) DEVELOPMENT AGREEMENTS:
 - A) MEMORANDUM OF REAL PROPERTY AGREEMENT, RECORDED JANUARY 11, 2019 AS DOCUMENT NO. 24096197, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.
 - B) DEVELOPMENT AGREEMENT, DA2018--0007, RECORDED MAY 21, 2019 AS DOCUMENT NO. 24184437, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.
 - C) DISPOSITION AND DEVELOPMENT AGREEMENT, RECORDED NOVEMBER 29, 2018 AS DOCUMENT NO. 24072193, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.
 - AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT, RECORDED JUNE 6, 2019 AS DOCUMENT NO. 24197079, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.
 - D) SECOND AMENDMENT TO DISPOSITION & DEVELOPMENT AGREEMENT (DDA), RECORDED SEPTEMBER 27, 2021 AS DOCUMENT NO. 25113728, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.
 - D) ASSIGNMENT OF RIGHTS AND OBLIGATIONS UNDER DISPOSITION AND DEVELOPMENT AGREEMENT AND DEVELOPMENT AGREEMENT RECORDED DECEMBER 21, 2021 AS DOCUMENT NO. 25200593, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

TRACT 10621
THE LUMBER YARD
FOR CONDOMINIUM PURPOSES
1 COMMERCIAL UNIT AND 20 RESIDENTIAL UNITS
SANTA CLARA COUNTY, CALIFORNIA
CITY OF MORGAN HILL
A SUBDIVISION OF ALL OF "PARCEL 3", "PARCEL 4" AND "PARCEL B", AS SHOWN ON THE MAP ENTITLED "TRACT 10641, THE LUMBER YARD" FILED DECEMBER 9, 2021 IN BOOK 944 OF MAPS, AT PAGES 21 THROUGH 26, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA AND THE LANDS DESCRIBED IN THE QUITCLAIM DEED RECORDED NOVEMBER 03, 2023 AS DOCUMENT NO. 25564370, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA

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

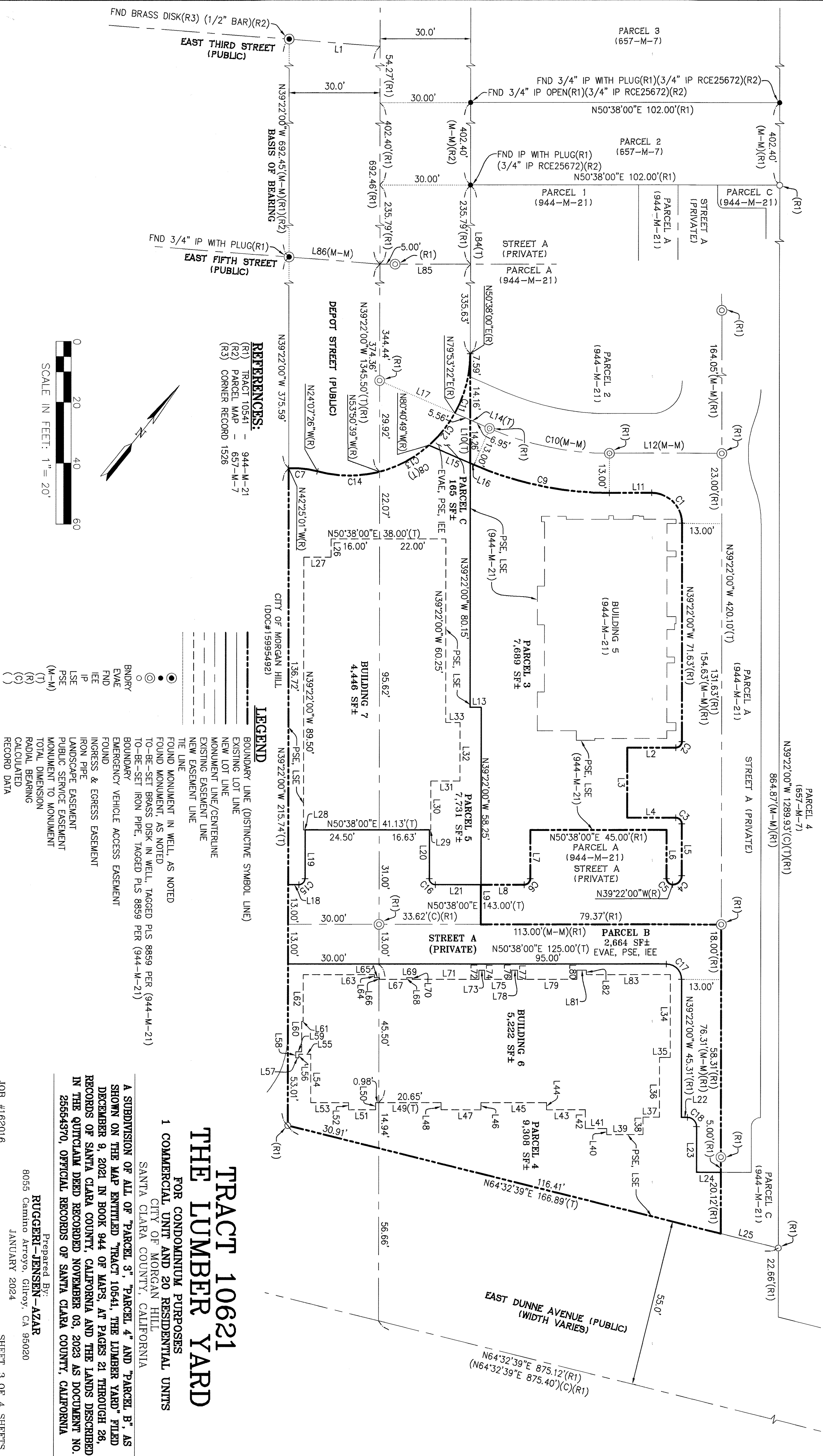
EASEMENT NOTES:
THE PROPERTY MAY BE SUBJECT TO BY THE TERMS DESCRIBED IN THE "EASEMENT DEED BY COURT ORDER IN SETTLEMENT OF LANDOWNER ACTION" RECORDED FEBRUARY 13, 2014 AS DOCUMENT #22518872, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

BASIS OF BEARINGS:
THE BEARING OF N39°33'W BETWEEN FOUND MONUMENTS ALONG THE SOUTHWEST LINE OF DEPOT STREET AS SHOWN ON THE PARCEL MAP FILED JULY 5, 1994 IN BOOK 657 OF MAPS, AT PAGE 7, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, WAS TAKEN AS THE BASIS OF BEARINGS SHOWN HEREON.

NOTES:
1. DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
2. TIE LINES ARE 90° OR RADIAL TO MONUMENT LINES UNLESS OTHERWISE NOTED.
3. DUE TO ROUNDING, THE SUM OF THE INDIVIDUAL DIMENSIONS MAY NOT EQUAL THE OVERALL TOTAL DIMENSION.
4. THE AREA WITHIN THE DISTINCTIVE SYMBOL LINE IS ±29,127 SF.
5. SEE SHEET 4 FOR LINE AND CURVE TABLES.

FND BRASS DISK IN WELL,
MARKINGS NOT LEGIBLE(R1)
(2'-FOOT MONUMENT TIES)(R2)
(2'-3/4" BRASS DISK WITH
PUNCH, RCE24893, 0.09'
SOUTHEASTERLY)(836-M-11)

BUTTERFIELD BOULEVARD
(PUBLIC)



TRACT 10621 THE LUMBER YARD

FOR CONDOMINIUM PURPOSES
1 COMMERCIAL UNIT AND 20 RESIDENTIAL UNITS
CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

A SUBDIVISION OF ALL OF "PARCEL 3", "PARCEL 4", AND "PARCEL B", AS SHOWN ON THE MAP ENTITLED "TRACT 10641, THE LUMBER YARD" FILED DECEMBER 9, 2021 IN BOOK 944 OF MAPS, AT PAGES 21 THROUGH 26, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA AND THE LANDS DESCRIBED IN THE QUITCLAIM DEED RECORDED NOVEMBER 03, 2023 AS DOCUMENT NO. 25564370, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
JANUARY 2024

JOB #162016
SHEET 3 OF 4 SHEETS

LINE TABLE				LINE TABLE				CURVE TABLE			
LINE	BEARING	DIST		LINE	BEARING	DIST		CURVE	LENGTH	RADIUS	DELTA
L1	N55°08'21"E	30.09'	(R1)	L44	N39°22'00"W	2.33'		C1	15.71'	10.00'	090°00'00"
L2	N50°38'00"E	16.00'	(R1)	L45	N50°38'00"E	21.63'		C2	3.14'	2.00'	090°00'00"
L3	N39°22'00"W	23.00'	(R1)	L46	N39°22'00"W	2.33'		C3	3.14'	2.00'	090°00'00"
L4	N50°38'00"E	16.00'	(R1)	L47	N50°38'00"E	13.17'		C4	4.71'	3.00'	090°00'00"
L5	N39°22'00"W	17.00'	(R1)	L48	N39°22'00"W	2.33'		C5	3.14'	2.00'	090°00'00"
L6	N39°22'00"W	16.00'	(R1)	L49	N50°38'00"E	21.62'		C6	3.14'	2.00'	090°00'00"
L7	N39°22'00"W	16.00'	(R1)	L50	N39°22'00"W	2.33'		C7	9.58'	30.00'	018°17'35"
L8	N50°38'00"E	14.37'	(R1)	L51	N50°38'00"E	9.02'		C8	73.47'	40.00'	105°14'34"
L9	N39°22'00"W	13.00'	(R1)	L52	N39°22'00"W	2.33'		C9	46.01'	113.00'	023°19'52"
L10	N39°22'00"W	35.91'	(R1)	L53	N50°38'00"E	12.46'		C10	40.72'	100.00'	023°19'52"
L11	N50°38'00"E	14.02'	(R1)	L54	N39°22'00"W	15.87'		C11	20.42'	40.00'	029°15'22"
L12	N50°38'00"E	37.02'	(R1)	L55	N50°38'00"E	3.92'		C12	13.56'	40.00'	019°25'48"
L13	N50°38'00"E	3.62'		L56	N39°22'00"W	1.17'		C13	18.74'	40.00'	026°50'10"
L14	N73°57'52"E	12.50'		L57	N50°38'00"E	1.00'		C14	20.75'	40.00'	029°43'13"
L15	N73°57'52"E	14.80'		L58	N39°22'00"W	2.00'		C15	3.14'	2.00'	090°00'00"
L16	N73°57'52"E	1.34'	(R1)	L59	N50°38'00"E	1.92'		C16	3.14'	2.00'	090°00'00"
L17	N73°57'52"E	27.11'		L60	N39°22'00"W	10.00'		C17	7.85'	5.00'	090°00'00"
L18	N50°38'00"E	3.50'		L61	N50°38'00"E	0.46'		C18	4.71'	3.00'	090°00'00"
L19	N39°22'00"W	16.00'		L62	N39°22'00"W	15.29'					
L20	N39°22'00"W	16.00'		L63	N50°38'00"E	23.54'					
L21	N50°38'00"E	15.00'		L64	N39°22'00"W	1.00'					
L22	N50°38'00"E	2.00'	(R1)	L65	N50°38'00"E	1.62'					
L23	N39°22'00"W	15.00'	(R1)	L66	N39°22'00"W	0.50'					
L24	N50°38'00"E	8.00'	(R1)	L67	N50°38'00"E	9.00'					
L25	N64°32'39"E	19.57'	(R1)	L68	N39°22'00"W	0.50'					
L26	N39°22'00"W	6.00'		L69	N50°38'00"E	1.92'					
L27	N50°38'00"E	9.00'		L70	N39°22'00"W	0.50'					
L28	N50°38'00"E	0.50'		L71	N50°38'00"E	21.96'					
L29	N50°38'00"E	0.50'		L72	N39°22'00"W	3.00'					
L30	N39°22'00"W	16.08'		L73	N50°38'00"E	1.92'					
L31	N50°38'00"E	9.58'		L74	N39°22'00"W	3.00'					
L32	N39°22'00"W	19.17'		L75	N50°38'00"E	9.00'					
L33	N50°38'00"E	4.71'		L76	N39°22'00"W	3.00'					
L34	N39°22'00"W	27.21'		L77	N39°22'00"W	3.00'					
L35	N50°38'00"E	3.50'		L78	N50°38'00"E	1.92'					
L36	N39°22'00"W	19.58'		L79	N50°38'00"E	19.58'					
L37	N50°38'00"E	5.42'		L80	N39°22'00"W	3.00'					
L38	N39°22'00"W	5.71'		L81	N50°38'00"E	3.15'					
L39	N50°38'00"E	12.00'		L82	N39°22'00"W	1.50'					
L40	N39°22'00"W	2.00'		L83	N50°38'00"E	27.71'					
L41	N50°38'00"E	7.08'		L84	N39°22'00"W	571.43'	(571.42')(C)(R1)				
L42	N39°22'00"W	6.17'		L85	N50°38'00"E	30.00'	(R1)				
L43	N50°38'00"E	12.88'		L86	N55°09'32"E	30.09'	(R1)				

TRACT 10621
THE LUMBER YARD

FOR CONDOMINIUM PURPOSES
1 COMMERCIAL UNIT AND 20 RESIDENTIAL UNITS
CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

A SUBDIVISION OF ALL OF "PARCEL 3", "PARCEL 4" AND "PARCEL B", AS SHOWN ON THE MAP ENTITLED "TRACT 10641, THE LUMBER YARD" FILED DECEMBER 9, 2021 IN BOOK 944 OF MAPS, AT PAGES 21 THROUGH 26, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA AND THE LANDS DESCRIBED IN THE QUITCLAIM DEED RECORDED NOVEMBER 03, 2023 AS DOCUMENT NO. 25564370, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA

RECORDING REQUESTED BY
WHEN RECORDED RETURN TO

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

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

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

FIRST AMENDMENT TO SUBDIVISION IMPROVEMENTS AGREEMENT

THE LUMBER YARD – TRACT NO. 10541

THIS FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENTS AGREEMENT ("AMENDMENT") is dated as of this _____ day of _____, 2024, is entered into by and between the CITY OF MORGAN HILL, a California municipal corporation ("CITY"), and MH LUMBERYARD 49, LLC, a California Limited Liability Company, ("SUBDIVIDER"). SUBDIVIDER and CITY are collectively referred to as the "Parties".

RECITALS

The following recitals are a substantive portion of this AMENDMENT:

1. The CITY and SUBDIVIDER entered into that Subdivision Improvements Agreement (ORIGINAL AGREEMENT) on December 6, 2021 to develop the property located on the east side of Depot Street, between Fifth Street and East Dunne Avenue, in Morgan Hill, California, (APNs 726-13-061 through 726-13-064) as a two-phased, mixed-use development consisting of 40 attached townhome style units, and one mixed-use building with office space on the ground floor and 9 condominium units on the second and third floors. The first phase of the project is designated as Tract No. 10541 ("Project"). The ORIGINAL AGREEMENT was recorded on December 9, 2021 with the Santa Clara County Recorder as document number 25190632.
2. At the time of execution of the ORIGINAL AGREEMENT, Robert V. Hammond and Linda Hammond, Trustees of the Robert V. Hammond and Linda Hammond Revocable Trust dated May 28, 1991, Robert V. Hammond, Jr., and Robert M. Traurig, were the original owners/original subdivider, and the original developer was The Latala Group, LLC.
3. On December 21, 2021, a Grant Deed was recorded with the Santa Clara County Recorder as document number 25200591, that transferred the property from the original owners to the SUBDIVIDER.
4. On December 9, 2021, the final map for Tract No. 10541 was recorded with the Santa Clara County Recorder in Book 944 of Maps, pages 21 through 26.

5. Pursuant to the ORIGINAL AGREEMENT, the SUBDIVIDER is required to perform and complete all public improvements within eighteen (18) months from the date of the recording of the Final Map (no later than June 9, 2023). Pursuant to Section 6 of the ORIGINAL AGREEMENT, the City Manager may extend the deadline for completion by not more than six (6) months at her reasonable discretion and determination that granting the extension will not be detrimental to the public welfare.
6. On December 11, 2023, the SUBDIVIDER submitted a written request to extend the deadline by an additional twenty-four (24) months to complete the public improvements due to project delays caused by the arson fire incident at the project site that occurred in June 2023, and additional delays during the construction of the Depot Street realignment improvements and with the coordination with PG&E to underground the existing overhead utility lines.
7. The City Engineer deemed that the extension of the deadline by an additional eighteen (18) months (no later than December 9, 2024) is necessary to allow the SUBDIVIDER to continue the completion of the remaining public improvements which include the undergrounding of the overhead utility lines and the construction of the project's frontage improvements along Depot Street and East Dunne Avenue.
8. Pursuant to Section 17.32.270 of the Morgan Hill Municipal Code (Chapter 17.32, Improvements and Improvement Agreements), the completion date may further be extended by the City Council upon written request by the SUBDIVIDER and the submittal of adequate evidence to justify the extension. If City Council approves the extension, the SUBDIVIDER shall enter into a Subdivision Improvement Extension Agreement with the CITY.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. All terms and conditions of the ORIGINAL AGREEMENT shall remain in full force and effect, except that the following amendments shall be made as set forth below.

The first paragraph of Section 6 of the ORIGINAL AGREEMENT is amended to read as follows:

Section 6. Timing of Performance

Subdivider agrees to perform and complete all Improvements within thirty-six (36) months from the date of the recording of the Final Map. The Subdivider may request the City Council to further extend the deadline for completion upon written request by the Subdivider and the submittal of adequate evidence to justify the extension.

//

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2. Those individuals who are signing this AMENDMENT 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 AMENDMENT.

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

ATTEST:

CITY OF MORGAN HILL

By:

By:

Michelle Bigelow, City Clerk

Christina J. Turner, City Manager

Date:

Date:

APPROVED AS TO FORM:

"Subdivider"

By:

**MH LUMBERYARD 49, LLC, a California
Limited Liability Company**

Donald A. Larkin, City Attorney

Date:

By: Van Daele Homes of Northern
California, Inc., a California
corporation

Its: Managing Manager

By:

Name:

Title:

Date:

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

CITY COUNCIL STAFF REPORT

MEETING DATE: January 17, 2024

PREPARED BY:

Lynette Kong, Associate Engineer

APPROVED BY: City Manager

APPROVE THE FINAL MAP FOR THE KERLEY RESIDENTIAL PROJECT - TRACT NO. 10609 (19380 MONTEREY ROAD WITH ASSESSOR PARCEL NUMBERS 726-42-001 AND 726-42-002) AND RELATED SUBDIVISION IMPROVEMENTS AGREEMENT

RECOMMENDATION(S)

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with CIVIC MONTEREY ROAD, LLC; and
3. Authorize the recordation of the Final Map and Subdivision Improvements Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2022-2023 Strategic Priorities

Economic Development

Guiding Documents

Morgan Hill 2035 General Plan

Storm Drain Master Plan

Water System Master Plan

Wastewater System Master Plan

REPORT NARRATIVE:

Kerley - Tract 10609 is a 93-unit residential condominium development located at 19380 Monterey Road, the former Family RV site, and is approximately 250 feet southeast of the Monterey Road/Burnett Avenue intersection as shown on the attached Site Map (Attachment 1). The project is bounded to the north by Irish Construction and a private landscape contractor, to the east by Madrone Mobilehome Estates and to the south by Superior Auto and Repair.

The project site is composed of two parcels with a total area of approximately 4.62 acres. The larger of the two parcels, labeled as "Parcel C" on the Final Map, has an area of 3.93 acres while the second parcel, labeled as "Parcel B" on the Final Map, has an area of 0.74 acres.

All the streets to be constructed within the development will be privately-owned and maintained by the Developer and future Homeowners Association (HOA).

The Developer, CIVIC MONTEREY ROAD, LLC, has met all the conditions specified by the Planning Commission in the approval of the project's Vesting Tentative Map and Design Review Permit (Resolution No. 22-17). The City Council is required to approve the Final Map (Attachment 2) if it conforms to all the requirements of the Subdivision Map Act, and any conditions of approval for the Vesting Tentative Map.

The Developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provisions to provide the City with the required fees, security, and insurance prior to the recordation of the Final Map. The Final Map has met the conditions of approval and conforms to the requirements of the Subdivision Map Act.

Staff recommends that City Council approve the Final Map and authorize the City Manager to sign the Subdivision Improvements Agreement (Attachment 3) pending review and approval by the City Attorney.

COMMUNITY ENGAGEMENT:

Inform

The project's notice of the appeal hearing was publicly noticed in November 2022, which included a mailing to property owners within 600 feet of the project, and was noticed in the newspaper for the minimum 10-day period.

The project's Vesting Tentative Map for Condominium Purposes and Design Permits were publicly noticed in September 2022, which included a mailing to property owners within 600 feet of the project, and was noticed in the newspaper for the minimum 10-day period.

The project's development information webpage was created on the City's website to inform the public of the project's Vesting Tentative Map and Design Review applications.

ALTERNATIVE ACTIONS:

There are no feasible alternative actions as the Developer has met the requirements of the Vesting Tentative Map conditions approved by the Planning Commission to file for a Final Map approval and has furnished the necessary documents to complete the processing of the Subdivision Improvements Agreement.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

November 16, 2022 — City Council held a public hearing on an appeal on the project and adopted Resolution No. 22-055 which denied the appeal and reaffirmed the decision of the Planning Commission to approve the project, subject to the conditions of

approval.

September 13, 2022 — Planning Commission held a public hearing on the project and adopted Resolution No. 22-17 which approved the project's single-lot Vesting Tentative Subdivision Map (SD2021-0004) and Design Permit (SR2021-0014).

February 16, 2022 — City Council adopted Resolution No. 22-004 which granted one concession for the proposed development to increase the floor area ratio.

FISCAL AND RESOURCE IMPACT:

Development review costs for this project are paid with development processing fees collected from the Developer.

CEQA (California Environmental Quality Act):

Categorical Exemption

The project is exempt pursuant to CEQA Guidelines Section 15332, Class 32 (In-fill development). A Notice of Exemption was filed for this project at the County of Santa Clara on November 18, 2022.



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

Site Map Kerley - Tract No. 10609

0 40 80 160 240 320
Feet



Page 75 of 90

OWNERS' STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY SHOWN ON THE SUBDIVISION WITHIN THE DISTINCTIVE SYMBOL LINE OF THIS MAP ENTITLED "TRACT 10609, KERLEY", CONSISTING OF NINE (9) SHEETS, THIS STATEMENT BEING ON SHEET ONE (1) THEREOF; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE HAVE CAUSED SAID MAP TO BE PREPARED FOR RECORD, AND DO CONSENT TO THE MAKING AND FILING OF SAID MAP.

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

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

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE CONDOMINIUMS WITHIN THE "KERLEY" SUBDIVISION THEIR LICENSEES, VISITORS, AND TENANTS, EASEMENTS OVER, UNDER, OR UPON THOSE CERTAIN AREAS DESIGNATED AS "PRIVATE ACCESS EASEMENT" (PRAE) FOR THE PURPOSES OF INGRESS, EGRESS AND PARKING (WHERE DESIGNATED) IN ACCORDANCE WITH THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (CC&RS) FOR THE KERLEY SUBDIVISION.

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE CONDOMINIUMS WITHIN THE "KERLEY" SUBDIVISION OVER, UNDER, OR UPON THOSE CERTAIN AREAS DESIGNATED AS "LANDSCAPE EASEMENT" (LSE) FOR LANDSCAPING AND MAINTENANCE PURPOSES TO BE USED AND MAINTAINED IN ACCORDANCE WITH THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (CC&RS) FOR THE KERLEY SUBDIVISION.

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE CONDOMINIUMS WITHIN THE "KERLEY" SUBDIVISION, THEIR LICENSEES, VISITORS, AND TENANTS, FOR THE PURPOSES OF INGRESS, EGRESS, PARKING (WHERE DESIGNATED), UPON AND OVER THE STREETS DESIGNATED AS (PRIVATE), AND SHOWN AS "MINT LANE", "LEMONGRASS LANE", "SUMAC LANE", "JALAPENO LANE", "HIBISCUS LANE", "CARDAMOM LANE", "SERRANO LANE", "VANILLA LANE", AND "WASABI LANE" IN ACCORDANCE WITH THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (CC&RS) FOR THE KERLEY SUBDIVISION. SAID STREETS SHALL BE CONVEYED TO, AND MAINTAINED BY, THE HOMEOWNERS ASSOCIATION CREATED FOR THE "KERLEY" SUBDIVISION.

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

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

OWNER: CIVIC MONTEREY ROAD, LLC, A DELAWARE LIMITED LIABILITY COMPANY
BY: CIVIC RESCAL PLATFORM B, LLC, A DELAWARE LIMITED LIABILITY COMPANY
BY: CIVIC RESCAL HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY
BY: _____
NAME: Ryan Parlett
TITLE: Approved Signatory

OWNER ACKNOWLEDGMENT

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

STATE OF CALIFORNIA }
COUNTY OF Contra Costa }ss.

ON August 25, 2023, 2023, BEFORE ME, Laurel Nunez, A NOTARY PUBLIC, PERSONALLY Ryan Parlett APPEARED WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) (S) ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT (H) /SHE/ THEY EXECUTED THE SAME IN (H) /HER/ THEIR AUTHORIZED CAPACITY (YES), AND THAT BY (H) /HER/ THEIR SIGNATURE (S) ON THE INSTRUMENT THE PERSON (S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON (S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND.
NOTARY'S SIGNATURE: Laurel Nunez
NAME OF NOTARY (PLEASE PRINT): Laurel Nunez
PRINCIPAL COUNTY OF BUSINESS: Contra Costa
MY COMMISSION NUMBER: 2426856
MY COMMISSION EXPIRES: Nov. 8, 2026

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY, THAT IS TRUE AND COMPLETE AS SHOWN, IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF CIVIC MONTEREY ROAD, LLC, A DELAWARE LIMITED LIABILITY COMPANY, COMPLETED JUNE 10, 2022. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS BEFORE AUGUST 2025, AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

Bryan Pierce 08/01/2023
BRYAN PIERCE, PLS 8859 DATE



CITY SURVEYOR'S STATEMENT

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

DATE: _____
JOHN K. KING
ACTING CITY SURVEYOR – HANNA & BRUNETTI
P.L.S. NO. 6809



CITY ENGINEER'S STATEMENT

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

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



NOTES:

- 1.) THE DISTINCTIVE SYMBOL LINE INDICATES THE BOUNDARIES OF THE LAND SUBDIVIDED BY THIS FINAL MAP.
- 2.) THE AREA WITHIN THE DISTINCTIVE SYMBOL LINE IS 4.62 ACRES, MORE OR LESS.
- 3.) A GEOTECHNICAL INVESTIGATION REPORT WAS PREPARED BY STEVENS, FERRONE & BAILEY ENGINEERING COMPANY, INC. SFB PROJECT NO. 155-109 AND IS ON FILE WITH THE CITY OF MORGAN HILL

STATEMENT OF THE PLANNING COMMISSION

I HEREBY STATE THAT THE TENTATIVE MAP FOR THE WITHIN FINAL MAP SHOWN HEREON WAS CONDITIONALLY APPROVED BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL ON _____, BY RESOLUTION NUMBER _____, APPLICATION NUMBER _____

DATE: _____
JENNIFER CARMAN
SECRETARY
CITY OF MORGAN HILL, CALIFORNIA

STATEMENT OF THE CITY CLERK

I HEREBY STATE THAT THIS FINAL MAP, CONSISTING OF NINE (9) SHEETS, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL AT A MEETING OF SAID COUNCIL HELD ON THE _____ DAY OF _____, 2023; AND THAT SAID COUNCIL DID ACCEPT, SUBJECT TO THEIR IMPROVEMENT IN ACCORDANCE WITH CITY STANDARDS, ON BEHALF OF THE PUBLIC, THE DEDICATION OF THE "PUBLIC SERVICE EASEMENT" (PSE) AND THE "EMERGENCY VEHICLE ACCESS EASEMENT" (EVAE) FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE DEDICATION, AS SHOWN ON THIS MAP.

DATE: _____
MICHELLE BIGELOW – CITY CLERK
OF THE CITY OF MORGAN HILL, CALIFORNIA

RECORDER'S STATEMENT

FILE NO. _____ FEE \$ _____ PAID. ACCEPTED FOR RECORD AND FILED IN BOOK _____ OF MAPS AT PAGES _____, SANTA CLARA COUNTY RECORDS, THIS _____ DAY OF _____, 20__ AT _____ M., AT THE REQUEST OF OLD REPUBLIC TITLE COMPANY

REGINA ALCOMENDRAS, RECORDER
SANTA CLARA COUNTY, CALIFORNIA BY _____ DEPUTY

TRACT 10609
KERLEY

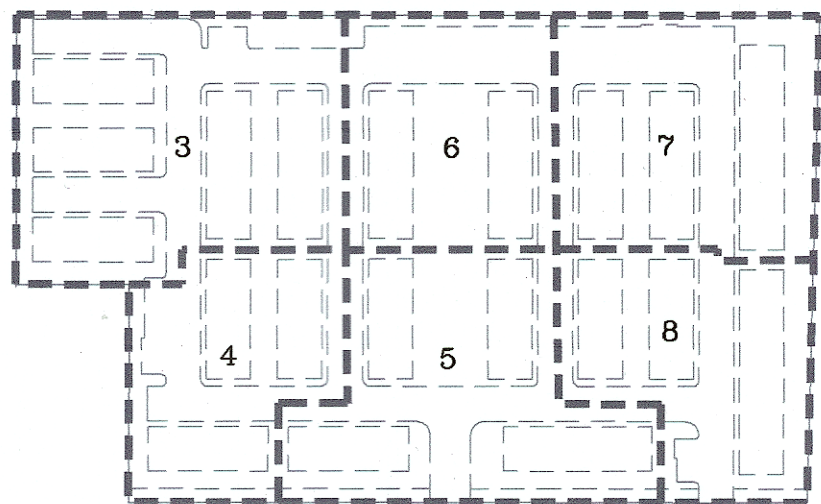
A SINGLE LOT FOR CONDOMINIUM PURPOSES
CONSISTING OF 93 RESIDENTIAL UNITS
CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

BEING ALL OF "PARCEL B" AND "PARCEL C" AS SHOWN ON THE
PARCEL MAP FILED OCTOBER 24, 1975, IN BOOK 363 OF MAPS, PAGE
18, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
AUGUST 2023

LINE TABLE			
LINE	BEARING	DIST	
L1	N22°19'28"W	16.00'	(N22°35'24"W 16.00')(R2)
L2	N50°52'00"E	57.00'	
L3	N50°52'00"E	57.00'	
L4	N50°52'00"E	57.00'	
L5	N50°52'00"E	57.00'	

CURVE TABLE				
CURVE	LENGTH	RADIUS	DELTA	
C1	116.28'	430.00'	015°29'37"	(R2)
C2	98.98'	430.00'	013°11'17"	(L=98.99' R=430.00' Δ=013°11'23")(R2)
C3	17.30'	430.00'	002°18'20"	(L=17.29' R=430.00' Δ=002°18'14")(R2)



KEY INDEX MAP
NOT TO SCALE

LEGEND

---	BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
---	EXISTING LOT LINE
---	FORMER LOT LINE
---	MONUMENT LINE/CENTERLINE
---	NEW EASEMENT LINE
---	TIE LINE
●	FOUND MONUMENT IN WELL, AS NOTED
●	FOUND MONUMENT, AS NOTED
⊙	SET BRASS DISK IN WELL, TAGGED PLS 8859
⊙	FOUND
⊙	IRON PIPE
⊙	EMERGENCY VEHICLE ACCESS EASEMENT
⊙	LANDSCAPE EASEMENT
⊙	PUBLIC SERVICE EASEMENT
⊙	PRIVATE ACCESS EASEMENT
⊙	SEARCH FOR NOT FOUND
(M-M)	MONUMENT TO MONUMENT
(T)	TOTAL DIMENSION
(R)	RADIAL BEARING
(C)	CALCULATED
()	RECORD DATA IF DIFFERENT FROM MEASURED

REFERENCES:

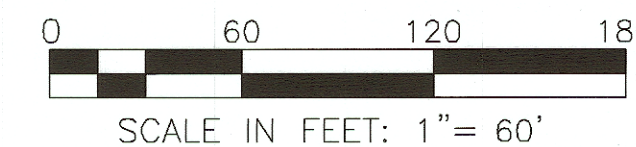
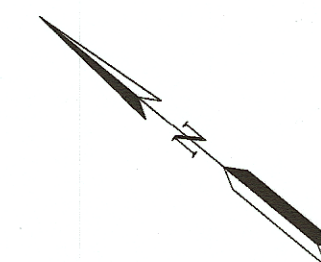
(R1)	PARCEL MAP	-	363-M-18
(R2)	TRACT 8541	-	668-M-5
(R3)	PARCEL MAP	-	507-M-10
(R4)	GRANT DEED	-	DOC #14775546

NOTES:

- ALL MONUMENT TIES ARE 90° OR RADIAL TO MONUMENT LINES UNLESS OTHERWISE NOTED.
- DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.

BASIS OF BEARINGS:

THE BEARING OF N39°08'00"W BETWEEN FOUND MONUMENTS ALONG THE EAST LINE OF MONTEREY HIGHWAY AS SHOWN ON THE PARCEL MAP FILED OCTOBER 24, 1975 IN BOOK 363 OF MAPS, AT PAGE 18, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.



TRACT 10609 KERLEY

A SINGLE LOT FOR CONDOMINIUM PURPOSES
CONSISTING OF 93 RESIDENTIAL UNITS

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

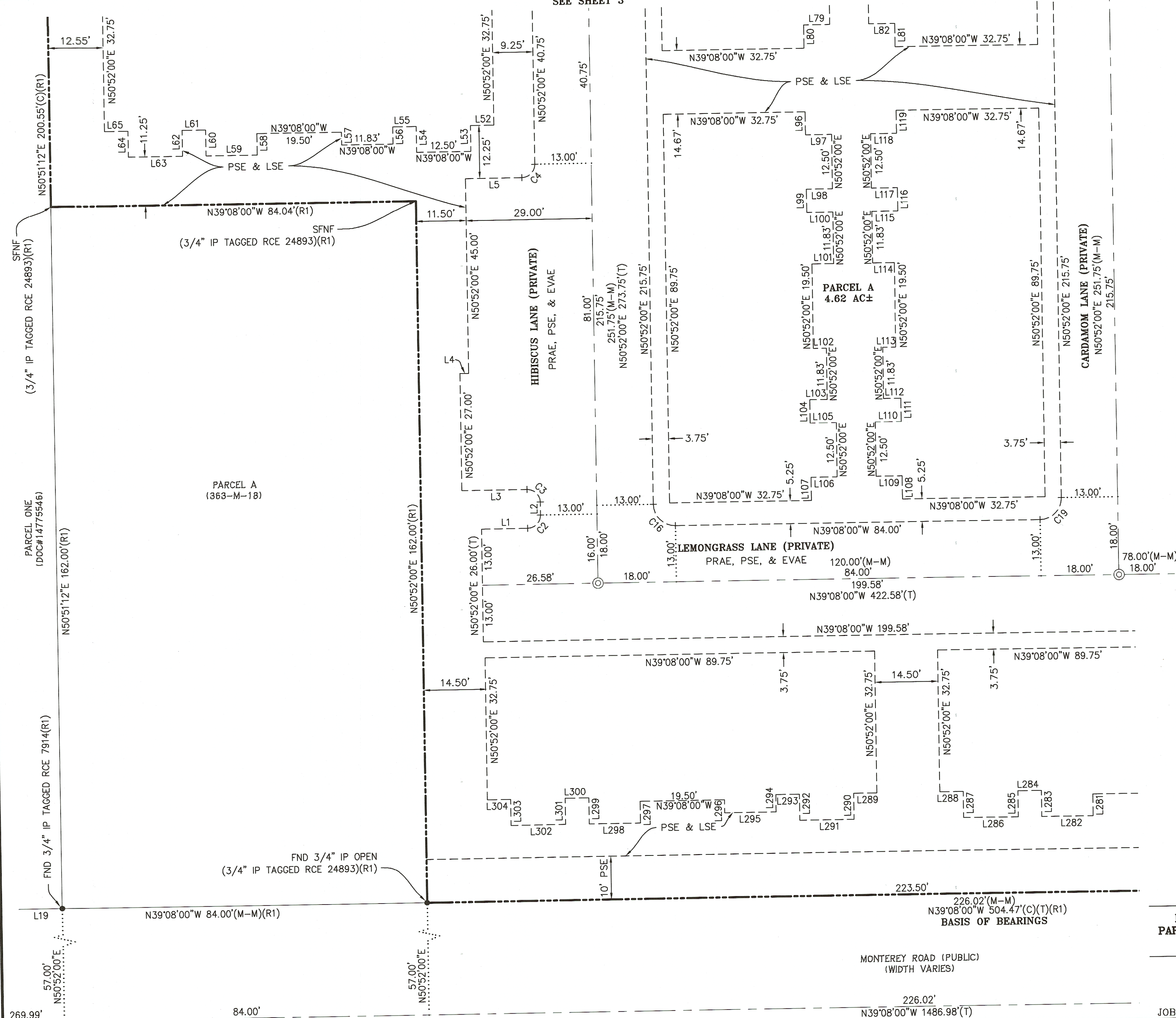
BEING ALL OF "PARCEL B" AND "PARCEL C" AS SHOWN ON THE
PARCEL MAP FILED OCTOBER 24, 1975, IN BOOK 363 OF MAPS, PAGE
18, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
AUGUST 2023

JOB #212008

SHEET 2 OF 9 SHEETS

SEE SHEET 3

**LEGEND**

---	BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
---	EXISTING LOT LINE
---	FORMER LOT LINE
---	MONUMENT LINE/CENTERLINE
---	NEW EASEMENT LINE
---	TIE LINE
●	FOUND MONUMENT IN WELL, AS NOTED
○	FOUND MONUMENT, AS NOTED
⊙	SET BRASS DISK IN WELL, TAGGED PLS 8859
⊙	FOUND
⊙	IRON PIPE
⊙	EMERGENCY VEHICLE ACCESS EASEMENT
⊙	LANDSCAPE EASEMENT
⊙	PUBLIC SERVICE EASEMENT
⊙	PRIVATE ACCESS EASEMENT
⊙	SEARCH FOR NOT FOUND
⊙	MONUMENT TO MONUMENT
⊙	TOTAL DIMENSION
⊙	RADIAL BEARING
⊙	CALCULATED
⊙	RECORD DATA IF DIFFERENT FROM MEASURED

REFERENCES:

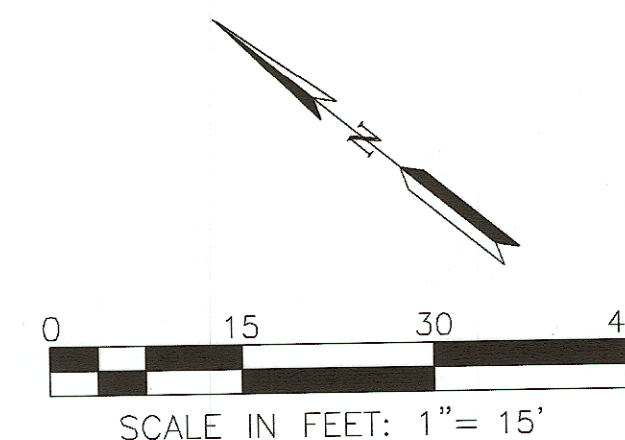
(R1)	PARCEL MAP	- 363-M-18
(R2)	TRACT 8541	- 668-M-5
(R3)	PARCEL MAP	- 507-M-10
(R4)	GRANT DEED	- DOC #14775546

NOTES:

- ALL MONUMENT TIES ARE 90° OR RADIAL TO MONUMENT LINES UNLESS OTHERWISE NOTED.
- DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
- SEE SHEET 9 FOR LINE AND CURVE TABLES.

BASIS OF BEARINGS:

THE BEARING OF N39°08'00"W BETWEEN FOUND MONUMENTS ALONG THE EAST LINE OF MONTEREY HIGHWAY AS SHOWN ON THE PARCEL MAP FILED OCTOBER 24, 1975 IN BOOK 363 OF MAPS, AT PAGE 18, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.



TRACT 10609 KERLEY

A SINGLE LOT FOR CONDOMINIUM PURPOSES
CONSISTING OF 93 RESIDENTIAL UNITS

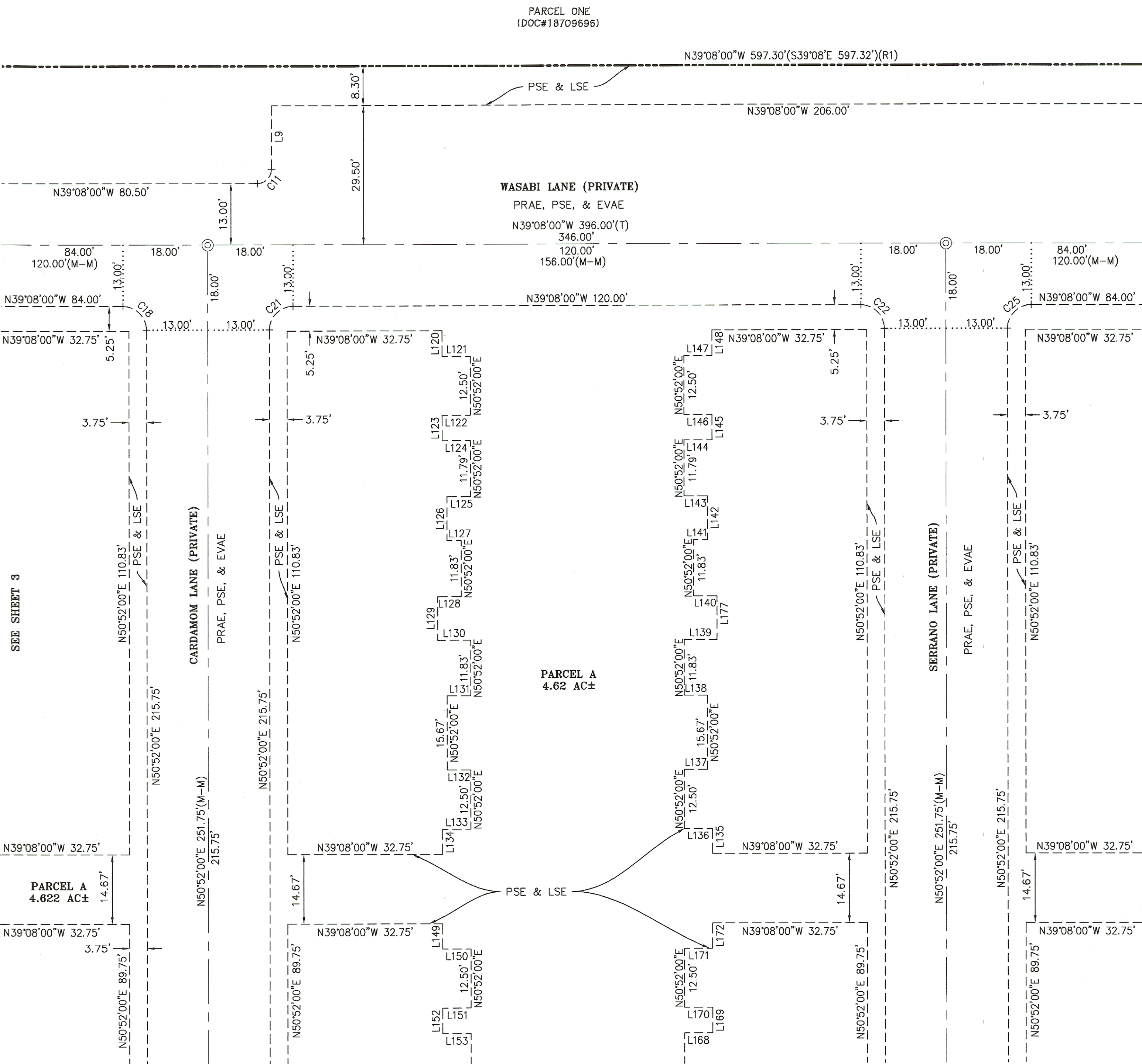
CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

BEING ALL OF "PARCEL B" AND "PARCEL C" AS SHOWN ON THE
PARCEL MAP FILED OCTOBER 24, 1975, IN BOOK 363 OF MAPS, PAGE
18, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
AUGUST 2023

JOB #212008

SHEET 4 OF 9 SHEETS

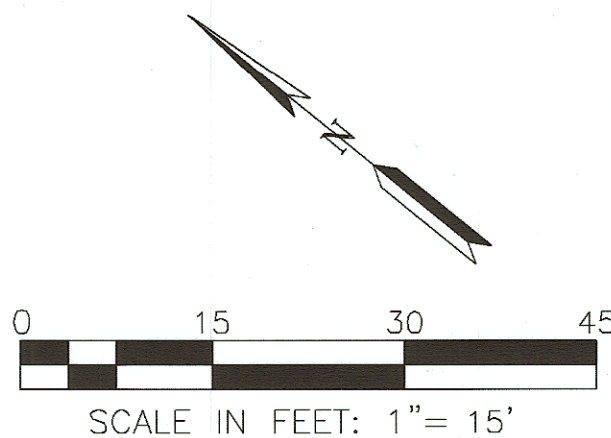


LEGEND	
---	BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
---	EXISTING LOT LINE
---	FORMER LOT LINE
---	MONUMENT LINE/CENTERLINE
---	NEW EASEMENT LINE
---	TIE LINE
●	FOUND MONUMENT IN WELL, AS NOTED
●	FOUND MONUMENT, AS NOTED
⊙	SET BRASS DISK IN WELL, TAGGED PLS 8859
FND	FOUND
IP	IRON PIPE
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
LSE	LANDSCAPE EASEMENT
PSE	PUBLIC SERVICE EASEMENT
PRAE	PRIVATE ACCESS EASEMENT
SFNF	SEARCH FOR NOT FOUND
(M-M)	MONUMENT TO MONUMENT
(T)	TOTAL DIMENSION
(R)	RADIAL BEARING
(C)	CALCULATED
()	RECORD DATA IF DIFFERENT FROM MEASURED

REFERENCES:	
(R1)	PARCEL MAP - 363-M-18
(R2)	TRACT 8541 - 668-M-5
(R3)	PARCEL MAP - 507-M-10
(R4)	GRANT DEED - DOC #14775546

- NOTES:**
- ALL MONUMENT TIES ARE 90° OR RADIAL TO MONUMENT LINES UNLESS OTHERWISE NOTED.
 - DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
 - SEE SHEET 9 FOR LINE AND CURVE TABLES.

BASIS OF BEARINGS:
THE BEARING OF N39°08'00"W BETWEEN FOUND MONUMENTS ALONG THE EAST LINE OF MONTEREY HIGHWAY AS SHOWN ON THE PARCEL MAP FILED OCTOBER 24, 1975 IN BOOK 363 OF MAPS, AT PAGE 18, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.



TRACT 10609 KERLEY

A SINGLE LOT FOR CONDOMINIUM PURPOSES
CONSISTING OF 93 RESIDENTIAL UNITS

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

BEING ALL OF "PARCEL B" AND "PARCEL C" AS SHOWN ON THE
PARCEL MAP FILED OCTOBER 24, 1975, IN BOOK 363 OF MAPS, PAGE
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Prepared By:
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AUGUST 2023

JOB #212008

SHEET 6 OF 9 SHEETS

PARCEL ONE
(DOC#18709696)

N39°08'00"W 597.30'(S39°08'E 597.32')(R1)

FND 3/4" IP TAG ILLEGIBLE
(3/4" IP TAGGED 7914)(R2)

WASABI LANE (PRIVATE)
PRAE, PSE, & EVAE

N39°08'00"W 396.00'(T)
346.00'
120.00'(M-M)

PARCEL A
4.62 AC±

VANILLA LANE (PRIVATE)
PRAE, PSE, & EVAE

SEE SHEET 8

LEGEND	
---	BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
---	EXISTING LOT LINE
---	FORMER LOT LINE
---	MONUMENT LINE/CENTERLINE
---	NEW EASEMENT LINE
---	TIE LINE
●	FOUND MONUMENT IN WELL, AS NOTED
○	FOUND MONUMENT, AS NOTED
⊙	SET BRASS DISK IN WELL, TAGGED PLS 8859
FND	FOUND
IP	IRON PIPE
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
LSE	LANDSCAPE EASEMENT
PSE	PUBLIC SERVICE EASEMENT
PRAE	PRIVATE ACCESS EASEMENT
SFNF	SEARCH FOR NOT FOUND
(M-M)	MONUMENT TO MONUMENT
(T)	TOTAL DIMENSION
(R)	RADIAL BEARING
(C)	CALCULATED
()	RECORD DATA IF DIFFERENT FROM MEASURED

REFERENCES:

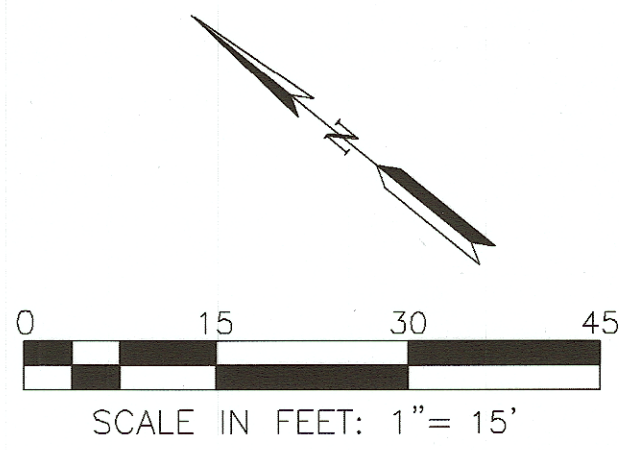
(R1)	PARCEL MAP	-	363-M-18
(R2)	TRACT 8541	-	668-M-5
(R3)	PARCEL MAP	-	507-M-10
(R4)	GRANT DEED	-	DOC #14775546

NOTES:

1. ALL MONUMENT TIES ARE 90° OR RADIAL TO MONUMENT LINES UNLESS OTHERWISE NOTED.
2. DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
3. SEE SHEET 9 FOR LINE AND CURVE TABLES.

BASIS OF BEARINGS:

THE BEARING OF N39°08'00"W BETWEEN FOUND MONUMENTS ALONG THE EAST LINE OF MONTEREY HIGHWAY AS SHOWN ON THE PARCEL MAP FILED OCTOBER 24, 1975 IN BOOK 363 OF MAPS, AT PAGE 18, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.



TRACT 10609
KERLEY

A SINGLE LOT FOR CONDOMINIUM PURPOSES
CONSISTING OF 93 RESIDENTIAL UNITS
CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

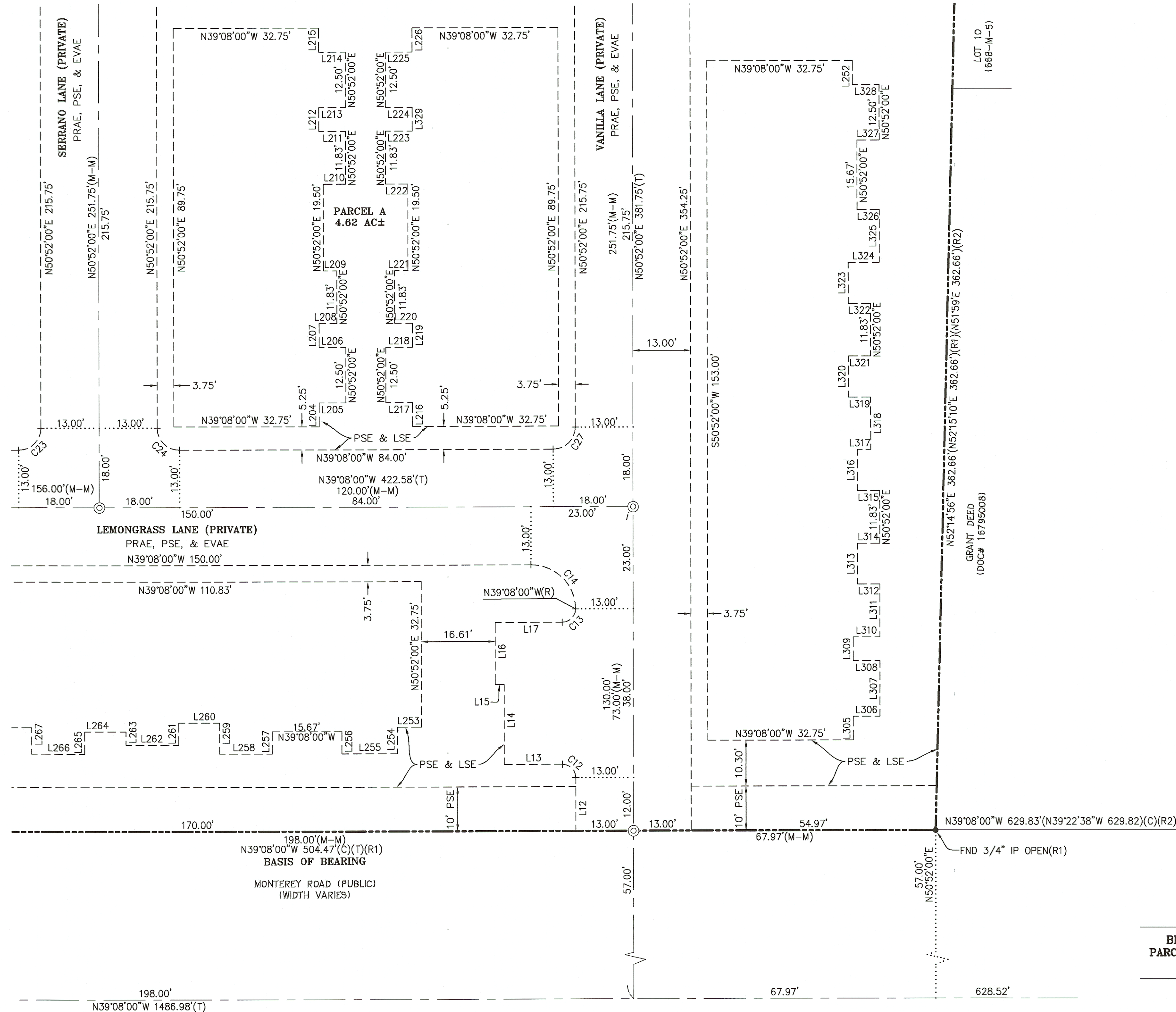
BEING ALL OF "PARCEL B" AND "PARCEL C" AS SHOWN ON THE
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Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
AUGUST 2023

JOB #212008

SHEET 7 OF 9 SHEETS

SEE SHEET 5

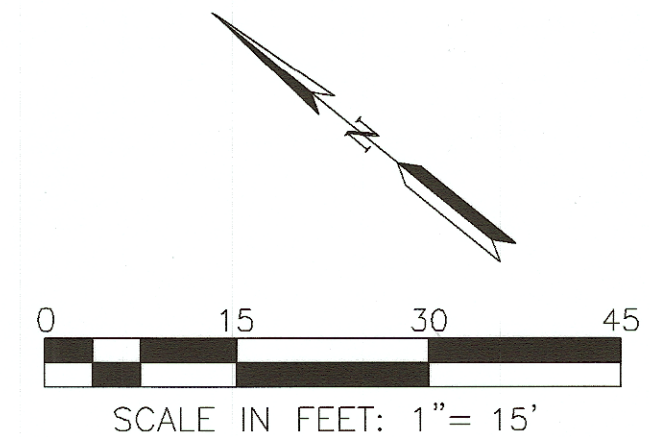


_____	BOUNDARY LINE	(DISTINCTIVE SYMBOL LINE)
_____	EXISTING LOT LINE	
_____	FORMER LOT LINE	
_____	MONUMENT LINE/CENTERLINE	
_____	NEW EASEMENT LINE	
.....	TIE LINE	
⊙	FOUND MONUMENT IN WELL, AS NOTED	
●	FOUND MONUMENT, AS NOTED	
⊙	SET BRASS DISK IN WELL, TAGGED PLS 8859	
FND	FOUND	
IP	IRON PIPE	
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT	
LSE	LANDSCAPE EASEMENT	
PSE	PUBLIC SERVICE EASEMENT	
PRAE	PRIVATE ACCESS EASEMENT	
SFNF	SEARCH FOR NOT FOUND	
(M-M)	MONUMENT TO MONUMENT	
(T)	TOTAL DIMENSION	
(R)	RADIAL BEARING	
(C)	CALCULATED	
()	RECORD DATA IF DIFFERENT FROM MEASURED	

(R1)	PARCEL MAP	-	363-M-18
(R2)	TRACT 8541	-	668-M-5
(R3)	PARCEL MAP	-	507-M-10
(R4)	GRANT DEED	-	DOC #14775546

1. ALL MONUMENT TIES ARE 90° OR RADIAL TO MONUMENT LINES UNLESS OTHERWISE NOTED.
2. DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
3. SEE SHEET 9 FOR LINE AND CURVE TABLES.

THE BEARING OF N39°08'00"W BETWEEN FOUND MONUMENTS ALONG THE EAST LINE OF MONTEREY HIGHWAY AS SHOWN ON THE PARCEL MAP FILED OCTOBER 24, 1975 IN BOOK 363 OF MAPS, AT PAGE 18, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.



TRACT 10609
KERLEY

A SINGLE LOT FOR CONDOMINIUM PURPOSES
CONSISTING OF 93 RESIDENTIAL UNITS

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

BEING ALL OF "PARCEL B" AND "PARCEL C" AS SHOWN ON THE
PARCEL MAP FILED OCTOBER 24, 1975, IN BOOK 363 OF MAPS, PAGE
18, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
AUGUST 2023

JOB #212008

SHEET 8 OF 9 SHEETS

LINE TABLE		
LINE	BEARING	DIST
L1	N39°08'00"W	10.58'
L2	N50°52'00"E	3.00'
L3	N39°08'00"W	15.00'
L4	N39°08'00"W	2.00'
L5	N39°08'00"W	13.00'
L6	N50°52'00"E	9.50'
L7	N50°52'00"E	13.50'
L8	N50°52'00"E	13.00'
L9	N50°52'00"E	13.50'
L10	N50°52'00"E	1.50'
L11	N50°52'00"E	1.50'
L12	N50°52'00"E	12.00'
L13	N39°08'00"W	13.00'
L14	N50°52'00"E	18.00'
L15	N39°08'00"W	2.00'
L16	N50°52'00"E	14.00'
L17	N39°08'00"W	15.00'
L18	N39°04'48"W	270.00'
L19	N39°08'00"W	270.00'
L20	N52°14'56"E	483.00'
L21	N39°08'00"W	5.38'
L22	N50°52'00"E	6.00'
L23	N39°08'00"W	12.50'
L24	N50°52'00"E	6.00'
L25	N39°08'00"W	5.42'
L26	N50°52'00"E	4.00'
L27	N39°08'00"W	11.83'
L28	N50°52'00"E	3.00'
L29	N50°52'00"E	5.00'
L30	N39°08'00"W	11.83'
L31	N50°52'00"E	6.00'
L32	N39°08'00"W	5.42'
L33	N50°52'00"E	6.00'
L34	N39°08'00"W	12.50'
L35	N50°52'00"E	6.00'
L36	N39°08'00"W	5.37'
L37	N39°08'00"W	5.37'
L38	N50°52'00"E	6.00'
L39	N39°08'00"W	12.50'
L40	N50°52'00"E	6.00'
L41	N39°08'00"W	5.42'
L42	N50°52'00"E	6.00'
L43	N39°08'00"W	11.83'
L44	N50°52'00"E	5.00'
L45	N50°52'00"E	3.00'
L46	N39°08'00"W	11.83'
L47	N50°52'00"E	4.00'
L48	N39°08'00"W	5.42'

LINE TABLE		
LINE	BEARING	DIST
L49	N50°52'00"E	6.00'
L50	N50°52'00"E	6.00'
L51	N39°08'00"W	5.38'
L52	N39°08'00"W	5.38'
L53	N50°52'00"E	6.00'
L54	N50°52'00"E	6.00'
L55	N39°08'00"W	5.42'
L56	N50°52'00"E	4.00'
L57	N50°52'00"E	3.00'
L58	N50°52'00"E	5.00'
L59	N39°08'00"W	11.83'
L60	N50°52'00"E	6.00'
L61	N39°08'00"W	5.42'
L62	N50°52'00"E	6.00'
L63	N39°08'00"W	12.50'
L64	N50°52'00"E	6.00'
L65	N39°08'00"W	5.37'
L66	N50°52'00"E	5.37'
L67	N39°08'00"W	6.00'
L68	N39°08'00"W	6.00'
L69	N50°52'00"E	5.42'
L70	N39°08'00"W	6.00'
L71	N39°08'00"W	5.00'
L72	N50°52'00"E	9.29'
L73	N39°08'00"W	3.00'
L74	N39°08'00"W	5.00'
L75	N50°52'00"E	9.25'
L76	N39°08'00"W	7.00'
L77	N39°08'00"W	5.00'
L78	N39°08'00"W	5.00'
L79	N39°08'00"W	6.00'
L80	N50°52'00"E	5.37'
L81	N50°52'00"E	5.37'
L82	N39°08'00"W	6.00'
L83	N39°08'00"W	5.00'
L84	N39°08'00"W	5.00'
L85	N39°08'00"W	7.00'
L86	N50°52'00"E	9.25'
L87	N39°08'00"W	5.00'
L88	N39°08'00"W	3.00'
L89	N50°52'00"E	9.29'
L90	N39°08'00"W	5.00'
L91	N39°08'00"W	6.00'
L92	N50°52'00"E	5.42'
L93	N39°08'00"W	6.00'
L94	N39°08'00"W	6.00'
L95	N50°52'00"E	5.37'
L96	N50°52'00"E	5.37'

LINE TABLE		
LINE	BEARING	DIST
L97	N39°08'00"W	6.00'
L98	N39°08'00"W	6.00'
L99	N50°52'00"E	5.42'
L100	N39°08'00"W	6.00'
L101	N39°08'00"W	5.00'
L102	N39°08'00"W	3.00'
L103	N39°08'00"W	4.00'
L104	N50°52'00"E	5.42'
L105	N39°08'00"W	6.00'
L106	N39°08'00"W	6.00'
L107	N50°52'00"E	5.38'
L108	N50°52'00"E	5.38'
L109	N39°08'00"W	6.00'
L110	N39°08'00"W	6.00'
L111	N50°52'00"E	5.42'
L112	N39°08'00"W	4.00'
L113	N39°08'00"W	3.00'
L114	N39°08'00"W	5.00'
L115	N39°08'00"W	6.00'
L116	N50°52'00"E	5.42'
L117	N39°08'00"W	6.00'
L118	N39°08'00"W	6.00'
L119	N50°52'00"E	5.37'
L120	N50°52'00"E	5.37'
L121	N39°08'00"W	6.00'
L122	N39°08'00"W	6.00'
L123	N50°52'00"E	5.42'
L124	N39°08'00"W	6.00'
L125	N39°08'00"W	5.00'
L126	N50°52'00"E	9.29'
L127	N39°08'00"W	3.00'
L128	N39°08'00"W	5.00'
L129	N50°52'00"E	9.25'
L130	N39°08'00"W	7.00'
L131	N39°08'00"W	5.00'
L132	N39°08'00"W	5.00'
L133	N39°08'00"W	6.00'
L134	N50°52'00"E	5.37'
L135	N50°52'00"E	5.37'
L136	N39°08'00"W	6.00'
L137	N39°08'00"W	5.00'
L138	N39°08'00"W	5.00'
L139	N39°08'00"W	7.00'
L140	N39°08'00"W	5.00'
L141	N39°08'00"W	3.00'
L142	N50°52'00"E	9.29'
L143	N39°08'00"W	5.00'
L144	N39°08'00"W	6.00'

LINE TABLE		
LINE	BEARING	DIST
L145	N50°52'00"E	5.42'
L146	N39°08'00"W	6.00'
L147	N39°08'00"W	6.00'
L148	N50°52'00"E	5.37'
L149	N50°52'00"E	5.37'
L150	N39°08'00"W	6.00'
L151	N39°08'00"W	6.00'
L152	N50°52'00"E	5.42'
L153	N39°08'00"W	6.00'
L154	N39°08'00"W	5.00'
L155	N39°08'00"W	3.00'
L156	N39°08'00"W	4.00'
L157	N50°52'00"E	5.42'
L158	N39°08'00"W	6.00'
L159	N39°08'00"W	6.00'
L160	N50°52'00"E	5.38'
L161	N50°52'00"E	5.38'
L162	N39°08'00"W	6.00'
L163	N39°08'00"W	6.00'
L164	N50°52'00"E	5.42'
L165	N39°08'00"W	4.00'
L166	N39°08'00"W	3.00'
L167	N39°08'00"W	5.00'
L168	N39°08'00"W	6.00'
L169	N50°52'00"E	5.42'
L170	N39°08'00"W	6.00'
L171	N39°08'00"W	6.00'
L172	N50°52'00"E	5.37'
L173	N50°52'00"E	5.37'
L174	N39°08'00"W	6.00'
L175	N39°08'00"W	6.00'
L176	N50°52'00"E	5.42'
L177	N50°52'00"E	9.25'
L178	N39°08'00"W	6.00'
L179	N39°08'00"W	5.00'
L180	N50°52'00"E	9.29'
L181	N39°08'00"W	3.00'
L182	N39°08'00"W	5.00'
L183	N50°52'00"E	9.25'
L184	N39°08'00"W	7.00'
L185	N39°08'00"W	5.00'
L186	N39°08'00"W	5.00'
L187	N39°08'00"W	6.00'
L188	N50°52'00"E	5.37'
L189	N50°52'00"E	5.37'
L190	N39°08'00"W	6.00'
L191	N39°08'00"W	5.00'
L192	N39°08'00"W	5.00'

LINE TABLE		
LINE	BEARING	DIST
L193	N39°08'00"W	7.00'
L194	N50°52'00"E	9.25'
L195	N39°08'00"W	5.00'
L196	N39°08'00"W	3.00'
L197	N50°52'00"E	9.29'
L198	N39°08'00"W	5.00'
L199	N39°08'00"W	6.00'
L200	N50°52'00"E	5.42'
L201	N39°08'00"W	6.00'
L202	N39°08'00"W	6.00'
L203	N50°52'00"E	5.37'
L204	N50°52'00"E	5.38'
L205	N39°08'00"W	6.00'
L206	N39°08'00"W	6.00'
L207	N50°52'00"E	5.42'
L208	N39°08'00"W	4.00'
L209	N39°08'00"W	3.00'
L210	N39°08'00"W	5.00'
L211	N39°08'00"W	6.00'
L212	N50°52'00"E	5.42'
L213	N39°08'00"W	6.00'
L214	N39°08'00"W	6.00'
L215	N50°52'00"E	5.37'
L216	N50°52'00"E	5.38'
L217	N39°08'00"W	6.00'
L218	N39°08'00"W	6.00'
L219	N50°52'00"E	5.42'
L220	N39°08'00"W	4.00'
L221	N39°08'00"W	3.00'
L222	N39°08'00"W	5.00'
L223	N39°08'00"W	6.00'
L224	N39°08'00"W	6.00'
L225	N39°08'00"W	6.00'
L226	N50°52'00"E	5.37'
L227	N50°52'00"E	5.38'
L228	N39°08'00"W	6.00'
L229	N39°08'00"W	5.00'
L230	N39°08'00"W	5.00'
L231	N50°52'00"E	11.83'
L232	N39°08'00"W	7.00'
L233	N50°52'00"E	9.25'
L234	N39°08'00"W	5.00'
L235	N39°08'00"W	5.00'
L236	N50°52'00"E	9.25'
L237	N39°08'00"W	5.00'
L238	N50°52'00"E	11.83'
L239	N39°08'00"W	3.00'
L240	N50°52'00"E	9.25'

LINE TABLE		
LINE	BEARING	DIST
L241	N39°08'00"W	5.00'
L242	N39°08'00"W	5.00'
L243	N50°52'00"E	9.25'
L244	N39°08'00"W	5.00'
L245	N50°52'00"E	11.83'
L246	N39°08'00"W	6.00'
L247	N50°52'00"E	5.42'
L248	N39°08'00"W	6.00'
L249	N50°52'00"E	12.50'
L250	N39°08'00"W	6.00'
L251	N50°52'00"E	5.38'
L252	N50°52'00"E	5.38'
L253	N39°08'00"W	5.37'
L254	N50°52'00"E	6.00'
L255	N39°08'00"W	12.50'
L256	N50°52'00"E	5.00'
L257	N50°52'00"E	5.00'
L258	N39°08'00"W	11.83'
L259	N50°52'00"E	7.00'
L260	N39°08'00"W	9.25'
L261	N50°52'00"E	5.00'
L262	N39°08'00"W	11.83'
L263	N50°52'00"E	3.00'
L264	N39°08'00"W	9.29'
L265	N50°52'00"E	5.00'
L266	N39°08'00"W	11.79'
L267	N50°52'00"E	6.00'
L268	N39°08'00"W	5.42'
L269	N50°52'00"E	6.00'
L270	N39°08'00"W	12.50'
L271	N50°52'00"E	6.00'
L272	N39°08'00"W	5.37'
L273	N39°08'00"W	5.38'
L274	N50°52'00"E	6.00'
L275	N39°08'00"W	12.50'
L276	N50°52'00"E	6.00'
L277	N39°08'00"W	5.42'
L278	N50°52'00"E	4.00'
L279	N39°08'00"W	11.83'
L280	N50°52'00"E	3.00'
L281	N50°52'00"E	5.00'
L282	N39°08'00"W	11.83'
L283	N50°52'00"E	6.00'
L284	N39°08'00"W	5.42'
L285	N50°52'00"E	6.00'
L286	N39°08'00"W	12.50'
L287	N50°52'00"E	6.00'
L288	N39°08'00"W	5.37'

LINE TABLE		
LINE	BEARING	DIST
L289	N39°08'00"W	5.38'
L290	N50°52'00"E	6.00'
L291	N39°08'00"W	12.50'
L292	N50°52'00"E	6.00'
L293	N39°08'00"W	5.42'
L294	N50°52'00"E	4.00'
L295	N39°08'00"W	11.83'
L296	N50°52'00"E	3.00'
L297	N50°52'00"E	5.00'
L298	N39°08'00"W	11.83'
L299	N50°52'00"E	6.00'
L300	N39°08'00"W	5.42'
L301	N50°52'00"E	6.00'
L302	N39°08'00"W	12.50'
L303	N50°52'00"E	6.00'
L304	N39°08'00"W	5.37'
L305	N50°52'00"E	5.38'
L306	N39°08'00"W	6.00'
L307	N50°52'00"E	12.50'
L308	N39°08'00"W	6.00'
L309	N50°52'00"E	5.42'
L310	N39°08'00"W	6.00'
L311	N50°52'00"E	11.83'
L312	N39°08'00"W	5.00'
L313	N50°52'00"E	9.25'
L314	N39°08'00"W	5.00'
L315	N39°08'00"W	5.00'
L316	N50°52'00"E	9.25'
L317	N39°08'00"W	3.00'
L318	N50°52'00"E	11.83'
L319	N39°08'00"W	5.00'
L320	N50°52'00"E	9.25'
L321	N39°08'00"W	5.00'
L322	N39°08'00"W	5.00'
L323	N50°52'00"E	9.25'
L324	N39°08'00"W	7.00'
L325	N50°52'00"E	11.83'
L326	N39°08'00"W	5.00'
L327	N39°08'00"W	5.00'
L328	N39°08'00"W	6.00'
L329	N50°52'00"E	5.42'

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	15.71'	10.00'	090°00'00"
C2	4.71'	3.00'	090°00'00"
C3	4.71'	3.00'	090°00'00"
C4	4.71'	3.00'	090°00'00"
C5	7.85'	5.00'	090°00'00"
C6	7.85'	5.00'	090°00'00"
C7	7.85'	5.00'	090°00'00"
C8	15.71'	10.00'	090°00'00"
C9	7.85'	2.50'	180°00'00"
C10	4.71'	3.00'	090°00'00"
C11	4.71'	3.00'	090°00'00"
C12	4.71'	3.00'	090°00'00"
C13	4.71'	3.00'	090°00'00"
C14	15.71'	10.00'	090°00'00"
C15	15.71'	10.00'	090°00'00"
C16	7.85'	5.00'	090°00'00"
C17	7.85'	5.00'	090°00'00"
C18	7.85'	5.00'	090°00'00"
C19	7.85'	5.00'	090°00'00"
C20	7.85'	5.00'	090°00'00"
C21	7.85'	5.00'	090°00'00"
C22	7.85'	5.00'	090°00'00"
C23	7.85'	5.00'	090°00'00"
C24	7.85'	5.00'	090°00'00"
C25	7.85'	5.00'	090°00'00"
C26	7.85'	5.00'	090°00'00"
C27	7.85'	5.00'	090°00'00"

RECORDING REQUESTED BY
WHEN RECORDED RETURN TO

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

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

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

SUBDIVISION IMPROVEMENTS AGREEMENT

CIVIC MONTEREY ROAD, LLC

KERLEY – TRACT NO. 10609

This Subdivision Improvements Agreement (“Agreement”) between the City of Morgan Hill, a municipal corporation (“City”), and **Civic Monterey Road, LLC**, a Delaware Limited Liability Company (“Subdivider”), is entered into this ____ day of _____, 2023. City and Subdivider hereby acknowledge the following:

1. Subdivider has filed a Tentative Subdivision Map and supporting documents for **Tract No. 10609**, the subdivision known as **Kerley** (“Map”).
2. City desires, as part of the conditions of approval (“Conditions”) of the Final Tract Map or Parcel Map (“Final Map”), that certain public improvements be installed by Subdivider (“Improvements”) as shown on the City Engineer approved and signed Subdivision Improvement Plans entitled "**Improvement Plans for Kerley Townhomes, Tract No. 10609**" (“Plans”).
3. Subdivider has been unable to complete, prior to filing of the Final Map, all of the Improvements required by City to the satisfaction of the City Engineer.
4. Subdivider is required by the terms of the Morgan Hill Municipal Code (“Municipal Code”), to improve all streets, highways, or public areas which are part of the development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer and to post certain securities to secure the completion of the Improvements.
5. To assure City that Subdivider will construct, install and complete all Improvements required for the Subdivision, the parties have entered into this Agreement.

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

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

Section 1. Incorporation by Reference

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

Section 2. Construction of Improvements

(a) Subdivider shall construct, as provided for in the Conditions, the Improvements as shown fully executed in the Plans entitled **"Improvement Plans for Kerley Townhomes, Tract No. 10609"** subject to the approval of City.

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

(c) Survey Monumentation:

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

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

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

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

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

Section 3. Modification of Plans

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

Section 4. Security

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

Improvements and the City Engineer's Estimated Costs of Improvements as of **February 10, 2023** are attached hereto as Exhibit "A".

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

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

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

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

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

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

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

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

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

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

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

Section 5. Inspections

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

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

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

Section 6. Timing of Performance

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

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

Section 7. Work Performance and Warranty

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

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

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

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

(d) The Improvements shall not be deemed complete until such time as such Improvements have been accepted for maintenance by the City Council per the terms of the Municipal Code and state law.

(e) Subdivider warrants that: (1) it has investigated the work to be performed under this agreement, (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should Subdivider discover any conditions materially differing from those inherent in the Improvements or work or as represented by City, it shall immediately inform City and shall not proceed, except at Subdivider's risk, until written instructions are received from City.

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

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

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

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

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

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

(b) Except as otherwise provided by this Agreement, City rejects all lands, rights-of-way, and

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

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

Section 9. Indemnity

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

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

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

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

Section 10. Insurance

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

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

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

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

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

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

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

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

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

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

(4) Pollution (Environmental) Liability: The performance of Subdivider’s work or service under this Agreement involves handling of hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials. Subdivider shall procure and maintain Pollution Liability covering the Subdivider’s liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

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

(1) ALL Policies:

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

(2) ALL Policies except Workers Compensation:

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

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

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

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

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

Certificate Holder address:

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

Section 11. Permits and Requisite Fees

(a) Subdivider shall pay all current fee obligations in the total amount of **\$5,718,562** due under City Resolution No. **5592**, as amended, in accordance with the Department of Public Work fee schedule, as follows:

(1) **\$2,360,351** payable at the time of recording of the Final Map, and

(2) **\$3,358,211** payable on a pro-rata basis for each individual lot in the Subdivision prior to final inspection of each and every residence.

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

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

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

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

Section 12. On-Site Supervision

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

Section 13. Waiver

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

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

- a. Address of Subdivider is as follows:

CIVIC MONTEREY ROAD, LLC
1500 Willow Pass Court
Concord, CA 94520

- b. Address of City is as follows:

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

With a copy to:

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

Section 15. Noncompliance

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

Section 16. Notice of Breach and/or Default

City may serve written notice upon Subdivider and surety of breach of this Agreement or of any portion thereof, and, after ten (10) business days during which period the Subdivider shall have the opportunity to cure, such notice shall become notice of default of Subdivider for any of the following circumstances:

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

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

Section 17. Performance by Surety or City

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

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

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

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

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

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

Section 18. Successors in Interest

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

Section 19. Effective Date

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

Section 20. Amendment of Agreement

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

Section 21. Execution

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

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

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

Section 23. Law to Govern: Venue

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

Section 24. Limitations Upon Subcontracting and Assignment.

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

Section 25. Miscellaneous

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

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

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

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

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

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

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

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

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

CITY OF MORGAN HILL

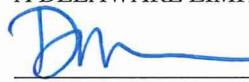
"Subdivider"

CIVIC MONTEREY ROAD, LLC

By:

By: CIVIC RESCAL PLATFORM B, LLC
A DELAWARE LIMITED LIABILITY COMPANY
BY: CIVIC RESCAL HOLDINGS, LLC
A DELAWARE LIMITED LIABILITY COMPANY

Christina J. Turner, City Manager



Print Name and Title *Dana Tsubota,*
Authorized Signer

Date: _____

Date: 7/17/23

ATTEST:

By:

Michelle Bigelow, City Clerk

Date: _____

APPROVED AS TO FORM:

By:

Donald A. Larkin, City Attorney

Date: _____

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

State of **California**

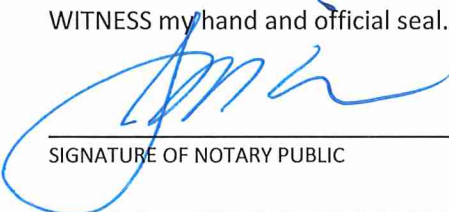
County of ~~Santa Clara~~ Contra Costa

On July 17 2023, before me, Jessica Moraes a Notary Public in and for said County and State, personally appeared Dana Tsukota proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.




SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

State of **California**

County of **Santa Clara**

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT "A"
IMPROVEMENTS AND
ESTIMATED COSTS OF IMPROVEMENTS
AS OF APRIL 24, 2023

Opinion of Probable Cost For Bonding Purposes (Public Improvements)
KERLEY TOWNHOMES
February 10, 2022
Morgan Hill, CA

Revision Date	Revision Description

In providing this Opinion of Probable Cost, the Client understands that the Design Professional has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the Design Professional is not a Professional Cost Estimator. The Design Professional makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs. It is the Client's responsibility to review all unit prices and make changes as the Client sees fit to reflect the actual market prices the Client is experiencing and to reflect the Client's method of operation.

This document shall be considered incomplete unless accompanied by all sheets, including notes.

SUMMARY

A. DEMOLITION	\$96,540
B. PAVING & CONCRETE	\$89,234
C. WATER	\$225,750
D. SANITARY SEWER	\$2,980
E. MISCELLANEOUS	\$252,712
Sub-Total Improvements:	\$667,216
Contingency 15%	\$100,082
Total Improvements:	\$767,298



4/24/2023

Opinion of Probable Cost For Bonding Purposes (Public Improvements)
KERLEY TOWNHOMES
February 10, 2022
Morgan Hill, CA

Revision Date	Revision Description

In providing this Opinion of Probable Cost, the Client understands that the Design Professional has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the Design Professional is not a Professional Cost Estimator. The Design Professional makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs. It is the Client's responsibility to review all unit prices and make changes as the Client sees fit to reflect the actual market prices the Client is experiencing and to reflect the Client's method of operation.

This document shall be considered incomplete unless accompanied by all sheets, including notes.

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
A. DEMOLITION					
1.	Demo, Removal, & Offhaul of Ex- AC Swk	1,530	SF	\$3.00	\$4,590
2.	Demo, Removal, & Offhaul of Ex- Curb and Gutter	460	LF	\$4.00	\$1,840
3.	Demo, Removal, & Offhaul and Disposal of Ex- 8" ACP Water	500	LF	\$120.00	\$60,000
4.	Abandonment of existing Sewer service connection	1	LS	\$2,000.00	\$2,000
5.	Demo, Removal, & Offhaul of Ex- Irrigation Box	2	EA	\$500.00	\$1,000
6.	Demo, Removal, & Offhaul of Ex- AC Pavement	7,680	SF	\$3.00	\$23,040
7.	Demo, Removal, & Offhaul of Ex- Trees	5	EA	\$600.00	\$3,000
8.	Sawcut	535	LF	\$2.00	\$1,070
Sub-Total Demolition:					\$96,540

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
B. PAVING & CONCRETE					
1.	4" PCC Sidewalk & base	2,420	SF	\$5.00	\$12,100
2.	6" PCC Sidewalk & base at EVA Driveway	260	SF	\$6.00	\$1,560
3.	PCC Curb and Gutter	485	LF	\$35.00	\$16,975
4.	Accessible Ramp	2	EA	\$2,000.00	\$4,000
5.	Concrete Driveway Approach	343	SF	\$10.00	\$3,429
6.	AC Pavement (5"/12") Public Street	7,310	SF	\$7.00	\$51,170
Sub-Total Paving & Concrete:					\$89,234

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
C. WATER					
1.	Fire Hydrant	3	EA	\$5,000.00	\$15,000
2.	6" Master Water Meter, Vault and Bypass	2	EA	\$6,000.00	\$12,000
3.	8" Water incl. valves, thrust blocks, etc.	570	LF	\$275.00	\$156,750
4.	6" Double Detector Check Assembly	2	EA	\$10,000.00	\$20,000
5.	Connect to existing	2	EA	\$8,000.00	\$16,000
6.	2" Irrigation Water Meter Service	1	EA	\$3,000.00	\$3,000
7.	2" Irrigation Backflow Preventer	1	EA	\$3,000.00	\$3,000
Sub-Total Water:					\$225,750

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
D. SANITARY SEWER					
1.	8" SS, (PVC)	14	LF	\$70.00	\$980
2.	8" SS (PVC) connect to existing	1	EA	\$2,000.00	\$2,000
Sub-Total Sanitary Sewer:					\$2,980

Opinion of Probable Cost For Bonding Purposes (Public Improvements)

KERLEY TOWNHOMES

February 10, 2022

Morgan Hill, CA

Revision Date	Revision Description

In providing this Opinion of Probable Cost, the Client understands that the Design Professional has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the Design Professional is not a Professional Cost Estimator. The Design Professional makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs. It is the Client's responsibility to review all unit prices and make changes as the Client sees fit to reflect the actual market prices the Client is experiencing and to reflect the Client's method of operation.

This document shall be considered incomplete unless accompanied by all sheets, including notes.

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
E. MISCELLANEOUS					
1.	Electrolier	4	EA	\$10,000.00	\$40,000
2.	Traffic control	1	LS	\$5,000.00	\$5,000
3.	Erosion and sediment control measures	1	LS	\$5,000.00	\$5,000
4.	Overhead utility undergrounding and joint trench facilities	550	LF	\$102.82	\$56,550
5.	Replacement of traffic signal detector loops in northbound lane	2	EA	\$2,000.00	\$4,000
6.	Landscaping, street trees, and irrigation improvements	1	LS	\$135,161.23	\$135,161
7.	Thermoplastic striping	1	LS	\$7,000.00	\$7,000
Sub-Total Miscellaneous:					\$252,712

Opinion of Probable Cost For Bonding Purposes (Public Improvements)
KERLEY TOWNHOMES
February 10, 2022
Morgan Hill, CA

Revision Date	Revision Description

In providing this Opinion of Probable Cost, the Client understands that the Design Professional has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the Design Professional is not a Professional Cost Estimator. The Design Professional makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs. It is the Client's responsibility to review all unit prices and make changes as the Client sees fit to reflect the actual market prices the Client is experiencing and to reflect the Client's method of operation.

This document shall be considered incomplete unless accompanied by all sheets, including notes.

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
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NOTES

1. THIS IS A PRELIMINARY OPINION OF PROBABLE COST BY THE CIVIL ENGINEER. THE CIVIL ENGINEER MAKES NO REPRESENTATION CONCERNING THE ABOVE ITEMS SHOWN IN CONNECTION WITH THE PLANS AND SPECIFICATIONS BEING PREPARED.
2. QUANTITIES SHOWN HEREIN ARE CALCULATED FROM KERLEY TOWNHOMES IMPROVEMENT PLANS DATED FEBRUARY 2023, WHICH ARE SUBJECT TO REVISION.
3. COST FIGURES SHOWN HEREIN ARE CONCEPTUAL ONLY. ACTUAL COSTS ARE DEPENDENT ON THE ITEMS SHOWN ON THE PLANS AT BIDDING TIME, THE GENERAL MARKET SITUATION, THE CONTRACTOR'S WORKLOAD, SEASONAL FACTORS, LABOR AND MATERIAL COST, ETC.
4. ITEMS SHOWN ABOVE AND THEIR ASSOCIATED COSTS ARE SUBJECT TO REVISION DUE TO CHANGES, ADDITIONS, AND DELETIONS RESULTING FROM ON-GOING AGENCY REVIEW.
5. COSTS ASSOCIATED WITH JOINT TRENCH CONSTRUCTION RULE 20 UNDERGROUNDING AND PRIVATE STREET LIGHTING ARE EXCLUDED FROM THIS OPINION OF PROBABLE COST
6. COSTS FOR INDIVIDUAL SANITARY SEWER BACKFLOW PREVENTERS, WATER PRESSURE REDUCERS, AND WATER PRESSURE BOOSTERS ARE NOT INCLUDED IN THIS OPINION OF PROBABLE COST. THE BUILDER SHOULD BUDGET FOR THESE ITEMS WITH THE BUILDING COSTS.
7. EROSION CONTROL COSTS ARE FOR INITIAL INSTALLATION ONLY AND DO NOT INCLUDE ONGOING MAINTENANCE OR SUBSEQUENT YEARLY INSTALLATIONS/MODIFICATIONS.
8. THE CONTINGENCY SHOWN SHOULD BE VERIFIED BY THE CLIENT. THE CONTINGENCY SHOWN IN THIS OPINION OF PROBABLE COST IS INTENDED TO INDICATE GENERAL UNCERTAINTY AND SHOULD NOT BE USED AS A VARIANCE TO ACTUAL CONSTRUCTION COST.
9. PAVEMENT STRUCTURAL SECTION THICKNESS SHOWN IS PRELIMINARY. FINAL DESIGN THICKNESS WILL BE DETERMINED FROM THE FINAL SOIL TESTING AND PAVEMENT SECTION DESIGN BY THE GEOTECHNICAL ENGINEER.
10. THIS DOCUMENT DOES NOT INCLUDE COSTS TO ACQUIRE RIGHT-OF-WAY NEEDED FOR THIS PROJECT.
11. PAVEMENT AND FINE GRADING FOR DRIVEWAYS AND DRIVEWAY PANS TO INDIVIDUAL LOTS/HOMES ARE NOT INCLUDED.
12. GEOTECHNICAL MITIGATION INCLUDING SLIDE REPAIR, SUBDRAINS, KEYWAYS, AND OVEREXCAVATION IS NOT INCLUDED IN THIS OPINION OF PROBABLE COSTS.
13. EARTHWORK QUANTITIES SHOWN ON THIS OPINION OF PROBABLE COST ARE APPROXIMATE QUANTITIES AND ARE FURNISHED FOR INFORMATION ONLY. THE ACTUAL AMOUNT OF EARTH MOVED WILL VARY DEPENDING ON THE PROPERTIES OF THE SOILS ENCOUNTERED, THE CONTRACTOR'S METHOD OF OPERATION, ETC.
14. THIS CONCEPTUAL COST ANALYSIS EXCLUDES THE FOLLOWING:
 - a. CONSTRUCTION STAKING
 - b. GEOTECHNICAL ENGINEERING OR TESTING
 - c. OVERSIZING OF UTILITIES FOR ADDITIONAL CAPACITY

Opinion of Probable Cost For Bonding Purposes (Public Improvements)
KERLEY TOWNHOMES
February 10, 2022
Morgan Hill, CA

Revision Date	Revision Description

In providing this Opinion of Probable Cost, the Client understands that the Design Professional has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the Design Professional is not a Professional Cost Estimator. The Design Professional makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs. It is the Client's responsibility to review all unit prices and make changes as the Client sees fit to reflect the actual market prices the Client is experiencing and to reflect the Client's method of operation.

This document shall be considered incomplete unless accompanied by all sheets, including notes.

- d. FENCING
e. BUILDING RELATED COSTS OR FEES
f. FINANCING CHARGES
g. REIMBURSABLE AGREEMENTS OR REFUNDABLE DEPOSITS
h. PLANNING AND OTHER CONSULTANT FEES
i. LANDSCAPING AND FINISH GRADING
j. CITY AND OTHER AGENCY FEES, INCLUDING MAP AND IMPROVEMENT PLAN FEES
k. ENVIRONMENTAL MITIGATION
l. BONDS AND BONDING FEES
m. IMPROVEMENTS NOT SHOWN ON THE PLANS
n. IMPROVEMENTS FOR CUSTOM LOTS
o. EROSION CONTROL
p. SCHOOL DISTRICT FEES
q. ASSESSMENT DISTRICT FEES
r. PROFESSIONAL DESIGN FEES (CIVIL, STRUCTURAL, ARCHITECTURAL, ETC.)
s. MONITORING DURING CONSTRUCTION

EXHIBIT "B"
PERFORMANCE BOND
(100% of Engineer's Estimate)

Bond No.: _____

Premium: _____

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

CIVIC MONTEREY ROAD, LLC
KERLEY - TRACT NO. 10609

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20_____, and identified as project **IMPROVEMENT PLANS FOR KERLEY TOWNHOMES, TRACT NO. 10609**, is hereby referred to and made a part hereof; and

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

Now, therefore, we, the principal and _____, as surety, are held and firmly bound unto the City of Morgan Hill hereinafter called ("City"), in the penal sum of **Seven Hundred Sixty-Seven Thousand Two Hundred Ninety-Eight Dollars (\$767,298.00)** lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The Surety's office is located at _____,

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

License No.: _____

Address: _____

Telephone No.: _____

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

Name of non-resident
agent:

Non-resident agent's office
address:

Telephone
No.:

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

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

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

Executed this _____ day of _____ 20____.

[form document – do not execute]

[form document – do not execute]

Principal

Principal

By: *[form document – do not execute]*

Surety

By: *[form document – do not execute]*

Attorney-in Fact

By: *[form document – do not execute]*

California Resident Agent

By: *[form document – do not execute]*

Non-resident Agent - Attorney-in-Fact

APPROVED:

[form document – do not execute]

Scott Creer, City Engineer

Date:

APPROVED AS TO FORM:

By: *[form document – do not execute]*

Donald A. Larkin, City Attorney

Date:

(Acknowledgment on following page.)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

Bond No.: _____

Premium: _____

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

CIVIC MONTEREY ROAD, LLC
KERLEY - TRACT NO. 10609

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20_____, and identified as **IMPROVEMENT PLANS FOR KERLEY TOWNHOMES – TRACT NO. 10609**, is hereby referred to and made a part hereof; and

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

Now, therefore, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto the City of Morgan Hill and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of **Seven Hundred Sixty-Seven Thousand Two Hundred Ninety-Eight Dollars (\$767,298.00)**, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City of Morgan Hill in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

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

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

The Surety's office is located at _____,

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

License No.:

Address: _____

Telephone No.: _____

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

Name of non-resident agent: _____,

Non-resident agent's office address: _____

Telephone No.: _____

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

Executed this _____ day of _____ 20 _____.

[form document – do not execute]

Principal

[form document – do not execute]

Principal

By: *[form document – do not execute]*

Surety

By: *[form document – do not execute]*

Attorney-in Fact

By: *[form document – do not execute]*

California Resident Agent

By: *[form document – do not execute]*

Non-resident Agent - Attorney-in-Fact

APPROVED:

[form document – do not execute]

Scott Creer, City Engineer

Date:

APPROVED AS TO FORM:

By: *[form document – do not execute]*

Donald A. Larkin, City Attorney

Date:

(Acknowledgment on following page.)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

**EXHIBIT “D”
WARRANTY BOND
(50 % of Cost of Construction)**

Bond No.:

Premium:

Whereas, the City Council of the City of Morgan Hill, State of California (hereinafter designated as “City”), and **CIVIC MONTEREY ROAD, LLC** (hereinafter designated as “Principal”) have entered into a Subdivision Improvement Agreement (hereinafter “Agreement”):

**CIVIC MONTEREY ROAD, LLC
KERLEY - TRACT NO. 10609**

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter “Improvements”), which said Agreement, dated _____, 20_____, and identified as project **IMPROVEMENT PLANS FOR KERLEY TOWNHOMES – TRACT NO. 10609**, is hereby referred to and made a part hereof; and

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

Now, therefore, we, the Principal and _____ as Surety, are held and firmly bound unto the City of Morgan Hill in the penal sum of **Three Hundred Eighty-Three Thousand Six Hundred Forty-Nine Dollars (\$383,649)** for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

Surety waives the provisions of Civil Code Sections 2819 and 2845. Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement

or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

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

Attn: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

Email: _____

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

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

SURETY:

Principal:

Date: _____

Date: _____

s/ *[form document – do not execute]*

s/ *[form document – do not execute]*

Name: _____

Name: _____

Title: _____

Title: _____

(Attach Acknowledgment with Notary

Seal and Power of Attorney)

APPROVED:

[form document – do not execute]

Scott Creer, City Engineer

Date:

APPROVED AS TO FORM:

By: *[form document – do not execute]*

Donald A. Larkin, City Attorney

Date:

END OF WARRANTY BOND

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Warranty Bond Page 4 of 4
Version July 2017



City Council

Meeting Minutes

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

Wednesday, December 6, 2023 5:30 PM

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

SPECIAL/REGULAR MEETING

A special meeting of the City Council was called at 5:30 p.m. for the purpose of conducting a closed session.

SPECIAL MEETING

5:30 p.m. Closed Session

CALL TO ORDER

Mayor Turner called the Special City Council meeting to order at 5:30 p.m.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

PRESENT	Rene Spring, Gino Borgioli, Yvonne Martinez Beltran, Mark Turner, Marilyn Librers
ABSENT	None

Council Member Borgioli joined the meeting at 6:00 p.m. and left the meeting at 9:08 p.m.

DECLARATION OF POSTING AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

CLOSED SESSION

City Attorney Donald Larkin announced the closed session item.

Conference with Legal Counsel – Anticipated Litigation

Significant exposure to litigation pursuant to
§ 54956.9(b): (Two Cases)

OPPORTUNITY FOR PUBLIC COMMENT

Public comment opened at 5:31 p.m. There being no requests to speak, public comment closed.

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 5:31 p.m.

REGULAR MEETING

Mayor Turner called the Regular City Council meeting to order at 6:00 p.m.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PRESENTATIONS

YAC Presentation

CITY COUNCIL REPORTS

Council Member Spring shared that he is the chair of the Santa Clara Valley Habitat Agency Governing Board, and they are doing a lot of great work preserving land in the Bay Area and South County, including the Tilton Ranch. He also shared that he is the chair of the South County Regional Wastewater Authority, which is in the process of expanding the wastewater facility that serves Morgan Hill and Gilroy. He has recently attended many events, including the Kiwanis Holiday parade, a special service in support of Congregation Emeth, a 50th-anniversary service of Advent Lutheran Church, and more. He thanked all those who volunteer in the area. They make South County amazing.

CITY MANAGER'S REPORT

City Manager Christina Turner encouraged everyone to sign up for the City's weekly 411 email. She announced the "I Belong" community survey and community meetings. Lastly, she announced that City offices will be closed for the holidays from December 22, 2023 through January 1, 2024.

CITY ATTORNEY'S REPORT

City Attorney Don Larkin shared that there was no reportable action from the closed session item.

OTHER REPORTS

Council Member Martinez Beltran shared that she attended League Leaders in San Diego. They discussed safeguarding local revenues, expanding investments to prevent and reduce homelessness and increasing the supply of affordable housing, improving public safety, and strengthening climate change and disaster preparedness. She also thanked the Council for their support of the Holiday Posada event.

Mayor Turner announced that he attended a Caltrain Local Policy Makers Group gathering to discuss Caltrain funding. They are \$2 billion short on the 12 crossings they are discussing. He also attended a ribbon cutting at Mariposa Preschool with the Chamber of Commerce.

PUBLIC COMMENT

Public comment opened at 6:15 p.m.

Ben Palm was called to speak.

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

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

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 4, 6, and 8 through 19.

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

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

Recommendation:

Accept and file the report.

2. **ACCEPT THE CITY'S ANNUAL COMPREHENSIVE FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2023**

Recommendation:

Accept the City's Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2023.

3. **ADOPT RESOLUTION APPROVING AND MAKING FINDINGS RELATED TO THE ASSEMBLY BILL (AB) 1600 DEVELOPMENT IMPACT FEE ANNUAL REPORT FOR FISCAL YEAR 2022-23**

Recommendation:

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

4. **ADOPT RESOLUTION AND ADOPT ORDINANCE 2349, NEW SERIES,**

ADDING CHAPTER 3.26 (“TOURISM BUSINESS IMPROVEMENT DISTRICT”) TO TITLE 3 (“REVENUE AND FINANCE”) OF THE MORGAN HILL MUNICIPAL CODE ESTABLISHING AND RENEWING THE MORGAN HILL TOURISM BUSINESS IMPROVEMENT DISTRICT

Recommendation:

1. Adopt resolution; and
2. Waive the reading, adopt Ordinance No. 2349, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

6. ADOPT RESOLUTION CERTIFYING COMPLIANCE WITH STATE HOUSING LAWS IN ORDER TO RECEIVE \$3,921,000 IN ONE BAY AREA GRANT CYCLE 3 (OBAG 3) FUNDING FOR THE MONTEREY ROAD TRAFFIC, BICYCLE, AND PEDESTRIAN IMPROVEMENTS PROJECT

Recommendation:

Adopt a resolution for self-certifying compliance with State housing laws that is required for receiving One Bay Area Grant Cycle 3 (OBAG 3) funding for the Monterey Road Traffic, Bicycle, and Pedestrian Improvements Project.

8. ADOPT WEED ABATEMENT RESOLUTION, EXEMPT FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) UNDER SECTION 15304(I)

Recommendation:

Adopt resolution declaring weeds and brush to be a nuisance and setting the hazardous vegetation public hearing for February 21, 2024.

9. ADOPT RESOLUTION AUTHORIZING CALIFORNIA CLIMATE INVESTMENTS - DEPARTMENT OF FORESTRY AND FIRE PROTECTION (CAL FIRE) FIRE PREVENTION GRANT APPLICATION

Recommendation:

Adopt a resolution authorizing a grant application to the California Department of Forestry and Fire Protection and authorizing the City Manager to execute associated grant documents.

10. APPROVE A THREE-YEAR SERVICE AGREEMENT WITH ALPHA ANALYTICAL LABORATORIES, INC. FOR A NOT-TO-EXCEED AMOUNT OF \$225,000 FOR WATER LABORATORY TESTING AND ANALYSIS SERVICES

Recommendation:

Approve and authorize the City Manager to execute and administer a three-year service agreement for a not-to-exceed amount of \$225,000 with Alpha Analytical Laboratories, Inc., for water laboratory testing and analysis services.

11. APPROVE CONTRACT WITH SCS ENGINEERS FOR COMPLETION OF A FOOD WASTE PREVENTION STUDY IN THE AMOUNT OF \$111,538

Recommendation:

Authorize the City Manager to enter into an agreement with SCS Engineers for completion of a Food Waste Prevention Study.

12. APPROVE FIRST AMENDMENT TO THE TUCKER CONSTRUCTION ON-CALL FENCING CONTRACT, AND AUTHORIZE CITY MANAGER TO EXTEND CONTRACT UP TO TWO YEARS

Recommendation:

1. Approve the first amendment to the on-call contract for public works projects with Tucker Construction, Inc. for an additional year of services for \$150,000, for a total contract amount of \$250,000; and
2. Authorize the City Manager to execute and administer two additional one-year extensions of the on-call contract in annual amounts that would not increase the price of the contract for the immediately preceding year by more than five percent (5%) annually.

13. APPROVE JOINT POWERS AGREEMENT FOR ENACTMENT OF THE CITIES ASSOCIATION OF SANTA CLARA COUNTY, JOINT POWERS AUTHORITY (CASCC JPA)

Recommendation:

1. Approve the proposed Joint Powers Agreement;
2. Authorize Mayor Turner or his alternate, Councilmember Librers, to report approval of the Agreement to the CASCC Board of Directors; and
3. Authorize the City Manager to execute the Agreement.

14. APPROVE SIXTH AMENDMENT TO DESIGN SERVICES AGREEMENT WITH HYDROSCIENCE ENGINEERS, INC. FOR THE NEW SEWER TRUNK LINE PROJECT FOR AN ADDITIONAL AMOUNT OF \$280,246

Recommendation:

1. Approve Sixth Amendment to Service Agreement for Design Professionals with HydroScience Engineers, Inc. to provide additional services for the New Sewer Trunk Line to Gilroy project for an additional \$280,246, for a total not-to-exceed amount of \$2,059,956; and
2. Authorize the City Manager to execute and administer the amended services agreement.

15. APPROVE THE NOVEMBER 15, 2023 CITY COUNCIL MEETING MINUTES

Recommendation:

Approve Minutes.

16. AUTHORIZE THE CITY MANAGER TO EXECUTE A PURCHASE AGREEMENT WITH CADENCE TEAM FOR THE NETWORK EQUIPMENT IN THE NOT-TO-EXCEED AMOUNT OF \$242,241, INCLUDING CONTINGENCY

Recommendation:

Authorize the City Manager to execute a purchase agreement for network equipment with Cadence Team in the amount of \$242,241, including a 10% contingency of \$22,022.

17. AWARD AND APPROVE AN AGREEMENT WITH IRISH EXCAVATION IN THE AMOUNT OF \$74,780 FOR CONSTRUCTION OF THE WOODLAND BOOSTER STATION RETAINING WALLS

Recommendation:

Approve and authorize the City Manager to execute and administer an agreement with Irish Excavation in the amount of \$74,780 to install two retaining walls at the Woodland Booster Station.

18. AWARD A TWO-YEAR LANDSCAPE MAINTENANCE AGREEMENT TO MEDALLION LANDSCAPE MANAGEMENT, LLC IN THE AMOUNT OF \$371,712 FOR CITY FACILITIES AND ASSESSMENT DISTRICTS

Recommendation:

1. Award a two-year contract to Medallion Landscape Management, LLC in the amount of \$371,712 to service Group 2 - City Facilities, Group 4 - Landscape Assessment Districts, including an extra services allocation of \$30,000 per year; and
2. Authorize the City Manager to execute and administer the Maintenance Service Agreement with Medallion Landscape Management, LLC. and to extend the agreement for up to three (3) additional one-year terms.

19. RECEIVE MONTHLY BUDGET UPDATE AND OCTOBER 2023 FINANCIAL AND INVESTMENT REPORTS

Recommendation:

Accept and file report.

ITEM PULLED FOR DISCUSSION

5. ADOPT ORDINANCE 2350, NEW SERIES, ADDING SECTION 18.30.070

(VEHICLE SALES OVERLAY ZONE (-VS)) OF CHAPTER 18.30 (OVERLAY ZONES AND COMBINING DISTRICTS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL ESTABLISHING THE VEHICLE SALES OVERLAY ZONE (-VS) TO ALLOW VEHICLE- RELATED USES AND OTHER COMPATIBLE USES IN DIFFERENT PARTS OF THE CITY THAT CAN SUPPORT SUCH A USE

Recommendation:

Waive the reading, adopt Ordinance No. 2350, 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.

City Attorney Donald Larkin provided a brief description of the item.

Public comment opened at 6:24 p.m. The following people were called to speak:

Joe Baranowski

Miguel Jimenez

Nick Gaich, Chamber of Commerce

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

MOTION:

Approving the recommended action.

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

7. ADOPT RESOLUTION JOINING BUILD THE FUTURE SANTA CLARA COUNTY

Recommendation:

Adopt resolution joining Build the Future Santa Clara County in advocating for comprehensive and collaborative solutions to solve the child care crisis.

City Manager Christina Turner provided a brief report.

Public comment opened at 6:40 p.m. There being no requests to speak, public comment closed.

MOTION:

Approving the recommended action.

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

OTHER BUSINESS

20. REVIEW SECTION 15.63 OF THE MUNICIPAL CODE AND PROVIDE DIRECTION REGARDING THE PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS

Recommendation:

1. Review Section 15.63 of the Municipal Code and discuss the prohibition of natural gas infrastructure in new buildings; and
2. Take no action to amend Section 15.63 of the Municipal Code, which prohibits natural gas infrastructure in new buildings.

Environmental Services Administrator Tanya Carothers provided a presentation and report.

The meeting recessed at 7:08 p.m. and reconvened at 7:17 p.m.

Public comment opened at 7:17 p.m. The following people were called to speak:

Nancy Lowe

Zoe Elizabeth, Silicon Valley Clean Energy

Jorge Uribe

Keerthi Sriram

Sofia Ruiz McGinty

DJ William

Margaret McCann

Rocke Garcia

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

MOTION:

Take no action.

RESULT:	Passed
MOVER:	Council Member Martinez Beltran
SECONDER:	Mayor Pro Tem Spring

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

21. PROVIDE DIRECTION REGARDING THE KEEPING OF ROOSTERS WITHIN CITY LIMITS

Recommendation:

Provide direction regarding whether to prohibit the keeping of roosters within the City of Morgan Hill.

Police Captain Mario Ramirez provided a report.

Public comment opened at 8:10 p.m.

Judy McAndress was called to speak.

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

MOTION:

Recommend staff to prohibit the keeping of roosters within the City of Morgan Hill.

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

Direction was provided to staff to explore mediation and take further code enforcement action to address this.

22. PROVIDE DIRECTION TO STAFF ON WHETHER TO ALLOW PUBLIC COMMENT ON ZOOM

Recommendation:

Provide direction to staff on whether to allow public comment on Zoom.

City Clerk Michelle Bigelow provided the report.

Public comment opened at 8:44 p.m. The following people were called to speak:

Joe Baranowski

Brian Sullivan

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

MOTION:

Direct staff to come back at goal setting in February with a staff report exploring how to securely have online participation allowing public comment on Zoom and looking into allowing public video.

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

23. SELECT AND APPOINT CITY COUNCIL MAYOR PRO TEMPORE

Recommendation:

1. Open floor to nomination(s) for Mayor Pro Tempore; and
2. Select a Council Member to serve as Mayor Pro Tempore per City Council Policy 99-01.

City Clerk Michelle Bigelow provided the report.

Public comment opened at 9:04 p.m. There being no requests to speak, public comment closed.

MOTION:

Appointing Marilyn Librers to serve as Mayor Pro Tem for 2024.

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

ABSENT:	None
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24. PROVIDE DIRECTION TO STAFF ON PROPOSED FUTURE COUNCIL INITIATED AGENDA ITEMS

Recommendation:

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

1. Consider providing more lead time for posting City Council agendas;
2. Consider a discussion on the Agricultural Mitigation Policy 18.152.050 - Mitigation ratio;
3. Consider a discussion on potential funding mechanisms for public art;
4. Consider revisiting City Council Policy 21-02, City Council Funding Requests;
5. Consider a discussion on special event security requirements;
6. Consider revisiting the Economic Development Blueprint; and
7. Consider a discussion on imposing a Commercial Vacancy Tax.

City Manager Christina Turner led the City Council through each of the requested items.

Public comment opened at 9:17 p.m. There being no requests to speak, public comment closed.

1. 2 yes: Martinez Beltran and Spring / 2 no: Turner and Librers - no further action
2. 3 yes: Librers, Spring, and Martinez Beltran / 1 no: Turner - bring a report back
3. 3 yes: Librers, Spring, and Turner / 1 no: Martinez Beltran - bring a report back
4. 2 yes: Librers and Turner / 2 no: Spring and Martinez Beltran - no further action
5. 4 yes: Librers, Spring, Turner, and Martinez Beltran - bring a report back
6. 4 yes: Librers, Spring, Turner, and Martinez Beltran - bring a report back
7. 3 yes: Librers, Spring, and Martinez Beltran / 1 no: Turner - bring a report back

PUBLIC HEARINGS

25. INTRODUCE ORDINANCE AMENDING SECTIONS 2.04.020 SALARY OF COUNCIL MEMBERS AND 2.04.030 SALARY OF THE MAYOR OF THE CHAPTER 2.04 CITY COUNCIL OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL

Recommendation:

1. Open/close public hearing;

2. Waive first and second reading of the Ordinance; and
3. Introduce Ordinance by title.

Finance Director Dat Nguyen provided the report.

The public hearing opened at 9:52 p.m.

Miguel Jimenez was called to speak.

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

MOTION:

Waiving the first and second reading of the ordinance.

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

MOTION:

Introducing the ordinance.

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

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Librers requested an item to discuss whether the City should continue to have an elected treasurer.

ADJOURNMENT

There being no further business, Mayor Turner adjourned the meeting at 10:04 p.m.

Minutes Prepared by:

Michelle Bigelow, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: January 17, 2024

PREPARED BY:

Andrew Aguilar, Community Services Supervisor

APPROVED BY: City Manager

AUTHORIZE THE CITY MANAGER TO EXECUTE AGREEMENT WITH ACT PRIVATE SECURITY & INVESTIGATIONS INC. FOR SECURITY SERVICES

RECOMMENDATION(S)

Authorize the City Manager to execute and administer a two and a half year agreement with ACT Private Security & Investigations Inc, in the amount of \$155,000 for security services.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Supporting our Youth, Seniors, and Entire Community

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

REPORT NARRATIVE:

The Community and Cultural Center's meeting rooms are rented by private parties, non-profit organizations and businesses for numerous types of events. To ensure safety and protect the facility, the City requires that security personnel are present at all events that include dancing and/or alcohol. The City has historically contracted with a private security firm to provide this service due to needed expertise and provide the services at affordable rates. The City passes the cost for these services on to the rental customers. The agreement also allows for security services to be requested for additional one-time or ongoing events at other locations in the City as needed. A Request for Proposals (RFP) was issued in August 2023 to identify companies that can provide security services for the City. The RFP was posted to the City's website. In addition, staff distributed the RFP announcement via email to area security services firms.

The City received twenty-one proposals. Of those proposals, 13 were deemed incomplete and unresponsive. City Staff from the Public Services Department evaluated

the remaining 8 proposals deemed responsive. The proposals were evaluated on submission thoroughness, experience, pricing, and proposed plan to perform the scope of work. The proposals were narrowed down to five companies, listed below:

- ACT Private Security & Investigations Inc.
- Citi Guard Inc.
- Coleman Security & Investigations Inc.
- Condor Security of America Inc.
- TLBC Inc.

A list of all companies providing responsive proposals and associated scoring is included in Attachment 1.

The City staff then invited the five top scoring companies to interviews. The final scoring of these five companies was updated based on submitted proposals and the completed interviews with the same criteria: experience, pricing, and proposed plan to perform the scope of work. Based on this assessment, staff recommends the award of a two and a half year consultant agreement to ACT Private Security & Investigations Inc. The agreement authorizes the City Manager to extend the term for a maximum of two, two-year extensions, along with a maximum compensation for each subsequent year after the initial term of no more than 105% of the immediately proceeding year.

COMMUNITY ENGAGEMENT:

Not Applicable

Security services are a necessary component of operating the Community and Cultural Center and no direct community engagement on this topic was believed necessary. The RFP was posted on the City website, which provides an opportunity for local vendors to subscribe to and receive notifications for City bids, proposals, and quotes.

ALTERNATIVE ACTIONS:

City Council could decide not to approve the agreement and direct staff to identify an alternate model for providing security services. This would likely increase cost and have a negative impact on customer satisfaction.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In July 2016, the City entered into a two -year agreement with Asset Protection Private Security. On September 27, 2017, the City Council approved the first amendment to the agreement to increase the not-to-exceed total compensation which was necessary due to additional rental activity at the Community and Cultural Center and other City security needs. On May 16, 2018, City Council approved the Second Amendment to extend the term for an additional year and increase the total compensation. On April 17, 2019, City Council approved the third and final amendment to a revised not-to-exceed total compensation of \$145,000 and extended the term for a fourth year. On March 18, 2020, the City Council approved a new two-year agreement with Asset Protection Private

Security, Inc.

FISCAL AND RESOURCE IMPACT:

The agreement is subject to budget appropriation. Funding of \$155,000 for this agreement is included in the current Fiscal Year 2023-24 budget and will be recommended for inclusion in the upcoming recommended biennial budget, in the General Fund (010), within the Public Services Department Recreation Division (010.2150.42231). The expenditures are fully offset by revenue.

CEQA (California Environmental Quality Act):

Categorical Exemption

The planned maintenance and management of City facilities falls within the CEQA categorical exemption of Class 1, Existing Facilities.

Security Services RFP_Scoring Summary

	NARRATIVE SCORING										NARRATIVE SCORING									
		ACT	Armed Force Security	Citi Guard	Coleman	Condor	Oracle	TLBC	Treasured		Points Available	ACT	Armed Force Security	Citi Guard	Coleman	Condor	Oracle	TLBC	Treasured	
Throughness & Understading of Tasks											15.0	13.0	10.5	11.0	11.0	14.0	4.5	10.5	9.5	
Background & Experience											15.0	13.0	9.5	10.5	11.5	13.0	5.5	8.5	9.0	
Staff Expertise & Experience											15.0	11.0	9.5	9.5	11.0	13.5	2.5	10.0	9.0	
Recent Public Sector Experience												8.3	7.3	6.3	6.7	8.7	4.7	4.3	6.3	
											10.0									
References											10.0	8.7	9.0	7.7	7.0	9.0	5.7	5.3	5.3	
SUBTOTAL- NARRATIVE POINTS											65.0	54.0	45.8	45.0	47.2	58.2	22.9	38.6	39.1	

	BID PRICING										BID PRICING SCORING									
Item	Price from Lowest Bidder	ACT	Armed Force Security	Citi Guard	Coleman	Condor	Oracle	TLBC	Treasured		Points Available	ACT	Armed Force Security	Citi Guard	Coleman	Condor	Oracle	TLBC	Treasured	
Hourly Rate: Weekdays (Mon-Thurs)	25.00	40.00	65.00	40.00	45.00	37.95	25.00	36.50	45.00	14%	5.0	3.1	1.9	3.1	2.8	3.3	5.0	3.4	2.8	
Hourly Rate: Weekends (Fri, Sat,Sun)	27.00	40.00	65.00	40.00	45.00	37.95	27.00	36.50	45.00	71%	25.0	16.9	10.4	16.9	15.0	17.8	25.0	18.5	15.0	
Hourly Rate: Holidays	30.00	60.00	97.50	60.00	67.50	56.93	30.00	54.75	65.00	14%	5.0	2.5	1.5	2.5	2.2	2.6	5.0	2.7	2.3	
SUBTOTAL-PRICING POINTS											35.0	22.5	13.8	22.5	20.0	23.7	35.0	24.7	20.1	

GRAND TOTAL											100.0	76.5	59.6	67.5	67.2	81.9	57.9	63.3	59.2	
												2	6	3	4	1	8	5	7	

Point Score is lowest bidder's item price divided by each Contractor's item price times the number of points available.

Security Services RFP_Scoring Summary

NARRATIVE SCORING								Finalist Interview Scoring					
		ACT	Citi Guard	Coleman	Condor	TLBC		Points Available	ACT	Citi Guard	Coleman	Condor	TLBC
Ability to Meet all Aspects of the Scope of Work								15.0	14.5	13.0	12.0	12.0	6.0
Experience on Similar Events/Facilities								15.0	14.5	11.0	13.0	11.5	5.0
Demonstrated adequate training for guards								15.0	12.0	11.5	11.0	11.5	7.0
Professionalism								10.0	8.7	8.3	6.3	8.3	8.0
Ability to communicate clearly								5.0	4.5	3.8	3.5	3.7	3.3
Demonstrated Flexibility								5.0	4.8	4.0	3.8	4.0	3.0
								65.0	59.0	51.6	49.6	51.0	32.3

BID PRICING								BID PRICING SCORING					
Item	Price from Lowest Bidder	ACT	Citi Guard	Coleman	Condor	TLBC		Points Available	ACT	Citi Guard	Coleman	Condor	TLBC
Hourly Rate: Weekdays (Mon-Thurs)	36.50	40.00	40.00	45.00	37.95	36.50	14%	5.0	4.6	4.6	4.1	4.8	5.0
Hourly Rate: Weekends (Fri, Sat,Sun)	36.50	40.00	40.00	45.00	37.95	36.50	71%	25.0	22.8	22.8	20.3	24.0	25.0
Hourly Rate: Holidays	54.75	60.00	60.00	67.50	56.93	54.75	14%	5.0	4.6	4.6	4.1	4.8	5.0
SUBTOTAL-PRICING POINTS								35.0	31.9	31.9	28.4	33.7	35.0

GRAND TOTAL								100.0	91	84	78	85	67

Point Score is lowest bidder's item price divided by each Contractor's item price times the number of points available.

CONSULTANT AGREEMENT
ACT Private Security & Investigations 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 ACT Private Security & Investigations Inc. a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2026 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum of two two-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 CONSULTANT shall be security services as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$155,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One Hundred and Fifty-Five Thousand Dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT, so long as City Council has appropriated sufficient funds therefor, and the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement. The maximum compensation for each subsequent year after the initial term may be increased by no more than 105% of the immediately preceding year.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to

CONSULTANT. The City Manager of CITY is authorized to terminate this Agreement, in whole or in part, on behalf of CITY.

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

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

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

7.1. **Insurance Types and Amounts.**

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

7.1.2. **Automobile Liability.** CONSULTANT shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if CONSULTANT does not own automobiles, then CONSULTANT shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount

of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

7.1.4. Pollution (Environmental) Liability. If the performance of CONSULTANT'S work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, CONSULTANT shall procure and maintain Pollution Liability covering the CONSULTANT'S liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.5. Professional Liability.

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

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

7.1.6. Sexual Abuse/Molestation Liability (SML): If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall

procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) two hundred thousand dollars (\$200,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.7. Crime/Fidelity Bond. If the performance of CONSULTANT'S work or service under this Agreement relates to or involves handling of CITY monies, CONSULTANT shall procure and maintain Crime insurance, in the minimum amount of: (i) three hundred thousand dollars (\$300,000.00) per occurrence, covering all CONSULTANT'S officers and employees, for loss of CITY monies caused by dishonesty and/or theft.

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

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

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

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

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

7.2.2. Workers Compensation.

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

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

7.4. Certificates. CONSULTANT shall furnish CITY of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. A "material change" is a change that results in non-compliance with any insurance requirements in this section 7. Certificates, including renewal certificates, may be mailed

electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

9. **Compliance with Law.**

- 9.1. CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon any basis prohibited by State or Federal law, including but not limited to, race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 9.2. Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

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

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

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

final or of learning of the final judgment, decision or order. CONSULTANT and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. The City reserves the right to require CONSULTANT to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

ACT Private Security & Investigations Inc.
PO BOX 525
Los Banos, CA 93635

Address of CITY is as follows:

Community Services Dept.
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

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

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

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

16. **Maintenance of Records.**

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

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

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

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

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

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

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

21. **Defense and Indemnification.**

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

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

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

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

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

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

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

24. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to,

California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

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

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

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

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

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[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow

Print Name

Christina J. Turner

Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

ACT Private Security & Investigations Inc.

City Attorney

By:

Donald A. Larkin

Print Name

Andy Trevino - President

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: _____

Date: _____

12/5/2023

Crystal Trevino

By:

Crystal Trevino - CFO

Print Name and Title of Signer.

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

Date: _____

12/5/2023

EXHIBIT A SCOPE OF SERVICES

Provide security services for the City at selected special events and banquets occurring at the Community and Cultural Center or other locations designated by the City.

Responsibilities include:

- 1. Supply the requested number of security officers for special events to provide customer service and a visible presence at the event. Requests for security officers will be set at 3 hour minimum.**
- 2. Security officer(s) will arrive at the designated time and check in with the City Building Coordinator or designated City staff to be briefed on the nature of the event and any special instructions.**
- 3. Work in coordination with on-site City Building Coordinator or designated City staff to maintain general order and ensure City policies and procedures are enforced.**
- 4. Ensure that room capacities for events are not exceeded.**
- 5. Ensure bar/event personnel at bar area are over the age of 21, not under the influence, and are following/enforcing California legal drinking age.**
- 6. Monitor event to ensure that only guests over the California legal drinking age are consuming alcohol.**
- 7. Periodically patrol the Community Center parking lot and grounds during events.**
- 8. Contact the police department or emergency services in the event of a disturbance, breach of the peace, or other emergency.**
- 9. Assist City Staff with that the Community and Cultural Center or other City facilities are secure and locked after special events have ended.**
- 10. Ensure all guests and visitors have exited the facility and walk the City employee to his or her car after the event, as needed.**
- 11. Ensure security officer(s) agree to follow the City's Gift Policy III-018 by not accepting monetary gratuities.**

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

The security company shall calculate charges based on the hourly rates outlined below.

Weekdays (Monday-Thursday)	\$40 per hour
Weekends (Friday, Saturday, Sunday)	\$40 per hour
Holidays (All Federal Holidays)	\$60 per hour
Any time after 8 consecutive hours	\$60 per hour

The City shall pay for services on a weekly invoice submitted by the security company.

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

The City's Community Service Supervisor or designee will notify the security company of dates and times of service based on rentals at the Community and Cultural Center.

CITY COUNCIL STAFF REPORT

MEETING DATE: January 17, 2024

PREPARED BY:

Cynthia Iwanaga, Management Analyst

APPROVED BY: City Manager

AWARD AQUATICS CENTER RECREATION POOL REPLASTERING PROJECT

RECOMMENDATION(S)

1. Award contract to Earl Adams Tile - Coving & Plastering, Inc. dba Adams Pool Solutions in the amount of \$137,262 and contingency funds not to exceed \$27,452; and
2. Authorize the City Manager to execute and administer that certain construction contract with Earl Adams Tile - Coving & Plastering, Inc. dba Adams Pool Solutions.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2023-2024 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to consider the award of a contract to Earl Adams Tile - Coving & Plastering, Inc. dba Adams Pool Solutions ("Adams Pool Solutions") in the amount of \$137,262 to complete the replastering of the Morgan Hill Aquatics Center's (AC) recreation pool. The scope of work for the AC Recreation Pool Replastering project ("Project") includes all the labor and material necessary to replaster the recreation pool's entire 4,400 square foot surface including the removal and replacement of attached equipment, and materials including drain covers and inlets. The Contractor will also be responsible for the refilling of the pool's water. The AC's recreation pool was last replastered in 2012, and industry standards recommend that pools are replastered every ten years.

In soliciting for this contract, the City published a Notice Inviting Bids in the Morgan Hill Times on November 17, 2023 and November 24, 2023. Staff also posted the bid documents on the City website and the Public Purchase Online Service. The bid documents were also sent to the Builders Exchange of Santa Clara County, San Francisco Builders Exchange, Construction BidBoard, and Dodge and Data Analytics. A bid solicitation was issued on November 20, 2023. Contractors registered on the City's Informal Bidders List with the required Contractor State Licensing Board (CSLB) license Class C-53 (Swimming Pools) or Class A (General Engineering) were also notified of the bid. A non-mandatory pre-bid job walk was held at the AC on December 7, 2023 and two contractors attended. On December 18, 2023, two bids were received.

Name of Contractor	Bid Amount
Earl Adams Tile-Coping & Plastering, Inc dba Adams Pool Solutions	\$137,262
USA Construction LLC	\$238,960

Adams Pool Solutions was the lowest bidder. The company has over 27 years of industry knowledge and experience in the replastering of commercial pools including replastering pools for jurisdictions including the City of Gilroy. City staff is recommending that the City Council award the contract to Adams Pool Solutions and authorize the City Manager to execute and administer the agreement (Attachment 1).

COMMUNITY ENGAGEMENT:

Inform

The Recreation Pool Replastering project is scheduled to take place from February through March 2024. Several weeks before the Recreation Pool replastering begins, signs will be posted at the Aquatics Center informing customers of the upcoming project and pool closure. AC Welcome Desk staff will be kept fully informed of the construction schedule, so that they can keep AC customers up to date on the progress of the project. Information on the closure will also be shared directly with members via social media and email communications.

ALTERNATIVE ACTIONS:

The City Council could decide not to approve this project. Postponing this work is not recommended as replastering the pool is needed as the current plaster has begun to fail in many locations.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Not applicable.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this contract will be \$164,714, which

includes the contract amount of \$137,262, and a 20% contingency of \$27,452. The project is an approved Capital Improvement Project (CIP) #PR1005.375.40.40.8051.86360 Recreation Facility Renovation project and is within budget.

CEQA (California Environmental Quality Act):

Categorical Exemption

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

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and Earl Adams Tile-Coping & Plastering, Inc. dba Adams Pool Solutions ("Contractor") for work on the Aquatic Center Recreation Pool Replastering Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct on the Project. On January 17, 2024, City authorized award of this Contract to Contractor for the amount set forth in Section 4, below.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.
 - 2.1 Notice Inviting Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto;
 - 2.5 Contract;
 - 2.6 Payment and Performance Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Plans and Technical Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Award;
 - 2.12 Notice to Proceed; and
 - 2.13 The following: N/A No additional documents
3. **Contractor's Obligations.** Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor One Hundred Thirty Seven Thousand Two Hundred Sixty-Two Dollars (\$137,262.00) (the "Contract Price"), for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.
5. **Time for Completion.** Contractor will fully complete the Work for the Project, meeting all requirements for Final Completion, within **30 working days** from the commencement date given in the Notice to Proceed ("Contract Time") **and in no case later than April 1, 2024**. By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** As further specified in Section 5.4 of the General Conditions, if Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of Five Hundred Dollars (\$500.00) per day for each day of unexcused delay in achieving Final Completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract Price will be reduced accordingly.
7. **Labor Code Compliance.**
 - 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.
 - 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
 - 7.3 **DIR Registration.** City will not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code Section 1725.5, subject to limited legal exceptions.
8. **Workers' Compensation Certification.** Pursuant to Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. **Conflicts of Interest.** Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement, or in violation of any California law, including Government Code Section 1090 *et seq.*, or the Political Reform Act, as set forth in Government Code Section 81000 *et seq.* and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.
10. **Independent Contractor.** Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.
11. **Notice.** Any notice required by the Contract Documents must be made in writing, signed, dated, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

City:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Phone: (409) 779-7259
Attn: City Clerk
Email: michelle.bigelow@morganhill.ca.gov
Copy to: keri.russell@morganhill.ca.gov

Contractor:

Name: Earl Adams Tile-Coping & Plastering Inc. dba Adams Pool Solutions
Address: 3675 Old Santa Rita Road
City/State/Zip: Pleasanton, CA 94588
Phone: (925) 828-3100
Attn: Debra Eula
Email: debbie@adamspools.com
Copy to: kris@adamspools.com

12. General Provisions.

- 12.1 **Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.

- 12.2 Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract.
- 12.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Santa Clara County, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure Section 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Santa Clara County, California.
- 12.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 12.5 Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor.
- 12.6 Severability.** If any provision of the Contract Documents, is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.7 Iran Contracting Act.** If the Contract Price exceeds \$1,000,000, Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code Section 2200 *et seq.* (the “Act”), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.
- 12.8 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code Section 313. If Contractor is a partnership, signature by a general partner with authority to bind the partnership is required. If Contractor is a limited liability company (LLC), a signature by a member or manager with authority to bind the LLC is required.
- 12.9 Electronic Signatures.** Unless otherwise prohibited by law or City policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City.

[Signatures are on the following page.]

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.

The parties agree to this Contract as witnessed by the signatures below:

CITY OF MORGAN HILL:

Christina J. Turner
City Manager

Date: _____

CONTRACTOR:
EARL ADAMS TILE-COPING &
PLASTERING INC. dba ADAMS POOL
SOLUTIONS

Signature

Attest:

Michelle Bigelow
City Clerk

Date: _____

Name/Title [print]

Date: _____

*Corporate entities must provide a
second signature:*

Signature

Approved as to Form:

Donald A. Larkin
City Attorney

Date: _____

Name/Title [print]

Date: _____

726779
Contractor's License Number(s)

08/31/2024
Expiration Date(s)

Seal:

1000006072
Contractor's DIR Registration Number(s)

06/30/2025
Expiration Date

END OF CONTRACT

PAYMENT BOND

The City of Morgan Hill ("City") and Earl Adams Tile-Coping & Plastering Inc. dba Adams Pool Solutions ("Contractor") have entered into a contract for work on the Aquatic Center Recreation Pool Replastering Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in an amount not less than One Hundred Thirty Seven Thousand Two Hundred Sixty Two Dollars (\$137,262) ("Bond Sum"), under California Civil Code Sections 9550, *et seq.*, to ensure payment to authorized claimants. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor
2. **Surety's Obligation.** If Contractor or any of its Subcontractors fails to pay a person authorized in California Civil Code Section 9100 to assert a claim against a payment bond, any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors, under California Unemployment Insurance Code Section 13020, with respect to the work and labor, then Surety will pay the obligation.
3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code Section 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4. **Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code Sections 2819 and 2845. City waives the requirement of a new bond for any supplemental contract under Civil Code Section 9550. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Email: _____

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

7. Effective Date; Execution. This Bond is entered into and is effective on _____, 20__.

SURETY:

s/ _____

Name: _____

Title: _____

CONTRACTOR:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF PAYMENT BOND

PERFORMANCE BOND

The City of Morgan Hill ("City") and Earl Adams Tile-Coping & Plastering Inc. dba Adams Pool Solutions ("Contractor") have entered into a contract for work on the Aquatic Center Recreation Pool Replastering Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

- 1. General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee for an amount not less than One Hundred Thirty Seven Thousand Two Hundred Sixty-Two Dollars (\$_____) (the "Bond Sum") to ensure Contractor's faithful performance of its obligations under the Contract. By executing this Bond, Contractor and Surety bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, to the provisions of this Bond.
- 2. Surety's Obligations.** Surety's obligations are co-extensive with Contractor's obligations under the Contract. If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, Surety's obligations under this Bond will become null and void. Otherwise, Surety's obligations under this bond will remain in full force and effect.
- 3. Waiver.** Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code Sections 2819 and 2845.
- 4. Application of Contract Balance.** Upon making a demand on this Bond for completion of the Work prior to acceptance of the Project, City will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by City to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which City is entitled under the terms of the Contract.
- 5. Contractor Default.** Upon written notification from City that Contractor is in default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:

5.1 Arrange for completion of the Work under the Contract by Contractor, with City's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;

5.2 Arrange for completion of the Work under the Contract by a qualified contractor acceptable to City, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense, or

5.3 Waive its right to complete the Work under the Contract and reimburse City the amount of City's costs to have the remaining Work completed.

6. Surety Default. If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.

7. Notice. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

Email: _____

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

[Signatures are on the following page.]

9. Effective Date; Execution. This Bond is entered into and effective on _____, 20____.

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF PERFORMANCE BOND

GENERAL CONDITIONS

Article 1 - Definitions

1.1 Definitions. The following definitions apply to all of the Contract Documents unless otherwise indicated, e.g., additional definitions that apply solely to the Specifications or other technical documents. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the following (in any tense or form): “day,” “furnish,” “including,” “install,” “work day” or “working day.”

Allowance means a specific amount that must be included in the Bid Proposal for Work that may or may not be included in the Project, depending on conditions that will not become known until after bids are opened. If the Contract Price includes an Allowance and the cost of performing the Work covered by that Allowance is greater or less than the Allowance, the Contract Price will be increased or decreased accordingly.

Article, as used in these General Conditions, means a numbered Article of the General Conditions, unless otherwise indicated by the context.

Change Order means a written document duly approved and executed by City, which changes the scope of Work, the Contract Price, or the Contract Time.

City means the City of Morgan Hill, acting through its City Council, officers, employees, and authorized representatives.

City Engineer means the City Engineer for City and his or her authorized delegee(s) designated to oversee and manage the Project on City’s behalf.

Claim means a separate demand by Contractor for a change in the Contract Time or Contract Price, that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part; or a written demand by Contractor objecting to the amount of Final Payment.

Contract means the signed agreement between City and Contractor for performing the Work required for the Project, and all documents expressly incorporated therein.

Contract Documents means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Notice Inviting Bids; the Instructions to Bidders; addenda, if any; the Bid Proposal, and attachments thereto; the Contract; the Notice of Award and Notice to Proceed; the payment and performance bonds; the General Conditions; the Special Conditions; the Project Plans and Specifications; any Change Orders; and any other documents

expressly made part of the Contract Documents. The Contract Documents do not include documents provided "For Reference Only," or documents that are intended solely to provide information regarding existing conditions.

Contract Price means the total compensation to be paid to Contractor for performance of the Work, as set forth in the Contract and as may be amended by Change Order or adjusted for an Allowance. The Contract Price is not subject to adjustment due to inflation or due to the increased cost of labor, material, supplies, or equipment following submission of the Bid Proposal. The Contract Price is deemed to include all applicable federal, state, and local taxes.

Contract Time means the number of days specified for complete performance of the Work, as set forth in the Contract and as may be amended by Change Order.

Contractor means the individual, partnership, corporation, or joint-venture that has signed the Contract with City to perform the Work.

Day means a calendar day unless otherwise specified.

Design Professional means the licensed individual(s) or firm(s) retained by City to provide architectural or engineering services for the Project. If no Design Professional has been retained for this Project, any reference to Design Professional is deemed to refer to the Engineer.

DIR means the California Department of Industrial Relations.

Drawings has the same meaning as Plans.

Engineer means the City Engineer for the City of Morgan Hill and his or her authorized delegee(s).

Excusable Delay is defined in Section 5.3(B), Excusable Delay.

Extra Work means new or unforeseen work added to the Project, as determined by the Engineer in his or her sole discretion, including Work that was not part of or incidental to the scope of the Work when the Contractor's bid was submitted; Work that is substantially different from the Work as described in the Contract Documents at bid time; or Work that results from a substantially differing and unforeseeable condition.

Final Completion means Contractor has fully completed all of the Work required by the Contract Documents to the City's satisfaction, including all punch list items, and any required commissioning or training, and has provided the City with all required submittals, including the instructions and manuals, product warranties, and as-built drawings.

Final Payment means payment to Contractor of the unpaid Contract Price, including release of undisputed retention, less amounts withheld or deducted pursuant to the Contract Documents.

Furnish means to purchase and deliver for the Project.

Government Code Claim means a claim submitted pursuant to California Government Code § 900 et seq.

Hazardous Materials means any substance or material identified now or in the future as hazardous under any Laws, or any other substance or material that may be considered hazardous or otherwise subject to Laws governing handling, disposal, or cleanup.

Including, whether or not capitalized, means “including, but not limited to,” unless the context requires otherwise.

Inspector means the individual(s) or firm(s) retained or employed by City to inspect the workmanship, materials, and manner of construction of the Project and its components to ensure compliance with the Contract Documents and all Laws.

Install means to fix in place for materials, and to fix in place and connect for equipment.

Laws means all applicable local, state, and federal laws, regulations, rules, codes, ordinances, permits, orders, and the like enacted or imposed by or under the auspices of any governmental entity with jurisdiction over any of the Work or any performance of the Work, including health and safety requirements.

Non-Excusable Delay is defined in Section 5.3(D), Non-Excusable Delay.

Plans means the City-provided plans, drawings, details, or graphical depictions of the Project requirements, but does not include Shop Drawings.

Project means the public works project referenced in the Contract.

Project Manager means the individual designated by City to oversee and manage the Project on City’s behalf and may include his or her authorized delegate(s) when the Project Manager is unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to the Engineer.

Recoverable Costs is defined in Section 5.3(F), Recoverable Costs.

Request for Information or RFI means a Contractor's written request for information about the Contract Documents, the Work or the Project, submitted to City in the manner and format specified by City.

Section, when capitalized in these General Conditions, means a numbered section or subsection of the General Conditions, unless the context clearly indicates otherwise.

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to City acceptance, which are intended to provide details for fabrication, installation, and the like, of items required by or shown in the Plans or Specifications.

Specialty Work means Work that must be performed by a specialized Subcontractor with the specified license or other special certification, and that the Contractor is not qualified to self-perform.

Specifications means the technical, text specifications describing the Project requirements, which are prepared for and incorporated into the Contract by or on behalf of City, and does not include the Contract, General Conditions or Special Conditions.

Subcontractor means an individual, partnership, corporation, or joint-venture retained by Contractor directly or indirectly through a subcontract to perform a specific portion of the Work. The term Subcontractor applies to subcontractors, suppliers, fabricators, and equipment lessors of all tiers, unless otherwise indicated by the context. A third party such as a utility performing related work on the Project is not a Subcontractor, even if Contractor must coordinate its Work with the third party.

Technical Specifications has the same meaning as Specifications.

Work means all of the construction and services necessary for or incidental to completing the Project in conformance with the requirements of the Contract Documents.

Work Day or Working Day, whether or not capitalized, means a weekday when the City is open for business, and does not include holidays observed by City.

Worksite means the place or places where the Work is performed, which includes, but may extend beyond the Project site, including separate locations for staging, storage, or fabrication.

Article 2 - Roles and Responsibilities

2.1 City.

- (A) **City Council.** The City Council has final authority in all matters affecting the Project, except to the extent it has delegated authority to the Engineer.
- (B) **Engineer.** The Engineer, acting within the authority conferred by the City Council, is responsible for administration of the Project on behalf of City, including authority to provide directions to the Design Professional and to Contractor to ensure proper and timely completion of the Project. The Engineer's decisions are final and conclusive within the scope of his or her authority, including interpretation of the Contract Documents.
- (C) **Project Manager.** The Project Manager assigned to the Project will be the primary point of contact for the Contractor and will serve as City's representative, for daily administration of the Project on behalf of City. Unless otherwise specified, all of Contractor's communications to City (in any form) will go to or through the Project Manager. City reserves the right to reassign the Project Manager role at any time or to delegate duties to additional City representatives, without prior notice to or consent of Contractor.
- (D) **Design Professional.** The Design Professional is responsible for the overall design of the Project, and to the extent authorized by City, may act on City's behalf to ensure performance of the Work in compliance with the Plans and Specifications, including any design changes authorized by Change Order. The Design Professional's duties may include review of Contractor's submittals, visits to any Worksite, inspecting the Work, evaluating test and inspection results, and participation in Project-related meetings, including any pre-construction conference, weekly meetings, and coordination meetings. The Design Professional's interpretation of the Plans or Specifications is final and conclusive.

2.2 Contractor.

- (A) **General.** Contractor must provide all labor, materials, supplies, equipment, services, and incidentals necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economical and efficient manner in the best interests of City, and with minimal inconvenience to the public.
- (B) **Responsibility for the Work and Risk of Loss.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is

solely responsible for, and required to exercise full control over the Work, including the construction means, methods, techniques, sequences, procedures, safety precautions and programs, and coordination of all portions of the Work with that of all other contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions. Contractor's responsibilities extend to any plan, method or sequence suggested, but not required by City or specified in the Contract Documents. From the date of commencement of the Work until either the date on which City formally accepts the Project or the effective date of termination of the Contract, whichever is later, Contractor bears all risks of injury or damage to the Work and the materials and equipment delivered to any Worksite, by any cause including fire, earthquake, wind, weather, vandalism or theft.

(C) **Project Administration.** Contractor must provide sufficient and competent administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents. Before starting the Work, Contractor must designate in writing and provide complete contact information, including telephone numbers and email address, for the officer or employee in Contractor's organization who is to serve as Contractor's primary representative for the Project, and who has authority to act on Contractor's behalf. A Subcontractor may not serve as Contractor's primary representative.

(D) **On-Site Superintendent.** Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent acceptable to City, and assistants, as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. The superintendent must have full authority to act and communicate on behalf of Contractor, and Contractor will be bound by the superintendent's communications to City. City's approval of the superintendent is required before the Work commences. If City is not satisfied with the superintendent's performance, City may request a qualified replacement of the superintendent. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of Contract Time, until an approved superintendent is physically present to supervise the Work. Contractor must provide written notice to City, as soon as practicable, before replacing the superintendent.

(E) **Standards.** Contractor must, at all times, ensure that the Work is performed in an efficient, skillful manner following best practices and in full compliance with the Contract Documents and Laws and applicable manufacturer's recommendations. Contractor has a material and ongoing obligation to provide true and complete information, to the best of its knowledge, with respect to all records, documents, or communications

pertaining to the Project, including oral or written reports, statements, certifications, Change Order requests, or Claims.

(F) **Meetings.** Contractor, its project manager, superintendent, and any primary Subcontractors requested by City, must attend a pre-construction conference, if requested by City, as well as weekly Project progress meetings scheduled with City. If applicable, Contractor may also be required to participate in coordination meetings with other parties relating to other work being performed on or near the Project site or in relation to the Project, including work or activities performed by City, other contractors, or other utility owners.

(G) **Construction Records.** Contractor will maintain up-to-date, thorough, legible, and dated daily job reports, which document all significant activity on the Project for each day that Work is performed on the Project. The daily report for each day must include the number of workers at the Project site; primary Work activities; major deliveries; problems encountered, including injuries, if any; weather and site conditions; and delays, if any. Contractor will take date and time-stamped photographs to document general progress of the Project, including site conditions prior to construction activities, before and after photographs at offset trench laterals, existing improvements and utilities, damage and restoration. Contractor will maintain copies of all subcontracts, Project-related correspondence with Subcontractors, and records of meetings with Subcontractors. Upon request by the City, Contractor will permit review of and/or provide copies of any of these construction records.

(H) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any Subcontractors, or any other party or parties performing portions of the Work or providing equipment, materials, or services for or on behalf of Contractor or the Subcontractors. Upon City's written request, Contractor must promptly and permanently remove from the Project, at no cost to City, any employee, Subcontractor, or employee of a Subcontractor who the Engineer has determined to be incompetent, intemperate or disorderly, or who has failed or refused to perform the Work as required under the Contract Documents.

(I) **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by City to be deficient or defective in any way, including workmanship, materials, parts or equipment. Workmanship, materials, parts or equipment that do not conform to the requirements under the Plans, Specifications and every other Contract Document, as determined by City, will be considered defective and subject to rejection. Contractor must also promptly correct, at Contractor's sole expense, any Work performed beyond the lines and grades shown on the Plans or established by City, and any Extra Work

performed without City's prior written approval. If Contractor fails to correct or to take reasonable steps toward correcting defective Work within five days following notice from City, or within the time specified in City's notice to correct, City may elect to have the defective Work corrected by its own forces or by a third party, in which case the cost of correction will be deducted from the Contract Price. If City elects to correct defective Work due to Contractor's failure or refusal to do so, City or its agents will have the right to take possession of and use any equipment, supplies, or materials available at the Project site or any Worksite on City property, in order to effectuate the correction, at no extra cost to City. Contractor's warranty obligations under Section 11.2, Warranty, will not be waived nor limited by City's actions to correct defective Work under these circumstances. Alternatively, City may elect to retain defective Work, and deduct the difference in value, as determined by the Engineer, from payments otherwise due to Contractor. This paragraph applies to any defective Work performed by Contractor during the one-year warranty period under Section 11.2.

(J) **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos, electronic records, approved samples, and the construction records required pursuant to paragraph (G), above. Project records subject to this provision include, but are not limited to, complete Project cost records and records relating to preparation of Contractor's bid, including estimates, take-offs, and price quotes or bids.

- (1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as Extra Work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.
- (2) Contractor must continue to maintain its Project-related records in an organized manner for a period of five years after City's acceptance of the Project or following Contract termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours. The record-keeping

requirements set forth in this subsection 2.2(J) will survive expiration or termination of the Contract.

(K) **Copies of Project Documents.** Contractor and its Subcontractors must keep copies, at the Project site, of all Work-related documents, including the Contract, permit(s), Plans, Specifications, Addenda, Contract amendments, Change Orders, RFIs and RFI responses, Shop Drawings, as-built drawings, schedules, daily records, testing and inspection reports or results, and any related written interpretations. These documents must be available to City for reference at all times during construction of the Project.

2.3 Subcontractors.

(A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors, subject to the 50% limitation set forth in the Instructions to Bidders. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work, for reasons including the subcontractor's poor reputation, lack of relevant experience, financial instability, and lack of technical ability or adequately trained workforce. Each Subcontractor must obtain a City business license before performing any Work.

(B) **Contractual Obligations.** Contractor must require each Subcontractor to comply with the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, including the generally applicable terms of the Contract Documents, and to likewise bind their subcontractors. Contractor will provide that the rights that each Subcontractor may have against any manufacturer or supplier for breach of warranty or guarantee relating to items provided by the Subcontractor for the Project, will be assigned to City. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and City, but City is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor. Copies of subcontracts must be available to the Engineer upon request. Before a Subcontractor commences Work on the Project, Contractor must provide the Engineer a written statement with the name of the Subcontractor, a description of each portion of the Work performed by the Subcontractor, and the percentage of the overall Work to be performed by the Subcontractor.

(C) **Termination.** If the Contract is terminated, each Subcontractor's agreement must be assigned by Contractor to City, subject to the prior rights of any surety, but only if and to the extent that City accepts, in writing, the assignment by written notification, and assumes all rights and obligations of Contractor pursuant to each such subcontract agreement.

(D) **Substitution of Subcontractor.** If Contractor requests substitution of a listed Subcontractor under Public Contract Code Section 4107, Contractor is solely responsible for all costs City incurs in responding to the request, including legal fees and costs to conduct a hearing, and any increased subcontract cost to perform the Work that was to be performed by the listed Subcontractor. If City determines that a Subcontractor is unacceptable to City based on the Subcontractor's failure to satisfactorily perform its Work, or for any of the grounds for substitution listed in Public Contract Code Section 4107(a), City may request removal of the Subcontractor from the Project. Upon receipt of a written request from City to remove a Subcontractor pursuant to this paragraph, Contractor will immediately remove the Subcontractor from the Project and, at no further cost to City, will either (1) self-perform the remaining Work to the extent that Contractor is duly licensed and qualified to do so, or (2) substitute a Subcontractor that is acceptable to City, in compliance with Public Contract Code Section 4107, as applicable.

2.4 Coordination of Work.

(A) **Concurrent Work.** City reserves the right to perform have performed, or permit performance of other work on or adjacent to the Project site while the Work is being performed for the Project. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, including by any utility companies or agencies, and must avoid hindering, delaying, or interfering with the work of other contractors, individuals, or entities, and must ensure safe and reasonable site access and use as required or authorized by City. To the full extent permitted by law, Contractor must hold harmless and indemnify City against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of any utility company or agency or another contractor or subcontractor.

(B) **Coordination.** If Contractor's Work will connect or interface with work performed by others, Contractor is responsible for independently measuring and visually inspecting such work to ensure a correct connection and interface. Contractor is responsible for any failure by Contractor or its Subcontractors to confirm measurements before proceeding with connecting Work. Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give the Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any known or reasonably discoverable defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work. Contractor must also promptly notify City if work performed by others, including work

or activities performed by City's own forces, is operating to hinder, delay, or interfere with Contractor's timely performance of the Work. City reserves the right to backcharge Contractor for any additional costs incurred due to Contractor's failure to comply with the requirements in this Section 2.4.

2.5 Submittals. Unless otherwise specified, Contractor must submit to Engineer for review and acceptance, all schedules, Shop Drawings, samples, product data and similar submittals required by the Contract Documents, or upon request by Engineer. Unless otherwise specified, all submittals, including Requests for Information (RFIs) are subject to the provisions of this Section, as well as specific submittal requirements that may be included elsewhere in the Contract Documents, including the Special Conditions or Specifications. The Engineer may require submission of a submittal schedule at or before a pre-construction conference, as may be specified in the Notice to Proceed.

(A) **General.** Contractor is responsible for ensuring that its submittals are accurate and conform to the Contract Documents.

(B) **Time and Manner of Submission.** Contractor must ensure that its submittals are prepared and delivered in a manner consistent with the current City-accepted schedule for the Work and within the applicable time specified elsewhere in the Contract Documents, or if no time is specified, in such time and sequence so as not to delay the performance of the Work or completion of the Project.

(C) **Required Contents.** Each submittal must include the Project name and contract number, Contractor's name and address, the name and address of any Subcontractor or supplier involved with the submittal, the date, and references to applicable Specification section(s) and/or drawing and detail number(s).

(D) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections as specified in full conformance with the requirements of this Section, or other requirements that apply to that submittal.

(E) **Effect of Review and Acceptance.** Review and acceptance of a submittal by City will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for any errors in any submittal, and review or acceptance of a submittal by City is not an assumption of risk or liability by City.

(F) **Enforcement.** Any Work performed or any material furnished, installed, fabricated, or used without City's prior acceptance of a required

submittal is performed or provided at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work or material, repairs to other affected portions of the Work, and the cost of additional time or services required of City, including costs for the Design Professional, Project Manager, or Inspector.

(G) **Excessive RFIs.** An RFI will be considered excessive or unnecessary if the City determines that the explanation or response to the RFI is clearly and unambiguously discernable from the Contract Documents. City's costs to review and respond to excessive or unnecessary RFIs may be deducted from payments otherwise due to Contractor.

2.6 Shop Drawings. When Shop Drawings are required by the Specifications or requested by the Engineer, they must be prepared according to best practices at Contractor's expense. The Shop Drawings must be of a size and scale to clearly show all necessary details. Unless otherwise specified by City, Shop Drawings must be provided to the Engineer for review and acceptance at least 30 days before the Work will be performed. If City requires changes, the corrected Shop Drawings must be resubmitted to the Engineer for review within the time specified by the Engineer. For all Project components requiring Shop Drawings, Contractor will not furnish materials or perform any Work until the Shop Drawings for those components are accepted by City. Contractor is responsible for any errors or omissions in the Shop Drawings, shop fits and field corrections; any deviations from the Contract Documents; and for the results obtained by the use of Shop Drawings. Acceptance of Shop Drawings by City does not relieve Contractor of Contractor's responsibility.

2.7 Access to Work. Contractor must afford prompt and safe access to any Worksite by City and its employees, agents, or consultants authorized by City; and upon request by City, Contractor must promptly arrange for City representatives to visit or inspect manufacturing sites or fabrication facilities for items to be incorporated into the Work.

2.8 Personnel. Contractor and its Subcontractors must employ only competent and skillful personnel to perform the Work. Contractor and its Subcontractor's supervisors, security or safety personnel, and employees who have unescorted access to the Project site must possess proficiency in English sufficient to read, understand, receive, and implement oral or written communications or instructions relating to their respective job functions, including safety and security requirements. Upon written notification from the Engineer, Contractor and its Subcontractors must immediately discharge any personnel who are incompetent, disorderly, disruptive, threatening, abusive, or profane, or otherwise refuse or fail to comply with the requirements of the Contract Documents or Laws, including Laws pertaining to health and safety. Any such

discharged personnel may not be re-employed or permitted on the Project in any capacity without City's prior written consent.

Article 3 - Contract Documents

3.1 Interpretation of Contract Documents.

(A) ***Plans and Specifications.*** The Plans and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Plans and Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all Work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Plans and Specifications, the Specifications will control, unless the Plan(s) at issue are dated later than the Specification(s) at issue. Detailed drawings take precedence over general drawings, and large-scale drawings take precedence over smaller scale drawings. Any arrangement or division of the Plans and Specifications into sections is for convenience and is not intended to limit the Work required by separate trades. A conclusion presented in the Plans or Specifications is only a recommendation. Actual locations and depths must be determined by Contractor's field investigation. Contractor may request access to underlying or background information in City's possession that is necessary for Contractor to form its own conclusions.

(B) ***Duty to Notify and Seek Direction.*** If Contractor becomes aware of a changed condition in the Project, or of any ambiguity, conflict, inconsistency, discrepancy, omission, or error in the Contract Documents, including the Plans or Specifications, Contractor must promptly submit a Request for Information to the Engineer and wait for a response from City before proceeding further with the related Work. The RFI must notify the City of the issue and request clarification, interpretation, or direction. The Engineer's clarification, interpretation, or direction will be final and binding on Contractor. If Contractor proceeds with the related Work before obtaining City's response, Contractor will be responsible for any resulting costs, including the cost of correcting any incorrect or defective Work that results. Timely submission of a clear and complete RFI is essential to avoiding delay. Delay resulting from Contractor's failure to submit a timely and complete RFI to the Engineer is Non-Excusable Delay. If Contractor believes that City's response to an RFI justifies a change to the Contract Price or Contract Time, Contractor must perform the Work as directed, but

may submit a timely Change Order request in accordance with the Contract Documents. (See Article 5 and 6.)

(C) **Figures and Dimensions.** Figures control over scaled dimensions.

(D) **Technical or Trade Terms.** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those meanings, unless otherwise specifically defined in the Contract Documents.

(E) **Measurements.** Contractor must verify all relevant measurements in the Contract Documents and at the Project site before ordering any material or performing any Work, and will be responsible for the correctness of those measurements or for costs that could have been avoided by independently verifying measurements.

(F) **Compliance with Laws.** The Contract Documents are intended to comply with Laws and will be interpreted to comply with Laws.

3.2 Order of Precedence. Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. Unless otherwise specified in the Special Conditions, in case of any conflict or inconsistency among the Contract Documents, the following order of precedence will apply, beginning from highest to lowest, with the most recent version taking precedent over an earlier version:

- (A) Change Orders;
- (B) Addenda;
- (C) Contract;
- (D) Notice to Proceed;
- (E) Appendix B- Federal Contract Requirements (only if used);
- (F) Special Conditions;
- (G) General Conditions;
- (H) Payment and Performance Bonds;
- (I) Technical Specifications;
- (J) Plans;
- (K) Notice of Award
- (L) Notice Inviting Bids;
- (M) Appendix A – Federal Bidding Requirements (only if used);
- (N) Instructions to Bidders;
- (O) Contractor's Bid Proposal and attachments;
- (P) The City's standard specifications, as applicable; and
- (Q) Any generic documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, such as Caltrans Standard Specifications or Caltrans Special Provisions.

3.3 Caltrans Standard Specifications. Any reference to or incorporation of the Standard Specifications of the State of California, Department of Transportation (“Caltrans”), including “Standard Specifications,” “Caltrans Specifications,” “State Specifications,” or “CSS,” means the most current edition of Caltrans’ Standard Specifications, unless otherwise specified (“Caltrans Standard Specifications”), including the most current amendments as of the date that Contractor’s bid was submitted for this Project. The following provisions apply to use of or reference to the Caltrans Standard Specifications or Special Provisions:

- (A) **Limitations.** None of the “General Provisions” of the Caltrans Standard Specifications, i.e., Sections 1 through 9, applies to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.
- (B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Caltrans Standard Specifications or Special Provisions and a provision of these Contract Documents, as determined by City, the provision in the Contract Documents will govern.
- (C) **Meanings.** Terms used in the Caltrans Standard Specifications or Special Provisions are to be interpreted as follows:
 - (1) Any reference to the “Engineer” is deemed to mean the City Engineer.
 - (2) Any reference to the “Special Provisions” is deemed to mean the Special Conditions, unless the Caltrans Special Provisions are expressly included in the Contract Documents listed in Section 2 of the Contract.
 - (3) Any reference to the “Department” or “State” is deemed to mean City.

3.4 For Reference Only. Contractor is responsible for the careful review of any document, study, or report provided by the City or appended to the Contract Documents solely for informational purposes and identified as “For Reference Only.” Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. Contractor is advised that City or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Any record drawings or similar final or accepted drawings or maps that are not part of the Contract Documents are deemed to be For Reference Only. The provisions of the Contract Documents

are not modified by any perceived or actual conflict with provisions in any document that is provided For Reference Only.

3.5 Current Versions. Unless otherwise specified by City, any reference to standard specifications, technical specifications, or any City or state codes or regulations means the latest specification, code or regulation in effect at the time the Contract is signed.

3.6 Conformed Copies. If City prepares a conformed set of the Contract Documents following award of the Contract, it will provide Contractor with two hard copy (paper) sets and one copy of the electronic file in PDF format. It is Contractor's responsibility to ensure that all Subcontractors, including fabricators, are provided with the conformed set of the Contract Documents at Contractor's sole expense.

3.7 Ownership. No portion of the Contract Documents may be used for any purpose other than construction of the Project, without prior written consent from City. Contractor is deemed to have conveyed the copyright in any designs, drawings, specifications, Shop Drawings, or other documents (in paper or electronic form) developed by Contractor for the Project, and City will retain all rights to such works, including the right to possession.

Article 4 - Bonds, Indemnity, and Insurance

4.1 Payment and Performance Bonds. Within ten days following issuance of the Notice of Award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than 100 percent of the Contract Price, and each executed by Contractor and its surety using the bond forms included with the Contract Documents.

(A) **Surety.** Each bond must be issued and executed by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from City, Contractor must substitute a surety acceptable to City. If Contractor fails to substitute an acceptable surety within the specified time, City may, at its sole discretion, withhold payment from Contractor until the surety is replaced to City's satisfaction, or terminate the Contract for default.

(B) **Supplemental Bonds for Increase in Contract Price.** If the Contract Price increases during construction by five percent or more over the original Contract Price, Contractor must provide supplemental or replacement bonds within ten days of written notice from City pursuant to this Section, covering 100% of the increased Contract Price and using the bond forms included with the Contract Documents.

4.2 Indemnity. To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its Council, officers, officials, employees, agents, volunteers, and consultants, (individually, an “Indemnitee,” and collectively the “Indemnitees”) from and against any and all liability, loss, damage, claims, causes of action, demands, charges, fines, costs, and expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, “Liability”) of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or in failing to comply with any obligation of Contractor under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor’s bid for the Contract. Contractor’s failure or refusal to timely accept a tender of defense pursuant to this Contract will be deemed a material breach of this Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code Section 9201. Contractor waives any right to express or implied indemnity against any Indemnitee. Contractor’s indemnity obligations under this Contract will survive the expiration or any early termination of the Contract.

4.3 Insurance. No later than ten days following issuance of the Notice of Award, Contractor must procure and provide proof of the insurance coverage required by this Section in the form of certificates and endorsements acceptable to City. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract through the date of City’s acceptance of the Project. 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. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, City may, at its sole discretion, purchase such coverage at Contractor’s expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. Contractor further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days’ notice provided to Contractor, at any time as deemed necessary to protect the interests of City. The procurement of the required insurance will not be construed to limit Contractor’s liability under this Contract or to fulfill Contractor’s indemnification obligations under this Contract.

(A) **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by City. If the City’s Risk Manager determines that the deductibles and/or self-insured

retentions are unacceptably high, at City's option, Contractor must either reduce or eliminate the deductibles and/or self-insured retentions as they apply to City and all required Additional Insured; or must provide a financial guarantee, to City's satisfaction, guaranteeing payment of losses and related investigation, claim administration, and legal expenses.

(B) **Policies and Limits.** The following insurance policies and limits are required for this Contract unless otherwise specified in the Special Conditions:

- (1) **Commercial General Liability Insurance ("CGL").** Contractor shall maintain CGL and must include coverage for liability arising from Contractor's or its Subcontractor's acts or omissions in the performance of the Work against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) two million dollars (\$2,000,000.00) combined single limit each occurrence and either a general aggregate limit of four million dollars (\$4,000,000.00) or a general aggregate limit of two million dollars (\$2,000,000.00) as applied on a "per project" or "per location" basis, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
 - a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.
 - b. CGL policy must include contractor's protected coverage, blanket contractual, and completed operations.
- (2) **Builder's Risk Insurance:** The Builder's Risk Insurance policy must be issued on occurrence basis, for all-risk coverage (including Flood and Earthquake) on a one hundred percent (100%) completed value basis on the insurable portion of the Project for the benefit of City.
- (3) **Workers' Compensation Insurance and Employer's Liability:** Contractor shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Contractor under Contractor's

combined insurance policies (including any excess or “umbrella” policies), whichever is greater. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

- (4) **Automobile Liability:** Contractor shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Contractor does not own automobiles, then Contractor shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) combined single limit, or (ii) the maximum amount of such insurance available to Contractor under Contractor’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.
- (5) **Pollution (Environmental) Liability:** If the performance of Contractor’s work or service under this Contract involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, Contractor shall procure and maintain Pollution Liability covering Contractor’s liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Contract. 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 Contractor under Contractor’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.
- (6) **Professional Liability:**
 - a. If the performance of Contractor’s work or service under this Contract involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, legal services, and appraisers), Contractor 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 Contractor under Contractor’s combined insurance policies (including any excess or “umbrella”

policies), whichever is greater. Further, if Contractor maintains a claims-made policy, Contractor shall provide written evidence of such insurance to City for at least five (5) years after the completion of work performed under this Contract.

- b. If the performance of Contractor's work or service under this Contract relates to Information Technology or related services (examples include, but are not limited to computer programmers, hardware engineers, or other systems consultants), Contractor 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 Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(C) **Required Endorsements.** Contractor must provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

- (1) For all Policies except Builder's Risk and Professional Liability:

- a. "Waiver of Subrogation" endorsements providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and the City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

- (2) General Liability, Automobile, and Pollution Liability:

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

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

- (3) General Liability:

- a. "Separation of Insureds" endorsements stating that the inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(D) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the additional insureds and waiver of subrogation. Contractor must confirm that each Subcontractor has complied with requirements as outlined herein. The insurance requirements for Subcontractors do not replace or limit the Contractor's insurance obligations.

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

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

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

(G) **Contractor's Responsibilities.** This Section 4.3 establishes the minimum requirements for Contractor's insurance coverage in relation to this Project, but is not intended to limit Contractor's ability to procure additional or greater coverage. Contractor is responsible for its own risk assessment and needs and is encouraged to consult its insurance provider to determine what coverage it may wish to carry beyond the minimum requirements of this Section. Contractor is solely responsible for the cost of its insurance coverage, including premium payments,

deductibles, or self-insured retentions, and no Additional Insured will be responsible or liable for any of the cost of Contractor's insurance coverage.

Article 5 - Contract Time

5.1 Time is of the Essence. Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.

(A) **General.** Contractor must commence the Work on the date indicated in the Notice to Proceed, and must fully complete the Work in strict compliance with all requirements of the Contract Documents and within the Contract Time. Contractor may not begin performing the Work before the date specified in the Notice to Proceed.

(B) **Authorization.** Contractor is not entitled to compensation or credit for any Work performed before the date specified in the Notice to Proceed, with the exception of any schedules, submittals, or other requirements, if any, that must be provided or performed before issuance of the Notice to Proceed

(C) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If City determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, City may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to City, in order to achieve a rate of progress satisfactory to City. If Contractor fails to comply with City's directive in this regard, City may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use City's own forces to achieve the necessary rate of progress. Alternatively, City may terminate the Contract based on Contractor's default.

5.2 Schedule Requirements. Contractor must prepare all schedules using standard, commercial scheduling software acceptable to Engineer, and must provide the schedules in electronic and paper form as requested by the Engineer. In addition to the general scheduling requirements set forth below, Contractor must also comply with any scheduling requirements included in the Special Conditions or in the Technical Specifications.

(A) **Baseline (As-Planned) Schedule.** Within ten calendar days following City's issuance of the Notice to Proceed (or as otherwise specified in the Notice to Proceed), Contractor must submit to City for

review and acceptance a baseline as-planned schedule using critical path methodology showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time including labor, equipment, materials and fabricated items. The baseline schedule must show the order of the major items of Work and the dates of start and completion of each item, including when the materials and equipment will be procured. The schedule must also include the work of all trades reflecting anticipated labor or crew hours and equipment loading for the construction activities, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the baseline schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates of the activity, and the duration of the activity.

(1) ***Specialized Materials Ordering.*** Within five calendar days following issuance of the Notice to Proceed, Contractor must order any specialized material or equipment for the Work that is not readily available from material suppliers. Contractor must also retain documentation of the purchase order date(s).

(B) ***City's Review of Schedules.*** City will review and may note exceptions to the baseline schedule, and to the progress schedules submitted as required below, to assure completion of the Work within the Contract Time. Contractor is solely responsible for resolving any exceptions noted in a schedule and, within seven days, must correct the schedule to address the exceptions. City's review or acceptance of Contractor's schedules will not operate to waive or limit Contractor's duty to complete the Project within the Contract Time, nor to waive or limit City's right to assess liquidated damages for Contractor's unexcused failure to do so.

(C) ***Progress Schedules.*** After City accepts the final baseline schedule with no exceptions, Contractor must submit an updated progress schedule and three week look-ahead schedule, in the format specified by City, for review and acceptance with each application for a progress payment or when otherwise specified by City, until completion of the Work. The updated progress schedule must show: how the actual progress of the Work as constructed to date compares to the baseline schedule; reflect any proposed changes in the construction schedule or method of operations, including to achieve Project milestones within the Contract Time; and identify any actual or potential impacts to the critical path. Contractor must also submit periodic reports to City of any changes in the projected material or equipment delivery dates for the Project.

(1) **Float.** The progress schedule must show early and late completion dates for each task. The number of days between those dates will be designated as the “float.” Any float belongs to the Project and may be allocated by the Engineer to best serve timely completion of the Project.

(2) **Failure to Submit Schedule.** Reliable, up-to-date schedules are essential to efficient and cost-effective administration of the Project and timely completion. If Contractor fails to submit a schedule within the time periods specified in this Section, or submits a schedule to which City has noted exceptions that are not corrected, City may withhold up to ten percent from payment(s) otherwise due to Contractor until the exceptions are resolved, the schedule is corrected and resubmitted, and City has accepted the schedule. In addition, Contractor’s failure to comply with the schedule requirements in this Section 5.2 will be deemed a material default and a waiver of any claims for Excusable Delay or loss of productivity arising during any period when Contractor is out of compliance, subject only to the limits of Public Contract Code Section 7102.

(D) **Recovery Schedule.** If City determines that the Work is more than one week behind schedule, within seven days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.

(E) **Effect of Acceptance.** Contractor and its Subcontractors must perform the Work in accordance with the most current City-accepted schedule unless otherwise directed by City. City’s acceptance of a schedule does not operate to extend the time for completion of the Work or any component of the Work, and will not affect City’s right to assess liquidated damages for Contractor’s unexcused delay in completing the Work within the Contract Time.

(F) **Posting.** Contractor must at all times prominently post a copy of the most current City-accepted progress or recovery schedule in its on-site office.

(G) **Reservation of Rights.** City reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by City or others, or to facilitate City’s use of its property. The Contract Time or Contract Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor’s time or cost to perform the Work.

(H) **Authorized Working Days and Times.** Contractor is limited to working Monday through Friday, excluding City of Morgan Hill-observed holidays, during City's normal business hours, except as expressly provided in the Special Conditions, or as authorized in writing by City. City reserves the right to charge Contractor for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in the Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

(A) **Notice of Delay.** If Contractor becomes aware of any actual or potential delay affecting the critical path, Contractor must promptly notify the Engineer in writing, regardless of the nature or cause of the delay, so that City has a reasonable opportunity to mitigate or avoid the delay.

(B) **Excusable Delay.** The Contract Time may be extended if Contractor encounters "Excusable Delay," which is an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through reasonable care, planning, foresight, and diligence, provided that Contractor is otherwise fully performing its obligations under the Contract Documents. Grounds for Excusable Delay may include fire, natural disasters, including earthquake or unusually severe weather, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, or suspension for convenience under Article 13. The Contract Time will not be extended based on circumstances which will not unavoidably delay completing the Work within the Contract Time based on critical path analysis.

(C) **Weather Delays.** A "Weather Delay Day" is a Working Day during which Contractor and its forces, including Subcontractors, are unable to perform more than 40% of the critical path Work scheduled for that day due to adverse weather conditions which impair the ability to safely or effectively perform the scheduled critical path Work that day. Adverse weather conditions may include rain, saturated soil, and Project site clean-up required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, City-approved schedule. Contractor will be entitled to a non-compensable extension of the Contract Time for each Weather Delay Day in excess of the normal Weather Delay Days within a given month as determined by reliable records, including monthly rainfall averages, for the

preceding ten years (or as otherwise specified in the Special Conditions or Specifications).

- (1) Contractor must fully comply with the applicable procedures in Articles 5 and 6 of the General Conditions regarding requests to modify the Contract Time.
 - (2) Contractor will not be entitled to an extension of time for a Weather Delay Day to the extent Contractor is responsible for concurrent delay on that day.
 - (3) Contractor must take reasonable steps to mitigate the consequences of Weather Delay Days, including prudent workforce management and protecting the Work, Project Site, materials, and equipment.
- (D) **Non-Excusable Delay.** Delay which Contractor could have avoided or mitigated through reasonable care, planning, foresight and diligence is "Non-Excusable Delay." Contractor is not entitled to an extension of Contract Time or any compensation for Non-Excusable Delay, or for Excusable Delay that is concurrent with Non-Excusable Delay. Non-Excusable Delay includes delay caused by:
- (1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten years;
 - (2) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for completion of the Work within the Contract Time;
 - (3) Contractor's failure to provide adequate notification to utility companies or agencies for connections or services necessary for completion of the Work within the Contract Time;
 - (4) foreseeable conditions which Contractor could have ascertained from reasonably diligent inspection of the Project site or review of the Contract Documents or other information provided or available to the Contractor;
 - (5) Contractor's failure, refusal, or financial inability to perform the Work within the Contract Time, including insufficient funds to pay its Subcontractors or suppliers.
 - (6) performance or non-performance by Contractor's Subcontractors or suppliers;

(7) the time required to respond to excessive RFIs (see Section 2.5(G));

(8) delayed submission of required submittals, or the time required for correction and resubmission of defective submittals;

(9) time required for repair of, re-testing, or re-inspection of defective Work;

(10) enforcement of Laws by City, or outside agencies with jurisdiction over the Work; or

(11) City's exercise or enforcement of any of its rights or Contractor's duties pursuant to the Contract Documents, including correction of defective Work, extra inspections or testing due to non-compliance with Contract requirements, safety compliance, environmental compliance, or rejection and return of defective or deficient submittals.

(E) **Compensable Delay.** Pursuant to Public Contract Code Section 7102, in addition to entitlement to an extension of Contract Time, Contractor is entitled to compensation for costs incurred due to delay caused solely by City, when that delay is unreasonable under the circumstances involved and not within the contemplation of the parties ("Compensable Delay"). Contractor is not entitled to an extension of Contract Time or recovery of costs for Compensable Delay that is concurrent with Non-Excusable Delay. Delay due to causes that are beyond the control of either City or Contractor, including Weather Delay Days, discovery of Historic or Archeological Items pursuant to Section 7.18, or the actions or inactions of third parties or other agencies, is not Compensable Delay, and will only entitle Contractor to an extension of time commensurate with the time lost due to such delay.

(F) **Recoverable Costs.** Contractor is not entitled to compensation for Excusable Delay unless it is Compensable Delay, as defined above. Contractor is entitled to recover only the actual, direct, reasonable, and substantiated costs ("Recoverable Costs") for each working day that the Compensable Delay prevents Contractor from proceeding with more than 50% of the critical path Work scheduled for that day, based on the most recent progress schedule accepted by City. Recoverable Costs will not include home office overhead or lost profit.

(G) **Request for Extension of Contract Time or Recoverable Costs.** A request for an extension of Contract Time or any associated Recoverable Costs must be submitted in writing to City within ten calendar

days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time, or any entitlement to the Contract Time extension or to the Recoverable Costs will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6, below. Strict compliance with these requirements is necessary to ensure that any delay or consequences of delay may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project and timely performance of the Work. Any request for an extension of Contract Time or Recoverable Costs that does not strictly comply with all of the requirements of Article 5 and Article 6 will be deemed waived.

(1) *Required Contents.* The request must include a detailed description of the cause(s) of the delay, and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, such as by workforce management, or by a change in sequencing. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor's plan for continued mitigation of the delay or its effects.

(2) *Delay Days and Costs.* The request must specify the number of days of Excusable Delay claimed, or provide a realistic estimate if the duration of the delay is not yet known. If the Contractor believes it is entitled to Recoverable Costs for Compensable Delay, the request must specify the amount of and basis for the Recoverable Costs that are claimed or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known. The maximum extension of Contract Time will be the number of days, if any, by which an Excusable Delay or a Compensable Delay exceeds any concurrent Non-Excusable Delay. Contractor is entitled to an extension of Contract Time, or compensation for Recoverable Costs, only if, and only to the extent that, such delay will unavoidably delay Final Completion.

(3) *Supporting Documentation.* The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including scheduling and cost impacts, with a time impact analysis using critical path methodology, and demonstrating the unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to City.

(4) *Burden of Proof.* Contractor has the burden of proving that the delay was an Excusable or Compensable Delay, as defined above; Contractor has fully complied with its scheduling obligations in Section 5.2, Schedule Requirements; Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts; the delay will unavoidably result in delaying Final Completion, and any Recoverable Costs claimed by Contractor were actually incurred and were reasonable under the circumstances.

(5) *Legal Compliance.* Nothing in this Section 5.3 is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code Section 7102.

(6) *No Waiver.* Any grant of an extension of Contract Time or compensation for Recoverable Costs due to Compensable Delay will not operate as a waiver of City's right to assess liquidated damages for Non-Excusable Delay.

(7) *Dispute Resolution.* In the event of a dispute over entitlement to an extension of Contract Time or compensation for Recoverable Costs, Contractor may not stop Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on City's rejection of a Change Order request for an extension of Contract Time or compensation for Recoverable Costs is to comply with the dispute resolution provisions set forth in Article 12, below.

5.4 Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, City will suffer damages from the delay that are difficult to determine and accurately specify. Pursuant to Public Contract Code section 7203, if Contractor fails to achieve Final Completion within the Contract Time, City will charge Contractor in the amount specified in the Contract for each calendar day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty. Any waiver of accrued liquidated damages, in whole or in part, is subject to approval of the City Council or its authorized delegee.

(A) **Liquidated Damages.** Liquidated damages will not be assessed for any Excusable or Compensable Delay, as set forth above.

(B) **Milestones.** Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents.

(C) **Setoff.** City is entitled to deduct the amount of liquidated damages assessed against any payments otherwise due to Contractor, including progress payments, Final Payment, or unreleased retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, City is entitled to recover the balance from Contractor or its performance bond surety.

(D) **Occupancy or Use.** Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute City's acceptance of the Project and will not operate as a waiver of City's right to assess liquidated damages for Contractor's Non-Excusable Delay in achieving Final Completion.

(E) **Other Remedies.** City's right to liquidated damages under this Section applies only to damages arising from Contractor's Non-Excusable Delay or failure to complete the Work within the Contract Time. City retains its right to pursue all other remedies under the Contract for other types of damage, including damage to property or persons, costs or diminution in value from defective materials or workmanship, costs to repair or complete the Work, or other liability caused by Contractor.

Article 6 - Contract Modification

6.1 Contract Modification. Subject to the limited exception set forth in subsection (D) below, any change in the Work or the Contract Documents, including the Contract Price or Contract Time, will not be a valid and binding change to the Contract unless it is formalized in a Change Order, including a "no-cost" Change Order or a unilateral Change Order. Changes in Work will not operate to release, limit, or abridge Contractor's warranty obligations pursuant to Article 11 or any obligations of Contractor's bond sureties.

(A) **City-Directed Changes.** City may direct changes in the scope or sequence of Work or the requirements of the Contract Documents, without invalidating the Contract. Such changes may include Extra Work as set forth in subsection (C) below, or deletion or modification of portions of the Work. Contractor must promptly comply with City-directed changes in the Work in accordance with the intent of the original Contract Documents, even if Contractor and City have not yet reached agreement as to adjustments to the Contract Price or Contract Time for the change in the Work or for the Extra Work. Contractor is not entitled to extra compensation for cost savings resulting from "value engineering" pursuant to Public Contract Code Section 7101, except to the extent authorized in

advance by City in writing, and subject to any applicable procedural requirements for submitting a proposal for value engineering cost savings.

(B) Disputes. In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to extra City-directed change in the Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute. Likewise, in the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents or constitute Extra Work, or otherwise dispute the interpretation of any portion(s) of the Contract Documents, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute, as directed by City. If Contractor refuses to perform the Work in dispute, City may, acting in its sole discretion, elect to delete the Work from the Contract and reduce the Contract Price accordingly, and self-perform the Work or direct that the Work be performed by others. Alternatively, City may elect to terminate the Contract for convenience or for cause. Contractor's sole recourse for an unresolved dispute related to changes in the Work or performance of any Extra Work is to comply with the dispute resolution provisions set forth in Article 12, below.

(C) Extra Work. City may direct Contractor to perform Extra Work related to the Project. Contractor must promptly perform any Extra Work as directed or authorized by City in accordance with the original Contract Documents, even if Contractor and City have not yet reached agreement on adjustments to the Contract Price or Contract Time for such Extra Work. If Contractor believes it is necessary to perform Extra Work due to changed conditions, Contractor must promptly notify the Engineer in writing, specifically identifying the Extra Work and the reason(s) the Contractor believes it is Extra Work. This notification requirement does not constitute a Change Order request pursuant to Section 6.2, below. Contractor must maintain detailed daily records that itemize the cost of each element of Extra Work, and sufficiently distinguish the direct cost of the Extra Work from the cost of other Work performed. For each day that Contractor performs Extra Work, or Work that Contractor contends is Extra Work, Contractor must submit no later than the following Working Day, a daily report of the Extra Work performed that day and the related costs, together with copies of certified payroll, invoices, and other documentation substantiating the costs ("Extra Work Report"). The Engineer will make any adjustments to Contractor's Extra Work Report(s) based on

the Engineer's records of the Work. When an Extra Work Report(s) is agreed on and signed by both City and Contractor, the Extra Work Report(s) will become the basis for payment under a duly authorized and signed Change Order. Failure to submit the required documentation by close of business on the next Working Day is deemed a full and complete waiver for any change in the Contract Price or Contract Time for any Extra Work performed that day.

(D) **Minor Changes and RFIs.** Minor field changes, including RFI replies from City, that do not affect the Contract Price or Contract Time and that are approved by the Engineer acting within his or her scope of authority, do not require a Change Order. By executing an RFI reply from City, Contractor agrees that it will perform the Work as clarified therein, with no change to the Contract Price or Contract Time.

(E) **Remedy for Non-Compliance.** Contractor's failure to promptly comply with a City-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, City may, at its sole discretion, hire another contractor or use its own forces to complete the disputed Work at Contractor's sole expense, and may deduct the cost from the Contract Price.

6.2 Contractor Change Order Requests. Contractor must submit a request or proposal for a change in the Work, compensation for Extra Work, or a change in the Contract Price or Contract Time as a written Change Order request or proposal.

(A) **Time for Submission.** Any request for a change in the Contract Price or the Contract Time must be submitted in writing to the Engineer within ten calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time. If City requests that Contractor propose the terms of a Change Order, unless otherwise specified in City's request, Contractor must provide the Engineer with a written proposal for the change in the Contract Price or Contract Time within five working days of receiving City's request, in a form satisfactory to the Engineer.

(B) **Required Contents.** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes, insurance, subcontract amounts, and if applicable, Extra Work Reports. Any estimated cost must be updated in writing as soon as the actual amount is known.

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions. Upon request, Contractor must permit City to inspect its original and unaltered bidding records, subcontract agreements, subcontract change orders, purchase orders, invoices, or receipts associated with the claimed costs.

(D) **Required Form.** Contractor must use City's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by City.

(E) **Certification.** All Change Order requests must be signed by Contractor and must include the following certification:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete as to the Work or Changes referenced herein, and agrees that any costs, expenses, or time extension requests not included herein are deemed waived."

6.3 Adjustments to Contract Price. The amount of any increase or decrease in the Contract Price will be determined based on one of the following methods listed below, in the order listed with unit pricing taking precedence over the other methods. Markup applies only to City-authorized time and material Work, and does not apply to any other payments to Contractor. For Work items or components that are deleted in their entirety, Contractor will only be entitled to compensation only for those direct, actual, and documented costs (including restocking fees), reasonably incurred before Contractor was notified of the City's intent to delete the Work, with no markup for overhead, profit, or other indirect costs.

(A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or in a post-award schedule of values pursuant to Section 8.1 Schedule of Values, will apply to determine the price for the affected Work, to the extent applicable unit prices have previously been provided for that type of Work. No additional markup for overhead, profit, or other indirect costs. will be added to the calculation.

(B) **Lump Sum.** A mutually agreed upon, all-inclusive lump sum price for the affected Work with no additional markup for overhead, profit, or other indirect costs;

(C) **Time and Materials.** On a time and materials basis, if and only to the extent compensation on a time and materials basis is expressly authorized by City in advance of Contractor's performance of the Work and subject to any not-to-exceed limit. Time and materials compensation for increased costs or Extra Work (but not decreased costs or deleted Work), will include allowed markup for overhead, profit, and other indirect costs, and which may include a not-to-exceed limit, calculated as the total of the following sums, the cumulative total of which may not exceed the maximum markup rate of 15%:

- (1) All direct labor costs provided by the Contractor, excluding superintendence, project management, or administrative costs plus 15 percent markup;
- (2) All direct material costs provided by the Contractor, including sales tax, plus 15 percent markup;
- (3) All direct plant and equipment rental costs provided by the Contractor, plus 15 percent markup;
- (4) All direct additional subcontract costs plus ten percent markup for Work performed by Subcontractors; and
- (5) Increased bond or insurance premium costs computed at 1.5% percent of total of the previous four sums.

6.4 Unilateral Change Order. If the parties dispute the terms of a proposed Change Order, including disputes over the amount of compensation or extension of time that Contractor has requested, the value of deleted or changed Work, what constitutes Extra Work, or quantities used, City may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time for the adjustment to compensation or time that the City believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

6.5 Non-Compliance Deemed Waiver. Contractor waives its entitlement to any increase in the Contract Price or Contract Time if Contractor fails to fully comply with the provisions of this Article. Contractor will not be paid for unauthorized Extra Work.

Article 7 - General Construction Provisions

7.1 Permits, Fees, Business License, and Taxes.

(A) **Permits, Fees, and City Business License.** Contractor must obtain and pay for all permits, fees, or licenses required to perform the Work, including a City business license. Contractor must cooperate with and provide notifications to all government agencies with jurisdiction over the Project, as may be required. Contractor must provide City with copies of all records of permits and permit applications, payment of required fees, and any licenses required for the Work.

(B) **Taxes.** Contractor must pay for all taxes on labor, material and equipment, except Federal Excise Tax to the extent that City is exempt from Federal Excise Tax.

7.2 Temporary Facilities. Contractor must provide, at Contractor's sole expense, any and all temporary facilities for the Project, including an onsite staging area for materials and equipment, a field office, sanitary facilities, utilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any incidental utility services. The location of all temporary facilities must be approved by the City prior to installation. Temporary facilities must be safe and adequate for the intended use, and installed and maintained in accordance with Laws and the Contract Documents. Contractor must fence and screen the Project site and, if applicable, any separate Worksites, including the staging area, and its operation must minimize inconvenience to neighboring properties. Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.

(A) **Utilities.** Contractor must install and maintain the power, water, sewer and all other utilities required for the Project site, including the piping, wiring, internet and Wi-Fi connections, and any related equipment necessary to maintain the temporary facilities.

(B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to City's property or to other property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

7.3 Noninterference and Site Management. Contractor must avoid interfering with City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures. Contractor must also minimize disruption of access to private property in the Project vicinity. Contractor must coordinate with affected property owners, tenants, and businesses, and maintain some vehicle and pedestrian access to their residences or properties at all times. Temporary

access ramps, fencing or other measures must be provided as needed. Before blocking access to a private driveway or parking lot, Contractor must provide effective notice to the affected parties at least 48 hours in advance of the pending closure and allow them to remove vehicles. Private driveways, residences and parking lots must have access to a roadway during non-Work hours.

(A) **Offsite Acquisition.** Unless otherwise provided by City, Contractor must acquire, use and dispose of, at its sole expense, any Worksites, licenses, easements, and temporary facilities necessary to access and perform the Work.

(B) **Offsite Staging Area and Field Office.** If additional space beyond the Project site is needed, such as for the staging area or the field office, Contractor may need to make arrangements with the nearby property owner(s) to secure the space. Before using or occupying any property owned by a third party, Contractor must provide City with a copy of the necessary license agreement, easement, or other written authorization from the property owner, together with a written release from the property owner holding City harmless from any related liability, in a form acceptable to the City Attorney.

(C) **Traffic Management.** Contractor must provide traffic management and traffic controls as specified in the Contract Documents, as required by Laws, and as otherwise required to ensure public and worker safety, and to avoid interference with public or private operations or the normal flow of vehicular, bicycle, or pedestrian traffic.

7.4 Signs. No signs may be displayed on or about City's property, except signage which is required by Laws or by the Contract Documents, without City's prior written approval as to size, design, and location.

7.5 Project Site and Nearby Property Protections.

(A) **General.** Contractor is responsible at all times, on a 24-hour basis and at its sole cost for protecting the Work, the Project site, and the materials and equipment to be incorporated into the Work until the City has accepted the Project, excluding any exceptions to acceptance, if any. Except as specifically authorized by City, Contractor must confine its operations to the area of the Project site indicated in the Plans and Specifications. Contractor is liable for any damage caused by Contractor or its Subcontractors to the Work, City's property, the property of adjacent or nearby property owners and the work or personal property of other contractors working for City, including damage related to Contractor's failure to adequately secure the Work or any Worksite.

(1) Subject to City's approval, Contractor will provide and install safeguards to protect the Work; any Worksite, including the Project site; City's real or personal property and the real or personal property of adjacent or nearby property owners, including plant and tree protections.

(2) City wastewater systems may not be interrupted. If the Work disrupts existing sewer facilities, Contractor must immediately notify City and establish a plan, subject to City's approval, to convey the sewage in closed conduits back into the sanitary sewer system. Sewage must not be permitted to flow in trenches or be covered by backfill.

(3) Contractor must remove with due care, and store at City's request, any objects or material from the Project site that City will salvage or reuse at another location.

(4) If directed by Engineer, Contractor must promptly repair or replace any property damage, as specified by the Engineer. However, acting in its sole discretion, City may elect to have the property damage remedied otherwise, and may deduct the cost to repair or replace the damaged property from payment otherwise due to Contractor.

(5) Contractor will not permit any structure or infrastructure to be loaded in a manner that will damage or endanger the integrity of the structure or infrastructure.

(B) **Securing Project Site.** After completion of Work each day, Contractor must secure the Project site and, to the extent feasible, make the area reasonably accessible to the public unless City approves otherwise. All excess materials and equipment not protected by approved traffic control devices must be relocated to the staging area or demobilized. Trench spoils must be hauled off the Project site daily and open excavations must be protected with steel plates. Contractor and Subcontractor personnel may not occupy or use the Project site for any purpose during non-Work hours, except as may be provided in the Contract Documents or pursuant to prior written authorization from City.

(C) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Plans or apparent from inspection of the Project site, Contractor must immediately notify the City and promptly submit a Request for Information to obtain further directions from the Engineer. Contractor must avoid taking any action which could cause damage to the facilities or utilities pending further direction from Engineer. The Engineer's written

response will be final and binding on Contractor. If Engineer's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6 above.

(D) **Support; Adjacent Properties.** Contractor must provide, install, and maintain all shoring, bracing, and underpinning necessary to provide support to City's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by Laws. See also Section 7.15 Trenching of Five Feet or More.

(E) **Notification of Property Damage.** Contractor must immediately notify the City of damage to any real or personal property resulting from Work on the Project. Contractor must immediately provide a written report to City of any such property damage in excess of \$500 (based on estimated cost to repair or replace) within 24 hours of the occurrence. The written report must include: (1) the location and nature of the damage, and the owner of the property, if known; (2) the name and address of each employee of Contractor or any Subcontractor involved in the damage; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with another government agency, Contractor will provide a copy of the report to City.

7.6 Materials and Equipment.

(A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new, free from defects, and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Contractor must employ measures to preserve the specified quality and fitness of the materials and equipment. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation, and must be installed in accordance with the manufacturer's recommendations or instructions. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work. Contractor is responsible for providing security and protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until City has formally accepted the Project as set forth in Section 11.1, Final Completion. Contractor will not assign, sell, mortgage, or hypothecate any materials or equipment for the Project, or remove any materials or equipment that have been installed or delivered.

(B) **City-Provided.** If the Work includes installation of materials or equipment to be provided by City, Contractor is solely responsible for the proper examination, handling, storage, and installation in accordance with the Contract Documents. Contractor must notify City of any defects discovered in City-provided materials or equipment sufficiently in advance of scheduled use or installation to afford adequate time to procure replacement materials or equipment as needed. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.

(C) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization or license required for use of patented or copyright-protected materials, equipment, devices or processes that are incorporated into the Work. Contractor's indemnity obligations in Article 4 apply to any claimed violation of intellectual property rights in violation of this provision.

7.7 Substitutions.

(A) **"Or Equal."** Any Specification designating a material, product, or thing (collectively "item") or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate the quality and type of item or service desired, and Contractor may request use of any equal item or service. Unless otherwise stated in the Specifications, any reference to a specific brand or trade name for an item or service that is used solely for the purpose of describing the type of item or service desired, will be deemed to be followed by the words "or equal." A substitution will only be approved if it is a true "equal" item or service in every aspect of design, function, and quality, as determined by City, including dimensions, weight, maintenance requirements, durability, fit with other elements, and schedule impacts.

(B) **Request for Substitution.** A post-award request for substitution of an item or service must be submitted in writing to the Engineer for approval in advance, within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within 35 days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.

(C) **Substantiation.** Any available data substantiating the proposed substitute as an equal item or service must be submitted with the written request for substitution. Contractor's failure to timely provide all necessary substantiation, including any required test results as soon as they are

available, is grounds for rejection of the proposed substitution, without further review.

(D) **Burden of Proving Equality.** Contractor has the burden of proving, at Contractor's sole cost, the equality of the proposed substitution. City has sole discretion to determine whether a proposed substitution is equal, and City's determination is final.

(E) **Approval or Rejection.** If the proposed substitution is approved, Contractor is solely responsible for any additional costs or time associated with the substituted item or service. If the proposed substitution is rejected, Contractor must, without delay, install the item or use the service as specified by the City.

(F) **Contractor's Obligations.** City's approval of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. In the event Contractor makes an unauthorized substitution, Contractor will be solely responsible for all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

7.8 Testing and Inspection.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection and testing by City at all times and locations during construction and/or fabrication and at any Worksite, including at shops and yards as well as at the Project site. All manufacturers' application or installation instructions must be provided to the Inspector at least ten days prior to the first such application or installation. Contractor must, at all times, make the Work available for testing or inspection. Neither City's inspection or testing of Work, nor its failure to do so, operate to waive or limit Contractor's duty to complete the Work in accordance with the Contract Documents.

(B) **Scheduling and Notification.** Contractor must cooperate with City in coordinating the inspections and testing. Contractor must submit samples of materials, at Contractor's expense, and schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must notify the Engineer no later than noon of the Working Day before any inspection or testing and must provide timely notice to the other necessary parties as specified in the Contract Documents. If Contractor schedules an inspection or test beyond regular Work hours, or on a Saturday, Sunday, or recognized City holiday, Contractor must notify the Engineer at least two Working Days in advance for approval. If approved, Contractor must reimburse City for the cost of the overtime inspection or testing. Such costs, including the City's

hourly costs for required personnel, may be deducted from payments otherwise due to Contractor.

(C) **Responsibility for Costs.** City will bear the initial cost of inspection and testing to be performed by independent testing consultants retained by City, subject to the following exceptions:

- (1) Contractor will be responsible for the costs of any subsequent tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.
- (2) Contractor will be responsible for inspection costs, at City's hourly rates, for inspection time lost because the Work is not ready, or Contractor fails to appear for a scheduled inspection.
- (3) If any portion of the Work that is subject to inspection or testing is covered or concealed by Contractor prior to the inspection or testing, Contractor will bear the cost of making that portion of the Work available for the inspection or testing required by the Contract Documents, and any associated repair or remediation costs.
- (4) Contractor is responsible for properly shoring all compaction test sites deeper than five feet below grade, as required under Section 7.15 below.
- (5) Any Work or material that is defective or fails to comply with the requirements of the Contract Documents must be promptly repaired, removed, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work or material was previously inspected or included in a progress payment

(D) **Contractor's Obligations.** Contractor is solely responsible for any delay occasioned by remediation of defective or of noncompliant Work or material. Inspection of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified. Any Work done without the required inspection(s) will also be subject to rejection by City.

(E) **Distant Locations.** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.

(F) **Final Inspection.** The provisions of this Section 7.8 also apply to final inspection under Article 11, Completion and Warranty Provisions.

7.9 Project Site Conditions and Maintenance. Contractor must at all times, on a 24-hour basis and at its sole cost, maintain the Project site and staging and storage areas in clean, neat, and sanitary condition and in compliance with all Laws pertaining to safety, air quality, and dust control. Adequate toilets must be provided, and properly maintained and serviced for all workers on the Project site, located in a suitably secluded area, subject to City's prior approval. Contractor must also, on a daily basis and at its sole cost, remove and properly dispose of the debris and waste materials from the Project site.

(A) **Air Emissions Control.** Contractor must not discharge smoke or other air contaminants into the atmosphere in violation of any Laws.

(B) **Dust and Debris.** Contractor must minimize and confine dust and debris resulting from the Work. Contractor must abate dust nuisance by cleaning, sweeping, and immediately sprinkling with water excavated areas of dirt or other materials prone to cause dust, and within one hour after the Engineer notifies Contractor that an airborne nuisance exists. The Engineer may direct that Contractor provide an approved water-spraying truck for this purpose. If water is used for dust control, Contractor will only use the minimum necessary. Contractor must take all necessary steps to keep wastewater out of streets, gutters, or storm drains. See Section 7.19, Environmental Control. If City determines that the dust control is not adequate, City may have the work done by others and deduct the cost from the Contract Price. Contractor will immediately remove any excess excavated material from the Project site and any dirt deposited on public streets.

(C) **Clean up.** Before discontinuing Work in an area, Contractor must clean the area and remove all rubbish debris and waste along with the construction equipment, tools, machinery, waste and surplus materials. Contractor must, at all times, minimize and confine dust and debris resulting from construction activities.

(1) Except as otherwise specified, all excess Project materials, and the materials removed from existing improvements on the Project site with no salvage value or intended reuse by City, will be Contractor's property.

(2) Hauling trucks and other vehicles leaving the Project site must be cleaned of exterior mud or dirt before traveling on City streets. Materials and loose debris must be delivered and loaded to prevent dropping materials or debris. Contractor must immediately remove spillage from hauling on any publicly traveled way. Streets affected by Work on the Project must be kept clean by street sweeping.

(D) **Disposal.** Contractor must dispose of all Project debris and waste materials in a safe and legal manner. Contractor may not burn or bury waste materials on the Project site. Contractor will not allow any dirt, refuse, excavated material, surplus concrete or mortar, or any associated washings, to be disposed of onto streets, into manholes or into the storm drain system.

(E) **Completion.** At the completion of the Work, Contractor must remove from the Project site all of its equipment, tools, surplus materials, waste materials and debris., presenting a clean and neat appearance. Before demobilizing from the Project site, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas. Contractor must ensure that all parts of the construction are properly joined with the previously existing and adjacent improvements and conditions. Contractor must provide all cutting, fitting and patching needed to accomplish that requirement. Contractor must also repair or replace all existing improvements that are damaged or removed during the Work, both on and off the Project site, including curbs, sidewalks, driveways, fences, signs, utilities, street surfaces and structures. Repairs and replacements must be at least equal to the previously existing improvements, and the condition, finish and dimensions must match the previously existing improvements. Contractor must restore to original condition all property or items that are not designated for alteration under the Contract Documents and leave each Worksite clean and ready for occupancy or use by City.

(F) **Non-Compliance.** If Contractor fails to comply with its maintenance and cleanup obligations within two business days following written notification from any City or its representative clean up order, City may, acting in its sole discretion, elect to suspend the Work until the condition(s) is corrected with no increase in the Contract Time or Contract Price, or undertake appropriate cleanup measures without further notice and deduct the cost from any amounts due or to become due to Contractor.

7.10 Instructions and Manuals. Contractor must provide to City three copies each of all instructions and manuals required by the Contract Documents, unless otherwise specified. These must be complete as to drawings, details, parts lists, performance data, and other information that may be required for City to easily maintain and service the materials and equipment installed for this Project.

(A) **Submittal Requirements.** All manufacturers' application or installation instructions must be provided to the City at least ten days prior

to the first such application. The instructions and manuals, along with any required guarantees, must be delivered to City for review.

(B) **Training.** Contractor or its Subcontractors must train City's personnel in the operation and maintenance of any complex equipment or systems as a condition precedent to Final Completion, if required in the Contract Documents.

7.11 As-built Drawings. Contractor and its Subcontractors must prepare and maintain at the Project site a detailed, complete, and accurate as-built set of the Plans which will be used solely for the purpose of recording changes made in any portion of the original Plans in order to create accurate record drawings at the end of the Project.

(A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. City may withhold the estimated cost for City to have the as-built drawings prepared from payments otherwise due to the Contractor, until the as-built drawings are brought up to date to the satisfaction of City. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities, installed underground, in walls, floors, or otherwise concealed. Deviations from the original Plans must be shown in detail. The exact location of all main runs, whether piping, conduit, ductwork, or drain lines, must be shown by dimension and elevation. The location of all buried pipelines, appurtenances, or other improvements must be represented by coordinates and by the horizontal distance from visible above-ground improvements.

(B) **Final Completion.** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to City for review and acceptance as a condition precedent to Final Completion and Final Payment.

7.12 Existing Utilities.

(A) **General.** The Work may be performed in developed, urban areas with existing utilities, both above and below ground, including utilities identified in the Contract Documents or in other informational documents or records. Contractor must take due care to locate identified or reasonably identifiable utilities before proceeding with trenching, excavation, or any other activity that could damage or disrupt existing utilities. This may include excavation with small equipment, potholing, or hand excavation, and, if practical, using white paint or other suitable markings to delineate the area to be excavated. Except as otherwise provided herein, Contractor will be responsible for costs resulting from damage to identified or reasonably identifiable utilities due to Contractor's

negligence or failure to comply with the Contract Documents, including the requirements in this Article 7.

(B) **Unidentified Utilities.** Pursuant to Government Code Section 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by City in the Contract Documents, Contractor must immediately provide written notice to City and the utility. City assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site, if those utilities are not identified in the Contract Documents. Contractor will be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans or Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent such delay was caused by City's failure to provide for removal or relocation of the utility facilities.

7.13 Notice of Excavation. Contractor must comply with all applicable requirements in Government Code Sections 4216 through 4216.5, which are incorporated by reference herein. Government Code Section 4216.2, requires that except in an emergency, Contractor must contact the appropriate regional notification center, or Underground Services Alert, at least two working days, but not more than fourteen calendar days before starting any excavation if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations. Contractor may not begin excavation until it has obtained and submitted to Engineer an inquiry identification number from Underground Services Alert.

7.14 Trenching and Excavations of Four Feet or More. As required by Public Contract Code Section 7104, if the Work includes digging trenches or other excavations that extend deeper than four feet below the surface, the provisions in this Section apply to the Work and the Project.

(A) **Duty to Notify.** Contractor must promptly, and before the following conditions are disturbed, provide written notice to City if Contractor finds any of the following conditions:

- (1) Material that Contractor believes may be a hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing Laws;

(2) Subsurface or latent physical conditions at the Project site differing from those indicated by information about the Project site made available to bidders prior to the deadline for submitting bids; or

(3) Unknown physical conditions at the Project site of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.

(B) **City Investigation.** City will promptly investigate the conditions and if City finds that the conditions materially differ from those indicated, apparent, or reasonably inferred from information about the Project site made available to bidders, or involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, City will issue a Change Order.

(C) **Disputes.** In the event that a dispute arises between City and Contractor regarding any of the conditions specified in subsection (B) above, or the terms of a Change Order issued by the City, Contractor will not be excused from completing the Work within the Contract Time, but must proceed with all Work to be performed under the Contract. Contractor will retain any and all rights provided either by the Contract or by Laws which pertain to the resolution of disputes between Contractor and City.

7.15 Trenching of Five Feet or More. As required by Labor Code Section 6705, if the Contract Price exceeds \$25,000.00 and the Work includes the excavation of any trench or trenches of five feet or more in depth, a detailed plan must be submitted to City for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it must be prepared by a California registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.

7.16 New Utility Connections. Except as otherwise specified, City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify City sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.

7.17 Lines and Grades. Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work. Contractor must also provide, preserve, and replace if necessary, all construction stakes required for the Project. All stakes or marks must be set by a California licensed surveyor or a California registered civil engineer. Contractor must notify the Engineer of any discrepancies found between Contractor's staking and grading and information provided by the Contract Documents. Upon completion, all Work must conform to the lines, elevations, and grades shown in the Plans, including any changes directed by a Change Order.

7.18 Historic or Archeological Items.

(A) **Contractor's Obligations.** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify the Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, a burial ground, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").

(B) **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an 85-foot radius of the find and may not resume until authorized in writing by City. If required by City, Contractor must assist in protecting or recovering the Historic or Archeological Items, with any such assistance to be compensated as Extra Work on a time and materials basis under Article 6, Contract Modification. At City's discretion, a suspension of Work required due to discovery of Historic or Archeological Items may be treated as Excusable Delay pursuant to Article 5 or as a suspension for convenience under Article 13.

7.19 Environmental Control. Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor must prevent the release of any hazardous material or hazardous waste into the soil or groundwater, and prevent the unlawful discharge of pollutants into City's storm drain system and watercourses as required below. Contractor and its Subcontractors must at all times in the performance of the Work comply with all Laws concerning pollution of waterways.

(A) **Stormwater Permit.** Contractor must comply with all applicable conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge

Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Stormwater Permit").

(B) **Contractor's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City's principal administrative offices, and Contractor must comply with the same without adjustment of the Contract Price or the Contract Time. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit. Contractor must also comply with all other Laws governing discharge of stormwater, including applicable municipal stormwater management programs.

7.20 Noise Control. Contractor must comply with all applicable noise control Laws. Noise control requirements apply to all equipment used for the Work or related to the Work, including trucks, transit mixers or transient equipment that may or may not be owned by Contractor.

7.21 Mined Materials. Pursuant to the Surface Mining and Reclamation Act of 1975, Public Resources Code Section 2710 *et seq.*, any purchase of mined materials, such as construction aggregate, sand, gravel, crushed stone, road base, fill materials, and any other mineral materials must originate from a surface mining operation included on the AB 3098 List, which may be accessed online at:
<https://www.conservation.ca.gov/smgb/Pages/AB-3098-List.aspx>

Article 8 - Payment

8.1 Schedule of Values. Prior to submitting its first application for payment, Contractor must prepare and submit to the Project Manager a schedule of values apportioned to the various divisions and phases of the Work, including mobilization and demobilization. If a Bid Schedule was submitted with Contractor's bid, the amounts in the schedule of values must be consistent with the Bid Schedule. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid.

(A) **Measurements for Unit Price Work.** Materials and items of Work to be paid for on the basis of unit pricing will be measured according to the methods specified in the Contract Documents.

(B) **Deleted or Reduced Work.** Contractor will not be compensated for Work that City has deleted or reduced in scope, except for any labor,

material or equipment costs for such Work that Contractor reasonably incurred before Contractor learned that the Work could be deleted or reduced. Contractor will only be compensated for those actual, direct and documented costs incurred, and will not be entitled to any mark up for overhead or lost profits.

8.2 Progress Payments. Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.

(A) ***Application for Payment.*** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Project site, as well as authorized and approved Change Orders. Each payment application must be supported by the unit prices submitted with Contractor's Bid Schedule and/or schedule of values and any other substantiating data required by the Contract Documents. **Each application for payment shall be accompanied by completed "Contract Balance Form," a copy of which is provided at the end of Article 8.**

(B) ***Payment of Undisputed Amounts.*** City will pay the undisputed amount due within thirty days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code Section 20104.50. City will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may withhold additional amounts as set forth in Section 8.3, below.

8.3 Adjustment of Payment Application. City may adjust or reject the amount requested in a payment application, including application for Final Payment, in whole or in part, if the amount requested is disputed or unsubstantiated. Contractor will be notified in writing of the basis for the modification to the amount requested. City may also deduct or withhold from payment otherwise due based upon any of the circumstances and amounts listed below. Sums withheld from payment otherwise due will be released when the basis for that withholding has been remedied and no longer exists.

(A) For Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items. City may withhold or deduct an amount based on the City's estimated cost to correct or complete the Work.

(B) For loss or damage caused by Contractor or its Subcontractors arising out of or relating to performance of the Work, or any failure to

protect the Project site, City may deduct an amount based on the estimated cost to repair or replace.

(C) For Contractor's failure to pay its Subcontractors and suppliers when payment is due. City may withhold an amount equal to the total of past due payments and may opt to pay that amount separately via joint check pursuant to Section 8.6(B), Joint Checks.

(D) For Contractor's failure to timely correct rejected, nonconforming, or defective Work. City may withhold or deduct an amount based on the City's estimated cost to correct or complete the Work.

(E) For any unreleased stop notice, City may withhold 125% of the amount claimed.

(F) For Contractor's failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents, City may withhold an amount equal to five percent of the total amount requested until Contractor complies with its schedule submittal obligations.

(G) For Contractor's failure to maintain or submit as-built documents in the manner and within the time specified in the Contract Documents; City may withhold or deduct an amount based on the City's cost to prepare the as-builts.

(H) For Work performed without Shop Drawings, that has been accepted by the City when accepted Shop Drawings are required before proceeding with the Work, City may deduct an amount based on the estimated cost to correct unsatisfactory Work or diminution in value.

(I) For fines, payments, or penalties assessed under the Labor Code, City may deduct from payments due to Contractor as required by Laws and as directed by the Division of Labor Standards Enforcement.

(J) For any other costs or charges that may be withheld or deducted from payments to Contractor, as provided in the Contract Documents, including liquidated damages, City may withhold or deduct such amounts from payment otherwise due to Contractor.

8.4 Early Occupancy. Neither City's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work.

8.5 Retention. City will retain five percent of the full amount due on each progress payment (i.e., the amount due before any withholding or

deductions pursuant to Section 8.3, Adjustment of Payment Application), or the percentage stated in the Notice Inviting Bids, whichever is greater, as retention to ensure full and satisfactory performance of the Work. Contractor is not entitled to any reduction in the rate of withholding at any time, nor to release of any retention before 35 days following City's acceptance of the Project.

(A) ***Substitution of Securities.*** As provided by Public Contract Code Section 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code Section 22300, and will be subject to approval as to form by City's legal counsel. If City exercises its right to draw upon such securities in the event of default pursuant to section (7) of the statutory Escrow Agreement for Security Deposits in Lieu of Retention, pursuant to subdivision (g) of Public Contract Code Section 22300 ("Escrow Agreement"), and if Contractor disputes that it is in default, its sole remedy is to comply with the dispute resolution procedures in Article 12 and the provisions therein. It is agreed that for purposes of this paragraph, an event of default includes City's rights pursuant to these Contract Documents to withhold or deduct sums from retention, including withholding or deduction for liquidated damages, incomplete or defective Work, stop payment notices, or backcharges. It is further agreed that if any individual authorized to give or receive written notice on behalf of a party pursuant to section (10) of the Escrow Agreement are unavailable to give or receive notice on behalf of that party due to separation from employment, retirement, death, or other circumstances, the successor or delegee of the named individual is deemed to be the individual authorized to give or receive notice pursuant to section (10) of the Escrow Agreement.

(B) ***Release of Undisputed Retention.*** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld pursuant to Section 8.3 Adjustment of Payment Application will be released as Final Payment to Contractor no sooner than 35 days following recordation of the notice of completion, and no later than 60 days following acceptance of the Project by City's governing body or authorized designee pursuant to Section 11.1(C) Acceptance, or, if the Project has not been accepted, no later than 60 days after the Project is otherwise considered complete pursuant to Public Contract Code Section 7107(c).

8.6 Payment to Subcontractors and Suppliers. Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Project site by the Subcontractor or supplier during the

preceding month. Such payments must be made in accordance with the requirements of Laws pertaining to such payments, and those of the Contract Documents and applicable subcontract or supplier contract.

(A) ***Withholding for Stop Notice.*** Pursuant to Civil Code Section 9358, City will withhold 125% of the amount claimed by an unreleased stop notice, a portion of which may be retained by City for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.

(B) ***Joint Checks.*** City reserves the right, acting in its sole discretion, to issue joint checks made payable to Contractor and a Subcontractor or supplier, if City determines this is necessary to ensure fair and timely payment to Subcontractor or supplier who has provided services or goods for the Project. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by the City Attorney's Office. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

8.7 Final Payment. Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. If Contractor fails to submit a timely application for Final Payment, City reserves the right to unilaterally process and issue Final Payment without an application from Contractor in order to close out the Project. For the purposes of determining the deadline for Claim submission pursuant to Article 12, the date of Final Payment is deemed to be the date that City acts to release undisputed retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment or that no undisputed funds remain available for Final Payment due to offsetting withholdings or deductions pursuant to Section 8.3, Adjustment of Payment Application. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.

8.8 Release of Claims. City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written waiver and release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts, subject to the limitations of

Public Contract Code Section 7100. Any disputed amounts may be specifically excluded from the release.

- 8.9 Warranty of Title.** Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

CONTRACT BALANCE FORM

Morgan Hill Aquatic Center Recreation Pool Replastering Project

Note: A detailed invoice MUST be attached to this Contract Balance Form.

CONTRACTOR NAME: _____	DATE: _____
MAILING ADDRESS: _____	TELEPHONE NO.: _____
_____	FAX NO.: _____
_____	PROJECT NO.: _____
	INVOICE NO.: _____

- | | | |
|--|-------------|----------------|
| 1. ORIGINAL CONTRACT AMOUNT: | \$ _____ | |
| 2. APPROVED CHANGE ORDERS TOTAL: | \$ _____ | |
| 3. REVISED CONTRACT AMOUNT: | | (1+2) \$ _____ |
| 4. PREVIOUS BALANCE PAID: | \$ _____ | |
| 5. REMAINING BALANCE: | | (3-4) \$ _____ |
| 6. CURRENT PROGRESS PAYMENT DUE:
(before retention) | \$ _____ | |
| 7. 5% RETENTION FROM WORK DONE: | (-)\$ _____ | |
| 8. CURRENT BALANCE DUE: | | (6-7) \$ _____ |
| 9. REMAINING BALANCE OF REVISED
CONTRACT AMOUNT:
(including retention) | | (5-8) \$ _____ |

Article 9 - Labor Provisions

9.1 Discrimination Prohibited. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Laws prohibiting discrimination, including the California Fair Employment and Housing Act (Government Code Section 12900 *et seq.*), Government Code Section 11135, and Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5.

9.2 Labor Code Requirements.

(A) **Eight Hour Day.** Pursuant to Labor Code Section 1810, eight hours of labor constitute a legal day's work under this Contract.

(B) **Penalty.** Pursuant to Labor Code Section 1813, Contractor will forfeit to City as a penalty, the sum of \$25.00 for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight hours in any one calendar day or more than 40 hours per calendar week, except if such workers are paid overtime under Labor Code Section 1815.

(C) **Apprentices.** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code Section 1777.5, which is fully incorporated by reference.

(D) **Notices.** Pursuant to Labor Code Section 1771.4, Contractor is required to post all job site notices prescribed by Laws.

9.3 Prevailing Wages. Each worker performing Work under this Contract that is covered under Labor Code Sections 1720, 1720.3, or 1720.9, including cleanup at the Project site, must 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>. Contractor must post a copy of the applicable prevailing rates at the Project site.

(A) **Penalties.** Pursuant to Labor Code Section 1775, Contractor and any Subcontractor will forfeit to City as a penalty up to \$200.00 for each calendar day, or portion of a day, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

(B) **Federal Requirements.** If this Project is subject to federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the currently applicable state or federal prevailing wage rates.

9.4 Payroll Records. Contractor must comply with the provisions of Labor Code Sections 1771.4, 1776, and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for electronic submission of payroll records to the DIR.

(A) **Contractor and Subcontractor Obligations.** Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) Contractor or Subcontractor has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any Work performed by its employees on the Project.

(B) **Certified Record.** A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to City, or to the Division of Labor Standards Enforcement, to the Division of Apprenticeship Standards of the DIR, and as further required by the Labor Code.

(C) **Enforcement.** Upon notice of noncompliance with Labor Code Section 1776, Contractor or Subcontractor has ten days in which to comply with the requirements of this section. If Contractor or Subcontractor fails to do so within the ten-day period, Contractor or Subcontractor will forfeit a penalty of \$100.00 per day, or portion of a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from payments then due to Contractor.

9.5 Labor Compliance. Pursuant to Labor Code Section 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the DIR.

9.6 Wage Theft Prevention. Compliance with Wage and Hour Laws: Contractor, 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 Contractor and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONTRACTOR 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 CONTRACTOR OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR 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 Contractor or an subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed, Contractor 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. Contractor 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 Contractor 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 Contractor 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 Contractor 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.

Article 10 - Safety Provisions

10.1 Safety Precautions and Programs. Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must at all times comply with all applicable health and safety Laws and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at any Worksite, materials and equipment stored on or off site, and property at or adjacent to any Worksite.

(A) **Reporting Requirements.** Contractor must immediately notify the City of any death, serious injury or illness resulting from Work on the Project. Contractor must immediately provide a written report to City of each recordable accident or injury occurring at any Worksite within 24 hours of the occurrence. The written report must include: (1) the name and address of the injured or deceased person; (2) the name and address of each employee of Contractor or of any Subcontractor involved in the incident; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to City.

(B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide City with copies of all notices required by Laws.

(C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.

(D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Project site is unsafe, City may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's satisfaction. If Contractor fails to promptly take the required corrective measures, City may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.

10.2 Hazardous Materials. Unless otherwise specified in the Contract Documents, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Project site that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to City. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.

10.3 Material Safety. Contractor is solely responsible for complying with Section 5194 of Title 8 of the California Code of Regulations, including by providing information to Contractor's employees about any hazardous chemicals to which they may be exposed in the course of the Work. A hazard communication program and other forms of warning and training about such exposure must be used. Contractor must also maintain Safety Data Sheets ("SDS") at the Project site, as required by Law, for materials or substances used or consumed in the performance of the Work. The SDS will be accessible and available to Contractor's employees, Subcontractors, and City.

(A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Project site and/or used in the performance of the Work. Contractor must notify the Engineer if a specified product or material cannot be used safely.

(B) **Labeling.** Contractor must ensure proper labeling on any material brought onto the Project site so that any persons working with or in the vicinity of the material may be informed as to the identity of the material,

any potential hazards, and requirements for proper handling, protections, and disposal.

10.4 Hazardous Condition. Contractor is solely responsible for determining whether a hazardous condition exists or is created during the course of the Work, involving a risk of bodily harm to any person or risk of damage to any property. If a hazardous condition exists or is created, Contractor must take all precautions necessary to address the condition and ensure that the Work progresses safely under the circumstances. Hazardous conditions may result from, but are not limited to, use of specified materials or equipment, the Work location, the Project site condition, the method of construction, or the way any Work must be performed.

10.5 Emergencies. In an emergency affecting the safety or protection of persons, Work, or property at or adjacent to any Worksite, Contractor must take reasonable and prompt actions to prevent damage, injury, or loss, without prior authorization from the City if, under the circumstances, there is inadequate time to seek prior authorization from the City.

Article 11 - Completion and Warranty Provisions

11.1 Final Completion.

(A) ***Final Inspection and Punch List.*** When the Work required by this Contract is fully performed, Contractor must provide written notification to City requesting final inspection. The Engineer will schedule the date and time for final inspection, which must include Contractor's primary representative for the Project and its superintendent. Based on that inspection, City will prepare a punch list of any items that are incomplete, missing, defective, incorrectly installed, or otherwise not compliant with the Contract Documents. The punch list to Contractor will specify the time by which all of the punch list items must be completed or corrected. The punch list may include City's estimated cost to complete each punch list item if Contractor fails to do so within the specified time. The omission of any non-compliant item from a punch list will not relieve Contractor from fulfilling all requirements of the Contract Documents. Contractor's failure to complete any punch list item within the time specified in the punch list will not waive or abridge its warranty obligations for any such items that must be completed by the City or by a third party retained by the City due to Contractor's failure to timely complete any such outstanding item.

(B) ***Requirements for Final Completion.*** Final Completion will be achieved upon completion or correction of all punch list items, as verified by City's further inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract

Documents, and submission of all final submittals, including instructions and manuals as required under Section 7.10, and complete, final as-built drawings as required under Section 7.11, all to City's satisfaction.

(C) **Acceptance.** The Project will be considered accepted upon City Council action during a public meeting to accept the Project, unless the Engineer is authorized to accept the Project, in which case the Project will be considered accepted upon the date of the Engineer's issuance of a written notice of acceptance. In order to avoid delay of Project close out, the City may elect, acting in its sole discretion, to accept the Project as complete subject to exceptions for punch list items that are not completed within the time specified in the punch list.

(D) **Final Payment and Release of Retention.** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than 35 days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, City may withhold up to 150% of City's estimated cost to complete each of the remaining items from Final Payment and may use the withheld retention to pay for the costs to self-perform the outstanding items or to retain a third party to complete any such outstanding punch list item.

11.2 Warranty.

(A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor warrants that materials or items incorporated into the Work comply with the requirements and standards in the Contract Documents, including compliance with Laws, and that any Hazardous Materials encountered or used were handled as required by Laws. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

(B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one year from the date of Project acceptance (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors, suppliers and manufacturers any special or extended warranties required by the Contract Documents.

(C) **Warranty Documents.** As a condition precedent to Final Completion, Contractor must supply City with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.

(D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor expressly agrees to be co-guarantor of such Work.

(E) **Contractor's Obligations.** Upon written notice from City to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period. Work performed during the Warranty Period ("Warranty Work") will be subject to the warranty provisions in this Section 11.2 for a one-year period that begins upon completion of such Warranty Work to City's satisfaction.

(F) **City's Remedies.** If Contractor or its responsible Subcontractor fails to correct defective Work within ten days following notice by City, or sooner, if required by the circumstances, Contractor expressly agrees that City may correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor must reimburse City for its costs in accordance with subsection (H) below.

(G) **Emergency Repairs.** In cases of emergency where any delay in correcting defective Work could cause harm, loss or damage, City may immediately correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor or its surety must reimburse City for its costs in accordance with subsection (H), below.

(H) **Reimbursement.** Contractor must reimburse City for its costs to repair under subsections (F) or (G), above, within 30 days following City's submission of a demand for payment pursuant to this provision. If City is required to initiate legal action to compel Contractor's compliance with this provision, and City is the prevailing party in such action, Contractor and its surety are solely responsible for all of City's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein in addition to any and all costs City incurs to correct the defective Work.

11.3 Use Prior to Final Completion. City reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final

Completion if City has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion. City will notify Contractor in writing of its intent to occupy or make use of the Project or any portions of the Project, pursuant to this provision.

(A) **Non-Waiver.** Occupation or use of the Project, in whole or in part, prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

(B) **City's Responsibility.** City will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before Final Completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to complete the Work within the Contract Time.

11.4 Substantial Completion. For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to City acceptance of the Project, except for warranty work performed under this Article.

Article 12 - Dispute Resolution

12.1 Claims. This Article applies to and provides the exclusive procedures for any Claim arising from or related to the Contract or performance of the Work.

(A) **Definition.** "Claim" means a separate demand by Contractor, submitted in writing by registered or certified mail with return receipt requested, for a change in the Contract Time, including a time extension or relief from liquidated damages, or a change in the Contract Price when the demand has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected or disputed by City, in whole or in part. A Claim may also include that portion of a unilateral Change Order that is disputed by the Contractor.

(B) **Limitations.** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and City. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Contract Time or the Contract Price, which has not previously been submitted to City in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by City.

(C) **Scope of Article.** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount, and applies in addition to the provisions of Public Contract Code Section 9204 and Sections 20104 *et seq.*, which are incorporated herein by this reference.

(D) **No Work Delay.** Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of a Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to a Claim or other dispute.

(E) **Informal Resolution.** Contractor will make a good faith effort to informally resolve a dispute before initiating a Claim, preferably by face-to-face meeting between authorized representatives of Contractor and City.

12.2 Claims Submission. The following requirements apply to any Claim subject to this Article:

(A) **Substantiation.** The Claim must be submitted to City in writing, clearly identified as a "Claim" submitted pursuant to this Article 12, and must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of City's written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all known or estimated labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each component of claimed cost. Any Claim for an extension of time or delay costs must be substantiated with a schedule analysis and narrative depicting and explaining claimed time impacts. Contractor understands that submission of a Claim which has no basis in fact or which Contractor knows to be false may violate the False Claims Act (Government Code Section 12650 *et seq.*).

(B) ***Claim Format and Content.*** A Claim must be submitted in the following format:

(1) Provide a cover letter, specifically identifying the submission as a "Claim" submitted under this Article 12 and specifying the requested remedy (e.g., amount of proposed change to Contract Price and/or change to Contract Time).

(2) Provide a summary of each Claim, including underlying facts and the basis for entitlement, and identify each specific demand at issue, including the specific Change Order request (by number and submittal date), and the date of City's rejection of that demand, in whole or in part.

(3) Provide a detailed explanation of each issue in dispute. For multiple issues included within a single Claim or for multiple Claims submitted concurrently, separately number and identify each individual issue or Claim and include the following for each separate issue or Claim:

(a) A succinct statement of the matter in dispute, including Contractor's position and the basis for that position;

(b) Identify and attach all documents that substantiate the Claim, including relevant provisions of the Contract Documents, RFIs, calculations, and schedule analysis (see subsection (A), Substantiation above);

(c) A chronology of relevant events; and

(d) Analysis and basis for claimed changes to Contract Price, Contract Time, or any other remedy requested.

(4) Provide a summary of issues and corresponding claimed damages. If, by the time of the Claim submission deadline (below), the precise amount of the requested change in the Contract Price or Contract Time is not yet known, Contractor must provide a good faith estimate, including the basis for that estimate, and must identify the date by which it is anticipated that the Claim will be updated to provide final amounts.

(5) Include the following certification, executed by Contractor's authorized representative:

“The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim submittal are true and correct. Contractor warrants that this Claim submittal is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay not included herein are deemed waived.

(C) ***Submission Deadlines.***

(1) A Claim disputing rejection of a request for a change in the Contract Time or Contract Price must be submitted within 15 days following the date that City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part. A Claim disputing the terms of a unilateral Change Order must be submitted within 15 days following the date of issuance of the unilateral Change Order. These Claim deadlines apply even if Contractor cannot yet quantify the total amount of any requested change in the Contract Time or Contract Price. If the Contractor cannot quantify those amounts, it must submit an estimate of the amounts claimed pending final determination of the requested remedy by Contractor.

(2) With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment, or will be deemed waived.

(3) A Claim disputing the amount of Final Payment must be submitted within 15 days of the effective date of Final Payment, under Section 8.7, Final Payment, above.

(4) Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.

12.3 City’s Response. City will respond within 45 days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the 45-day period is extended by mutual agreement of City and Contractor or as otherwise allowed under Public Contract Code Section 9204. However, if City determines that the Claim is not adequately substantiated pursuant to Section 12.2(A), Substantiation, City may first request, in writing, within 30 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against the Claim.

(A) **Additional Information.** If additional information is thereafter required, it may be requested and provided upon mutual agreement of City and Contractor. If Contractor's Claim is based on estimated amounts, Contractor has a continuing duty to update its Claim as soon as possible with information on actual amounts in order to facilitate prompt and fair resolution of the Claim.

(B) **Non-Waiver.** Any failure by City to respond within the times specified above will not be construed as acceptance of the Claim in whole or in part, or as a waiver of any provision of these Contract Documents.

12.4 Meet and Confer. If Contractor disputes City's written response, or City fails to respond within the specified time, within 15 days of receipt of City's response, or within 15 days of City's failure to respond within the applicable 45-day time period, respectively, Contractor may notify City of the dispute in writing sent by registered or certified mail, return receipt requested and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to notify City in writing of the dispute, and demand an informal conference to meet and confer, within the specified time, Contractor's Claim will be deemed waived.

(A) **Schedule Meet and Confer.** Upon receipt of the demand to meet and confer, City will schedule the meet and confer conference to be held within 30 days, or later if needed to ensure the mutual availability of each of the individuals that each party requires to represent its interests at the meet and confer conference.

(B) **Location for Meet and Confer.** The meet and confer conference will be scheduled at a location at or near City's principal office.

(C) **Written Statement After Meet and Confer.** Within ten working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.

(D) **Submission to Mediation.** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the Contractor may identify in writing disputed portion(s) of the Claim, which will be submitted for mediation, as set forth below.

12.5 Mediation and Government Code Claims.

(A) **Mediation.** Within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, following the meet and confer, City and Contractor will mutually agree to a mediator, as provided under Public Contract Code Section 9204. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. If there are multiple Claims in dispute, the parties may agree to schedule the mediation to address all outstanding Claims at the same time. The parties will share the costs of the mediator and mediation fees equally, but each party is otherwise solely and separately responsible for its own costs to prepare for and participate in the mediation, including costs for its legal counsel or any other consultants.

(B) **Government Code Claims.**

(1) Timely presentation of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract. Compliance with the Claim submission requirements in this Article 12 is a condition precedent to filing a Government Code Claim.

(2) The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied in whole or in part at the conclusion of the meet and confer process, including any period of time used by the meet and confer process. However, if the Claim is submitted to mediation, the time for filing a Government Code Claim will be tolled until conclusion of the mediation, including any continuations, if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

12.6 Tort Claims. This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.

12.7 Arbitration. It is expressly agreed, under Code of Civil Procedure Section 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.

12.8 Burden of Proof and Limitations. Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to speculative, special, or consequential damages, including home office overhead or

any form of overhead not directly incurred at the Project site or any other Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract. The Eichleay Formula or similar formula will not be used for any recovery under the Contract. The City will not be directly liable to any Subcontractor or supplier.

12.9 Legal Proceedings. In any legal proceeding that involves enforcement of any requirements of the Contract Documents, the finder of fact will receive detailed instructions on the meaning and operation of the Contract Documents, including conditions, limitations of liability, remedies, claim procedures, and other provisions bearing on the defenses and theories of liability. Detailed findings of fact will be requested to verify enforcement of the Contract Documents. All of the City's remedies under the Contract Documents will be construed as cumulative, and not exclusive, and the City reserves all rights to all remedies available under law or equity as to any dispute arising from or relating to the Contract Documents or performance of the Work.

12.10 Other Disputes. The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, including disputes regarding suspension or early termination of the Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 - Suspension and Termination

13.1 Suspension for Cause. In addition to all other remedies available to City, if Contractor fails to perform or correct Work in accordance with the Contract Documents, including non-compliance with applicable environmental or health and safety Laws, City may immediately order the Work, or any portion of it, suspended until the circumstances giving rise to the suspension have been eliminated to City's satisfaction.

(A) **Notice of Suspension.** Upon receipt of City's written notice to suspend the Work, in whole or in part, except as otherwise specified in the notice of suspension, Contractor and its Subcontractors must promptly stop Work as specified in the notice of suspension; comply with directions for cleaning and securing the Worksite; and protect the completed and in-progress Work and materials. Contractor is solely responsible for any

damages or loss resulting from its failure to adequately secure and protect the Project.

(B) **Resumption of Work.** Upon receipt of the City's written notice to resume the suspended Work, in whole or in part, except as otherwise specified in the notice to resume, Contractor and its Subcontractors must promptly re-mobilize and resume the Work as specified; and within ten days from the date of the notice to resume, Contractor must submit a recovery schedule, prepared in accordance with the Contract Documents, showing how Contractor will complete the Work within the Contract Time.

(C) **Failure to Comply.** Contractor will not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.

(D) **No Duty to Suspend.** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

13.2 Suspension for Convenience. City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience. Upon notice by City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work and secure the Project site as directed by City, except for taking measures to protect completed or in progress Work as directed in the suspension notice, and subject to the provisions of Section 13.1(A) and (B), above. If Contractor submits a timely request for a Change Order in compliance with Articles 5 and 6, the Contract Price and the Contract Time will be equitably adjusted by Change Order pursuant to Articles 5 and 6 to reflect the cost and delay impact occasioned by such suspension for convenience except to the extent that any such impacts were caused by Contractor's failure to comply with the Contract Documents or the terms of the suspension notice or notice to resume. However, Contract Time will only be extended if the suspension causes or will cause unavoidable delay in Final Completion. If Contractor disputes the terms of a Change Order issued for such equitable adjustment due to suspension for convenience, its sole recourse is to comply with the Claim procedures in Article 12.

13.3 Termination for Default. City may declare that Contractor is in default of the Contract for a material breach of or inability to fully, promptly, or satisfactorily perform its obligations under the Contract.

(A) **Default.** Events giving rise to a declaration of default include Contractor's refusal or failure to supply sufficient skilled workers, proper

materials, or equipment to perform the Work within the Contract Time; Contractor's refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct defective Work or damage; Contractor's failure to comply with the Laws, or orders of any public agency with jurisdiction over the Project; evidence of Contractor's bankruptcy, insolvency, or lack of financial capacity to complete the Work as required within the Contract Time; suspension, revocation, or expiration and nonrenewal of Contractor's license or DIR registration; dissolution, liquidation, reorganization, or other major change in Contractor's organization, ownership, structure or existence as a business entity; unauthorized assignment of Contractor's rights or duties under the Contract; or any material breach of the Contract requirements.

(B) **Notice of Default and Opportunity to Cure.** Upon City's declaration that Contractor is in default, due to a material breach of the Contract Documents, if City determines that the default is curable, City will afford Contractor the opportunity to cure the default within ten days of City's notice of default, or within a period of time reasonably necessary for such cure, including a shorter period of time if applicable.

(C) **Termination.** If Contractor fails to cure the default or fails to expediently take steps reasonably calculated to cure the default within the time period specified in the notice of default, City may issue written notice to Contractor and its performance bond surety of City's termination of the Contract for default.

(D) **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven calendar days from the date of the notice of termination, pursuant to paragraph (C), City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by City to complete the Work following termination, where "additional cost" means all cost in excess of the cost City would have incurred if Contractor had timely completed Work without the default and termination. In addition, City will have the right to immediate possession and use of any materials, supplies, and equipment procured for the Project and located at the Project site or any Worksite on City property for the purposes of completing the remaining Work.

(E) **Compensation.** Within 30 days of receipt of updated as-builts, all warranties, manuals, instructions, or other required documents for Work installed to date, and delivery to City of all equipment and materials for the Project for which Contractor has already been compensated, Contractor

will be compensated for the Work satisfactorily performed in compliance with the Contract Documents up to the effective date of the termination pursuant to the terms of Article 8, Payment, subject to City's rights to withhold or deduct sums from payment otherwise due pursuant to Section 8.3, and excluding any costs Contractor incurs as a result of the termination, including any cancellation or restocking charges or fees due to third parties. If Contractor disputes the amount of compensation determined by City, its sole recourse is to comply with the Claim Procedures in Article 12, by submitting a Claim no later than 30 days following notice from City of the total compensation to be paid by City.

(F) ***Wrongful Termination.*** If Contractor disputes the termination, its sole recourse is to comply with the Claim procedures in Article 12. If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience, under Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including special or consequential damages, lost opportunity costs or lost profits, and any award of damages is subject to Section 12.8, Burden of Proof and Limitations.

13.4 Termination for Convenience. City reserves the right, acting in its sole discretion, to terminate all or part of the Contract for convenience upon written notice to Contractor.

(A) ***Compensation to Contractor.*** In the event of City's termination for convenience, Contractor waives any claim for damages, including for loss of anticipated profits from the Project. The following will constitute full and fair compensation to Contractor, and Contractor will not be entitled to any additional claim or compensation.

(1) ***Completed Work.*** The value of its Work satisfactorily performed as of the date notice of termination is received, based on Contractor's schedule of values and unpaid costs for items delivered to the Project site that were fabricated for incorporation in the Work;

(2) ***Demobilization.*** Demobilization costs specified in the schedule of values, or if demobilization costs were not provided in a schedule of values pursuant to Section 8.1, then based on actual, reasonable, and fully documented demobilization costs; and

(3) ***Termination Markup.*** Five percent of the total value of the Work performed as of the date of notice of termination including reasonable, actual, and documented costs to comply with the

direction in the notice of termination for convenience, and demobilization costs, which is deemed to cover all overhead and profit to date.

(B) **Disputes.** If Contractor disputes the amount of compensation determined by City pursuant to paragraph (A), above, its sole recourse is to comply with the Claim procedures in Article 12, by submitting a Claim no later than 30 days following notice from City of total compensation to be paid by City.

13.5 Actions Upon Termination for Default or Convenience. The following provisions apply to any termination under this Article, whether for default or convenience, and whether in whole or in part.

(A) **General.** Upon termination, City may immediately enter upon and take possession of the Project and the Work and all tools, equipment, appliances, materials, and supplies procured or fabricated for the Project. Contractor will transfer title to and deliver all completed Work and all Work in progress to City.

(B) **Submittals.** Unless otherwise specified in the notice of termination, Contractor must immediately submit to City all designs, drawings, as-built drawings, Project records, contracts with vendors and Subcontractors, manufacturer warranties, manuals, and other such submittals or Work-related documents required under the terms of the Contract Documents, including incomplete documents or drafts.

(C) **Close Out Requirements.** Except as otherwise specified in the notice of termination, Contractor must comply with all of the following:

(1) Immediately stop the Work, except for any Work that must be completed pursuant to the notice of termination and comply with City's instructions for cessation of labor and securing the Project and any other Worksite(s).

(2) Comply with City's instructions to protect the completed Work and materials, using best efforts to minimize further costs.

(3) Contractor must not place further orders or enter into new subcontracts for materials, equipment, services or facilities, except as may be necessary to complete any portion of the Work that is not terminated.

(4) As directed in the notice, Contractor must assign to City or cancel existing subcontracts that relate to performance of the terminated Work, subject to any prior rights, if any, of the surety for

Contractor's performance bond, and settle all outstanding liabilities and claims, subject to City's approval.

(5) As directed in the notice, Contractor must use its best efforts to sell any materials, supplies, or equipment intended solely for the terminated Work in a manner and at market rate prices acceptable to City.

(D) **Payment Upon Termination.** Upon completion of all termination obligations, as specified herein and in the notice of termination, Contractor will submit its request for Final Payment, including any amounts due following termination pursuant to this Article 13. Payment will be made in accordance with the provisions of Article 8, based on the portion of the Work satisfactorily completed, including the close out requirements, and consistent with the previously submitted schedule of values and unit pricing, including demobilization costs. Adjustments to Final Payment may include deductions for the cost of materials, supplies, or equipment retained by Contractor; payments received for sale of any such materials, supplies, or equipment, less re-stocking fees charged; and as otherwise specified in Section 8.3, Adjustment of Payment Application.

(E) **Continuing Obligations.** Regardless of any Contract termination, Contractor's obligations for portions of the Work already performed will continue and the provisions of the Contract Documents will remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, record maintenance, or other such rights and obligations arising prior to the termination date.

Article 14 - Miscellaneous Provisions

14.1 Assignment of Unfair Business Practice Claims. Under Public Contract Code Section 7103.5, Contractor and its Subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or any subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.

14.2 Provisions Deemed Inserted. Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such

provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be deemed amended accordingly.

- 14.3 Waiver.** City's waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will not be effective unless it is in writing and signed by City. City's waiver of any breach, failure, right, or remedy will not be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by City.
- 14.4 Titles, Headings, and Groupings.** The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.
- 14.5 Statutory and Regulatory References.** With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that bids were due.
- 14.6 Survival.** The provisions that survive termination or expiration of this Contract include Contract Section 11, Notice, and subsections 12.1, 12.2, 12.3, 12.4, 12.5, and 12.6 of Section 12, General Provisions; and the following provisions in these General Conditions: Section 2.2(J), Contractor's Records, Section 2.3(C), Termination, Section 3.7, Ownership, Section 4.2, Indemnity, Article 12, Dispute Resolution, and Section 11.2, Warranty.

END OF GENERAL CONDITIONS

SPECIAL CONDITIONS

1. Emergency Contact. Prior to the commencement of Work on the Project, Contractor must provide contact information to the Engineer for the person designated by Contractor to respond to any emergency that arises on the Worksite during the course of the Project. That person will be responsible for responding to the Worksite within thirty (30) minutes following notification of an emergency by City's Police or Fire Department, regardless of the time of day.

2. Authorized Work Days and Hours.

- (A) **Authorized Work Days.** Except as expressly authorized in writing by City, Contractor is limited to performing Work on the Project on the following days of the week, excluding holidays observed by City:

Monday through Friday

- (B) **Authorized Work Hours.** Except as expressly authorized in writing by City, Contractor is limited to performing Work on the Project during the following hours:

7:00 a.m. to 8:00 p.m.

3. Pre-Construction Conference. City will designate a date and time for a pre-construction conference with Contractor following Contract execution. Project administration procedures and coordination between City and Contractor will be discussed, and Contractor must present City with the following information or documents at the meeting for City's review and acceptance before the Work commences:

1. Name, 24-hour contact information, and qualifications of the proposed on-site superintendent;
2. List of all key Project personnel and their complete contact information, including email addresses and telephone numbers during regular hours and after hours;
3. Staging plans that identify the sequence of the Work, including any phases and alternative sequences or phases, with the goal of minimizing the impacts on Aquatic Center customers and other operations in the Project vicinity;

4. Draft baseline schedule for the Work as required under Section 5.2, to be finalized within ten days after City issues the Notice to Proceed;
5. Breakdown of lump sum bid items, to be used for determining the value of Work completed for future progress payments to Contractor;
6. Schedule with list of Project submittals that require City review, and list of the proposed material suppliers;
7. Any other documents specified in the Special Conditions or Notice of Award.

4. Weather Delay Days. This provision is intended to supplement the requirements of General Conditions Section 5.2 on Schedule Requirements and Section 5.3 on Delays and Extensions of Contract Time.

- (A) **Weather Delay Day.** A Weather Delay Day is a Working Day during which Contractor and its forces, including Subcontractors, are unable to perform more than forty percent (40%) of the critical path Work scheduled for that day due to adverse weather conditions which impair the ability to safely or effectively perform the scheduled critical path Work that day. Adverse weather conditions may include rain, saturated soil, and Worksite clean-up required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, City-approved schedule.
- (B) **Normal Weather Delay Days.** Based on historic records for the Project location, Contractor's schedule should assume the following number of normal Weather Delay Days for each month:

Month	# Normal Weather Delay Days
December	08
January	11
February	10
March	10
April	06
May	03

Weather Delay Days which do not occur during a given month based on the number of days allocated for that month (above) do not carry over to another month.

END OF SPECIAL CONDITIONS

Technical Specifications

1. OVERVIEW

- 1.1** Contractor to provide pool replaster services at the Morgan Hill Dennis Kennedy Aquatic Center ("Aquatic Center"), located at 16200 Condit Road, Morgan Hill, CA 95037.
- 1.2** The replaster services are for the existing Recreation Pool. The Recreation Pool is approximately 4,400 square feet in surface area, ranges from 0 feet to 3 feet 6 inches in depth, and holds approximately 55,000 gallons of water. Detailed as-built plans were provided in Addendum #1.
- 1.3** The scope of services includes replastering the pool surface, removal and replacement of attached equipment and materials that include ladders, drain covers , and refilling the pool. Addendum #2 clarifies that the Contractor will remove and reinstall the current existing ladders and existing handrails. The drain covers will be replaced.
- 1.4** The Aquatic Center has two other pools, and multiple other facilities that will remain in use during construction. Contractor will need to schedule and plan replastering services to ensure continued accessibility to other facilities during construction at the Recreation Pool.
- 1.5** The required construction period is 30 working days and work shall be completed prior to April 1, 2024.

2. GENERAL REQUIREMENTS

Contractor shall:

- 2.1** Comply with all applicable federal, state, and local codes and ordinances.
- 2.2** Ensure all work is performed in a professional manner within the standards of the industry and original manufacturer of equipment, using proper equipment, methods, materials, and employees.
- 2.3** Ensure all Contractor's employees are fully trained and qualified to perform the services specified in this Invitation to Bid.
- 2.4** Take necessary steps to protect the public and all property from damage during operations, and shall be responsible for any damage to the work or property caused by the Contractor's employees.
- 2.5** Repair or replace any property that is damaged directly or indirectly as a result of Contractor's work. This includes privately owned, as well as City owned properties. This repair and/or replacement shall be done to the satisfaction of the City.
- 2.6** Ensure the worksite is left clean at the end of each work day, and at the conclusion of the project.
- 2.7** Supply their own fencing, locks and secure measures for the work site at the end of each work day by daisy-chaining to City's lock. Security measures shall not interfere with use of other areas of the facility. The City shall not be responsible for any tools or equipment left onsite.

- 2.8 Safely remove and dispose of all debris as-needed.
- 2.9 Obtain all necessary permits with the County of Santa Clara prior to the commencement of services, and finalize all permits with the County upon completion of services. There are no permits required by the City.

3. POOL REPLASTERING SERVICES

- 3.1 Contractor shall provide all labor, materials, tools, transportation, supervision, and equipment necessary to replaster the Recreation Pool at the Aquatic Center.
- 3.2 Contractor shall provide dust control measures during all work to reduce impacts to surrounding uses at the facility.
- 3.3 The City shall be responsible for draining the pool prior to the commencement of services, and will restart all pool circulation system components upon satisfactory completion of work.
 - 3.3.1 If it is discovered that damages to the pool surface are required to be remedied prior to replastering, Contractor shall provide a written quote and change order request to the City to repair the damages, and commence only upon approval by City. Written quote shall include exact methods utilized for repair. The quote shall be based on documented time and material work, with material costs charged at contractor's cost plus 15 percent. City shall issue a change order for approved work.
- 3.4 All materials furnished by Contractor, or used in the performance of services, shall be in new and unused condition.
- 3.5 Contractor shall:
 - 3.5.1 Remove all old plaster from the water line tile, downward and apply new, white plaster using industry-standard methods and follow manufacturer instructions for preparation and installation of plaster.
 - 3.5.2 Plaster shall be marble sand with Portland white cement or equivalent.
 - 3.5.3 Remove all drains and handrails.
 - 3.5.4 Remove and replace the four (4) Lawson Superflow 18x36 grates. Grates should be 224 gpm each at time of install, WAV18xxx 828 gpm, currently rated 628 gpm.
 - 3.5.5 Refill the pool once the plaster has been allowed to harden (cure), and in accordance with the manufacturer's recommended timeline. The pool shall be filled to capacity. Water connection shall be provided by the City.
 - 3.5.6 Ensure bonding grid is created when reaffixing all metal objects including handrails, in accordance with industry standards.

4. SCHEDULE OF PERFORMANCE

- 4.1 Contractor shall perform all work during normal business hours, Monday-Friday between the hours of 7:00 a.m. and 4:00 p.m. Pacific Time, except on

City Holidays.

- 4.2** Should the weather or other conditions not be suitable for the performance of work, the City Project Manager (or designee) shall have the authority to suspend the work.

4.2.1 If the City Project Manager (or designee) orders a suspension of the work, due to unsuitable weather or to such other conditions as are considered unfavorable to the suitable execution of the work, the days on which the suspension is in effect shall not be considered working days.

5. INSPECTION

- 5.1** All work shall be subject to inspection by the City Project Manager (or designee) at any time during the Contractor's performance of services.
- 5.2** When the contract work has been satisfactorily completed and the final clean up performed, the City Project Manager (or designee) will make a final inspection.

6. WARRANTY

- 6.1** All work shall be guaranteed against defects in workmanship and materials for a period of no less than (3) year from acceptance by City. Typical wear, abuse, or neglect will be exempt.
- 6.2** The warranty period for Contractor provided materials shall be for a period of 5 years or within the manufacturers' warranty, whichever is the later period. The warranty period shall commence upon date of acceptance by the City.
- 6.3** Contractor shall provide the City's authorized representative with all manufacturers' warranty documents upon completion of service and prior to leaving the job site.

7. INVOICING REQUIREMENTS

- 7.1** Contractor shall invoice the City upon project completion. City shall pay Contractor within thirty (30) days of City's receipt of an approved invoice.
- 7.2** Invoice shall include at a minimum the following:
- 7.2.1 Date of Service
 - 7.2.2 Description of Services
 - 7.2.3 Address of Serviced Location
 - 7.2.4 Unit Price/Hourly Rate/Parts Markup %
 - 7.2.5 Quantity/Number of Hours
 - 7.2.6 Extended Price

CITY COUNCIL STAFF REPORT

MEETING DATE: January 17, 2024

PREPARED BY:

Cynthia Iwanaga, Management Analyst

APPROVED BY: City Manager

AWARD COMMUNITY PARK DG PATHWAYS PROJECT

RECOMMENDATION(S)

1. Award Decomposed Granite (DG) Pathways Project to Angkor Engineering, Inc. in the amount of \$51,825 and contingency funds not to exceed \$25,913; and
2. Authorize the City Manager to execute and administer that certain construction contract with Angkor Engineering, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Protecting the Environment and Preserving Open Space and Agricultural Land

Maintaining and Enhancing Infrastructure

2023-2024 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to consider the award of a contract to Angkor Engineering, Inc. in the amount of \$51,825 to complete the installation of two new Decomposed Granite (DG) pathways within Community Park. The scope of work for the Community Park DG Pathways Project includes all the labor and material necessary to install 4,146 new SF of DG pathways in Community Park. The first new DG pathway will be located along the eastern border of the baseball fields and the second new DG pathway will be located west of the tennis courts. The installation of these two new DG pathways will complete the circular DG pathway that currently exists on the interior borders of Community Park.

In soliciting bids for this contract, the City published a Notice Inviting Bids in the Morgan Hill Times on November 10, 2023. Staff also posted the bid documents on the City website, and the Public Purchase Online Service. The bid documents were also sent to

the Builders Exchange of Santa Clara County, San Francisco Builders Exchange, Construction BidBoard, and Dodge and Data Analytics. A bid solicitation was issued on November 14, 2023. A non-mandatory pre-bid job walk was held at Community Park on November 27, 2023, and seven (7) contractors attended. On January 2, 2024, ten bids were received ranging from \$50,008 to \$152,418. Please see attached bid log (Attachment 1).

NOECON, Inc., the apparent lowest bidder at \$50,008 did not have the required current DIR contractor registration number, so staff is recommending awarding the project to Angkor Engineering, which was the next low bidder at \$51,825. Angkor Engineering, Inc. has almost three years of experience in the installation of DG pathways including grading and site concrete including for both the Oak Grove School District in San Jose and the San Leandro Unified School District. Staff is recommending that the Council award the contract to Angkor Engineering, Inc. in the amount of \$51,825, and authorize the City Manager to execute and administer the agreement (Attachment 2). In addition to authorizing the contract amount of \$51,825, staff is also recommending a 50% contingency amount of \$25,913, which is available for additional trail restoration due to a Per Capita Grant provided by the State of California Parks and Recreation Department. The total authorization with the contingency would be \$77,738.

COMMUNITY ENGAGEMENT:

Inform

The DG Pathways project is scheduled for February to March 2024. Several weeks before the installation begins, information on the closure will be shared with community members via social media posts and email communications to residents.

ALTERNATIVE ACTIONS:

The City Council could decide not to approve this project, and direct staff to pursue an alternative approach to creating new pathways in Community Park. Postponing this work is not recommended as the new DG pathways will provide a safer path for residents to walk through and around Community Park.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

No applicable.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this contract will be \$77,738, which includes the contract amount of \$51,825 and a 50% contingency of \$25,913. The large contingency will support completing additional portions of the Community Park DG trail as Per Capita Grant funds are available for the potential additional work. This entire project is eligible for State grant fund reimbursement.

CEQA (California Environmental Quality Act):

Categorical Exemption

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



REVISED BID OPENING LOG SHEET

Project: Community Park DG Pathways Project

Project Manager: Keri Russell

Date: Tuesday, January 2, 2024

Time: 11:30 a.m.

Bidder's Name	Bid Amount
1. Always Paving, Inc.	\$ 56,100.00
2. Angkor Engineering	\$ 51,825.00
3. Brannon Corporation	\$ 80,784.00
4. Gioletti Construction	\$ 79,934.00
5. Irish Excavation	\$ 80,605.02
6. iTech Solutions	\$152,418.00
7. NOECON, Inc.	\$ 50,007.54 *
8. Silicon Valley Paving, Inc.	\$ 70,482.00
9. Tri Valley Excavating Co., Inc.	\$69,860.10
10. Veterans Construction & Design, Inc.	\$122,734.00

***NOECON's DIR registration number is not current. Low bidder is Angkor Engineering.**

Signed: Cynthia Iwanaga for Keri Russell

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and Angkor Engineering, Inc., a California Corporation ("Contractor") for work on the Community Park DG Pathways Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Informal Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on [REDACTED], 20[REDACTED], (Contract Date) City authorized award of this Contract to Contractor for the amount of Contractor's bid.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following:
 - 2.1 Notice Inviting Informal Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto;
 - 2.5 Contract;
 - 2.6 Payment and Performance Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Drawings and Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Award;
 - 2.12 Notice to Proceed;
 - 2.13 And the following: No Additional Documents
3. **Contractor's Obligations.** Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor Fifty-One Thousand Eight Hundred and Twenty-Five Dollars (\$51,825.00) (the "Contract Price"), in accordance with the payment provisions in the General Conditions. The Contract Price includes all applicable federal, state, and local taxes.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within 60 calendar days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of Five Hundred Dollars (\$500.00) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.
7. **Labor Code Compliance.**
 - 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.
 - 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
 - 7.3 **DIR Registration.** City will not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
8. **Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

- 9. Notice.** Any notice required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

City:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Phone: (409) 779-7259
Attn: City Clerk
Email: michelle.bigelow@morganhill.ca.gov
Copy to:keri.russell@morganhill.ca.gov

Contractor:

Name: Angkor Engineering, Inc.
Address: 36 Quail Run Circle
City/State/Zip: Salinas, CA 93907
Phone: 408-316-6415
Attn: Aurelio Sanchez
Email: a@angkorinc.com
Copy to: marcos@angkorinc.com

10. General Provisions.

- 10.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 10.2 Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 10.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Santa Clara County, and no other place.
- 10.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

- 10.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.
- 10.6 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two (2) officers of the corporation are required pursuant to California Corporation Code Section 313.
- 10.7 Electronic Signatures.** Unless otherwise prohibited by law or City policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City.

[Signatures are on the following page.]

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.

The parties agree to this Contract as witnessed by the signatures below:

CITY OF MORGAN HILL:

CONTRACTOR:

ANGKOR ENGINEERING, INC.

Christina J. Turner
City Manager

Signature

Date: _____

Name/Title [print]

Attest:

Date: _____

Michelle Bigelow
City Clerk

Corporate entities must provide a second signature:

Date: _____

Signature

Approved as to Form:

Name/Title [print]

Donald A. Larkin
City Attorney

Date: _____

Date: _____

1090730
Contractor's License Number(s)

04/30/2024
Expiration Date(s)

Seal:

1000911736
Contractor's DIR Registration Number(s)

06/30/2024
Expiration Date

END OF CONTRACT

PAYMENT BOND

The City of Morgan Hill ("City") and Angkor Engineering, Inc. ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the Community Park DG Pathways Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in an amount not less than _____ Dollars (\$_____) ("Bond Sum"), under California Civil Code Sections 9550, et seq.
2. **Surety's Obligation.** If Contractor or any of its Subcontractors fails to pay any of the persons named in California Civil Code Section 9100 amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors, under California Unemployment Insurance Code Section 13020, with respect to the work and labor, then Surety will pay for the same.
3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code Section 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4. **Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code Sections 2819 and 2845. City waives requirement of a new bond for any supplemental contract under Civil Code Section 9550. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

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

7. Effective Date; Execution. This Bond is entered into and is effective on _____, 20____.

SURETY:

s/ _____

Name: _____

Title: _____

CONTRACTOR:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF PAYMENT BOND

PERFORMANCE BOND

The City of Morgan Hill ("City") and Angkor Engineering, Inc. ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the Community Park DG Pathways Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

1. **General.** Under this Bond, Contractor as Principal and _____, its surety ("Surety"), are bound to City as obligee for an amount not less than _____ Dollars (\$ _____) (the "Bond Sum"). By executing this Bond, Contractor and Surety bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, to the provisions of this Bond.
2. **Surety's Obligations; Waiver.** If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, Surety's obligations under this Bond will become null and void upon recordation of the notice of completion, provided Contractor has timely provided a warranty bond as required under the Contract. Otherwise, Surety's obligations will remain in full force and effect until expiration of the one (1) year warranty period under the Contract. Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code Sections 2819 and 2845.
3. **Application of Contract Balance.** Upon making a demand on this Bond, City will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by City to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which City is entitled under the terms of the Contract.
4. **Contractor Default.** Upon written notification from City that Contractor is in default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:
 - 4.1 Arrange for completion of the Work under the Contract by Contractor, with City's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;

4.2 Arrange for completion of the Work under the Contract by a qualified contractor acceptable to City, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense; or

4.3 Waive its right to complete the Work under the Contract and reimburse City the amount of City's costs to have the remaining Work completed.

5. Surety Default. If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.

6. Notice. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

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

8. Effective Date; Execution. This Bond is entered into and is effective on _____, 20____.

[Signatures are on the following page.]

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF PERFORMANCE BOND

WARRANTY BOND

The City of Morgan Hill ("City") and Angkor Engineering, Inc. ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the Community Park DG Pathways Project ("Project"). The Contract is incorporated by reference into this Warranty Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in the maximum amount of _____ Dollars (\$ _____) or 50% of the final Contract Price, whichever is greater ("Bond Sum").
2. **Warranty Period.** The Contract requires Contractor to guarantee its work and that of its Subcontractors on the Project, against defects in materials or workmanship which are discovered during the one (1) year period commencing with recordation of the Notice of Completion (the "Warranty Period").
3. **Surety's Obligations.** If Contractor faithfully carries out and performs its guarantee under the Contract, and, on due notice from City, repairs and make good at its sole expense any and all defects in materials and workmanship in the Project which are discovered during the Warranty Period, or if Contractor promptly reimburses City for all loss and damage that City sustains because of Contractor's failure to makes such repairs in accordance with the Contract requirements, then Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
4. **Waiver.** Surety waives the provisions of Civil Code Sections 2819 and 2845.
5. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____
6. **Law and Venue.** This Bond will be governed by California law, and any dispute pursuant to this Bond will be in the Superior Court of Santa Clara County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

7. Effective Date; Execution. This Bond is entered into and is effective on _____, 20____.

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF WARRANTY BOND

GENERAL CONDITIONS

Table of Contents:

Article 1 – Definitions	1
Article 2 – Roles and Responsibilities	5
Article 3 – Contract Documents	9
Article 4 – Bonds, Indemnity and Insurance.....	11
Article 5 – Contract Time	16
Article 6 – Contract Modification	21
Article 7 – General Construction Provisions.....	24
Article 8 – Payment.....	32
Article 9 – Labor Provisions	37
Article 10 – Safety Provisions	39
Article 11 – Completion and Warranty Provisions	40
Article 12 – Dispute Resolution.....	43
Article 13 – Suspension and Termination	48
Article 14 – Miscellaneous Provisions.....	50

Article 1 Definitions

1.1 Definitions. The following definitions apply to all of the Contract Documents unless otherwise indicated. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the words “day,” “furnish,” “including,” “install,” “work day” or “working day.”

Allowance means an amount included in the Bid Proposal for Work that may or may not be included in the Project, depending on conditions that will not become known until after bids are opened. If the Contract Price includes an Allowance and the cost of performing the Work covered by that Allowance is greater or less than the Allowance, the Contract Price will be increased or decreased accordingly.

Article, as used in these General Conditions, means a numbered Article of the General Conditions, unless otherwise indicated by the context.

Change Order means a written document duly approved and executed by City, which changes the scope of Work, the Contract Price, or the Contract Time.

City means the City of Morgan Hill, acting through its City Council, officers, employees, and authorized representatives.

City Engineer means the City Engineer for the City and his or her authorized delegate(s) designated to oversee and manage the Project on City’s behalf.

Claim means a separate demand by Contractor for change in the Contract Time or Contract Price, that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part; or a written demand by Contractor objecting to the amount of Final Payment.

Contract means the signed agreement between City and Contractor.

Contract Documents means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Notice Inviting Informal Bids; the Instructions to Bidders; addenda, if any; the Bid Proposal, and attachments thereto; the Contract; the notice of award and notice to proceed; the payment and performance bonds; the General Conditions; the Special Conditions; the Project Drawings and Specifications; any Change Orders; and any other documents expressly made part of the Contract Documents.

Contract Price means the total compensation to be paid to Contractor for performance of the Work, as set forth in the Contract and as amended by Change Order or adjusted for an Allowance. The Contract Price is not subject to adjustment due to inflation or due to the increased cost of labor, material, or equipment following submission of the Bid Proposal. The Contract Price is deemed to include all applicable federal, state, and local taxes.

Contract Time means the number of calendar days for performance of the Work, as set forth in the Contract and as amended by Change Order.

Contractor means the individual, partnership, corporation, or joint-venture who has signed the Contract with City to perform the Work.

Day means a calendar day unless otherwise specified.

Design Professional means the licensed individual(s) or firm(s) retained by City to provide architectural or engineering services for the Project. If no Design Professional has been retained for this Project, any reference to Design Professional is deemed to refer to the Engineer.

Drawings means City-provided plans and graphical depictions of the Project requirements, and does not include Shop Drawings.

Engineer means the City Engineer for the City of Morgan Hill and his or her authorized delegee(s).

Final Completion means Contractor has fully completed all of the Work required by the Contract Documents, including all punch list items, any required commissioning, and has provided all required submittals, including the warranty bond, instructions and manuals, and as-built drawings to City's satisfaction.

Final Payment means payment to Contractor of the unpaid Contract Price, including release of undisputed retention, less amounts withheld pursuant to the Contract Documents, including liquidated damages, up to one hundred twenty five percent (125%) of the amount of any unreleased stop notice, amounts subject to setoff, up to one hundred fifty percent (150%) of any unresolved third-party claim for which Contractor is required to indemnify City, and up to one hundred fifty percent (150%) of any amount in dispute as authorized by Public Contract Code Section 7107.

Furnish means to purchase and deliver to the Worksite designated for installation.

Hazardous Materials means any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, or cleanup.

Including, whether or not capitalized, means “including, but not limited to,” unless the context requires otherwise.

Inspector means the individual(s) or firm(s) retained by City to inspect the workmanship, materials, and manner of construction of the Project and its components to ensure compliance with the Contract Documents and all applicable codes, regulations, and permits.

Install means to fix in place for materials, and to fix in place and connect for equipment.

Project means the public works project referenced in the Contract.

Project Manager means the individual designated by City to oversee and manage the Project on City’s behalf and may include his or her authorized delegee(s) when Project Manager is unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to the Engineer.

RFI means a written request from Contractor for information from City or Design Professional.

Section as used in these General Conditions, means a numbered Section of the General Conditions, unless otherwise indicated by the context.

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to City approval, which are

intended to provide details for fabrication, installation, and the like, of items required by or shown in the Drawings and Specifications.

Specifications means the technical, text specifications describing the Project requirements, which are prepared for and incorporated into this Project by or on behalf of City, and does not include the Contract, General Conditions or Special Conditions.

Subcontractor means an individual, partnership, corporation, or joint-venture retained by Contractor directly or indirectly through a subcontract to perform a specific portion of the Work. The term Subcontractor applies to subcontractors, suppliers, fabricators, and equipment lessors of all tiers, unless otherwise indicated by the context.

Technical Specifications means Specifications.

Work means all of the construction and services necessary or incidental to completing the Project in conformance with the requirements of the Contract Documents.

Work Day or Working Day, whether or not capitalized, means a weekday which is not a holiday observed by City.

Worksite means the place or places where the Work is performed.

Article 2 Roles and Responsibilities

2.1 Design Professional.

(A) **General.** Design Professional, as City's representative, is responsible for the overall design of the Project, and to the extent authorized by City, may act on City's behalf to ensure performance of the Work in compliance with the Contract Documents.

(B) **Interpretation.** Design Professional will decide all questions pertaining to interpretation of the Drawings or Specifications. Design Professional's decision regarding interpretation of the Drawings or Specifications is final and conclusive.

2.2 Contractor.

(A) **General.** Contractor must provide all labor, materials, equipment and services necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economic and efficient manner in the best interests of City.

(B) **Responsibility for the Work.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for, and required to exercise full control over, construction means, methods, techniques, sequences, procedures, and coordination of all portions of the Work with that of all other Contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions.

(C) **Project Administration.** Contractor must provide sufficient and competent administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents. Before starting the Work, Contractor must designate in writing and provide complete contact information, including phone numbers and email address, for the officer or employee in Contractor's organization who is to serve as Contractor's primary representative for the Project, and who has authority to act on Contractor's behalf. A Subcontractor may not serve as Contractor's primary representative.

(D) **On-Site Superintendent.** Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent, acceptable to City, and assistants, as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of

Contract Time, until the superintendent is physically present to supervise the Work. Contractor must provide written notice to City, as soon as practicable, before replacing the superintendent.

(E) **Standards; Compliance.** Contractor must, at all times, ensure that the Work is performed in a good workmanlike manner following best practices and in full compliance with the Contract Documents and all applicable laws, regulations, codes, standards, and permits.

(F) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or its Subcontractors. If any person employed by Contractor fails or refuses to comply with the Engineer's directions regarding the performance of the Work, or is determined by the Engineer to be incompetent to perform the Work, or acts in a disorderly or improper manner at the Worksite, that person may be permanently dismissed from the Project at the request of the Engineer.

(G) **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by City, Project Manager, or the Inspector to be deficient or defective in workmanship, materials, and equipment.

(H) **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos and electronic records. Project records subject to this provision include, but are not limited to, Project cost records and records relating to preparation of Contractor's bid.

(1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as extra work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.

(2) Contractor must continue to maintain its Project records in an organized manner for a period of four (4) years after City's

acceptance of the Project or following termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's Project records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours.

2.3 Subcontractors.

(A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors, subject to the limitation set forth in the Instructions to Bidders. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work.

(B) **Contractual Obligations.** Contractor must require every Subcontractor to be bound to the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, and to likewise bind their subcontractors or suppliers. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and City, but City is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.

Copies of subcontracts must be available to the Engineer upon request. Before a Subcontractor commences Work on the Project, Contractor must provide the Engineer a written statement with the name of the Subcontractor, a description of each portion of the Work performed by the Subcontractor, and the percentage of the overall Work to be performed by the Subcontractor.

(C) **Termination.** If the Contract is terminated, each Subcontractor's agreement must be assigned by Contractor to City, subject to the prior rights of any surety, provided that City accepts the assignment by written notification, and assumes all rights and obligations of Contractor pursuant to each such subcontract agreement.

(D) **Substitution of Subcontractor.** If Contractor requests substitution of a listed Subcontractor under Public Contract Code Section 4107, Contractor is solely responsible for all costs City incurs in responding to the request, including legal fees and costs to conduct a hearing.

2.4 Coordination of Work.

(A) **Concurrent Work.** City reserves the right to perform or to have performed other work on or adjacent to the Project site while the Work is being performed. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, and must avoid hindering, delaying, or interfering with the work of other contractors

and subcontractors. To the full extent permitted by law, Contractor must hold harmless and indemnify City, Design Professional, and Project Manager against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of another contractor or subcontractor.

(B) **Defects.** Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any such known defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work.

2.5 Submittals. Unless otherwise specified, Contractor must submit to Project Manager for review and approval, all schedules, Shop Drawings, samples, product data and similar submittals required by the Contract Documents, or upon request by Project Manager. Unless otherwise specified, all submittals, including Requests for Information ("RFIs") are subject to the provisions of this Section.

(A) **General.** Contractor is responsible for ensuring that its submittals are accurate and conform to the Contract Documents.

(B) **Time and Manner of Submission.** Contractor must ensure that its submittals are prepared and delivered in a manner consistent with the current approved schedule for the Work and within the applicable time specified elsewhere in the Contract Documents, or if no time is specified, in such time and sequence so as not to delay the performance of the Work or completion of the Project.

(C) **Required Contents.** Each submittal must include the Project name, Contractor's name and address, the name and address of any Subcontractor or supplier involved with the submittal, the date, and references to applicable Specification section(s) and/or drawing and detail number(s).

(D) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections in full conformance with the requirements of this Section.

(E) **Effect of Review and Approval.** Review and approval of a submittal by City will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for any errors in any submittal, and review or approval of a submittal by City is not an assumption of risk or liability by City.

(F) **Enforcement.** Any Work performed or material used without prior approval of a required submittal will be performed at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work, repairs to other affected portions of the Work, and the cost of additional time or services required of the Design Professional, Project Manager, or Inspector.

(G) **Excessive RFIs.** RFIs will be considered excessive or unnecessary if the Engineer determines that the explanation or response to the RFI is clearly and unambiguously discernable in the Contract Documents. City's costs to review and respond to excessive or unnecessary RFIs may be deducted from payments otherwise due to Contractor.

Article 3 Contract Documents

3.1 Interpretation of Contract Documents.

(A) **Drawings and Specifications.** The Drawings and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Drawings and Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Drawings and Specifications, the Specifications will control.

(B) **Duty to Notify.** If Contractor becomes aware of any ambiguity, discrepancy, omission, or error in the Drawings or Specifications, Contractor must immediately notify the Design Professional and request clarification of such, by submitting a written request for information (RFI) in the manner specified by City. The Design Professional's clarifications or interpretations will be final and binding.

(C) **Figures and Dimensions.** Figures control over scaled dimensions.

(D) **Technical or Trade Terms.** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those meanings, unless otherwise specifically defined in the Contract Documents.

(E) **Measurements.** Contractor must verify all relevant measurements at the Worksite before ordering any material or performing any Work, and will be responsible for the correctness of those measurements.

3.2 Order of Precedence. Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. Unless otherwise specified in the Special Conditions, in case of any conflict or inconsistency among the Contract Documents, the following order of precedence will apply, beginning from highest to lowest:

- (A) Change Orders;
- (B) Addenda;
- (C) Contract;
- (D) Notice to Proceed;
- (E) Notice of Award;
- (F) Special Conditions;
- (G) General Conditions;
- (H) Payment and Performance Bonds;
- (I) Specifications;
- (J) Drawings;
- (K) Contractor's Bid Proposal and attachments;
- (L) Notice Inviting Informal Bids;
- (M) Instructions to Bidders; and
- (N) Any documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, e.g., Caltrans Standard Specifications or Caltrans Special Provisions.

3.3 Caltrans Standard Specifications. Any reference to or incorporation of the Standard Specifications of the State of California, Department of Transportation ("Caltrans"), including "Standard Specifications," "Caltrans Specifications," "State Specifications," or "CSS," means the most current edition of Caltrans' Standard Specifications, unless otherwise specified ("Standard Specifications"), including the most current amendments as of the date that Contractor's bid was submitted for this Project. The following provisions apply to use of or reference to the Standard Specifications:

(A) **Limitations.** None of the "General Provisions" of the Standard Specifications, i.e., Sections 1 through 9, applies to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.

(B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Standard Specifications and a provision of these Contract Documents, as determined by City, the provision in the Contract Documents will govern.

(C) **Meanings.** Terms used in the Standard Specifications are to be interpreted as follows:

(1) Any reference to the "Engineer" is deemed to mean the City Engineer.

(2) Any reference to the "Special Provisions" is deemed to mean the Special Conditions.

(3) Any reference to the "Department" or "State" is deemed to mean City.

3.4 For Reference Only. Contractor is responsible for the careful review of any document, study, or report appended to the Contract Documents solely for informational purposes and identified as "For Reference Only." Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. However, Contractor is advised that City or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Contractor must promptly notify City of any perceived or actual conflict between the Contract Documents and any document provided "For Reference Only."

Article 4

Bonds, Indemnity, and Insurance

4.1 Payment and Performance Bonds. Within ten (10) days following issuance of the notice of award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than one hundred percent (100%) of the Contract Price, using the bond forms included with the Contract Documents. Each bond must be issued by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven (7) days following written notice from City, Contractor must substitute a surety acceptable to City. If Contractor fails to substitute an acceptable surety within the specified time, City may, at its sole discretion, withhold payment from Contractor until the surety is replaced to City's satisfaction, or terminate the Contract for default.

4.2 Indemnity. To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its agents and consultants, and Design Professional (individually, an "Indemnatee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees,

paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnatee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's bid for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code Section 9201.

- 4.3 Insurance.** No later than ten (10) days following issuance of the notice of award, Contractor is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract until the date of recordation of the notice of completion. **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.** If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, City may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. **Contractor further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Contractor, at any time as deemed necessary to protect the interests of City.**

(A) **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by City. If the City's Risk Manager determines that the deductibles and/or self-insured retentions are unacceptably high, at City's option, Contractor must either reduce or eliminate the deductibles and/or self-insured retentions as they apply to City and all required Additional Insured; or must provide a financial guarantee, to City's satisfaction, guaranteeing payment of losses and related investigation, claim administration, and legal expenses.

(B) **Policies and Limits.** The following insurance policies and limits are required for this Contract unless otherwise specified in the Special Conditions:

- (1) **Commercial General Liability Insurance (“CGL”).**
Contractor shall maintain CGL and shall include coverage for liability arising from Contractor’s or its Subcontractor’s acts or omissions in the performance of the Work against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) two million dollars (\$2,000,000.00) combined single limit each occurrence and either a general aggregate limit of four million dollars (\$4,000,000.00) or a general aggregate limit of two million dollars (\$2,000,000.00) as applied on a “per project” or “per location” basis, or (ii) the maximum amount of such insurance available to Contractor under Contractor’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.
 - a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.
 - b. CGL policy must include contractor’s protected coverage, blanket contractual, and completed operations.
- (2) **Builder’s Risk Insurance:** The Builder’s Risk Insurance policy must be issued on occurrence basis, for all-risk coverage (including Flood and Earthquake) on a one hundred percent (100%) completed value basis on the insurable portion of the Project for the benefit of City.
- (3) **Workers’ Compensation Insurance and Employer’s Liability:** Contractor shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers’ Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Contractor under Contractor’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

- (4) **Automobile Liability:** Contractor shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Contractor does not own automobiles, then Contractor shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) combined single limit, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- (5) **Pollution (Environmental) Liability:** If the performance of Contractor's work or service under this Contract involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, Contractor shall procure and maintain Pollution Liability covering Contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- (6) **Professional Liability:**
- a. If the performance of Contractor's work or service under this Contract involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, legal services, and appraisers), Contractor 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 Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if Contractor maintains a claims-made policy, Contractor shall provide written evidence of such insurance to City for at least five (5) years after the completion of work performed under this Contract.

- b. If the performance of Contractor's work or service under this Contract relates to Information Technology or related services (examples include, but are not limited to computer programmers, hardware engineers, or other systems consultants), Contractor 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 Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(C) **Required Endorsements.** Contractor must provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

- (1) For all Policies except Builder's Risk and Professional Liability:
 - a. "Waiver of Subrogation" endorsements providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.
- (2) General Liability, Automobile, and Pollution Liability:
 - a. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds on a form at least as broad as ISO Form CG 20 10 for ongoing operations and at least as broad as ISO Form CG 20 37 for completed operations.
 - b. "Primary and Non-Contributing" - Insurance shall be endorsed to be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 01;
- (3) General Liability:
 - a. "Separation of Insureds" endorsements stating that the inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(D) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the additional insureds and waiver of subrogation.

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

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

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

- 4.4 Warranty Bond.** As a condition precedent to Final Completion, Contractor must submit a warranty bond, using the form provided by City, to guarantee its Work as specified in Article 11, Completion and Warranty Procedures. The warranty bond must be issued by a surety admitted in California for fifty percent (50%) of the final Contract Price or as otherwise specified in the Contract Documents. If an issuing surety cancels the bond or becomes insolvent, within seven (7) days following written notice from City, Contractor must substitute a surety acceptable to City.

Article 5 Contract Time

- 5.1 Time is of the Essence.** Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.

(A) **General.** Contractor must commence the Work on the date indicated in the notice to proceed, and must fully complete the Work, in strict compliance with all requirements of the Contract Documents, and within the Contract Time.

(B) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If City determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, City may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to City, in order to achieve a rate of progress satisfactory to City. If Contractor fails to comply with City's directive in this regard, City may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use City's own forces to achieve the necessary rate of progress. Alternatively, City may terminate the Contract based on Contractor's default.

5.2 Schedule Requirements. All schedules must be prepared using standard scheduling software acceptable to City, and must provide schedules in electronic and paper form as requested.

(A) **As-Planned (Baseline) Schedule.** Within fifteen (15) calendar days following issuance of the notice of award (or as otherwise specified in the Special Conditions), Contractor must submit to City for review and approval an as-planned (baseline) schedule showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time using critical path methodology. The as-planned schedule must include the work of all trades required for the Work, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the as-planned schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates, and the duration.

(B) **Progress Schedules.** Contractor must submit an updated progress schedule and three (3) week look-ahead schedule, in the format specified by City, for review and approval with each application for a progress payment. The progress schedule must show how the actual progress of the Work to date compared to the as-planned schedule, and must identify any actual or potential impacts to the critical path.

(C) **Recovery Schedule.** If City determines that the Work is more than one (1) week behind schedule, within seven (7) days following written notice of such determination, Contractor must submit a recovery schedule,

showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.

(D) **Effect of Approval.** Contractor and its Subcontractors must perform the Work in accordance with the most current approved schedule unless otherwise directed by City. City approval of a schedule does not operate to extend the time for completion of the Work or any component of the Work, and will not affect City's right to assess liquidated damages for Contractor's unexcused delay in completing the Work within the Contract Time.

(E) **Posting.** Contractor must at all times maintain a copy of the most current approved progress or recovery schedule posted prominently in its on-site office.

(F) **Reservation of Rights.** City reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by City or others, or to facilitate City's use of its property. The Contract Time or Contract Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.

(G) **Authorized Working Days and Times.** Contractor is limited to working Monday through Friday, excluding City of Morgan Hill-observed holidays, during City's normal business hours, except as expressly provided in the Special Conditions, or as authorized in writing by City. City reserves the right to charge Contractor for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in these Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

(A) **Excusable Delay.** The Contract Time may be extended if Contractor encounters an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through planning, foresight, and diligence ("Excusable Delay"). Grounds for Excusable Delay may include fire, earthquake, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, suspension for convenience under Article 13, or unusually severe weather.

(B) **Non-Excusable Delay.** Excusable Delay does not include delay that is concurrent with non-Excusable Delay, and does not include delay caused by:

- (1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten (10) years;
- (2) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for timely completion of the Work;
- (3) Contractor's failure to provide adequate notification to utility companies for connections or services necessary for the timely performance and completion of the Work;
- (4) foreseeable conditions Contractor could have ascertained from reasonably diligent inspection of the Worksite or review of the Contract Documents; or
- (5) Contractor's financial inability to perform the Work, including insufficient funds to pay its Subcontractors or suppliers.

(C) **Request for Extension of Contract Time.** A request for an extension of time and associated delay costs must be submitted in writing to City within ten (10) calendar days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time, or will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6, below. Strict compliance with these requirements is necessary to ensure that any delay or delay costs may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project and timely performance of the Work. Any request for an extension of time or delay costs that does not strictly comply with the requirements of Article 5 and Article 6 will be deemed waived.

- (1) **Required Contents.** The request must include a detailed description of the cause(s) of the delay, and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, e.g., by workforce management, change in sequencing, etc. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor's plan for continued mitigation of the delay or its effects.

(2) *Delay Days and Costs.* The request must specify the number of days of Excusable Delay claimed, or provide a realistic estimate if the duration of the delay is not yet known. The request must specify the amount of any delay-related costs that are claimed, or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known.

(3) *Supporting Documentation.* The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including schedule and cost impacts, including a time impact analysis using critical path methodology, and demonstrating unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to City.

(4) *Burden of Proof.* Contractor has the burden of proving 1) that the delay was an Excusable Delay, as defined above, 2) that Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts, 3) that the delay will unavoidably result in delaying Final Completion, and 4) that any delay costs claimed by Contractor were actually incurred and were reasonable under the circumstances.

(5) *Recoverable Costs.* If Contractor is granted an extension of time for Excusable Delay, recompense for delay costs will be limited to actual, direct, reasonable, and substantiated costs, and will not include home office overhead, or markup for overhead and profit.

(6) *Legal Compliance.* Nothing in this provision is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code Section 7102.

(7) *No Waiver.* Any grant of an extension of time or delay costs due to an Excusable Delay will not operate as a waiver of City's right to assess liquidated damages for unexcused delay.

(8) *Dispute Resolution.* In the event of a dispute over entitlement to an extension of time or delay costs, Contractor may not stop working pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on City's rejection of a Change Order

request for an extension of time or delay costs is to comply with the Dispute Resolution provisions set forth in Article 12, below.

5.4 Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, City will suffer damages which are difficult to determine and accurately specify. Pursuant to Public Contract Code section 7203, if Contractor fails to achieve Final Completion within the Contract Time, City may charge Contractor in the amount specified in the Contract for each calendar day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty.

(A) **Liquidated Damages.** Liquidated damages will not be assessed for any Excusable Delay, as set forth above.

(B) **Milestones.** Liquidated damages will also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents.

(C) **Setoff.** City is entitled to set off the amount of liquidated damages assessed against any payments otherwise due to Contractor, including setoff against release of retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, City is entitled to recover the balance from Contractor or its performance bond surety.

(D) **Occupancy or Use.** Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute City's acceptance of the Project and will not operate as a waiver of City's right to assess liquidated damages for Contractor's unexcused delay in achieving Final Completion.

Article 6 Contract Modification

6.1 Changes in Work. City reserves the right to make changes in the Work without invalidating the Contract. City may direct or Contractor may request changes in the Work, and any such changes will be formalized in a Change Order, which may include commensurate changes in the Contract Price or Contract Time as applicable. Contractor must promptly comply with City-directed changes in the Work in accordance with the intent of the original Contract Documents, even if Contractor and City have not yet reached agreement as to adjustments to the Contract Price or Contract Time.

(A) **City-Directed Change.** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to a City-directed change, Contractor must perform the Work as directed and may not delay its work or cease work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(B) **Contractor's Obligations.** In the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents as opposed to changed or extra Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(C) **Remedy for Non-Compliance.** Contractor's failure to promptly comply with an City-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, City may, at its sole discretion, hire another contractor or use its own forces to complete the disputed Work at Contractor's sole expense, and may deduct the cost from the Contract Price.

(D) **Dispute Resolution.** Contractor's sole recourse for an unresolved dispute related to changes in the Work is to comply with the dispute resolution provisions set forth in Article 12, below.

6.2 Contractor Change Order Requests. Contractor must submit a request or proposal for a change in the Work or a change in the Contract Price or Contract Time as a written Change Order request or proposal.

(A) **Time for Submission.** Any request for a change in the Contract Price must be submitted in writing to Project Manager within ten (10) calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time.

(B) **Required Contents.** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes, insurance, and subcontract amounts. Any estimated cost must be updated in writing as soon as the actual amount is known.

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-

related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions.

(D) **Required Form.** Contractor must use City's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by City.

(E) **Certification.** All Change Order requests must be signed by Contractor and must include the following certification:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete, and agrees that any costs, expenses, or time extension request not included herein is deemed waived. Contractor understands that submission of claims which have no basis in fact or which Contractor knows to be false may violate the False Claims Act, as set forth in Government Code Sections 12650 et seq."

6.3 Adjustments to Contract Price. The amount of any increase or decrease to the Contract Price will be determined based on one (1) of the following methods in the order provided:

(A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or schedule of values, will apply if unit pricing has previously been provided in Contractor's accepted bid schedule or schedule of values for the affected Work;

(B) **Lump Sum.** A mutually agreed upon lump sum;

(C) **Time and Materials.** On a time and materials basis, which may include a not-to-exceed limit, calculated as the total of the following sums:

- (1) All direct labor costs plus fifteen percent (15%) for overhead and profit;
- (2) All direct material costs, including sales tax, plus fifteen percent (15%) for overhead and profit;
- (3) All direct plant and equipment rental costs, plus fifteen percent (15%) for overhead and profit;
- (4) All direct subcontract costs plus ten percent (10%) for overhead and profit; and

- (5) Increased bond or insurance premium costs computed at one- and one-half percent (1½%) of total of the previous four (4) sums.

6.4 Unilateral Change Order. If City disagrees with the amount of compensation or extension of time that Contractor has requested, City may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time in the amount City believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

6.5 Non-Compliance Deemed Waiver. Contractor waives its entitlement to any increase in the Contract Price or Contract Time if Contractor fails to full comply with the provisions of this Article. Contractor will not be paid for unauthorized extra work.

Article 7 General Construction Provisions

7.1 Permits and Taxes.

(A) **General.** Contractor must obtain and pay for any and all permits, fees, or licenses required to perform the Work, unless otherwise indicated in the Contract Documents. Contractor must cooperate with and provide notifications to government agencies with jurisdiction over the Project, as may be required. Contractor must provide City with copies of all notices, permits, licenses, and renewals required for the Work.

(B) **Federal Excise Tax.** Contractor must pay for all taxes on labor, material and equipment, except Federal Excise Tax to the extent that City is exempt from Federal Excise Tax.

7.2 Temporary Facilities. Contractor must provide, at Contractor's sole expense, any and all temporary facilities, including onsite office, sanitary facilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any utility services incidental thereto.

(A) **Standards.** Such structures must be safe and adequate for the intended use, and installed and maintained in accordance with all applicable federal, state, and local laws, codes, and regulations.

(B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to City's property caused by the installation, use, or removal of

the temporary facilities, and must promptly restore the property to its original or intended condition.

(C) **Additional Requirements.** Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.

7.3 Signs. No signs may be displayed on or about City's property, except signage which is required by law or by the Contract Documents, without City's prior written approval as to content, size, design, and location.

7.4 Protection of Work and Property.

(A) **General.** Contractor is responsible at all times for protecting the Work and materials and equipment to be incorporated into the Work from damage until the Notice of Completion has been recorded. Except as specifically authorized by City, Contractor must confine its operations to the area of the Project site indicated in the Drawings. Contractor is liable for any damage caused to City's real or personal property, the real or personal property of adjacent property owners, or the work or personal property of other contractors working for City.

(B) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Drawings or apparent from inspection of the Project site, Contractor must promptly notify Project Manager, and must avoid taking any action which could cause damage to the facilities or utilities pending further direction from Project Manager. If Project Manager's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6, above.

(C) **Support; Adjacent Properties.** Contractor must provide, install, and maintain all shoring, bracing, underpinning, etc., necessary to provide support to City's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by law.

7.5 Noninterference. Contractor must take reasonable measures to avoid interfering with City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures.

7.6 Materials and Equipment.

(A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation, and must be installed in accordance with the manufacturer's recommendation. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work, and is responsible for protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until City accepts the Project.

(B) **City-Provided.** If the Work includes installation of materials or equipment to be provided by City, Contractor is solely responsible for the proper examination, handling, storage, and installation of such items in accordance with the Contract Documents. Contractor must promptly notify City of any defects discovered in City-provided materials or equipment. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.

(C) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization required for use of patented or copyright protected materials, equipment, devices or processes that are incorporated into the Work. Contractor's indemnity obligation in Article 4, applies to any claimed violation of intellectual property rights in violation of this provision.

7.7 Substitutions.

(A) **"Or Equal."** Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate quality and type of item or service desired, and Contractor may request use of any equal material, product, thing, or service.

(B) **Request for Substitution.** A request for substitution must be submitted to Project Manager for approval within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within thirty-five (35) days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.

(C) **Substantiation.** All data substantiating the proposed substitute as an “equal” item or service must be submitted with the written request for substitution. Contractor’s failure to timely provide necessary substantiation is ground for rejection of the proposed substitution, without further review.

(D) **Burden of Proving Equality.** Contractor has the burden of proving the equality of the proposed substitution. City has sole discretion to determine whether a proposed substitution is “equal,” and City’s determination is final.

(E) **Approval or Rejection.** If the proposed substitution is approved, Contractor is solely responsible for any additional costs associated with the substituted item(s). If the proposed substitution is rejected, Contractor must, without delay, install the item specified.

(F) **Contractor’s Obligations.** City’s review of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. In the event Contractor makes an unauthorized substitution, Contractor will be solely responsible for all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

7.8 Testing and Inspection.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection by Inspector at all times and locations during construction and/or fabrication. All manufacturers’ application or installation instructions must be provided to the Inspector at least ten (10) days prior to the first such application or installation. Contractor must, at all times, make the Work available for inspection.

(B) **Scheduling and Notification.** Contractor must schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must provide timely notice to all necessary parties as specified in the Contract Documents.

(C) **Responsibility for Costs.** City will bear the initial cost of testing to be performed by independent testing consultants retained by City, subject to the following exceptions:

- (1) Contractor will be responsible for the costs of any subsequent tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.

(2) Contractor will be responsible for inspection costs, at City's established rates, for inspection time lost because the Work is not ready or Contractor fails to appear for a scheduled inspection.

(3) In addition, if any portion of the Work which is subject to testing is covered or concealed by Contractor prior to testing, Contractor will bear the cost of making that portion of the Work available for the testing required by the Contract Documents, and any associated repair or remediation costs.

(D) **Contractor's Obligations.** Any Work that fails to comply with the requirements of the Contract Documents must be promptly repaired, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work was previously inspected or included in a progress payment. Contractor is solely responsible for any delay occasioned by remediation of noncompliant Work. Inspection of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified.

(E) **Distant Locations.** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.

(F) **Final Inspection.** The provisions of this Section 7.8 apply to final inspection under Article 11, Completion and Warranty Provisions.

7.9 Clean up. Contractor must regularly remove debris and waste materials and maintain the Worksite in clean and neat condition.

(A) **General.** Prior to discontinuing work in an area, Contractor must clean the area and remove all rubbish along with its construction equipment, tools, machinery, waste and surplus materials. Contractor must, at all times, minimize and confine dust and debris resulting from construction activities.

(B) **Completion.** At the completion of the Work, Contractor must remove from the Worksite all of its equipment, tools, surplus materials, waste materials and debris. Before demobilizing from the Worksite, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas.

(C) **Non-Compliance.** If Contractor fails to commence compliance with its cleanup obligations within two (2) business days following written notification from City or its representative, City may undertake appropriate

cleanup measures without further notice and the cost will be deducted from any amounts due or to become due Contractor.

7.10 Instructions and Manuals. Contractor must provide three (3) copies each of all instructions and manuals required by the Contract Documents, unless otherwise specified. These must be complete as to drawings, details, parts lists, performance data, and other information that may be required for City to easily maintain and service the materials and equipment installed for this Project.

(A) **Submittal Requirements.** All manufacturers' application or installation instructions must be provided to the Inspector at least ten (10) days prior to the first such application. The instructions and manuals, along with any required guarantees, must be delivered to City for review.

(B) **Instruction of Personnel.** Contractor or its Subcontractors must instruct City's personnel in the operation and maintenance of any complex equipment as a condition precedent to Final Completion, if required in the Contract Documents.

7.11 As-built Drawings. Contractor and its Subcontractors must maintain on the Worksite a separate complete set of the Drawings which will be used solely for the purpose of recording changes made in any portion of the Work in order to create accurate record drawings at the end of the Project.

(A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. Progress payments may be delayed, in whole or in part, until the as-built drawings are brought up to date to the satisfaction of City. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities, etc., installed underground, in walls, floors, or otherwise concealed. Deviations from the original Drawings must be shown in detail. The location of all main runs, whether piping, conduit, ductwork, drain lines, etc., must be shown by dimension and elevation.

(B) **Final Completion.** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to City for review and approval as a condition precedent to Final Completion.

7.12 Existing Utilities. As required by Government Code Section 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by City in the Contract Documents, Contractor must immediately provide written notice to City and the utility. City assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site, if those utilities

are not identified in the Contract Documents. Contractor will be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Drawings or Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent such delay was caused by City's failure to provide for removal or relocation of the utility facilities.

7.13 Notice of Excavation. Government Code Section 4216.2, requires that except in an emergency, Contractor must contact the appropriate regional notification center, or Underground Services Alert at 800-642-2444 (for Northern California), at least two (2) working days, but not more than fourteen (14) calendar days before starting any excavation if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations, and if practical, Contractor must delineate with white paint or other suitable markings the area to be excavated.

7.14 Trenching and Excavations.

(A) ***Duty to Notify.*** Contractor must promptly, and before the following conditions are disturbed, provide written notice to City if Contractor finds any of the following conditions:

(1) Material that Contractor believes may be a hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law;

(2) Subsurface or latent physical conditions at the Worksite differing from those indicated by information about the Worksite made available to bidders prior to the deadline for submitting bids; or

(3) Unknown physical conditions at the Worksite of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.

(B) ***City Investigation.*** City will promptly investigate the conditions and if City finds that the conditions do materially differ or do involve hazardous waste, and cause a decrease or increase in Contractor's cost

of, or the time required for, performance of any part of the Work, City will issue a Change Order.

(C) **Disputes.** In the event that a dispute arises between City and Contractor regarding any of the conditions specified in subsection (A) above, Contractor will not be excused from any scheduled completion date provided for in the Contract Documents, but must proceed with all Work to be performed under the Contract. Contractor will retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between Contractor and City.

7.15 Trenching of Five Feet or More. As required by Labor Code Section 6705, if the Contract Price exceeds Twenty Five Thousand Dollars (\$25,000.00) and the Work includes the excavation of any trench or trenches of five (5) feet or more in depth, a detailed plan must be submitted to City or its civil or structural engineer, for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it must be prepared by a registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.

7.16 New Utility Connections. City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify City sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.

7.17 Lines and Grades. Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work.

7.18 Historic or Archeological Items.

(A) **Contractor's Obligations.** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").

(B) **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an eighty-five (85) foot radius of the find and may not resume until authorized in writing by City. If required by City, Contractor must assist in protecting or recovering the Historic or Archeological Items, any such assistance to be compensated as extra work on a time and materials basis under Article 6, Contract Modification. Any suspension of Work required due to discovery of Historic or Archeological Items will be treated as a suspension for convenience under Article 13.

7.19 Environmental Control. Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor and its Subcontractors must at all times in the performance of the Work comply with all applicable federal, state, and local laws and regulations concerning pollution of waterways.

(A) **Stormwater Permit.** Contractor must comply with all applicable conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Stormwater Permit").

(B) **Contractor's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City's principal administrative offices, and Contractor must comply with the same without adjustment of the Contract Price or the Contract Time. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit, Contractor must comply with all other applicable state, municipal or regional laws, ordinances, rules or regulations governing discharge of stormwater, including applicable municipal stormwater management programs.

Article 8 Payment

8.1 Schedule of Values. Prior to submitting its first application for payment, Contractor must prepare and submit to Project Manager a schedule of values apportioned to the various divisions and phases of the Work. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid.

8.2 Progress Payments. Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.

(A) **Application for Payment.** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Worksite, as well as authorized and approved Change Orders. Each pay application must be supported by Contractor's schedule of values and any other substantiating data required by the Contract Documents.

Each application for payment shall be accompanied by completed "Contract Balance Form," a copy of which is provided at the end of Article 8.

(B) **Payment of Undisputed Amounts.** City will pay the undisputed amount due, as certified by the Design Professional, within thirty (30) days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code Section 20104.50. City will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may deduct additional amounts as set forth in Section 8.3, below.

8.3 Adjustment of Payment Application. City may adjust or reject a payment application, including application for Final Payment, in whole or in part, based upon any of the circumstances listed below. Contractor will be notified in writing of the basis for the adjustment, and will be promptly paid once the basis for that adjustment has been remedied and no longer exists.

(A) Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items;

(B) Loss or damage caused by Contractor or its Subcontractor(s) arising out of or relating to performance of the Work;

(C) Contractor's failure to pay its Subcontractors and suppliers when payment is due;

(D) Failure to timely correct rejected, nonconforming, or defective Work;

(E) Unexcused delay in performance of the Work;

- (F) Any unreleased stop notice, retained as one hundred twenty five percent (125%) of the amount claimed;
- (G) Failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents;
- (H) Failure to maintain or submit as-built documents in the manner and within the time specified in the Contract Documents;
- (I) Work performed without approved Shop Drawings, when approved Shop Drawings are required before proceeding with the Work;
- (J) Contractor's payroll records are delinquent or inadequate; and
- (K) Any other costs or charges that may be offset against payments due, as provided in the Contract Documents, including liquidated damages.

8.4 Acceptance of Work. Neither City's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work.

8.5 Retention. City will retain five percent (5%) of the amount due on each progress payment, or the percentage stated in the Notice Inviting Informal Bids, whichever is greater, as retention to ensure full and satisfactory performance of the Work.

(A) ***Substitution of Securities.*** As provided by Public Contract Code Section 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code Section 22300, and will be subject to approval as to form by City's legal counsel.

(B) ***Release of Undisputed Retention.*** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld under Section 8.3 or 8.6 will be released as Final Payment to Contractor no sooner than thirty five (35) days following recordation of the notice of completion, and no later than sixty (60) days following acceptance of the Project by City's governing body or authorized designee, or, if the Project has not been accepted, no later than sixty (60) days after the Project is otherwise considered complete under Public Contract Code Section 7107(c).

8.6 Setoff. City is entitled to set off any amounts due from Contractor against any payments due to Contractor. City's entitlement to setoff includes progress payments as well as Final Payment and release of retention.

8.7 Payment to Subcontractors and Suppliers. Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Worksite by the Subcontractor or supplier during the preceding month. Such payments must be made in accordance with the requirements of the law, and those of the Contract Documents and applicable subcontract or supplier contract.

(A) **Withholding for Stop Notice.** City will withhold one hundred twenty five percent (125%) of the amount claimed by an unreleased stop notice, a portion of which may be retained by City for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.

(B) **Joint Checks.** City reserves the right to issue joint checks made payable to Contractor and its Subcontractors or suppliers. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by City. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

8.8 Final Payment. Final Completion, acceptance of the Work by City, and recordation of the Notice of Completion, and any release required by the Contract Documents are conditions precedent to Final Payment and release of undisputed retention, as set forth above. Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. The date of Final Payment is deemed to be effective on the date that City acts to release retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.

8.9 Release of Claims. City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written release of all claims against City arising from or related to the portion of Work covered

by those undisputed amounts. Any disputed amounts may be specifically excluded from the release.

- 8.10 Warranty of Title.** Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

CONTRACT BALANCE FORM

Project Name: _____

Note: A detailed invoice MUST be attached to this Contract Balance Form.

CONTRACTOR NAME: _____	DATE: _____
MAILING ADDRESS: _____	TELEPHONE NO.: _____
_____	FAX NO.: _____
_____	PROJECT NO.: _____
	INVOICE NO.: _____

- | | | |
|--|-------------|----------------|
| 1. ORIGINAL CONTRACT AMOUNT: | \$ _____ | |
| 2. APPROVED CHANGE ORDERS TOTAL: | \$ _____ | |
| 3. REVISED CONTRACT AMOUNT: | | (1+2) \$ _____ |
| 4. PREVIOUS BALANCE PAID: | \$ _____ | |
| 5. REMAINING BALANCE: | | (3-4) \$ _____ |
| 6. CURRENT PROGRESS PAYMENT DUE: | \$ _____ | |
| (before retention) | | |
| 7. 5% RETENTION FROM WORK DONE: | (-)\$ _____ | |
| 8. CURRENT BALANCE DUE: | | (6-7) \$ _____ |
| 9. REMAINING BALANCE OF REVISED CONTRACT AMOUNT: | | (5-8) \$ _____ |
| (including retention) | | |

Article 9

Labor Provisions

9.1 Discrimination Prohibited. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Federal and California laws including the California Fair Employment and Housing Act (Government Code Sections 12900 et seq.), Government Code Section 11135, and Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5.

9.2 Labor Code Requirements.

(A) ***Eight Hour Day.*** Under Labor Code Section 1810, eight (8) hours of labor constitute a legal day's work under this Contract.

(B) ***Penalty.*** Under Labor Code Section 1813, Contractor will forfeit to City as a penalty, the sum of Twenty Five Dollars (\$25.00) for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight (8) hours in any one (1) calendar day or more than forty (40) hours per calendar week, except if such workers are paid overtime under Labor Code Section 1815.

(C) ***Apprentices.*** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code Section 1777.5, which is fully incorporated by reference.

(D) ***Notices.*** Under Labor Code Section 1771.4, Contractor is required to post all job site notices prescribed by law or regulation.

9.3 Prevailing Wages. Each worker performing Work under this Contract that is covered under Labor Code Section 1720, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in Sections 1720.3, 1771, and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Worksite.

(A) ***Penalties.*** Under Labor Code Section 1775, Contractor and any Subcontractor will forfeit to City as a penalty up to Two Hundred Dollars (\$200.00) for each calendar day, or portion a day, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

(B) **Federal Requirements.** If this Project is subject to Federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the current applicable prevailing wage rates under federal law, available online at <http://www.access.gpo.gov/davisbacon/ca.html>.

9.4 Payroll Records. Contractor must comply with the provisions of Labor Code Sections 1771.4, 1776, and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for electronic submission of payroll records.

(A) **Contractor and Subcontractor Obligations.** Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) Contractor or Subcontractor has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any Work performed by its employees on the Project.

(B) **Certified Record.** A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to City, or to the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations, and as further provided by the Labor Code.

(C) **Enforcement.** Upon notice of noncompliance with Labor Code Section 1776, Contractor or Subcontractor has ten (10) days in which to comply with requirements of this section. If Contractor or Subcontractor fails to do so within the ten (10) day period, Contractor or Subcontractor will forfeit a penalty of One Hundred Dollars (\$100.00) per day, or portion a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from progress payments then due.

9.5 Labor Compliance. Under Labor Code section 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

9.6 Wage Theft Prevention. Compliance with Wage and Hour Laws: Contractor, 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 Contractor and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONTRACTOR 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 CONTRACTOR OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR 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 Contractor or an subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed, Contractor 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. Contractor 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 Contractor 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 Contractor 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 Contractor 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.

Article 10 Safety Provisions

10.1 Safety Precautions and Programs. Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must comply with all applicable safety laws, rules and regulations and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite, materials and equipment stored on or off site, and property at or adjacent to the Worksite.

(A) **Reporting Requirements.** Contractor must immediately provide a written report to City of all recordable accidents and injuries occurring at the Worksite. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to City.

(B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide City with copies of all notices required by law or regulation.

(C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.

(D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Worksite is unsafe, City may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's satisfaction. If Contractor fails to promptly take the required corrective

measures, City may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.

10.2 Hazardous Materials. Unless otherwise specified, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Worksite that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to City. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.

10.3 Material Safety. Contractor must maintain Material Safety Data Sheets ("MSDS") at the Worksite, as required by law, for materials or substances used or consumed in the performance of the Work. The MSDS will be accessible and available to Contractor's employees, Subcontractors, and City.

(A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Worksite and/or used in the performance of the Work.

(B) **Labeling.** Contractor must ensure proper labeling on any material brought onto the Worksite so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

Article 11 Completion and Warranty Provisions

11.1 Final Completion.

(A) **Final Inspection.** When the Work required by this Contract is fully performed, Contractor must provide written notification to Project Manager requesting final inspection. Based on this inspection, the Design Professional will prepare a punch list of items that are incomplete, incorrectly installed, or not operating as required by the Contract Documents. The omission of any such item from this punch list will not

relieve Contractor from fulfilling all requirements of the Contract Documents.

(B) **Punch List.** City will promptly deliver the punch list to Contractor and will specify the time by which all of the punch list items must be completed or corrected. The punch list may include City's estimated cost to complete each punch list item if Contractor fails to do so within the specified time.

(C) **Requirements for Final Completion.** Final Completion will be achieved upon completion or correction of all punch list items, as verified by inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents, and submission of all final submittals, including a warranty bond as required under Section 4.4, instructions and manuals as required under Section 7.10, and as-built drawings as required under Section 7.11, all to City's satisfaction. Once Final Completion is achieved, and the Project has been formally accepted by City, City will file a notice of completion with the County Recorder.

(D) **Final Payment.** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than thirty-five (35) days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, City may elect to accept the Project and record the notice of completion, and withhold up to one hundred fifty percent (150%) of City's estimated cost to complete the remaining items from Final Payment.

11.2 Warranty.

(A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

(B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one (1) year from the date of recordation of the notice of completion (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors,

suppliers and manufacturers any special or extended warranties required by the Contract Documents.

(C) **Warranty Documents.** As a condition precedent to acceptance, Contractor must supply City with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.

(D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor expressly agrees to act as co-guarantor of such Work.

(E) **Contractor's Obligations.** Upon written notice from City to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period.

(F) **City's Remedies.** If Contractor and/or its responsible Subcontractor fails to correct defective Work within ten (10) days following notice by City, or sooner, if required by the circumstances, Contractor expressly agrees that City may correct the defects to conform with Contract Documents at Contractor's sole expense, and Contractor agrees to reimburse City for its costs within thirty (30) days following City's submission of a demand for payment pursuant to this provision. If City is required to initiate legal action to compel Contractor's compliance with this provision, and City is the prevailing party in such action, Contractor is solely responsible for all of City's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein in addition to any and all costs incurred by City to correct the defective Work.

11.3 Use Prior to Final Completion. City reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if City has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion. City will notify Contractor in writing of its intent to occupy or make use of the Project or any portions of the Project, pursuant to this provision.

(A) **Non-Waiver.** Occupation or use prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these

Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

(B) **City's Responsibility.** City will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before final completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to perform the Work.

11.4 Substantial Completion. For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to recordation of the Notice of Completion, except for warranty work performed under this Article.

Article 12

Dispute Resolution

12.1 Claims. This Article applies to and provides the exclusive procedures for any Claim arising from or related to the Contract or performance of the Work.

(A) **Definition.** "Claim" means a separate demand by Contractor, submitted in writing, for change in the Contract Time or Contract Price that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part.

(B) **Limitations.** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and City. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Contract Time or the Contract Price, which has not previously been submitted to City in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by City.

(C) **Scope of Article.** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount, and applies in addition to the provisions of Public Contract Code Section 9204 and Sections 20104, et seq.

(D) **No Work Delay.** Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of the Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to the Claim or other dispute.

12.2 Claims Submission. The following requirements apply to any Claim subject to this Article:

(A) **Substantiation.** The Claim must be submitted to City in writing, clearly identified as a “Claim” submitted pursuant to this Article 12, and must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of City’s written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of the relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.

(B) **Claim Format.** A Claim must be submitted in the following format:

(1) General introduction, specifically identifying the submission as a “Claim” submitted under this Article 12.

(2) Relevant background information, including identification of the specific demand at issue, and the date of City’s rejection of that demand.

(3) Detailed explanation of the issue(s) in dispute. For multiple issues, separately number and identify each issue and include the following for each separate issue:

(a) The background of the issue, including references to relevant provisions of the Contract Documents;

(b) A succinct statement of the matter in dispute, including Contractor’s position and the basis for that position;

(c) A chronology of relevant events;

(d) The identification and attachment of all supporting documents (see subsection (A), above, on Substantiation); and

(e) Use of a separate page for each issue.

(4) Summary of issues and damages.

(5) The following certification, executed by Contractor's authorized representative:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim are true and correct. Contractor warrants that this Claim is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay claim not included herein are deemed waived. Contractor understands that submission of a Claim which has no basis in fact or which Contractor knows to be false may violate the False Claims Act (Government Code Section 12650 et seq.)."

(C) ***Submission Deadlines.***

(1) A Claim must be submitted within fifteen (15) days following the date that City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part.

(2) With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment, or will be deemed waived.

(3) A Claim disputing the amount of Final Payment must be submitted within fifteen (15) days of the effective date of Final Payment, under Section 8.8, above.

(4) Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.

12.3 City's Response. City will respond within forty-five (45) days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the forty-five (45) day period is extended by mutual agreement of City and Contractor. However, the City may first request, in

writing, within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against Contractor. If Contractor fails to submit the additional documentation to City within fifteen (15) days of receipt of City's request, the Claim will be deemed waived.

(A) **Additional Information.** If additional information is thereafter required, it may be requested and provided upon mutual agreement of City and Contractor.

(B) **City's Response.** City's written response to the Claim, as further documented, will be submitted to Contractor within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by Contractor in producing the additional information, whichever is greater.

(C) **Non-Waiver.** Any failure by City to respond within the times specified above may not be construed as acceptance of the Claim in whole or in part, or as a waiver of any provision of these Contract Documents.

12.4 Meet and Confer. If Contractor disputes City's written response, or City fails to respond within the specified time, Contractor must notify City in writing, either within fifteen (15) days of receipt of City's response, or within fifteen (15) days of City's failure to respond within the specified time, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to notify City in writing of the dispute, and demand an informal conference to meet and confer, within the specified time, Contractor's Claim will be deemed waived.

(A) **Schedule Meet and Confer.** Upon receipt of the demand to meet and confer, City will schedule the meet and confer conference to be held within thirty (30) days, or later if needed to ensure the mutual availability of all of the individuals that each party requires to represent its interests at the meet and confer conference.

(B) **Location for Meet and Confer.** The meet and confer conference will be scheduled at a location at or near City's principal office.

(C) **Written Statement After Meet and Confer.** Within ten (10) working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.

(D) **Submission to Mediation.** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the disputed portion(s) will be submitted for mediation as set forth below.

12.5 Mediation and Government Code Claims.

(A) **Mediation.** Mediation under this Article will be scheduled within sixty (60) days following conclusion of the meet and confer process, with a mediator that the parties mutually agreed upon. The mediation itself may take place more than sixty (60) days following conclusion of the meet and confer process to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. The parties must share the costs of mediation equally, except costs incurred by each party for representation by legal counsel or any other consultant.

(B) **Government Code Claims.**

(1) Timely presentment of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract.

(2) The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied as a result of the meet and confer process, including any period of time used by the meet and confer process. If the parties agree to mediation, the time for filing a Government Code Claim will be tolled until conclusion of the mediation if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

12.6 Tort Claims. This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.

12.7 Arbitration. It is expressly agreed, under California Code of Civil Procedure Section 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.

12.8 Damages. Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages.

Contractor is not entitled to recovery of any alleged home office overhead. The Eichleay Formula or similar formula may not be used for any recovery under the Contract. Contractor is not entitled to consequential damages, including home office overhead or any form of overhead not directly incurred at the Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract.

- 12.9 Other Disputes.** The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 Suspension and Termination

- 13.1 Suspension for Cause.** In addition to all other remedies available to City, if Contractor fails to perform or correct work in accordance with the Contract Documents, City may immediately order the Work, or any portion of it, suspended until the cause for the suspension has been eliminated to City's satisfaction.

(A) ***Failure to Comply.*** Contractor will not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.

(B) ***No Duty to Suspend.*** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

- 13.2 Suspension for Convenience.** City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience, and not due to any act or omission by Contractor or its Subcontractors. Upon notice by City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work as directed by City. The Contract Price and the Contract Time will be equitably adjusted by Change Order to reflect the cost and delay impact occasioned by such suspension for convenience.

13.3 Termination for Default. Contractor may be deemed in default for a material breach of or inability to perform the Contract, including Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct rejected work; disregard of laws, regulations, ordinances, rules, or orders of any public agency with jurisdiction over the Project; or if Contractor lacks financial capacity to complete the Work within the Contract Time; or is otherwise responsible for a material breach of the Contract requirements.

(A) **Notice.** Upon City's determination that Contractor is in default, City may provide Contractor and its surety written notice of default and intent to terminate the Contract.

(B) **Termination.** Within seven (7) calendar days after notice of intent to terminate for default has been given, unless the default is cured or arrangements to cure the default have been made and memorialized in writing, to City's satisfaction, City may terminate the Contract by written notice to Contractor with a copy to Contractor's surety.

(C) **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven (7) calendar days from the date of the notice of termination, Contractor's surety will be deemed to have waived its right to complete the Work under the Contract, and City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by City to complete the Work following termination. In addition, City will have the right to use any materials, supplies, and equipment belonging to Contractor and located at the Worksite for the purposes of completing the remaining Work.

(D) **Wrongful Termination.** If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience, in Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including consequential damages, lost opportunity costs or lost profits.

13.4 Termination for Convenience. City reserves the right to terminate all or part of the Contract for convenience upon written notice to Contractor. Upon receipt of such notice, Contractor must immediately stop the Work,

comply with City's instructions to protect the completed Work and materials, and use its best efforts to minimize further costs. In the event of termination for convenience, the parties agree that the following will constitute full and fair compensation to Contractor, and that Contractor will not be entitled to any additional compensation:

(A) **Completed Work.** The value of its Work satisfactorily performed to date, including Project overhead and profit based on Contractor's schedule of values;

(B) **Demobilization.** Actual and substantiated demobilization costs; and

(C) **Markup.** Five percent (5%) of the total value of the Work performed as of the date of notice of termination or five percent (5%) of the value of the Work yet to be completed, whichever is less.

13.5 Provisions Remaining in Effect. Upon termination pursuant to this Article, the provisions of the Contract Documents remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

Article 14

Miscellaneous Provisions

14.1 Assignment of Unfair Business Practice Claims. Under Public Contract Code Section 7103.5, Contractor and its Subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.

14.2 Provisions Deemed Inserted. Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be amended accordingly.

- 14.3 Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by the waiving party.
- 14.4 Titles, Headings, and Groupings.** The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.
- 14.5 Statutory and Regulatory References.** With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that bids were due.

END OF GENERAL CONDITIONS

SPECIAL CONDITIONS

1. **Emergency Contact.** Prior to commencement of the Work on the Project, Contractor must provide contact information to the City's Project Manager for the person designated by Contractor to respond to any emergency that arises on the Worksite during the course of the Project. That person will be responsible for responding on the Worksite within thirty (30) minutes following notification of an emergency by City's Police or Fire Department, regardless of the time of day.
2. **Weather Delays.** This provision is intended to supplement the requirements of General Conditions Section 5.2 on Schedule Requirements and Section 5.3 on Delays and Extensions of Contract Time.

(A) **Weather Delay Day.** A Weather Delay Day is a Working Day during which Contractor and its forces, including Subcontractors, are unable to perform more than forty percent (40%) of the critical path Work scheduled for that day due to adverse weather conditions which impair the ability to safely or effectively perform the scheduled critical path Work that day. Adverse weather conditions may include rain, saturated soil, and Worksite clean-up required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, City-approved schedule.

(B) **Normal Weather Delay Days.** Based on historic records for the Project location, Contractor's schedule should assume the following number of normal Weather Delay Days for each month:

Month	# Normal Weather Delay Days
January	11
February	10
March	10
April	06
May	03
June	01
July	01
August	01
September	01
October	01
November	04
December	08

(C) **Extension of Time.** Contractor will be entitled to a non-

compensable extension of the Contract Time for each Weather Delay Day in excess of the normal Weather Delay Days within a given month, as set forth in Section (B) above, subject to the following limitations:

- (1) Contractor must fully comply with the applicable procedures in Article 5 and 6 of the General Conditions regarding requests to modify the Contract Time.
- (2) Normal Weather Delay Days which do not occur during a given month do not carry over to another month.
- (3) Contractor will not be entitled to an extension of time for a Weather Delay Day to the extent Contractor is responsible for concurrent delay on that day.

END OF SPECIAL CONDITIONS

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CITY COUNCIL STAFF REPORT

MEETING DATE: January 17, 2024

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

PAVEMENT CONDITION UPDATE AND PAVEMENT REHABILITATION PLANNING UPDATE

RECOMMENDATION(S)

Receive updates.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

Affordable Housing and Homelessness

Transportation

REPORT NARRATIVE:

For the last half of a decade, the City has made continued strides to improve its pavement conditions across the City. The purpose of this update is two-fold. One, to share and provide a comprehensive report on pavement conditions and, two, to provide an update on future pavement condition planning for the City.

Pavement Condition Update

The City's most recent overall system-wide Pavement Condition Index (PCI) rating for the end of calendar year 2023 was 75. This is the same as the overall system-wide PCI rating of 75 at the end of 2022. The City has steadily improved the condition of its streets since 2018 through investment of City dollars, annual funding from State Senate Bill 1 (Road Repair and Accountability Act of 2017), and Measure B funding (2016 voter approved countywide half-cent sales tax to enhance transportation). In 2023, the City had a consultant complete a detailed Pavement Management Report and survey of pavement conditions throughout the City. This report was funded through grant funding from MTC. The report is available online on the City's new pavement rehabilitation web page at:

www.morganhill.ca.gov/DocumentCenter/View/47646/City-of-Morgan-Hill-PTAP-23--rev01-for-Web

The survey of City streets was taken in the Spring of 2023 and the report completed in

late 2023. As a result, the report does not include the 2023 Pavement Improvement Project completed by the City this past fall. The report shows the City with an overall PCI of 74, which improved to 75 for year end of 2023 due to the recent pavement improvements completed. The report also identifies a backlog of \$25.1 million in pavement rehabilitation. Comparatively, in 2017, the City had an estimated backlog of \$23.2 million, which with inflation in today's dollars would be \$29.5 million. This effectively means the City has reduced its backlog since 2017. The report provides various details and scenarios on pavement conditions and prediction of pavement conditions based on various funding scenarios.

Pavement Planning

City staff are in the process of preparing the 2024 Pavement Rehabilitation Project. As planned, the project prioritizes the repair of the City's arterial and collector roadways, while allocating available funds to the resurfacing of residential streets that are significantly degraded. However, budget limitations have prevented the City from funding all the previously planned work and some work has been pushed back on the schedule. This includes the Woodland Acres area and sections of the Jackson Meadows area. The planned work for the coming five years is available on the City's new Pavement Rehabilitation webpage at: <https://morganhill.ca.gov/2539/Pavement-Rehab-Street-Cut-Moratorium>

COMMUNITY ENGAGEMENT:

Inform

City staff work on a significant communication planning effort to be implemented ahead of the work, which is planned to occur during the summer months. City staff regularly receive requests for pavement repairs from throughout the community and these are reviewed and repaired by street maintenance staff if smaller in nature or incorporated into the larger pavement rehab planning if larger in nature. The City has recently developed a page dedicated to pavement rehabilitation on the City's website that outlines long term planning for pavement rehabilitation. The page is available at: www.morganhill.ca.gov/2539/Pavement-Rehab-Street-Cut-Moratorium

ALTERNATIVE ACTIONS:

The City Council could provide staff with additional direction or feedback as deemed appropriate.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has taken significant actions related to funding pavement rehabilitation and has received annual updates on pavement rehabilitation planning. Most recently, the City Council received the following reports:

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

On April 19, 2023, the City Council received an Update Regarding Pavement Rehabilitation Planning.

On June 21, 2023, the City Council adopted a resolution approving FY2023-24 list of street rehabilitation projects funded by senate bill (SB) 1: the road repair and

accountability act.

Appropriation for funding pavement rehabilitation activities shall occur with the upcoming budget process.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with receiving the report. Award of future projects and appropriations will require additional action by the City Council.

CEQA (California Environmental Quality Act):

Categorical Exemption

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

CITY COUNCIL STAFF REPORT

MEETING DATE: January 17, 2024

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

PURCHASE OF MOBILE OFFICE SPACE FOR AQUATICS CENTER AND OUTDOOR SPORTS CENTER USE

RECOMMENDATION(S)

1. Approve the purchase of mobile office space for \$100,000; and
2. Authorize the City Manager to execute necessary agreements to complete the purchase with approval of the City Attorney.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

2022-2023 Strategic Priorities

Economic Development

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

REPORT NARRATIVE:

This item is being presented to the Council to provide an opportunity for the City to purchase additional office/ meeting space at the Outdoor Sports Center and Aquatics Center. The office space is 700 square feet in size and has heating and cooling, but no restrooms or water service. The building is permitted and meets ADA standards. The building is approximately 20 years old, but in good condition and is expected to be usable for decades. The recommended purchase would be for ancillary use by the programs and users of the Outdoor Sports Center and Aquatics Center. The fair market value for the trailers is estimated at \$100,000 based on comparative research for used mobile office trailers. The significant benefit the City would have with the purchase of the existing building is that it has been installed, permitted, has electric connection, and has access ramps fully installed. Should the City purchase a comparable trailer, installation would cost the City tens of thousands of dollars above the purchase price for the installation.

In 2023, the Bay Area Panthers made Morgan Hill the practice location for the team,

which plays its games in San Jose's SAP Arena. The fields used by the team for practice were at the Outdoor Sports Center. As part of the field rental, the Panthers brought in a mobile building for use by the team that is located on the south side of the Outdoor Sports Center gravel parking lot adjacent to the Aquatics Center (Attachment A). The building was initially used by the team. However, a few weeks into the season, the team parted ways with the head coach/general manager, and it was discovered that the building was owned by the coach's previous business organization and not the Panthers. The Panthers stopped using the building, and it has sat empty for eight months. The Panther's originally attempted to negotiate ownership of the building, but were unsuccessful. In the last two months, the owner and City staff have engaged in discussions about the purchase of the building.

The purpose of additional meeting space would be both a benefit to the Outdoor Sports Center and Aquatics Center and would support enhanced revenue generation for both facilities. The space can be rented for stand-alone meetings or could be used as an add-on for major sports rentals at the Aquatics Center and Outdoor Sports Center. Users of major events often note there are no locker rooms or meeting spaces for teams, officials, event staff, etc. Additionally, the space could support programming such as youth camps, clinics, etc. External pictures of the trailer are included as an attachment.

COMMUNITY ENGAGEMENT:

Consult

No direct engagement was made with the community on the purchase. City staff and MHOSC staff have had conversation in the past with users on the need for additional meeting space. The need was also identified through the community engagement associated with the development of the draft Condit Road Sports Facilities Master Plan.

ALTERNATIVE ACTIONS:

The Council could choose not to make this purchase. Should the the purchase not occur, City staff would direct the owners of the office/meeting space to remove the trailers from the site.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

No previous Council Actions have been taken related to this purchase. However, the Council approved the draft Condit Road Sports Facilities Master Plan on October 19, 2022, which includes the planned addition of meeting space for the facility.

FISCAL AND RESOURCE IMPACT:

Funding for the purchase is available within the existing Capital Improvement Program under Project PR11011-Condit Road Sports Facilities Development funded through the Recreation Center Impact Fund (360).

CEQA (California Environmental Quality Act):

Categorical Exemption

The purchase of the office/meeting space will complete the purchase of an existing facility that is already on site at the Outdoor Sports Center. The planned maintenance and management of city facilities falls within the CEQA categorical exemption of Class 1, Existing Facilities.



City of Morgan Hill

Public Services Department



CITY OF MORGAN HILL

LOCATION PLAN

Condit Road Sports Facilities

Date: 12/28/23

Drwn by: AE

PAGE 1 OF 1

Building Pictures



CITY COUNCIL STAFF REPORT

MEETING DATE: January 17, 2024

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

RECEIVE MONTHLY BUDGET UPDATE AND NOVEMBER 2023 FINANCIAL AND INVESTMENT REPORTS

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Fiscal Sustainability

Community Outreach, Engagement, and Messaging

REPORT NARRATIVE:

As part of the City Council's expectation to maintain a high level of transparency and to be responsible stewards of public funds, staff is providing this monthly budget update, along with the November 2023 financial and investment reports.

November 2023 Financial Report

The Revenue and Expense Summary through November 2023 is included on the first page of the monthly financial report. Overall, General Fund revenues total \$13.6 million or about 25% of the budget as some of the major revenue categories are received later in the fiscal year. Expenditures, including encumbrances, amounted to \$26.0 million, of which approximately \$4.0 million is attributable to outstanding encumbrances, compared to prior year expenditures, including encumbrances, of \$24.5 million. This represents an increase of \$1.5 million, including encumbrances, compared to the prior year. Excluding the encumbrances, expenditures increased by about \$1.2 million mainly due to new programs such as Innovative Transit, continued recovery in Recreation Services, as well as overall cost increases.

Budget Update

There has been no material change to the City's revenue since the last budget update to the Council on December 6, 2023 except for Development Services. Based on the latest data, the team is forecasting the fund will see a revenue shortfall of about \$1.0

million. This is mainly due to the absence of significant public improvements where the majority of the engineering revenues are derived from, as well as because some projects are moving forward slower than expected. Staff has implemented some initiatives to alleviate the forecasted revenue shortfall, including freezing of a vacant senior planner position and repositioning of certain engineer positions to capital improvement projects.

For water revenue, Morgan Hill residents consumed about the same amount of water through November compared to the prior three-year average.

COMMUNITY ENGAGEMENT:

Inform.

Finance staff prepares these financial reports to inform City officials, the Council, the Community, and various lenders and stakeholders about the financial health of the organization, which assists each one of the interested parties in making sound financial and investment decisions.

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is a monthly financial report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the financial and investment report for each month. At the September 16, 2015 meeting, City Council recommended monthly financial and investment reports be agendaized under the Consent Agenda, and quarterly financial and investment reports be presented to City Council as an "Other Business" item.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Not a Project

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

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
November 30, 2023 - 42% of Year Complete



CITY OF MORGAN HILL

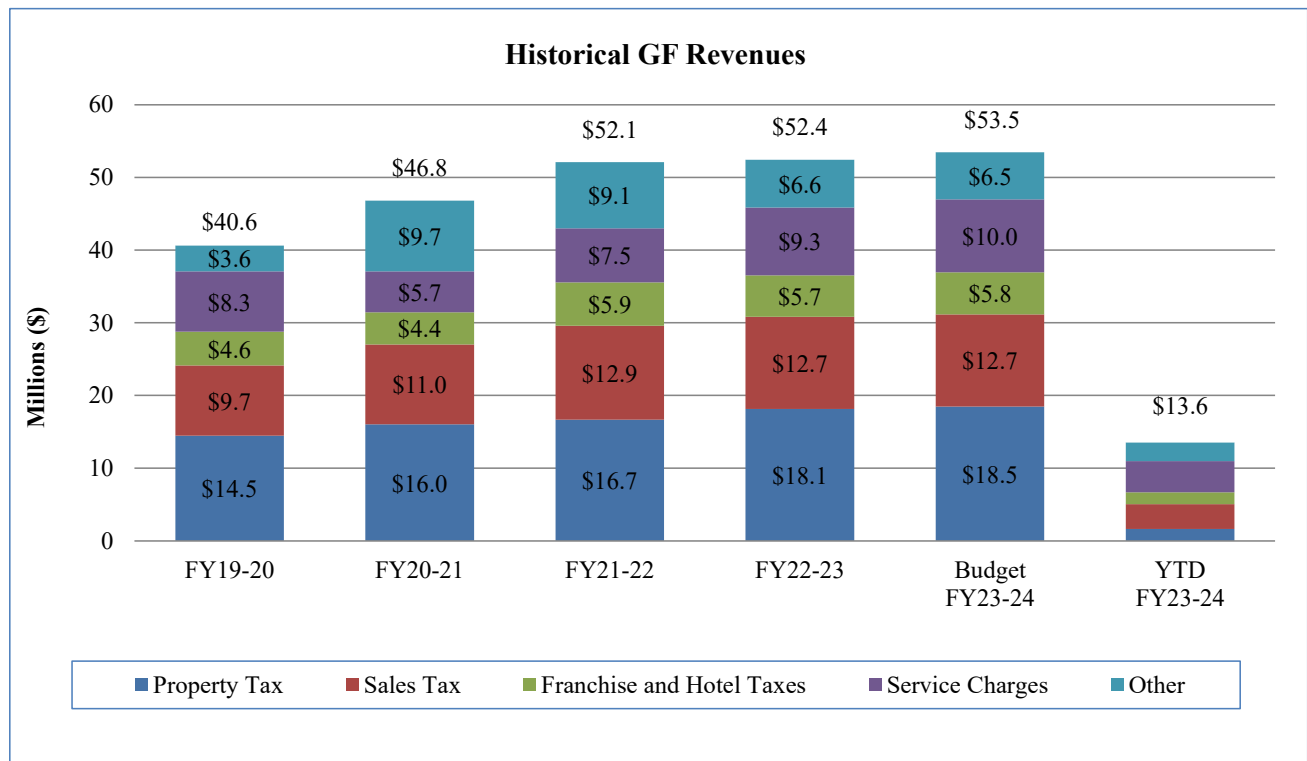
Prepared by:
FINANCE DEPARTMENT



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2023-24
FOR THE MONTH ENDED NOVEMBER 2023 – 42% OF YEAR COMPLETE

- **General Fund** – Revenues through November totaled \$13.6 million, or about 25% of the budgeted revenues as some of the major revenue categories such as property tax are received later in the fiscal year. With respect to the property tax revenue forecast, the County estimates the City will receive approximately \$19.0 million in property tax revenue for the current fiscal year, about \$0.5 million more than the budget of \$18.5 million. As for sales tax, HdL, the City's sales tax consultant revised the City's current fiscal year sales tax revenue estimate, before tax rebates, to \$12.5 million, a downward revision of about \$0.2 million from the current year budget, partially attributable to falling gas prices, lower household discretionary spending, and weaker consumer confidence.

The chart below shows historical General Fund revenues by major revenue category from FY19-20 through FY22-23 Actual, FY23-24 Budget, and YTD as of November 30, 2023.



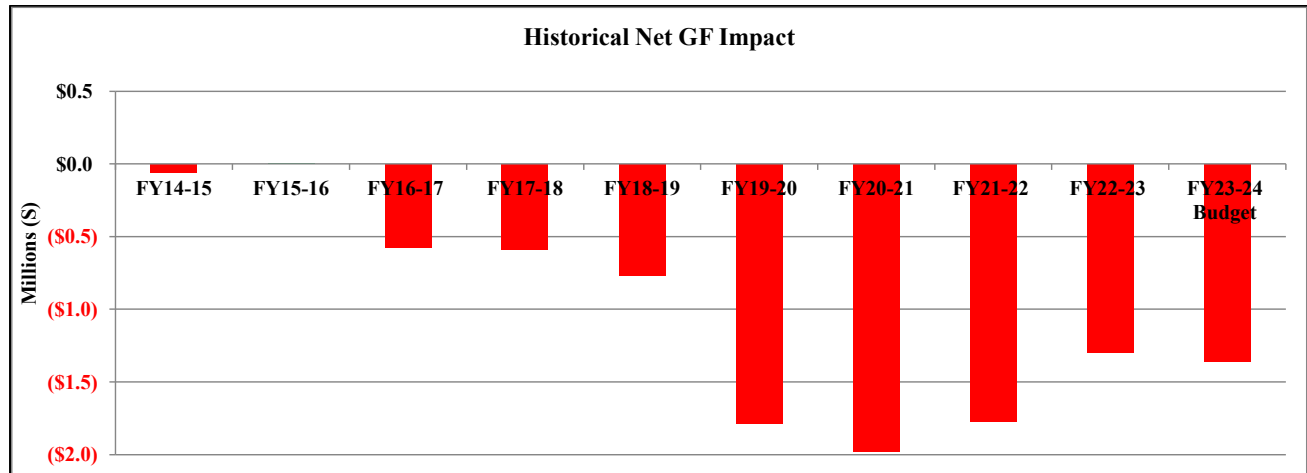
General Fund expenditures and encumbrances through November totaled \$26.0 million, of which approximately \$4.0 million is attributable to outstanding encumbrances, compared to prior year expenditures, including encumbrances, of \$24.5 million. This represents an increase of \$1.5 million, including encumbrances, compared to the prior year. Excluding the encumbrances, expenditures increased by about \$1.2 million mainly due to new programs such as Innovative Transit, continued recovery in Recreation Services, as well as overall cost increases.

- **Community Services** – The Community Services Department’s recreation operations, as reflected in the schedule presented on page 7 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$1.3 million as of November 30, 2023. Recreation Services revenues continue to recover from the pandemic and are on target with budget.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2023-24
FOR THE MONTH ENDED NOVEMBER 2023 – 42% OF YEAR COMPLETE

The chart below shows the historical net impact of Recreation Operations to the general fund.



Due to longstanding governmental accounting and budgeting convention, the City's recreation operations are not charged for indirect costs (known in Morgan Hill as "General Fund Administration") from the central services departments of City Attorney, City Manager, and Administrative Services. The City's other governmental funds, such as Development Services, and the proprietary funds, such as Water and Wastewater, and the Information Services Fund, are assessed such charges through the City's indirect cost allocation plan, prepared in compliance with the guidelines set forth in the Code of Federal Regulations Title 2, Chapter II, Part 200 (formerly OMB Circular No. A-87), which mandates certain calculation and cost allocation practices that must be followed in order to qualify for Federal grant funding, but which also represents best practice for non-grant funded City operations like utilities and information services.

- **Development Services Fund** – Revenues through November totaled \$1.8 million compared to prior year to date amount of approximately \$3.3 million. Expenditures, including encumbrances, totaled \$2.5 million.
- **Debt Service Funds** – Expenditures through November totaled \$0.6 million. The debt service for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued and are budgeted for in the months delineated in the underlying bond documents. The General Fund's portion of the annual debt service payments is approximately \$200,000, less than one percent of the General Fund's budgeted revenues.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2023-24
FOR THE MONTH ENDED NOVEMBER 2023 – 42% OF YEAR COMPLETE

- **Wastewater Operations** – Revenues through November 30, 2023 totaled \$5.1 million. Expenditures and outstanding encumbrances totaled \$5.2 million or 33% of the budget. The table below shows historical Wastewater Operations revenues and expenditures from FY19-20 through FY22-23 Actual, FY23-24 Budget, and YTD as of November 30, 2023.

(amount in millions)	FY19-20	FY20-21	FY21-22	FY22-23	Budget FY23-24	YTD FY23-24
Revenues	11.9	13.3	14.9	15.3	15.6	5.1
Expenditures	12.3	13.3	14.8	16.0	15.6	5.2
Operating Margin	(0.4)	-	0.1	(0.7)	-	(0.1)
Operating Margin without Encumbrances	(0.1)	-	0.1	(0.7)	-	(0.0)

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues through November 30, 2023 totaled \$7.3 million. Water Operations expenditures, including outstanding encumbrances, totaled \$8.3 million. Morgan Hill residents consumed about the same amount of water through November compared to the prior three-year average. As such, no revenue stabilization water rate was implemented. The table below shows Water Operations revenues and expenditures from FY19-20 through FY22-23 Actual, FY23-24 Budget, and YTD as of November 30, 2023.

(amount in millions)	FY19-20	FY20-21	FY21-22	Un-audited FY22-23	Budget FY23-24	YTD FY23-24
Revenues	15.3	16.5	16.0	18.1	19.8	7.3
Expenditures	16.4	16.5	15.2	18.0	20.3	8.3
Operating Margin	(1.1)	-	0.8	0.1	(0.5)	(1.0)
Operating Margin without Encumbrances	(0.1)	-	0.8	0.1	(0.5)	(0.2)

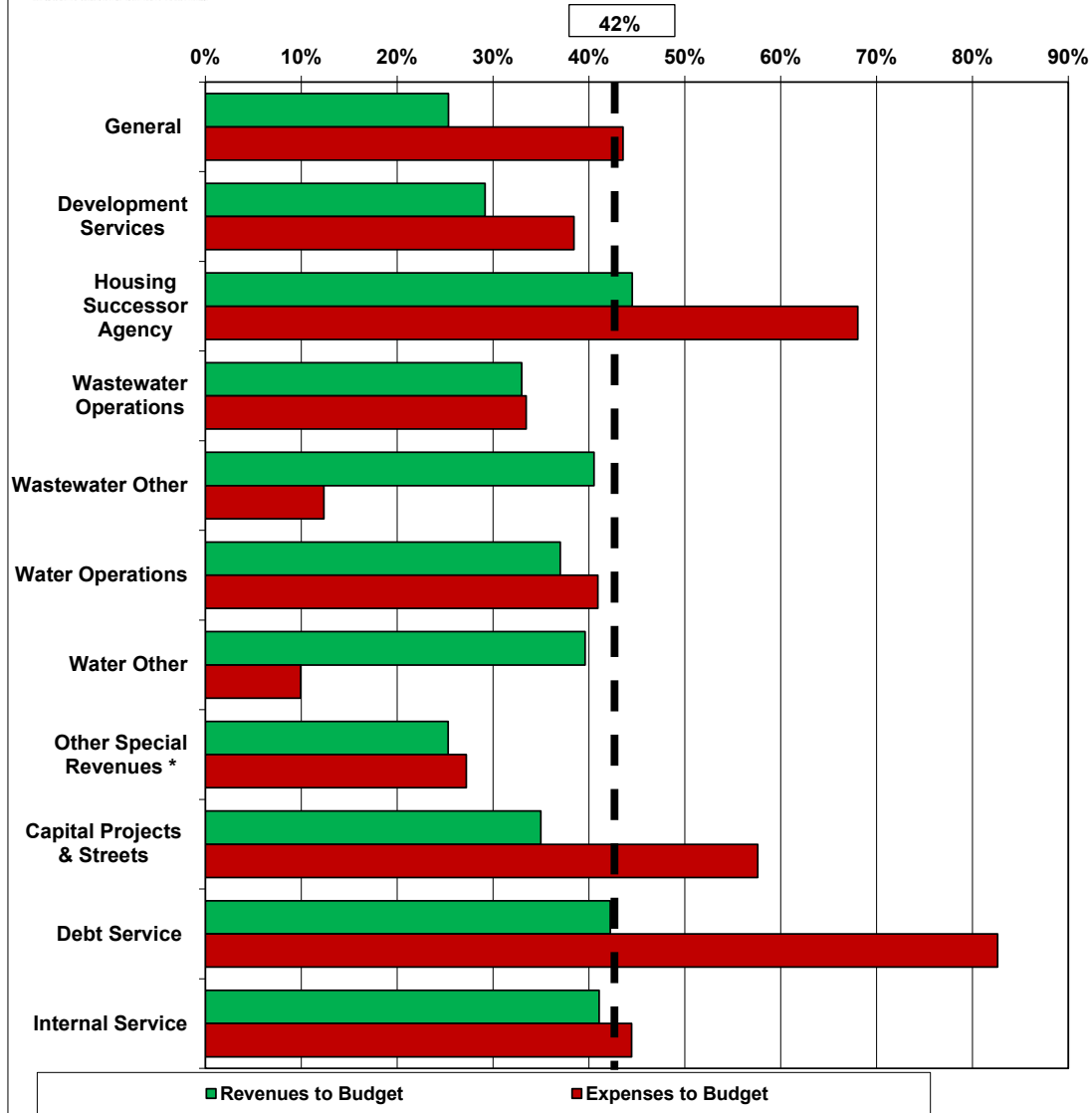
- **Investments** – Two securities were called, and five new securities were purchased, including four CDs. Total interest earnings received on investments were \$429,000 during the month.



Morgan Hill YTD Revenue & Expense Summary

November 30, 2023 - 42% of Year Complete

Percentage of Actual to Budget



FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 13,559,570	25%	\$ 26,013,269	44%
Development Services	1,847,033	29%	2,454,723	38%
Housing Successor Agency	106,511	45%	797,671	68%
Wastewater Operations	5,137,066	33%	5,206,297	33%
Wastewater Other	3,984,167	41%	5,403,255	12%
Water Operations	7,322,146	37%	8,318,422	41%
Water Other	3,444,495	40%	1,838,088	10%
Other Special Revenues *	2,118,342	25%	2,427,176	27%
Capital Projects & Streets	4,883,397	35%	24,805,830	58%
Debt Service	286,471	42%	560,757	83%
Internal Service	5,241,141	41%	6,061,482	44%
TOTAL FOR ALL FUNDS	\$ 47,930,338	32%	\$ 83,886,970	37%

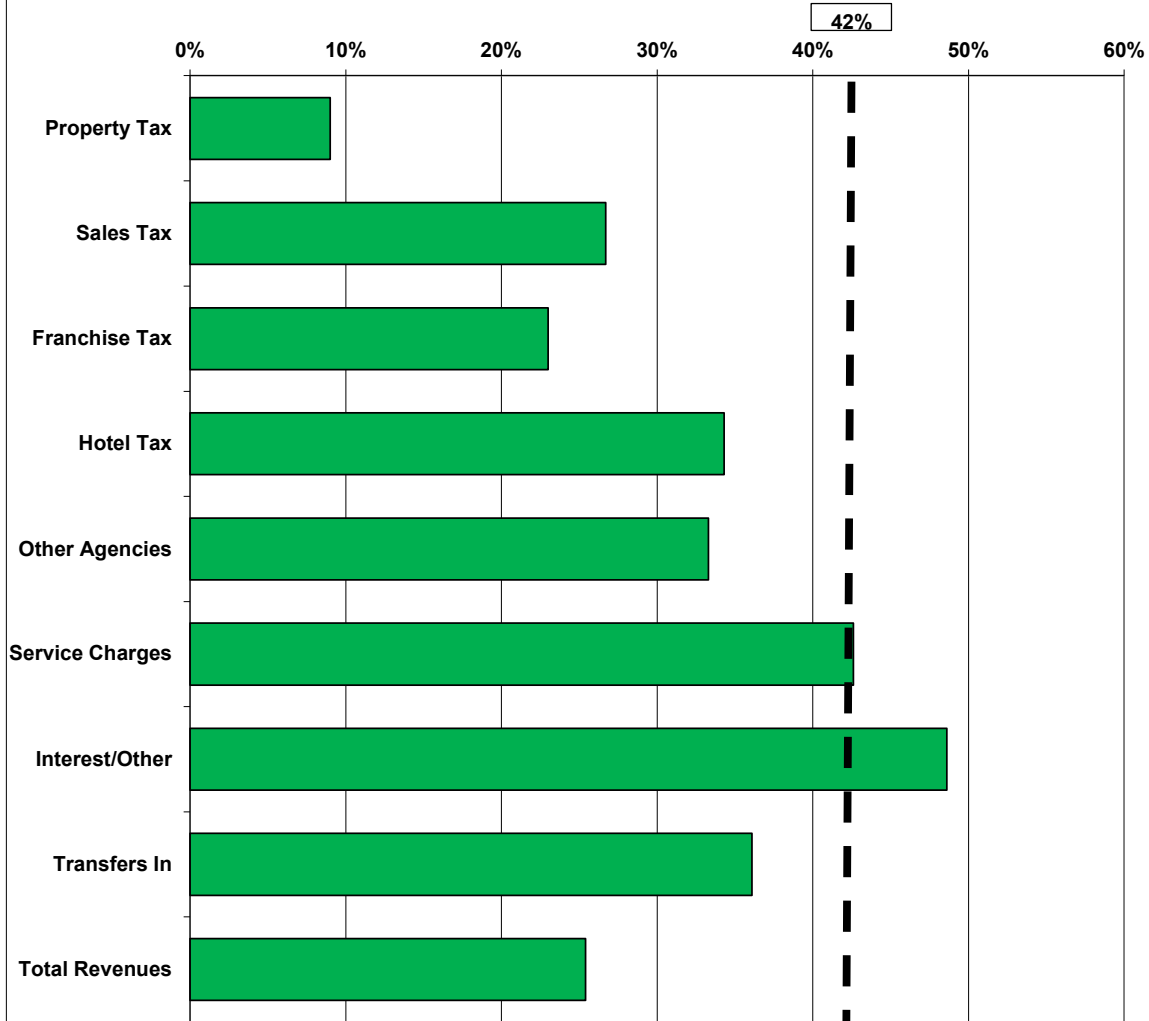
* Includes all Special Revenue Funds except Development Services Fund, Street Funds, and Housing Successor Agency.



Morgan Hill YTD General Fund Revenues

November 30, 2023 - 42% of Year Complete

Percent of Actual to Budget

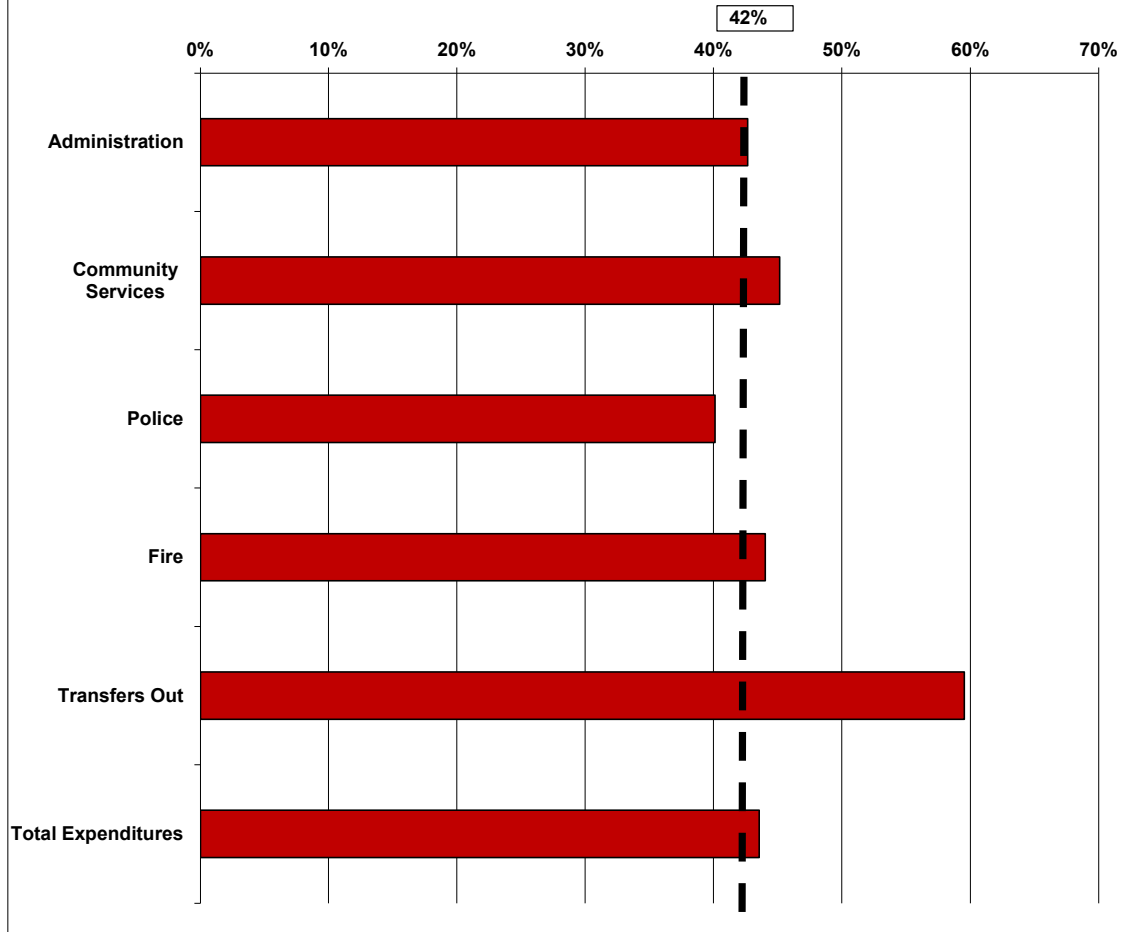


REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$ 18,472,000	\$ 1,661,403	9%	\$ 1,906,973	-13%
Sales Tax	12,673,967	3,385,660	27%	3,359,742	1%
Franchise Tax	2,983,800	687,037	23%	523,586	31%
Hotel Tax	2,800,000	960,062	34%	1,032,839	-7%
Other Agencies	1,011,233	336,938	33%	364,023	-7%
Service Charges	10,036,079	4,278,786	43%	3,787,504	13%
Interest/Other	2,143,687	1,041,510	49%	709,543	47%
Transfers In	3,342,540	1,208,173	36%	1,166,427	4%
TOTAL REVENUES	\$ 53,463,306	\$ 13,559,570	25%	\$ 12,850,636	6%



Morgan Hill YTD General Fund Expenditures November 30, 2023 - 42% of Year Complete

Percent of Actual to Budget



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 6,489,162	\$ 2,767,408	43%	\$ 2,849,126	-3%
Community Services	17,780,940	8,029,918	45%	7,490,100	7%
Police	23,056,204	9,249,131	40%	8,351,824	11%
Fire	9,139,905	4,023,577	44%	3,830,924	5%
Transfers Out	3,263,767	1,943,236	60%	1,976,381	-2%
TOTAL EXPENDITURES	\$ 59,729,978	\$ 26,013,269	44%	\$ 24,498,356	6%

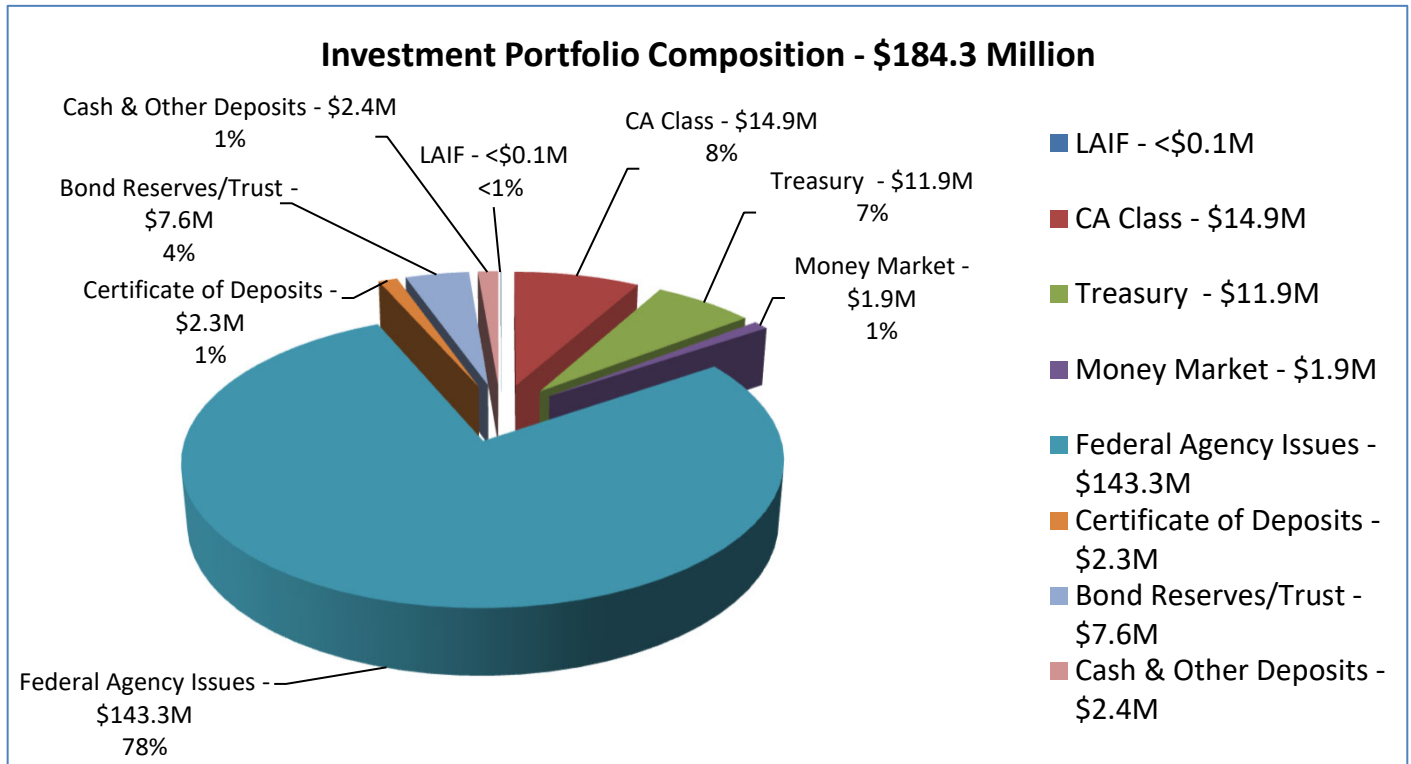


City of Morgan Hill
Recreation Report - Fiscal Year 2023-24
For the Month Ended November 30, 2023
42% of Year Complete

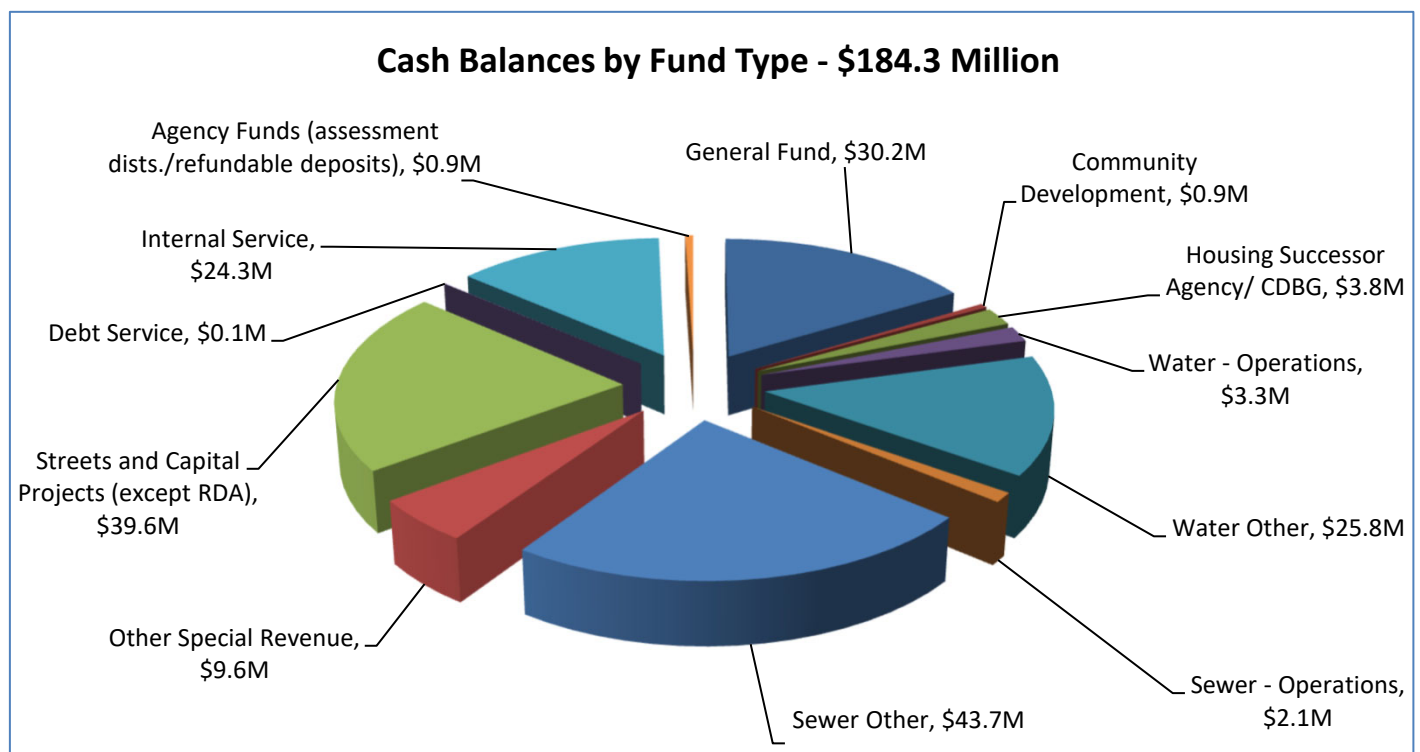
	<u>Budget</u>	<u>November 2023</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 5,656,265	\$ 443,298	\$ 2,541,795	
Facility Rentals	1,203,269	171,707	654,108	
Community Services	152,498	2,799	12,778	
Transfers in	75,000	6,250	31,250	
Total Revenues	<u>\$ 7,087,032</u>	<u>\$ 624,053</u>	<u>\$ 3,239,932</u>	46%
Less: Expenditures				
Membership & Program Services	\$ 7,268,962	\$ 418,093	\$ 2,659,464	
Facility Rentals	573,524	53,878	230,252	
Community Services	672,192	53,970	217,458	
Total Expenditures	<u>\$ 8,514,679</u>	<u>\$ 525,939</u>	<u>\$ 3,107,174</u>	36%
Net Impact without encumbrances	<u>\$ (1,427,647)</u>	<u>\$ 98,114</u>	<u>\$ 132,758</u>	
Encumbrances	-	-	1,434,711	
Net Impact with encumbrances	<u>\$ (1,427,647)</u>	<u>\$ 98,114</u>	<u>\$ (1,301,953)</u>	

City of Morgan Hill Monthly Investment Report - November 30, 2023

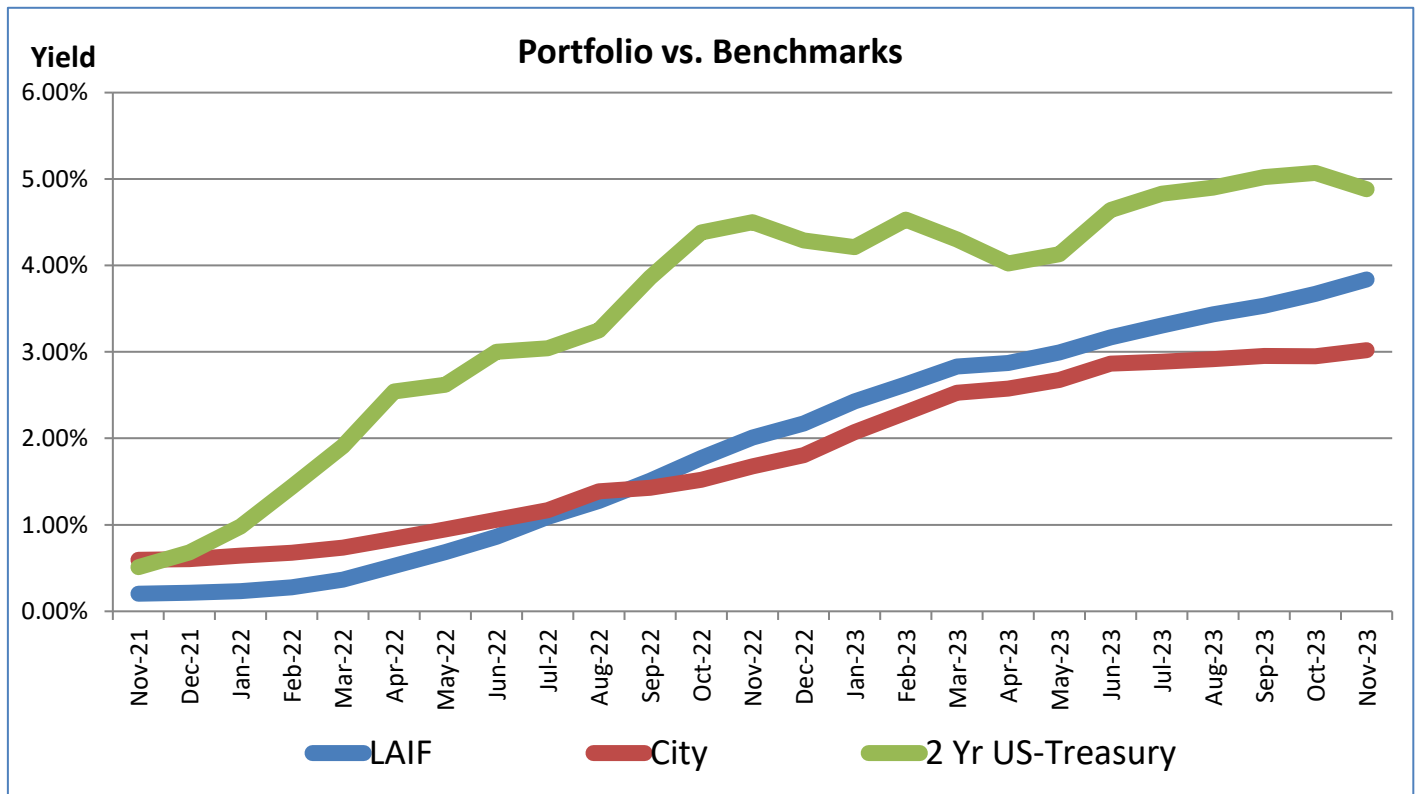
The following are the snapshots of City's investment portfolio as of November 30, 2023. The first chart shows the portfolio composition by investment type:



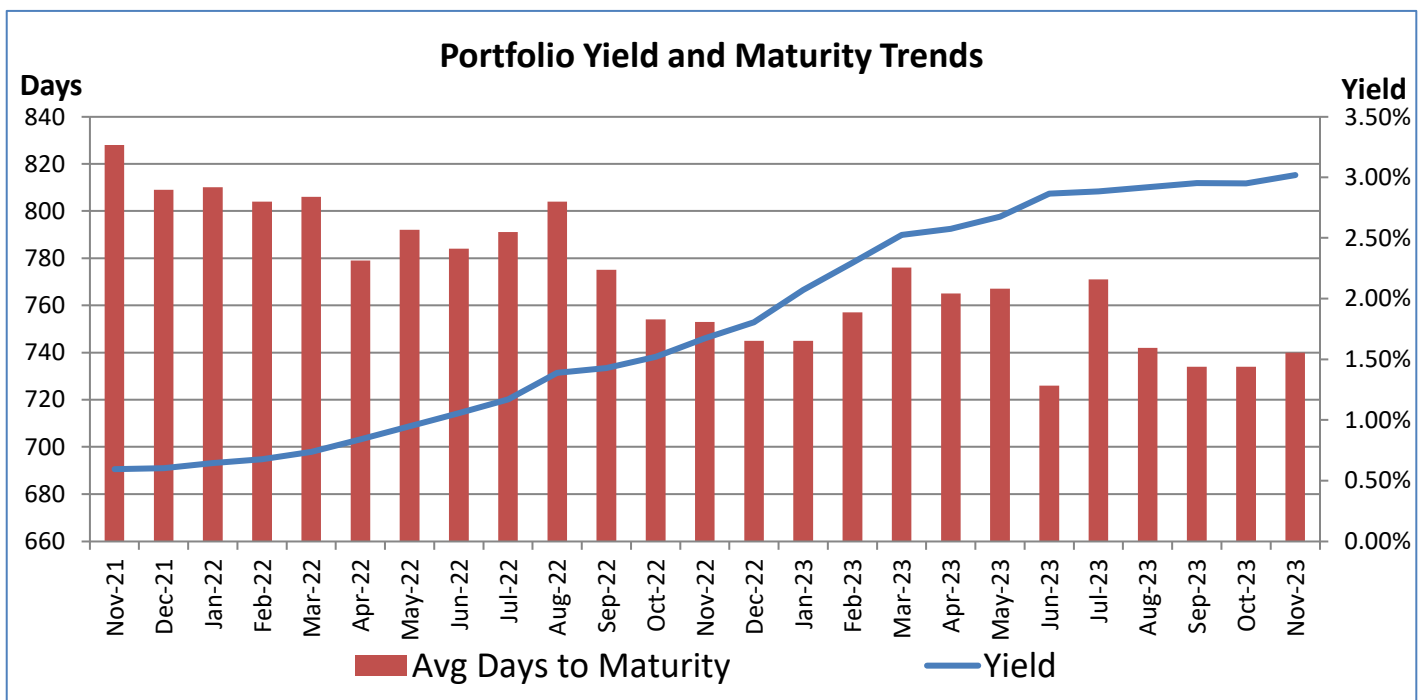
The chart below shows cash balances by fund type reconciled to City's financial system:



The following chart illustrates a yield comparison by month among the City's portfolio, LAIF and 2-Year US Treasury:



The chart below illustrates monthly average days to maturity of the City's portfolio along with the weighted average yield for the past two years:





City of Morgan Hill
Investment Portfolio Detail
As of November 30, 2023

Investment Type	CUSIP	Settlement Date	Cost Value	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F			\$ 58,174	\$ 58,174	0.03%	\$ 57,377	3.84%		
California C L A S S			14,943,595	14,943,595	8.11%	\$ 14,943,595	5.55%		
City Managed									
Treasury Note	91282CCZ2	10/8/2021	1,987,656	1,992,973	1.08%	1,812,120	1.00%	9/30/2026	9/30/2026
Treasury Note	91282CDR9	1/4/2022	1,999,141	1,999,963	1.09%	1,992,380	0.77%	12/31/2023	12/31/2023
Treasury Note	91282CDR9	1/19/2022	1,989,688	1,999,550	1.08%	1,992,380	1.02%	12/31/2023	12/31/2023
Treasury Note	91282CDV0	2/11/2022	1,977,969	1,998,100	1.08%	1,985,080	1.44%	1/31/2024	1/31/2024
Treasury Note	9128286R6	3/28/2022	1,996,320	1,999,268	1.08%	1,974,460	2.34%	4/30/2024	4/30/2024
Treasury Note	912828U24	6/13/2022	1,904,688	1,936,242	1.05%	1,864,920	3.16%	11/15/2026	11/15/2026
FFCB Bond	3133ELVX9	4/8/2020	2,000,000	2,000,000	1.09%	1,968,840	0.88%	4/8/2024	4/8/2024
FFCB Bond	3133ELC28	5/27/2020	2,000,000	2,000,000	1.09%	1,877,100	0.73%	5/27/2024	5/27/2025
FHLMC Bond	3134GVYN2	6/3/2020	2,000,000	2,000,000	1.09%	1,903,300	0.60%	12/3/2023	12/3/2024
FHLMC Bond	3134GWZG4	10/20/2020	2,000,000	2,000,000	1.09%	1,846,720	0.60%	4/20/2024	10/20/2025
FHLMC Bond	3134GW3X2	10/27/2020	2,000,000	2,000,000	1.09%	1,837,320	0.63%	4/27/2024	10/27/2025
FFCB Bond	3133EMFR8	11/3/2020	2,000,000	2,000,000	1.09%	1,844,940	0.54%	5/3/2024	11/3/2025
FNMA Bond	3135GA4P3	11/18/2020	2,000,000	2,000,000	1.09%	1,846,720	0.65%	5/18/2024	11/18/2025
FHLMC Bond	3134GXEI9	11/24/2020	2,000,000	2,000,000	1.09%	1,845,500	0.64%	5/24/2024	11/24/2025
FFCB Bond	3133EMHF2	11/24/2020	1,000,000	1,000,000	0.54%	922,000	0.60%	5/24/2024	11/24/2025
FHLMC Bond	3134GXCS1	11/25/2020	3,000,000	3,000,000	1.63%	2,767,170	0.63%	5/25/2024	11/25/2025
FHLMC Bond	3134GXFA7	11/30/2020	2,000,000	2,000,000	1.09%	1,845,560	0.65%	5/26/2024	11/26/2025
FFCB Bond	3133EMLC4	12/22/2020	2,000,000	2,000,000	1.09%	1,832,280	0.47%	12/22/2023	12/22/2025
FHLB Bond	3130AKQ74	1/22/2021	2,000,000	2,000,000	1.09%	1,833,280	0.63%	1/22/2024	1/22/2026
FNMA Bond	3135G06R9	1/28/2021	2,000,000	2,000,000	1.09%	1,829,120	0.55%	1/28/2024	1/28/2026
FHLB Bond	3130AKRN8	1/28/2021	2,000,000	2,000,000	1.09%	1,828,140	0.65%	1/28/2024	1/28/2026
FHLB Bond	3130ALCV4	2/24/2021	2,000,000	2,000,000	1.09%	1,826,520	0.75%	2/24/2024	2/24/2026
FHLB Bond	3130ALDB7	2/25/2021	2,000,000	2,000,000	1.09%	1,829,360	0.66%	2/25/2024	2/25/2026
FHLB Bond	3130AKZ25	2/26/2021	2,000,000	2,000,000	1.09%	1,822,440	0.65%	2/26/2024	2/26/2026
FHLB Bond	3130ALGS7	3/10/2021	2,000,000	2,000,000	1.09%	1,834,980	0.85%	3/10/2024	3/10/2026
FHLB Bond	3130ALEP5	3/16/2021	2,000,000	2,000,000	1.09%	1,827,540	0.70%	3/16/2024	3/16/2026
FHLB Bond	3130ALDN1	3/16/2021	2,000,000	2,000,000	1.09%	1,831,820	0.80%	3/16/2024	3/16/2026
FHLB Bond	3130AMNH1	6/9/2021	2,000,000	2,000,000	1.09%	1,821,060	1.08%	12/9/2023	6/9/2026
FHLB Bond	3130AMYJ5	6/30/2021	2,000,000	2,000,000	1.09%	1,824,960	1.00%	12/30/2023	6/30/2026
FHLB Bond	3130AMPY1	7/15/2021	3,000,000	3,000,000	1.63%	2,741,100	1.13%	1/15/2024	7/15/2026
FHLB Bond	3130AMYS5	7/15/2021	2,000,000	2,000,000	1.09%	1,872,420	0.85%	1/15/2024	7/15/2025
FHLB Bond	3130ANJCS	8/26/2021	2,000,000	2,000,000	1.09%	1,804,620	0.80%	2/26/2024	8/26/2026
FHLB Bond	3130ANLW8	8/26/2021	3,000,000	3,000,000	1.63%	2,722,110	1.00%	2/26/2024	8/26/2026
FHLB Bond	3130ANLZ1	8/26/2021	2,000,000	2,000,000	1.09%	1,809,700	0.90%	2/26/2024	8/26/2026
FHLB Bond	3130A8XY4	9/13/2021	2,103,340	2,057,532	1.12%	1,858,880	0.82%	3/11/2024	9/11/2026
FFCB Bond	3133EM4X7	9/28/2021	1,982,960	1,990,438	1.08%	1,803,820	0.98%	3/10/2024	9/10/2026
FHLB Bond	3130APCH6	9/29/2021	3,000,000	3,000,000	1.63%	2,723,970	1.13%	3/29/2024	9/29/2026
FHLB Bond	3130ANZE3	9/30/2021	2,000,000	2,000,000	1.09%	1,810,200	0.88%	3/30/2024	9/30/2026
FHLB Bond	3130AP6N0	9/30/2021	3,000,000	3,000,000	1.63%	2,717,730	1.05%	3/30/2024	9/30/2026
FHLB Bond	3130AP6M2	9/30/2021	3,000,000	3,000,000	1.63%	2,715,390	1.02%	3/30/2024	9/30/2026
FHLB Bond	3130APCG8	10/19/2021	2,000,000	2,000,000	1.09%	1,808,380	1.00%	4/19/2024	10/19/2026
FHLB Bond	3130APNX9	11/18/2021	2,000,000	2,000,000	1.09%	1,819,740	1.30%	5/18/2024	11/18/2026
FHLB Bond	3130AQFL2	12/29/2021	2,000,000	2,000,000	1.09%	1,992,920	0.75%	12/29/2023	12/29/2023
FHLB Bond	3130AQHU0	1/19/2022	2,000,000	2,000,000	1.09%	1,860,280	1.74%	1/19/2024	1/19/2027
FHLB Bond	3130AQKT9	1/25/2022	2,000,000	2,000,000	1.09%	1,902,820	1.51%	1/25/2024	7/25/2025
FHLB Bond	3130AR4F5	3/10/2022	2,000,000	2,000,000	1.09%	1,938,100	3.48%	3/10/2024	3/10/2027
FHLMC Bond	3134GXUZ5	6/15/2022	2,000,000	2,000,000	1.09%	1,950,520	3.28%	12/15/2023	12/15/2025
FHLB Bond	3130ASPE3	7/28/2022	2,000,000	2,000,000	1.09%	1,949,480	4.30%	1/28/2024	7/28/2027
FNMA Bond	3135GACZ2	11/25/2022	2,000,000	2,000,000	1.09%	1,994,520	5.40%	5/25/2024	11/25/2024
FHLMC Bond	3134GY4B5	11/28/2022	2,000,000	2,000,000	1.09%	1,992,320	5.00%	5/15/2024	8/26/2024
FHLB Bond	3130AUTF6	1/27/2023	2,000,000	2,000,000	1.09%	1,993,700	5.43%	1/27/2024	1/27/2025
FHLB Bond	3130AUP32	1/27/2023	2,250,000	2,250,000	1.22%	2,234,160	5.98%	1/27/2024	1/27/2028
FHLMCMTN Bond	3134GYGB2	1/30/2023	2,000,000	2,000,000	1.09%	1,975,600	5.20%	1/26/2024	1/26/2028
FHLMCMTN Bond	3134GYG22	2/16/2023	3,000,000	3,000,000	1.63%	2,972,490	5.13%	2/16/2024	11/16/2026
FHLB Bond	3130AUTZ7	2/24/2023	2,000,000	2,000,000	1.09%	1,988,800	6.44%	2/24/2024	2/24/2028

Investment Type	CUSIP	Settlement Date	Cost Value	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
FHLB Bond	3130AUZH0	3/6/2023	2,000,000	2,000,000	1.09%	1,997,020	6.33%	12/6/2023	3/6/2026
FHLB Bond	3130AUZZ0	3/13/2023	2,000,000	2,000,000	1.09%	1,994,520	6.23%	12/13/2023	3/13/2026
FHLB Bond	3130AV2Z4	3/15/2023	2,000,000	2,000,000	1.09%	1,999,420	5.35%	3/15/2024	3/15/2024
FHLB Bond	3130AV3P5	3/20/2023	2,000,000	2,000,000	1.09%	1,996,260	5.50%	3/20/2024	9/20/2024
FHLB Bond	3130AVK92	4/5/2023	3,000,000	3,000,000	1.63%	2,995,200	5.00%	4/5/2024	4/5/2024
FHLB Bond	3130AVL83	4/6/2023	2,000,000	2,000,000	1.09%	1,993,700	5.20%	1/7/2024	10/7/2024
FHLB Bond	3130AVQ96	4/17/2023	2,000,000	2,000,000	1.09%	1,996,680	5.15%	1/17/2024	4/17/2024
FHLB Bond	3130AVNT5	4/28/2023	1,000,000	1,000,000	0.54%	998,010	5.50%	12/25/2023	4/25/2025
FHLMCMTN Bond	3134GYQZ8	5/11/2023	3,000,000	3,000,000	1.63%	2,990,670	6.09%	2/11/2024	5/11/2026
FHLMCMTN Bond	3134GYSV5	5/25/2023	2,000,917	2,000,000	1.09%	1,998,780	5.50%	12/22/2023	06/18/2024
FHLB Bond	3130AWF62	6/13/2023	2,000,000	2,000,000	1.09%	1,994,260	5.50%	12/13/2023	12/13/2024
FHLB Bond	3130AWEB2	6/26/2023	2,000,000	2,000,000	1.09%	1,995,080	5.55%	3/26/2024	12/26/2024
FHLB Bond	3130AWHD5	6/29/2023	2,000,000	2,000,000	1.09%	1,993,580	5.90%	12/29/2023	6/29/2027
FHLMCMTN Bond	3134GYUY6	7/12/2023	2,000,000	2,000,000	1.09%	1,990,100	6.29%	1/12/2024	7/12/2028
FHLMCMTN Bond	3134GYWC2	7/26/2023	2,000,000	2,000,000	1.09%	1,991,280	6.00%	1/26/2024	7/26/2028
FHLMCMTN Bond	3134GYW57	7/27/2023	2,000,000	2,000,000	1.09%	1,995,980	6.00%	12/27/2023	7/27/2026
FHLMCMTN Bond	3134H1CJ0	9/28/2023	2,000,000	2,000,000	1.09%	1,994,620	6.25%	12/28/2023	9/28/2028
FHLMCMTN Bond	3134H1HC0	10/30/2023	2,000,000	2,000,000	1.09%	1,996,200	6.38%	1/30/2024	10/30/2028
FHLB Bond	3130AXS82	11/30/2023	2,000,000	2,000,000	1.09%	1,993,480	6.10%	2/27/2024	11/27/2028
CD - Ally Bank	02007GM83	3/30/2023	250,000	250,000	0.14%	249,665	5.15%	3/28/2024	3/28/2024
CD - Western Alliance Bank	95763PLA7	3/30/2023	250,000	250,000	0.14%	249,980	5.30%	1/2/2024	1/2/2024
CD - Zions Bancorp	98970LC43	3/31/2023	250,000	250,000	0.14%	249,810	5.40%	9/27/2024	9/27/2024
CD - Pacific Western Bank	69506YYD5	4/5/2023	250,000	250,000	0.14%	250,130	5.65%	4/5/2028	4/5/2028
CD - US Bank	90354KBR8	5/17/2023	250,000	250,000	0.14%	249,493	5.10%	5/16/2024	5/16/2024
CD - Morgan Stanley Bank	61690DGT9	11/8/2023	250,000	250,000	0.14%	247,003	5.05%	11/8/2028	11/8/2028
CD - Morgan Stanley Private Bank	61768EE82	11/8/2023	250,000	250,000	0.14%	247,003	5.05%	11/8/2028	11/8/2028
CD - American Express	02589AF98	11/8/2023	250,000	250,000	0.14%	246,468	5.00%	11/8/2028	11/8/2028
CD - State Bank India	8562834U7	11/24/2023	250,000	250,000	0.14%	246,460	5.00%	11/24/2028	11/24/2028
Sub Total/Average			\$ 157,442,677	\$ 157,474,067	85.43%	\$ 150,162,630	2.75%		
US Bank Money Market			\$ 838,671	\$ 838,671	0.45%	\$ 838,671	5.25%		
WFB Money Market			\$ 1,016,741	\$ 1,016,741	0.55%	\$ 1,016,741	5.25%		
Total City Managed/Average			\$ 174,299,858	\$ 174,331,247	85.92%	\$ 167,019,014	3.02%		
Bond Reserve Accounts - Held By Trustees			\$ 374,165	\$ 374,165	0.20%	\$ 374,165			
Cash/Deposits			\$ 2,434,346	\$ 2,434,346	1.32%	\$ 2,434,346			
PARS and CALPERS CERBT Trust			\$ 7,187,404	\$ 7,187,404	3.90%	\$ 7,821,010			
GRAND TOTAL/AVERAGE			<u>\$ 184,295,773</u>	<u>\$ 184,327,162</u>	<u>100%</u>	<u>\$ 177,648,535</u>			



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF NOVEMBER 30, 2023
FOR THE FISCAL YEAR OF 2023-24

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	3.84%	\$ 58,174	0.03%	\$ 57,377
California CLASS	All Funds Pooled	5.55%	14,943,595	8.11%	14,943,595
Federal Issues	All Funds Pooled	2.76%	143,297,970	77.74%	137,292,213
Treasury	All Funds Pooled	1.61%	11,926,096	6.47%	11,621,340
Certificate of Deposits	All Funds Pooled	5.19%	2,250,000	1.22%	1,249,078
Dreyfus Treas Cash Mgmt & WFB MMA	All Funds Pooled	5.25%	1,855,412	1.01%	1,855,412
	SUBTOTAL		\$ 174,331,247	94.58%	\$ 167,019,014
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility	Debt Service	4.47%	537	0.00%	537
Blackrock Liq Fund	Debt Service	4.47%	684	0.00%	684
Zions Bank - MH Police Facility Lease Revenue Bonds	Debt Service	4.47%	684	0.00%	684
Blackrock Liq Fund	Debt Service	4.47%	684	0.00%	684
BNY - RDA Bonds	Agency Fund	4.96%	104,181	0.06%	104,181
Dreyfus Cash Mgmt 521	Agency Fund	4.96%	104,181	0.06%	104,181
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015	Agency Fund	4.47%	268,764	0.15%	268,764
Blackrock Liquidity Temp Fund-2015	Agency Fund	4.47%	268,764	0.15%	268,764
	SUBTOTAL		374,165	0.20%	374,165
Other Cash/Deposits					
General Checking	All Funds		2,388,496	1.30%	2,388,496
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		15,850	0.01%	15,850
CALPERS CERBT - OPEB Trust			4,887,404	2.65%	5,290,274
PARS - PENSION Trust			2,300,000	1.25%	2,530,736
	SUBTOTAL		9,621,750	5.22%	10,255,355
Total Cash and Investments			\$ 184,327,162	100.00%	\$ 177,648,535

CASH ACTIVITY SUMMARY
FY 2023-24

Fund Type	07/01/2023 Balance	Change in Cash Balance	11/30/2023 Balance
General Fund	\$ 32,352,753	\$ (2,145,908)	\$ 30,206,845
Community Development	1,831,559	(897,405)	934,154
Housing Successor Agency/ CDBG	4,202,736	(395,667)	3,807,069
Water - Operations	2,585,170	770,625	3,355,795
Water Other	23,673,105	2,137,644	25,810,749
Sewer - Operations	907,428	1,182,965	2,090,393
Sewer Other	44,135,046	(462,561)	43,672,485
Other Special Revenue	8,827,861	748,601	9,576,462
Streets and Capital Projects (except RDA)	40,486,238	(903,473)	39,582,765
Debt Service	342,534	(274,232)	68,302
Internal Service	25,139,787	(858,204)	24,281,583
Agency Funds (assessment dists./refundable deposits)	8,515,969	(7,575,410)	940,558
Total	\$ 193,000,187	\$ (8,673,025)	\$ 184,327,162

Note: See Investment Portfolio Detail for maturities of "Investments." Market values are obtained from the City's investment brokers' monthly reports.

I certify that information on the investment report has been reconciled to the general ledger and bank statements and that there are sufficient funds to meet the expenditure requirements of the City for the next six months. The portfolio is in compliance with the City of Morgan Hill Investment Policy and all State laws and regulations.

Prepared by: 
 Gina Nazareno, Senior Accountant

Approved by:

Reviewed by: 
 Dat Nguyen, Finance Director


 Caitlin Jachimowicz, Treasurer



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2023-24
For the Month Ended November 30, 2023
42% of Year Complete

	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
TAXES							
Property Tax - Secured/Unsecured	\$ 15,245,000	15,745,000	\$ 1,604,116	10%	\$ 1,813,055	\$ (208,939)	-12%
Property Tax - RPTTF Residual Distribution	2,527,000	2,527,000	-	n/a	-	-	n/a
Property Tax - Supplemental Roll	200,000	200,000	57,287	29%	93,917	(36,630)	-39%
Sales Tax	12,218,967	12,218,967	3,280,401	27%	3,243,303	37,098	1%
Public Safety Sales Tax	455,000	455,000	105,259	23%	116,439	(11,180)	-10%
Transient Occupancy Taxes	2,800,000	2,800,000	960,062	34%	1,032,839	(72,777)	-7%
Franchise (Refuse ,Cable ,PG&E)	2,873,800	2,983,800	687,037	23%	523,586	163,452	31%
Property Transfer Tax	510,000	510,000	167,309	33%	151,649	15,660	10%
TOTAL TAXES	36,829,767	37,439,767	6,861,472	18%	6,974,788	(113,316)	-2%
LICENSES/PERMITS							
Business License	170,000	170,000	157,658	93%	126,775	30,883	24%
Other Permits	53,975	53,975	21,554	40%	21,127	427	2%
TOTAL LICENSES/PERMITS	223,975	223,975	179,212	80%	147,902	31,310	21%
FINES AND PENALTIES							
Parking Enforcement	3,019	3,019	4,432	147%	2,429	2,003	82%
Bails & Fines	47,875	47,875	23,102	48%	12,297	10,805	88%
Administrative Citations	20,000	20,000	15,605	78%	5,885	9,720	165%
TOTAL FINES AND PENALTIES	70,894	70,894	43,138	61%	20,610	22,528	109%
OTHER AGENCIES							
Motor Vehicle in-Lieu	40,800	40,800	-	n/a	-	-	n/a
Other Revenue - Other Agencies	971,089	1,011,233	336,938	33%	364,023	(27,085)	-7%
TOTAL OTHER AGENCIES	1,011,889	1,052,033	336,938	32%	364,023	(27,085)	-7%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	33,248	33,248	13,673	41%	12,503	1,170	9%
Business License Application Review	53,000	83,000	63,909	77%	18,923	44,987	238%
Membership Services & Rec Programs	5,656,265	5,656,265	2,541,795	45%	2,195,938	345,858	16%
Facility Rentals	1,203,269	1,203,269	654,108	54%	401,287	252,821	63%
Community Services	152,498	152,498	12,778	8%	14,131	(1,352)	-10%
General Administration Overhead	1,822,869	1,822,869	735,946	40%	739,753	(3,808)	-1%
Other Charges Current Services	1,084,930	1,084,930	256,576	24%	404,969	(148,393)	-37%
TOTAL CURRENT SERVICES	10,006,079	10,036,079	4,278,786	43%	3,787,504	491,282	13%
OTHER REVENUE							
Use of money/property	583,850	683,850	540,105	79%	282,019	258,086	92%
Other Revenues	234,168	614,168	111,746	18%	107,363	4,383	4%
TOTAL OTHER REVENUE	818,018	1,298,018	651,851	50%	389,382	262,469	67%
TRANSFERS IN							
One Time Transfer	180,000	180,000	75,000	42%	75,000	-	0%
Public Safety Facilities Fund	50,000	50,000	20,833	42%	20,833	-	0%
Supplemental Law Enforcement Fund	100,000	100,000	-	n/a	-	-	n/a
Countywide Solid Waste	373,000	468,680	155,417	33%	147,917	7,500	5%
Streets	949,760	949,760	292,715	31%	274,300	18,415	7%
Park Maintenance	650,000	650,000	270,833	42%	270,835	(2)	0%
Sewer Operations	394,000	394,000	164,167	42%	156,250	7,917	5%
Water Operations	394,000	394,000	164,167	42%	156,250	7,917	5%
Open Space	81,100	81,100	33,792	42%	33,792	-	n/a
Park Development	75,000	75,000	31,250	42%	31,250	-	n/a
TOTAL TRANSFERS IN	3,246,860	3,342,540	1,208,173	36%	1,166,427	41,747	4%
TOTAL GENERAL FUND	52,207,482	53,463,306	13,559,570	25%	12,850,636	708,934	6%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	954,952	954,952	290,472	30%	274,300	16,172	6%
Interest / Other Revenue/Other Charges	78	78	2,243	2876%	1,065	1,178	111%
202 STREET MAINTENANCE	955,030	955,030	292,715	31%	275,366	17,350	6%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2023-24
For the Month Ended November 30, 2023
42% of Year Complete

	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
SPECIAL REVENUE FUNDS							
205 SUPPLEMENTAL LAW ENFORCEMENT FUND							
Interest Income	1,905	1,905	3,978	209%	1,201	2,777	231%
Police Grant/SLEF/JAG	100,000	100,000	102,826	103%	81,938	20,888	25%
205 SUPPLEMENTAL LAW ENFORCEMENT FUND	101,905	101,905	106,803	105%	83,139	23,665	28%
206 DEVELOPMENT SERVICES							
Building Fees	3,455,600	3,495,600	1,302,963	37%	1,887,785	(584,821)	-31%
Planning Fees	1,645,444	1,645,444	267,816	16%	363,673	(95,857)	-26%
Engineering Fees	1,190,852	1,190,852	170,406	14%	833,678	(663,272)	-80%
Other Revenue/Current Charges	-	-	105,847	n/a	185,817	(79,970)	-43%
206 DEVELOPMENT SERVICES	6,291,896	6,331,896	1,847,033	29%	3,270,953	(1,423,920)	-44%
207 LONG RANGE PLANNING	1,013,392	1,013,392	312,013	31%	498,266	(186,254)	-37%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	325	325	731	225%	290	441	152%
215 and 216 HCD BLOCK GRANT	325	325	731	225%	290	441	152%
225 ASSET SEIZURE	1,298	1,298	1,120	86%	463	657	142%
229 LIGHTING AND LANDSCAPE	200,028	200,028	2,262	1%	714	1,548	217%
230 COMMUNITY FACILITIES DISTRICT	37,914	37,914	1,681	4%	463	1,219	263%
232 ENVIRONMENTAL PROGRAMS	590,223	590,223	237,957	40%	224,591	13,366	6%
234 MOBILE HOME PARK RENT STAB.	584	584	2,371	406%	3,839	(1,468)	-38%
236 HOUSING MITIGATION	4,456,924	4,456,924	921,707	21%	318,595	603,112	189%
240 EMPLOYEE ASSISTANCE	20,889	20,889	3,365	16%	3,131	234	7%
246 COUNTYWIDE SOLID WASTE	1,645,138	1,944,000	526,793	27%	803,802	(277,009)	-34%
247 ENVIRONMENT REMEDIATION	1,358	1,358	1,539	113%	613	926	151%
255 HOUSING SUCCESSOR AGENCY	239,202	239,202	106,511	45%	356,975	(250,465)	-70%
TOTAL SPECIAL REVENUE FUNDS	15,556,107	15,894,969	4,364,601	27%	5,841,198	(1,476,597)	-25%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	1,673,505	1,673,505	228,604	14%	1,618,222	(1,389,618)	-86%
302 PARK MAINTENANCE	363,038	363,038	317,030	87%	20,288	296,742	1463%
303 LOCAL DRAINAGE	447,897	447,897	243,785	54%	740,924	(497,138)	-67%
304 LOCAL DRAINAGE/NON AB1600	30,901	30,901	15,377	50%	101,683	(86,306)	-85%
306 AGRICULTURE & OPEN SPACE PRESERVATION	4,036	4,036	64,510	1598%	44,459	20,051	45%
308 STREET CIP	4,486,656	4,486,656	1,568,536	35%	1,191,339	377,197	32%
309 TRAFFIC IMPACT	1,276,925	1,276,925	333,574	26%	108,111	225,462	209%
315 PUBLIC SAFETY FACILITIES IMPACT	801,703	801,703	204,467	26%	57,272	147,195	257%
346 PUBLIC FACILITIES NON-AB1600	822,102	822,102	166,842	20%	373,425	(206,582)	-55%
347 PUBLIC FACILITIES IMPACT	176,602	176,602	59,021	33%	16,084	42,937	267%
348 LIBRARY	657,457	657,457	196,145	30%	50,466	145,679	289%
350 UNDERGROUNDING	22,520	22,520	18,772	83%	7,476	11,297	151%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	492,717	492,717	30,712	6%	208,567	(177,855)	-85%
360 COMMUNITY/REC IMPACT FUND	1,142,697	1,142,697	346,425	30%	87,213	259,212	297%
375 QUIMBY FEE	610,860	610,860	796,882	130%	1,541,243	(744,361)	-48%
TOTAL CAPITAL PROJECTS FUNDS	13,009,616	13,009,616	4,590,682	35%	6,166,770	(1,576,088)	-26%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	290,850	290,850	123,610	42%	122,743	867	1%
441 POLICE FACILITY BOND	387,792	387,792	162,860	42%	161,848	1,012	1%
TOTAL DEBT SERVICE FUNDS	678,642	678,642	286,471	42%	284,591	1,879	1%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2023-24
For the Month Ended November 30, 2023
42% of Year Complete

	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 WASTEWATER OPERATION							
Sewer Service Fees	15,200,000	15,200,000	5,009,134	33%	5,016,337	(7,203)	0%
Interest Income/Transfers	39,704	39,704	21,840	55%	14,256	7,584	53%
Other Revenue/Current Charges	329,403	329,403	106,092	32%	198,629	(92,538)	-47%
640 WASTEWATER OPERATION	15,569,107	15,569,107	5,137,066	33%	5,229,223	(92,157)	-2%
641 WASTEWATER EXPANSION							
Interest Income	40,173	40,173	245,255	610%	101,353	143,903	142%
Development Impact Fee	4,388,986	4,388,986	1,315,555	30%	398,583	916,972	230%
Transfer From-643 (Sewer Replacement)	-	-	-	n/a	6,429,447	(6,429,447)	-100%
641 WASTEWATER EXPANSION	4,429,159	4,429,159	1,560,810	35%	6,929,383	(5,368,573)	-77%
642 WASTEWATER RATE STABILIZATION	192,000	192,000	112,684	59%	33,479	79,205	237%
643 WASTEWATER CAPITAL PROJECT	5,204,512	5,204,512	2,310,673	44%	2,796,475	(485,802)	-17%
TOTAL SEWER FUNDS	25,394,778	25,394,778	9,121,233	36%	14,988,560	(5,867,327)	-39%
650 WATER OPERATION							
Water Sales	18,500,000	18,500,000	6,732,483	36%	6,325,962	406,520	6%
Meter Install & Service	50,000	50,000	46,949	94%	62,982	(16,033)	-25%
Transfers-In / Interest Income	606,318	606,318	280,667	46%	247,116	33,551	14%
Other Revenue/Current Charges	630,464	630,464	262,047	42%	369,210	(107,163)	-29%
650 WATER OPERATION	19,786,782	19,786,782	7,322,146	37%	7,005,270	316,875	5%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	28,855	28,855	34,313	119%	13,179	21,134	160%
Development Impact Fee	1,720,216	1,720,216	327,481	19%	89,216	238,265	267%
651 WATER EXPANSION	1,749,071	1,749,071	361,794	21%	102,395	259,399	253%
652 WATER RATE STABILIZATION	-	-	36,753	n/a	14,582	22,171	152%
653 WATER CAPITAL PROJECT	6,948,348	6,948,348	3,045,948	44%	2,156,928	889,020	41%
TOTAL WATER FUNDS	28,484,201	28,484,201	10,766,641	38%	9,279,176	1,487,465	16%
TOTAL ENTERPRISE FUNDS	53,878,979	53,878,979	19,887,874	37%	24,267,735	(4,379,862)	-18%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	2,493,922	2,493,922	1,045,238	42%	933,875	111,363	12%
740 BUILDING MAINTENANCE	1,675,215	1,675,215	698,790	42%	689,894	8,896	1%
741 BUILDING REPLACEMENT	859,973	859,973	394,939	46%	354,663	40,276	11%
745 CIP ADMINISTRATION	2,059,092	2,059,092	388,245	19%	536,618	(148,373)	-28%
760 UNEMPLOYMENT INSURANCE	2,940	2,940	3,160	107%	1,354	1,806	133%
770 WORKERS COMPENSATION	997,442	997,442	366,226	37%	337,970	28,257	8%
790 EQUIPMENT REPLACEMENT	1,725,990	1,725,990	1,109,888	64%	468,356	641,532	137%
791 EMPLOYEE BENEFITS	849,796	849,796	356,219	42%	337,673	18,546	5%
795 GENERAL LIABILITY INSURANCE	2,103,483	2,103,483	878,436	42%	826,520	51,916	6%
TOTAL INTERNAL SERVICE FUNDS	12,767,853	12,767,853	5,241,141	41%	4,486,923	754,218	17%
TOTAL FOR ALL FUNDS	\$ 148,098,679	\$ 149,693,365	\$ 47,930,338	32%	\$ 53,897,854	\$ (5,967,516)	-11%



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2023-24
For the Month Ended November 30, 2023
42% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
010 GENERAL FUND								
I. ADMINISTRATION								
	CITY COUNCIL	\$ 44,147	\$ 435,652	\$ 161,555	\$ 1,000	\$ 162,555	37%	\$ 186,367
	CITY ATTORNEY	76,755	1,081,241	339,554	113,474	453,028	42%	310,703
	CITY MANAGER	55,653	886,041	265,034	34,890	299,924	34%	252,733
	HUMAN RESOURCES	64,301	898,203	325,583	-	325,583	36%	333,618
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	34,062	628,281	208,284	-	208,284	33%	219,775
	Elections	2,370	37,728	11,752	-	11,752	31%	5,819
	COUNCIL SVCS & RECORDS MGMT	36,432	666,009	220,035	-	220,035	33%	225,595
	FINANCE	136,709	2,522,016	769,141	537,142	1,306,282	52%	695,175
	TOTAL ADMINISTRATION	413,996	6,489,162	2,080,902	686,506	2,767,408	43%	2,004,191
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	418,093	7,268,962	2,659,464	1,342,605	4,002,069	55%	2,391,575
	Recreation Facility Rentals	53,878	573,524	230,252	32,191	262,442	46%	198,964
	Innovative Transit	57,099	850,612	228,980	563,928	792,908	93%	141,274
	Community Services	53,970	672,192	217,458	59,916	277,374	41%	212,083
	Park Maintenance	89,579	1,567,049	429,355	65,003	494,359	32%	494,341
	Environmental Services	23,643	472,354	132,578	4,446	137,024	29%	88,410
	Countywide Solid Waste Program	31,654	907,406	151,902	-	151,902	17%	137,902
	Street Maintenance	214,834	3,025,578	892,794	196,992	1,089,786	36%	844,914
	Downtown Maintenance	23,190	345,237	101,672	25,073	126,745	37%	73,016
	Cable Television	7,845	74,940	36,723	-	36,723	49%	7,373
	COMMUNITY SERVICES	973,783	15,757,854	5,081,178	2,290,154	7,371,332	47%	4,589,851
	CODE COMPLIANCE	18,259	340,153	76,979	-	76,979	23%	68,590
	INFRASTRUCTURE PLANNING & CONGESTION MGMT	30,149	415,141	129,435	-	129,435	31%	122,098
	ECONOMIC DEVELOPMENT PROGRAMS	74,848	1,267,792	405,228	46,944	452,172	36%	338,574
	TOTAL COMMUNITY SERVICES	1,097,039	17,780,940	5,692,820	2,337,097	8,029,918	45%	5,119,114
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	194,361	1,735,700	657,955	41,628	699,583	40%	653,670
	Field Operations	936,754	11,210,613	4,442,905	36,824	4,479,729	40%	4,003,267
	Support Services	214,289	3,586,324	1,133,292	583,800	1,717,092	48%	1,141,968
	Emergency Services/Haz Mat	17,441	222,865	83,797	-	83,797	38%	81,633
	Special Operations	279,476	4,098,765	1,477,701	-	1,477,701	36%	1,607,170
	Dispatch Services	181,332	2,201,937	791,230	-	791,230	36%	791,797
	POLICE	1,823,653	23,056,204	8,586,879	662,252	9,249,131	40%	8,279,505
	FIRE	682,577	9,139,905	3,725,275	298,302	4,023,577	44%	3,461,400
	TOTAL PUBLIC SAFETY	2,506,230	32,196,109	12,312,154	960,554	13,272,708	41%	11,740,906
IV. TRANSFERS								
	Other	108,647	3,263,767	1,943,236	-	1,943,236	60%	1,976,381
	TOTAL TRANSFERS	108,647	3,263,767	1,943,236	-	1,943,236	60%	1,976,381
	TOTAL GENERAL FUND	4,125,913	59,729,978	22,029,112	3,984,157	26,013,269	44%	20,840,591



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2023-24
For the Month Ended November 30, 2023
42% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
SPECIAL REVENUE FUNDS								
202	STREET MAINTENANCE	433	954,952	294,878	-	294,878	31%	276,400
205	PUBLIC SAFETY/SUPP.LAW	107	101,289	537	-	537	1%	522
206	DEVELOPMENT SERVICES FUND							
	Planning	128,141	1,847,544	651,100	302	651,402	35%	616,612
	Building	168,640	2,563,441	920,129	104,658	1,024,786	40%	837,914
	Engineering	127,454	1,974,680	650,537	127,998	778,535	39%	635,798
206	DEVELOPMENT SERVICES FUND	424,235	6,385,665	2,221,766	232,957	2,454,723	38%	2,090,325
207	LONG RANGE PLANNING	60,116	1,581,133	330,087	18,178	348,265	22%	332,406
215/216	CDBG	7	83	35	-	35	42%	34
225	ASSET SEIZURE	65	782	326	-	326	42%	316
229	LIGHTING AND LANDSCAPE	13,481	234,554	56,149	5,788	61,936	26%	72,243
230	COMMUNITY FACILITIES DISTRICT	5,003	41,249	15,477	-	15,477	38%	13,300
232	ENVIRONMENT PROGRAMS	33,500	561,335	162,044	18,999	181,042	32%	179,484
234	MOBILE HOME PARK	76	907	378	-	378	42%	367
236	HOUSING MITIGATION	60,429	1,541,126	315,317	185,806	501,122	33%	318,975
240	EMPLOYEE ASSISTANCE	79	20,946	2,394	-	2,394	11%	4,314
246	COUNTYWIDE SOLID WASTE PROGRAM	31,083	2,078,493	293,502	1,022,161	1,315,663	63%	508,404
255	HOUSING SUCCESSOR AGENCY	97,724	1,172,110	522,671	275,000	797,671	68%	494,927
TOTAL SPECIAL REVENUE FUNDS		726,338	14,674,624	4,215,560	1,758,889	5,974,449	41%	4,310,008
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	31,655	2,285,298	381,516	114,002	495,518	22%	636,710
302	PARK MAINTENANCE	205,043	660,850	421,998	284,611	706,609	107%	272,214
303	LOCAL DRAINAGE	31,749	7,119,361	255,187	3,796,244	4,051,431	57%	736,138
304	LOCAL DRAIN. NON-AB1600	131,558	410,006	151,868	21,516	173,384	42%	18,683
306	AGRICULTURE & OPEN SPACE PRESERVATIK	8,133	247,600	40,667	-	40,667	16%	52,439
308	STREET CIP	1,903,508	5,499,004	3,545,855	962,097	4,507,952	82%	5,639,434
309	TRAFFIC IMPACT	17,037	5,827,301	205,509	3,746,217	3,951,726	68%	1,977,274
315	PUBLIC SAFETY FACILITIES IMPACT	540,117	10,717,603	833,165	8,758,030	9,591,195	89%	283,836
346	PUBLIC FAC.NON AB1600	382	1,321,382	51,207	13,711	64,918	5%	22,502
347	PUBLIC FACILITIES IMPACT	7,440	1,529,278	77,199	50,000	127,199	8%	12,147
348	LIBRARY IMPACT	18,529	222,349	92,645	-	92,645	42%	92,882
350	UNDERGROUNDING	98	1,194,738	490	-	490	0%	476
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	1,711	916,562	18,660	3,428	22,088	2%	8,487
360	COMM/REC CENTER IMPACT	20,125	2,756,259	112,370	557,016	669,386	24%	576,703
375	QUIMBY FEE	560	1,403,605	15,744	-	15,744	1%	72,025
TOTAL CAPITAL PROJECTS FUNDS		2,917,645	42,111,196	6,204,080	18,306,872	24,510,952	58%	10,401,948
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	236,868	290,852	237,948	-	237,948	82%	234,811
441	POLICE FACILITY BOND DEBT	321,379	387,792	322,809	-	322,809	83%	316,229
TOTAL DEBT SERVICE FUNDS		558,246	678,644	560,757	-	560,757	83%	551,040



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2023-24
For the Month Ended November 30, 2023
42% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
ENTERPRISE FUNDS								
SEWER								
640	WASTEWATER OPERATIONS	785,088	15,560,361	5,127,198	79,099	5,206,297	33%	6,471,709
641	WASTEWATER CAPITAL EXPANSION	111,266	26,223,607	584,394	412,871	997,265	4%	2,272,746
642	WASTEWATER RATE STABILIZATION	156	1,872	780	-	780	42%	757
643	WASTEWATER CAPITAL PROJECTS	241,501	17,522,286	1,423,548	2,981,662	4,405,210	25%	9,029,542
TOTAL SEWER FUND(S)		1,138,012	59,308,126	7,135,920	3,473,632	10,609,552	18%	17,774,755
WATER								
	Water Operations	1,517,633	18,485,381	6,928,689	759,276	7,687,965	42%	5,719,379
	Utility Billing	92,477	1,192,638	375,854	91,709	467,562	39%	351,685
	Water Conservation	63,790	644,730	154,114	8,780	162,894	25%	97,996
650	WATER OPERATIONS	1,673,899	20,322,749	7,458,657	859,765	8,318,422	41%	6,169,060
651	WATER CAPITAL EXPANSION	58,611	2,479,364	301,708	18,077	319,785	13%	299,185
652	WATER RATE STABILIZATION	117	1,403	585	-	585	42%	567
653	WATER-CAPITAL PROJECTS	429,529	16,010,730	1,029,947	487,771	1,517,718	9%	280,956
TOTAL WATER FUND(S)		2,162,157	38,814,246	8,790,897	1,365,613	10,156,509	26%	6,749,769
TOTAL ENTERPRISE FUNDS		3,300,168	98,122,372	15,926,816	4,839,245	20,766,062	21%	24,524,523
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	166,508	2,683,931	991,609	52,064	1,043,673	39%	859,023
740	BUILDING MAINTENANCE	117,618	1,781,790	557,652	79,548	637,200	36%	500,022
741	BUILDING REPLACEMENT	7,726	1,501,100	39,456	12,035	51,491	3%	68,526
745	CIP ADMINISTRATION	140,970	2,061,046	676,210	1,539	677,749	33%	722,482
760	UNEMPLOYMENT	-	15,000	11,826	-	11,826	79%	10,642
770	WORKERS COMPENSATION	21,668	1,048,265	630,680	-	630,680	60%	604,542
790	EQUIPMENT REPLACEMENT	162	1,245,240	77,382	474,639	552,021	44%	326,065
791	EMPLOYEE BENEFITS FUND	16,785	750,000	107,525	-	107,525	14%	189,774
795	GEN. LIABILITY INSURANCE	50,609	2,551,193	2,349,318	-	2,349,318	92%	1,676,136
TOTAL INTERNAL SERVICE FUNDS		522,045	13,637,565	5,441,657	619,825	6,061,482	44%	4,957,213
REPORT TOTAL		\$ 12,150,355	\$ 228,954,379	\$ 54,377,982	\$ 29,508,988	\$ 83,886,970	37%	\$ 65,585,324



City of Morgan Hill
Fund Activity Summary - Fiscal Year 2022-23
For the Month Ended November 30, 2023
42% of Year Complete

Fund No.	Fund Description	Beginning Fund Balance 07-01-23	Revenues		Expenses		Year to-Date Deficit or Carryover	Preliminary Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved
010	GENERAL FUND	\$ 33,175,566	\$ 13,559,570	25%	\$ 22,029,112	37%	\$ (8,469,543)	\$ 3,984,157	\$ 20,721,866
TOTAL GENERAL FUND		\$ 33,175,566	\$ 13,559,570	25%	\$ 22,029,112	37%	\$ (8,469,543)	\$ 3,984,157	\$ 20,721,866
202	STREET MAINTENANCE	68,927	\$ 292,715	31%	\$ 294,878	36%	\$ (2,163)	\$ -	\$ 66,764
205	PUBLIC SAFETY/SUPPL. LAW	319,867	106,803	105%	537	33%	106,266	-	426,133
206	DEVELOPMENT SERVICES	(426,677)	1,847,033	29%	2,221,766	35%	(374,733)	232,957	(1,034,367)
207	LONG RANGE PLANNING	1,276,770	312,013	31%	330,087	21%	(18,075)	18,178	1,240,517
215 / 216	CDBG	30,767	731	225%	35	42%	696	-	31,463
225	ASSET SEIZURE	102,496	1,120	86%	326	42%	794	-	103,290
229	LIGHTING AND LANDSCAPE	191,949	2,262	1%	56,149	24%	(53,887)	5,788	132,275
230	COMMUNITY FACILITIES DISTRICT	150,651	1,681	4%	15,477	38%	(13,796)	-	136,855
232	ENVIRONMENTAL PROGRAMS	328,270	237,957	40%	162,044	29%	75,914	18,999	385,185
234	MOBILE HOME PK RENT STAB.	76,297	2,371	406%	378	42%	1,993	-	78,290
235	SENIOR HOUSING	239,361	-	n/a	-	n/a	-	-	239,361
236	HOUSING MITIGATION	5,698,654	921,707	21%	315,317	20%	606,390	185,806	6,119,239
240	EMPLOYEE ASSISTANCE	61,893	3,365	16%	2,394	11%	971	-	62,864
246	COUNTYWIDE SOLID WASTE	239,294	526,793	113%	293,502	14%	233,291	1,022,161	(549,576)
247	ENVIRONMENT REMEDIATION	140,690	1,539	113%	-	n/a	1,539	-	142,229
255	HOUSING SUCCESSOR AGENCY	4,001,427	106,511	45%	522,671	45%	(416,160)	275,000	3,310,267
TOTAL SPECIAL REVENUE FUNDS		\$ 12,500,636	\$ 4,364,601	27%	\$ 4,215,560	29%	\$ 149,041	\$ 1,758,889	\$ 10,890,788
301	PARK DEV. IMPACT FUND	\$ 1,426,990	\$ 228,604	14%	\$ 381,516	17%	\$ (152,912)	\$ 114,002	\$ 1,160,076
302	PARK MAINTENANCE	2,489,205	317,030	87%	421,998	64%	(104,969)	284,611	2,099,625
303	LOCAL DRAINAGE	11,817,863	243,785	54%	255,187	4%	(11,401)	3,796,244	8,010,218
304	LOCAL DRAINAGE/NON-AB1600	1,343,736	15,377	50%	151,868	37%	(136,491)	21,516	1,185,729
306	AG. AND OPEN SPACE PRESERVATION	541,496	64,510	1598%	40,667	16%	23,843	-	565,339
308	STREET CIP	4,078,203	1,568,536	35%	3,545,855	64%	(1,977,320)	962,097	1,138,786
309	TRAFFIC IMPACT FUND	3,727,580	333,574	26%	205,509	4%	128,065	3,746,217	109,428
315	PUBLIC SAFETY FACILITIES IMPACT	3,050,728	204,467	26%	833,165	8%	(628,697)	8,758,030	(6,335,999)
346	PUBLIC FACILITIES NON-AB1600	2,943,797	166,842	20%	51,207	4%	115,636	13,711	3,045,721
347	PUBLIC FACILITIES IMPACT FUND	1,099,809	59,021	33%	77,199	5%	(18,178)	50,000	1,031,631
348	LIBRARY IMPACT FUND	1,408,238	196,145	30%	92,645	42%	103,499	-	1,511,737
350	UNDERGROUNDING	1,626,301	18,772	83%	490	0%	18,283	-	1,644,584
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	92,077	30,712	6%	18,660	2%	12,052	3,428	100,701
360	COMM/REC CTR IMPACT FUND	992,228	346,425	30%	112,370	4%	234,055	557,016	669,267
375	QUIMBY FEE	1,621,885	796,882	130%	15,744	1%	781,137	-	2,403,022
TOTAL CAPITAL PROJECT FUNDS		\$ 38,260,136	\$ 4,590,682	35%	\$ 6,204,080	15%	\$ (1,613,398)	\$ 18,306,872	\$ 18,339,866
420	CIVIC CENTER DEBT	\$ 175,864	\$ 123,610	42%	\$ 237,948	82%	\$ (114,338)	\$ 76	\$ 61,450
441	POLICE FACILITY BOND DEBT	166,725	162,860	42%	322,809	83%	(159,948)	97	6,680
TOTAL DEBT SERVICE FUNDS		\$ 342,589	\$ 286,471	42%	\$ 560,757	83%	\$ (274,286)	\$ 173	\$ 68,130
640	WASTEWATER OPERATIONS	\$ 4,670,817	\$ 5,137,066	33%	\$ 5,127,198	33%	\$ 9,868	79,099	4,601,586
641	WASTEWATER IMPACT FUND*	21,350,081	1,560,810	35%	584,394	2%	976,416	412,871	21,913,626
642	WASTEWATER RATE STABILIZATION	2,799,081	112,684	59%	780	42%	111,904	-	2,910,985
643	WASTEWATER CAPITAL PROJECTS	15,601,623	2,310,673	44%	1,423,548	8%	887,125	2,981,662	13,507,086
650	WATER OPERATIONS	4,444,824	7,322,146	37%	7,458,657	37%	(136,511)	859,765	3,448,548
651	WATER IMPACT FUND*	2,969,960	361,794	21%	301,708	12%	60,086	18,077	3,011,969
652	WATER RATE STABILIZATION	3,183,868	36,753	n/a	585	42%	36,168	-	3,220,036
653	WATER -CAPITAL PROJECT	15,548,298	3,045,948	44%	1,029,947	6%	2,016,001	487,771	17,076,528
TOTAL ENTERPRISE FUNDS		\$ 70,568,552	\$ 19,887,874	37%	\$ 15,926,816	16%	\$ 3,961,057	\$ 4,839,245	\$ 69,690,364
730	INFORMATION SERVICES	\$ 793,101	\$ 1,045,238	42%	\$ 991,609	37%	\$ 53,629	\$ 52,064	\$ 794,666
740	BUILDING MAINTENANCE	7,256	698,790	42%	557,652	31%	141,138	79,548	68,846
741	BUILDING REPLACEMENT	4,309,501	394,939	46%	39,456	3%	355,484	12,035	4,652,949
745	CIP ENGINEERING	9,209	388,245	19%	676,210	33%	(287,965)	1,539	(280,295)
760	UNEMPLOYMENT	303,137	3,160	107%	11,826	79%	(8,666)	-	294,471
770	WORKERS COMPENSATION	2,152,498	366,226	37%	630,680	60%	(264,454)	30,000	1,858,044
790	EQUIPMENT REPLACEMENT	7,665,968	1,109,888	64%	77,382	6%	1,032,506	474,639	8,223,835
791	EMPLOYEE BENEFITS FUNDS	(124,893)	356,219	42%	107,525	14%	248,695	-	123,802
795	GEN. LIABILITY INSURANCE	932,477	878,436	42%	2,349,318	92%	(1,470,882)	-	(538,405)
TOTAL INTERNAL SERVICE FUNDS		\$ 16,048,254	\$ 5,241,141	41%	\$ 5,441,657	40%	\$ (200,516)	\$ 649,825	\$ 15,197,913

 CITY OF MORGAN HILL City of Morgan Hill Fund Activity Summary - Fiscal Year 2022-23 For the Month Ended November 30, 2023 42% of Year Complete							
Beginning Fund Balance 07-01-23	Revenues		Expenses		Year to-Date Deficit or Carryover	Preliminary Ending Fund Balance	
	YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 33,175,566	\$ 13,559,570	25%	\$ 22,029,112	37%	\$ (8,469,543)	\$ 3,984,157	\$ 20,721,866
SPECIAL REVENUE GROUP	12,500,636	4,364,601	27%	4,215,560	29%	149,041	1,758,889	10,890,788
DEBT SERVICE GROUP	342,589	286,471	42%	560,757	83%	(274,286)	173	68,130
CAPITAL PROJECTS GROUP	38,260,136	4,590,682	35%	6,204,080	15%	(1,613,398)	18,306,872	18,339,866
ENTERPRISE GROUP	70,568,552	19,887,874	37%	15,926,816	16%	3,961,057	4,839,245	69,690,364
INTERNAL SERVICE GROUP	16,048,254	5,241,141	41%	5,441,657	40%	(200,516)	649,825	15,197,913
TOTAL ALL GROUPS	\$ 170,895,733	\$ 47,930,338	32%	\$ 54,377,982	24%	\$ (6,447,645)	\$ 29,539,160	\$ 134,908,928

For Enterprise Funds: Unrestricted fund balance = Fund balance net of fixed assets and long-term liabilities.
 *Unreserved fund balance includes bond proceeds reserved for projects listed in bond documents.
¹ Amount restricted for encumbrances, fixed asset replacement, long-term receivables, and bond reserves.

CITY COUNCIL STAFF REPORT

MEETING DATE: January 17, 2024

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

APPROVE STATE OF CALIFORNIA, OFFICE OF EMERGENCY SERVICES' UNIVERSAL RESOLUTION DESIGNATING APPLICANT'S AGENT FOR DISASTER ASSISTANCE

RECOMMENDATION(S)

1. Designate City Manager, Finance Director, or Senior Accountant to submit for Disaster Assistance to the State of California, Office of Emergency Services, for the purpose of obtaining certain federal financial assistance; and
2. Direct the City Clerk to certify the Designation of Applicant's Agency Resolution to the State of California, Office of Emergency Services.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

When a State or Federal disaster declaration is made, and the City of Morgan Hill has damages or costs that can be reimbursed from disaster recovery funds, a Designation of Applicant's Agent Resolution must be made by the City Council. It is important that the State and Federal agencies know that the City's designated agent has the authority of the City Council to act on the City's behalf.

Staff is seeking approval from the City Council to designate the staff positions of City Manager, Finance Director, or Senior Accountant as applicant's agents to represent the City of Morgan Hill for any applications with the State Office of Emergency Services (OES) and Federal Emergency Management Agency (FEMA) for disaster assistance. The universal resolution is valid for all open and future disasters up to three (3) years, following the date of approval by the City Council. The City Council last approved the designation of applicant's agent resolution in 2020, when the City filed for the 2020 SCU

Lightning Complex Fire cost reimbursements.

The City currently has a reimbursement claim for the 2022-2023 Early Winter Storms. Therefore, it is necessary for the City to renew the Designation of Applicant's Agent Resolution on file with Cal OES which will be valid for all open and future disasters for up to three (3) years.

COMMUNITY ENGAGEMENT:

Not Applicable

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council last approved the Designation of Applicant's Agent Resolution on October 21, 2020.

FISCAL AND RESOURCE IMPACT:

There is no direct fiscal impact for designation of applicant's agent. However, the City is not eligible for State and Federal disaster assistance unless a Designation of Applicant's Agent Resolution has been adopted by the City Council. By approving this document, the City will be in a position to recover a percentage of the costs expended due to current and any future declared disasters.

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.



Cal OES ID No: 085-49278

DESIGNATION OF APPLICANT'S AGENT RESOLUTION FOR NON-STATE AGENCIES

BE IT RESOLVED BY THE City Council OF THE City of Morgan Hill
(Governing Body) (Name of Applicant)

THAT City Manager, OR
(Title of Authorized Agent)

Finance Director, OR
(Title of Authorized Agent)

Senior Accountant
(Title of Authorized Agent)

is hereby authorized to execute for and on behalf of the City of Morgan Hill,
(Name of Applicant)

a public entity established under the laws of the State of California, this application and to file it with the California Governor's Office of Emergency Services for the purpose of obtaining federal financial assistance for any existing or future grant program, including, but not limited to any of the following:

- **Federally declared Disaster (DR), Fire Mitigation Assistance Grant (FMAG), California State Only Disaster (CDAA), Immediate Services Program (ISP), Hazard Mitigation Grant Program (HMGP), Building Resilient Infrastructure and Communities (BRIC), Legislative Pre-Disaster Mitigation Program (LPDM)**, under
- Public Law 93-288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, and/or state financial assistance under the California Disaster Assistance Act.
- **Flood Mitigation Assistance Program (FMA)**, under Section 1366 of the National Flood Insurance Act of 1968.
- **National Earthquake Hazards Reduction Program (NEHRP)** 42 U.S. Code 7704 (b) ((2) (A) (ix) and 42 U.S. Code 7704 (b) (2) (B) National Earthquake Hazards Reduction Program, and also The Consolidated Appropriations Act, 2018, Div. F, Department of Homeland Security Appropriations Act, 2018, Pub. L. No. 115-141
- **California Early Earthquake Warning (CEEW)** under CA Gov Code – Gov, Title 2, Div. 1, Chapter 7, Article 5, Sections 8587.8, 8587.11, 8587.12

That the City of Morgan Hill, a public entity established under the
(Name of Applicant)

laws of the State of California, hereby authorizes its agent(s) to provide to the Governor's Office of Emergency Services for all matters pertaining to such state disaster assistance the assurances and agreements required.



Please check the appropriate box below

- ☒ This is a universal resolution and is effective for all open and future disasters/grants declared up to three (3) years following the date of approval.
- ☐ This is a disaster/grant specific resolution and is effective for only disaster/grant number(s): _____

Passed and approved this 17 day of January, 20 24

Mark Turner, Mayor

(Name and Title of Governing Body Representative)

Marilyn Librers, Mayor Pro Tem

(Name and Title of Governing Body Representative)

Rene Spring, Council Member

(Name and Title of Governing Body Representative)

CERTIFICATION

I, **Michelle Bigelow**, duly appointed and **City Clerk** of
(Name) (Title)

City of Morgan Hill, do hereby certify that the above is a true and
(Name of Applicant)

correct copy of a resolution passed and approved by the **City Council**
(Governing Body)

of the **City of Morgan Hill** on the 17 day of **January**, 20 24.
(Name of Applicant)

City Clerk

(Signature)

(Title)



Cal OES Form 130 Instructions

A Designation of Applicant's Agent Resolution for Non-State Agencies is required of all Applicants to be eligible to receive funding. A new resolution must be submitted if a previously submitted resolution is older than three (3) years from the last date of approval, is invalid, or has not been submitted.

When completing the Cal OES Form 130, Applicants should fill in the blanks on pages 1 and 2. The blanks are to be filled in as follows:

Resolution Section:

Governing Body: This is the group responsible for appointing and approving the Authorized Agents.

Examples include: Board of Directors, City Council, Board of Supervisors, Board of Education, etc.

Name of Applicant: The public entity established under the laws of the State of California.

Examples include: School District, Office of Education, City, County or Non-profit agency that has applied for the grant, such as: City of San Diego, Sacramento County, Burbank Unified School District, Napa County Office of Education, University Southern California.

Authorized Agent: These are the individuals that are authorized by the Governing Body to engage with the Federal Emergency Management Agency and the California Governor's Office of Emergency Services regarding grants for which they have applied. There are two ways of completing this section:

1. **Titles Only:** The titles of the Authorized Agents should be entered here, not their names. This allows the document to remain valid if an Authorized Agent leaves the position and is replaced by another individual. If "Titles Only" is the chosen method, this document must be accompanied by either a cover letter naming the Authorized Agents by name and title, or the Cal OES AA Names document. The supporting document can be completed by any authorized person within the Agency (e.g., administrative assistant, the Authorized Agent, secretary to the Director). It does not require the Governing Body's signature.
2. **Names and Titles:** If the Governing Body so chooses, the names **and** titles of the Authorized Agents would be listed. A new Cal OES Form 130 will be required if any of the Authorized Agents are replaced, leave the position listed on the document, or their title changes.



Checking Universal or Disaster-Specific Box: A Universal resolution is effective for all past disasters and for those declared up to three (3) years following the date of approval. Upon expiration it is no longer effective for new disasters, but it remains in effect for disasters declared prior to expiration. It remains effective until the disaster goes through closeout unless it is superseded by a newer resolution.

Governing Body Representative: These are the names and titles of the approving Board Members.

Examples include: Chairman of the Board, Director, Superintendent, etc. The names and titles **cannot** be one of the designated Authorized Agents. A minimum of three (3) approving board members must be listed. If less than three are present, meeting minutes must be attached in order to verify a quorum was met.

Certification Section:

Name and Title: This is the individual in attendance who recorded the creation and approval of this resolution.

Examples include: City Clerk, Secretary to the Board of Directors, County Clerk, etc. This person **cannot** be one of the designated Authorized Agents or Approving Board Member. If a person holds two positions (such as City Manager and Secretary to the Board) and the City Manager is to be listed as an Authorized Agent, then that person could sign the document as Secretary to the Board (not City Manager) to eliminate "Self-Certification."

CITY COUNCIL STAFF REPORT

MEETING DATE: January 17, 2024

PREPARED BY:

Edith Ramirez, Assistant City Manager

APPROVED BY: City Manager

ADOPT RESOLUTION FOR AN EXCEPTION TO THE 180-DAY WAITING PERIOD TO APPOINT RETIRED ANNUITANT, ANDREW CRABTREE, TO SERVE AS TEMPORARY EXTRA HELP (GOVERNMENT CODE SECTIONS 7522.56 AND 21224) IN THE DEVELOPMENT SERVICES DEPARTMENT TO PERFORM WORK AS A RETIRED ANNUITANT

RECOMMENDATION(S)

Adopt Resolution for an exception to the 180-day waiting period to appoint Andrew Crabtree, a retired annuitant, to serve as temporary extra help (Government Code Sections 7522.56 and 21224) in the Development Services Department to perform work as a Retired Annuitant.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Fostering a Positive Organizational Culture

2022-2023 Strategic Priorities

Fiscal Sustainability

Community Outreach, Engagement, and Messaging

REPORT NARRATIVE:

Generally, the Public Employment Retirement Law (PERL) requires that retired annuitants serve a 180-day wait period before working in a retired annuitant position. However, the PERL also provides for exceptions to this waiting period if certain criteria are met and the governing body of the public agency adopts a non-consent calendar resolution at a public meeting approving the appointment as a critically needed position before the 180 days have passed. The adoption of the resolution allows the employer to hire a retired annuitant to perform work of a limited duration, such as specialized work and limited-term complex projects.

There are two types of post-retirement appointments possible under Government Code Section 7522.56:

1. Extra help retired annuitants hired to perform work of limited duration such as special projects (Government Code Section 21224); and

2. Appointment to a vacant position on an interim basis while a permanent replacement is being recruited (an active recruitment must be in place for this type of appointment, and the appointment must end when the replacement is hired, Government Code Section 21221(h)).

Andrew Crabtree recently retired from the City of Santa Clara where he was the Community Development Director from August 2016 until December 30, 2023. As Director, he successfully led a department of approximately 75 employees with a \$34 million operating budget, achieving multiple City objectives, including the adoption of the City's first comprehensive zoning code update, an affordable housing ordinance, four specific/neighborhood plans, and an update of the climate action plan. He oversaw a restructuring of the City's Housing Division, the implementation of a new permit tracking system, the development of budget tracking tools and the first update of the Building Division fee schedule since 1990, enabling the Building program to develop a robust fund reserve. He reduced his department's dependence upon the City of Santa Clara General Fund while expanding service delivery and improving service cycle times and customer satisfaction. Andrew has familiarity with the City of Morgan Hill, having previously served as the Community Development Director for Morgan Hill from September 2013 until July 2016, leading the adoption of the City's General Plan and Residential Development Control System (RDSCS) updates.

Staff recommends hiring Mr. Crabtree, on a temporary, part-time basis to work on special projects to support the Development Services Department. His scope of work will include the review and preparation of recommendations related to the Department's budget, developing recommendations for capacity building and improvements to the operations and work flow to support the growing needs of the administration of new housing laws with limited staffing resources. Mr. Crabtree will report to the Assistant City Manager for Development Services and also help with special projects as needed. The term of Mr. Crabtree's employment is anticipated to be approximately four to six months, averaging 20 hours per week, starting January 22, 2024. This employment arrangement would fall under the State Government Code type 1 appointment (Government Code Section 21224).

COMMUNITY ENGAGEMENT:

This staff report serves to inform the Community.

ALTERNATIVE ACTIONS:

Direct staff to return with other options.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

The Public Employees' Pension Reform Act (PEPRA) sets forth limitations for compensating retired annuitants. All retirees must be paid hourly, at no less than the

minimum, nor more than the maximum, paid to employees doing similar work. Based on the CalPERS formula for setting retired annuitant pay rates, the individual will be paid at the hourly rate for the as-needed position as follows:

Retired Annuitant	Hourly Rate of Pay	Fiscal Years	Not to Exceed Amount
Andrew Crabtree	\$115.00	2023-2024 (22 weeks) and 2024-2025 (2 weeks)	\$55,200

Consistent with temporary employees, Crabtree will be enrolled in the PARS retirement system in lieu of participation in CalPERS and Social Security. Sufficient appropriations are available in the Development Services Department to fund this position.

CEQA (California Environmental Quality Act):

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

RESOLUTION NO. 24-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL FOR EXCEPTION TO THE 180-DAY WAITING PERIOD TO HIRE A RETIRED ANNUITANT AS A TEMPORARY EXTRA HELP EMPLOYEE (GOVERNMENT CODE SECTIONS 7522.56 AND 21224) AS A RETIRED ANNUITANT IN THE DEVELOPMENT SERVICES DEPARTMENT

WHEREAS, in compliance with Government Code section 7522.56 the City of Morgan Hill must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since his or her retirement date; and

WHEREAS, Andrew Crabtree (CalPERS ID XXXXXXXXXXXX) retired from the City of Santa Clara in the position of Community Development Director, effective December 30, 2023; and

WHEREAS, section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is June 27, 2024, without this certification resolution; and

WHEREAS, section 7522.56 provides that this exception to the 180 day wait period shall not apply if the retiree accepts any retirement-related incentive; and

WHEREAS, the City of Morgan Hill, City of Santa Clara, and Andrew Crabtree certify that Andrew Crabtree has not received a Golden Handshake or any other retirement-related incentive; and

WHEREAS, the City of Morgan Hill hereby appoints Andrew Crabtree as an extra help retired annuitant to perform the critically needed duties of Temporary Employee for the City of Morgan Hill under Government Code section 21224, effective January 18, 2024; and

WHEREAS, the entire employment agreement, contract or appointment document between the City of Morgan Hill and Andrew Crabtree has been reviewed by this body and is attached herein; and

WHEREAS, no matters, issues, terms or conditions related to this employment and appointment have been or will be placed on a consent calendar; and

WHEREAS, the employment shall be limited to 960 hours per fiscal year; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties; and

WHEREAS, effective January 18, 2024, the maximum hourly salary rate for the Temporary Employee position is \$115.00, and the minimum hourly equivalent is \$20.00; and

WHEREAS, the hourly rate paid to Andrew Crabtree will be \$115.00; and

WHEREAS, Andrew Crabtree has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate.

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

SECTION 1: The City of Morgan Hill hereby certifies the appointment of Andrew Crabtree and that this appointment is necessary to fill the critically needed position of Temporary Employee for the City of Morgan Hill. Andrew Crabtree's scope of work will be to review and prepare recommendations related to the Development Service Department's budget, developing recommendations for capacity building and improvements to the operations and workflow to support the growing needs of the administration of new housing laws and support with special assignments as needed. Andrew will also assist the Community Development Director on special projects as needed.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 17th day of January 2024 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.24-XXX adopted by the City Council at the meeting held on the 17th day of January 2024.

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

DATE: _____

MICHELLE BIGELOW, City Clerk



January 18, 2024

Andrew Crabtree
[REDACTED]
[REDACTED]

Dear Andrew:

The City of Morgan Hill is excited to offer you a Retired Annuitant temporary position effective, Monday, January 22, 2024, subject to City Council approval. Your rate of pay will be \$115.00 per hour. Your duties will include supporting the implementation of systems and administrative improvements of the Development Services Department while supporting key project deliverables.

The project is anticipated to last until June 30, 2024. It should be noted that as a temporary, at-will employee, your employment may end at any time without notice. As a temporary employee you will be enrolled in PARS retirement system in lieu of participation in CalPERS and Social Security.

As a CalPERS retired annuitant with specialized skills and knowledge as described in Section 21224 of the California Government Code, you shall adhere to the following terms and conditions of employment:

- The duration of the assignment is not to exceed one year.
- You will be limited to working a total of 960 hours per fiscal year.
- You must track your hours and not exceed 960 hours per fiscal year.
- You will not exceed 40 hours in a week without prior authorization from your supervisor.
- Consistent with current Government Code provisions, you may not receive benefits, incentives, compensation in lieu of benefits, or other forms of compensation in addition to the hourly pay rate.

Please indicate your acceptance of this offer by signing this letter and returning it to Human Resources. You can scan and email acceptance form to Michael.Horta@morganhill.ca.gov.

Sincerely,



Michael Horta

Human Resources Director

I, Andrew Crabtree, accept the terms outlined in this offer of employment letter dated January 18, 2024.

Signature

Date

cc: Personnel File

CITY COUNCIL STAFF REPORT

MEETING DATE: January 17, 2024

PREPARED BY:

Michelle Bigelow, City Clerk

APPROVED BY: City Manager

PROVIDE DIRECTION REGARDING CITY COUNCIL TERM LIMITS AND MAYORAL TERM

RECOMMENDATION(S)

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

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

Enhancing Diversity and Inclusiveness

REPORT NARRATIVE:

On May 3, 2023, the Council directed staff to bring back this topic for Council consideration. On June 7, 2023, the Council directed staff to research term limits and bring information back to the City Council to review and provide direction. The City of Morgan Hill does not have term limits for the Council or commissions. Should the City Council want to put term limits in place for the elected positions of Mayor and Council Member, it would require voter approval.

Government Code Section 36502(b) specifies that the City Council or the residents of the City may propose, by initiative, a proposal to limit the number of terms a member of the City Council may serve on the City Council or the number of terms an elected mayor may serve. Any proposal to limit the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall apply prospectively only and shall not become operative unless the proposition is submitted to the electors of the City at a regularly scheduled election and a majority of the votes cast favor its adoption. Limitations may be placed on the number of consecutive terms that Council Members may serve and may also be placed on the number of terms that a person may serve during their lifetime.

There are a few term-limit ordinances currently being used throughout the state, and

they generally fall within four models:

- Two or three consecutive terms of four years for Council Members and two or more terms of two years for the Mayor, followed by a hiatus of a specified duration (typically 1, 2, or 4 years) before the incumbent is eligible to seek election to additional terms.
- Two or three consecutive terms of four years for Council Members and two or more terms of two years for the Mayor.
- Eight or ten-year maximum consecutive terms for Council Members and the Mayor, followed by a hiatus of a specified duration (typically 1, 2, or 4 years) before the incumbent is eligible to seek election to additional terms.
- Eight or ten-year maximum consecutive terms for Council Members and the Mayor.

In addition, pursuant to Government Code Section 36502(b), a term limit ordinance applies prospectively only. This means that any term of office that commenced prior to the effective date of a term limit ordinance would not count as a term served for purposes of implementing the ordinance.

For purposes of discussion, the Council is asked to consider the following points:

- The number of terms a Council Member/Mayor may serve consecutively
- Whether to allow a hiatus between terms when the imposed limit has been reached or create a lifetime term limit
- The period of hiatus between terms, if desired, when the imposed limit has been reached
- Whether to limit terms for Commissioners

If the City Council wishes to put terms limits in place, it is asked to provide direction to staff on the specific model of term limits it wants to move forward with (examples outlined above) and to direct staff to bring back a staff report for adoption of a resolution placing a term limit ordinance on the November 2024 ballot.

The City Council is also asked to discuss the mayoral term and if it wishes to change the mayoral term from two to four years. Should the City Council wish to make this change, it would require voter approval, and the City Council is asked to provide direction to staff to bring back a staff report for adoption, placing the mayoral term change on the ballot.

COMMUNITY ENGAGEMENT:

This report serves to inform the community of the City Council's discussion regarding term limits.

ALTERNATIVE ACTIONS:

The City Council may direct staff to take no further action.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 3, 2023, the Council directed staff to bring back this topic for Council

consideration. On June 7, 2023, the Council directed staff to research term limits and bring information back to the City Council to review and provide direction.

FISCAL AND RESOURCE IMPACT:

No fiscal impact is associated with seeking direction from the Council on this item. Should the City Council move forward with placing a measure(s) on the ballot, the estimated cost is \$60,000 per ballot measure.

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.



State of California

GOVERNMENT CODE

Section 36502

36502. (a) A person is not eligible to hold office as councilmember, city clerk, or city treasurer unless he or she is at the time of assuming the office an elector of the city, and was a registered voter of the city at the time nomination papers are issued to the candidate as provided for in Section 10227 of the Elections Code.

If, during his or her term of office, he or she moves his or her place of residence outside of the city limits or ceases to be an elector of the city, his or her office shall immediately become vacant.

(b) Notwithstanding any other provision of law, the city council of a general law or charter city may adopt or the residents of the city may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve. Any proposal to limit the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall apply prospectively only and shall not become operative unless it is submitted to the electors of the city at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal. Notwithstanding the provisions of this subdivision, the provisions of any city charter that, on January 1, 1996, impose limitations on the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall remain in effect. Unless otherwise prohibited by a city charter, any city charter may be amended pursuant to this section or pursuant to the procedures specified in the charter, to include the limitation authorized in this subdivision.

(Amended by Stats. 1995, Ch. 432, Sec. 5. Effective January 1, 1996.)

Item # 17
AGENDA DATE: 09/06/2023
SUPPLEMENT # 1

From: [Yvonne Chavez](#)
To: [CC Public Comment](#)
Subject: [EXTERNAL] Term Limits for City Counsel
Date: Wednesday, September 6, 2023 1:40:11 PM

To all concerned

I am voicing my opinion that I believe we should have Term Limits for City Counsel. We need to have constant and fresh eyes for keeping the wonderful town growing at the right pace. Some times I think members all they see are dollar signs and it's pushing the business and good people out of town. Keep it real.

Yvonne Chavez
Long time resident

Sent from my iPhone

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From: [Yvonne Chavez](#)
To: [CityCouncil](#)
Subject: [EXTERNAL] Term limits
Date: Wednesday, September 6, 2023 1:32:04 PM

Hi

I am sending my desire to set term limits for city council.

This I believe will keep the ideas fresh and up to date.

Please consider for tonight meeting.

Regards
Yvonne Chavez
Home Owner in
Morgan Hill

Sent from my iPhone

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Term Limits



Term Limits Examples

Term Limits by Seat

select term limits:
2 terms; 3 terms, etc.

Examples:

Council Member for 2 terms (8 years)
or
Mayor for 2 terms (4 years)
or
Council Member for 2 terms (8 years)
followed by Mayor for 2 terms
(4 years)

OR

Maximum Consecutive Term in Years

select term:
10 yrs, 12 yrs, etc.

Examples:

Council Member for 10 years
or
Mayor for 10 years
or
Council Member for 8 years (2 terms)
followed by Mayor for 2 years (1 term)

Allow a hiatus between
terms limits

OR

Create a lifetime term limit

Council Member Term = 4 years

Mayor Term = 2 years

Council Discussion/Action



- Does the City Council wish to put term limits in place?
 - Yes:
 - Direct staff to bring back a resolution placing term limits on the November 2024 ballot.
 - Provide direction to staff on:
 - Term limits per seat i.e. Council Member x terms and Mayor x terms

Or

- Term limits of total x consecutive years

Council Discussion/Action Cont.



- Provide direction ...:
 - Whether to allow a hiatus between term limits

Or

- Create a lifetime term limit

- Does the City Council wish to put term limits in place for commissions?
- Does the City Council wish to change the mayoral term from two years to four years?

QUESTIONS?



CITY OF MORGAN HILL