



Special/Regular Meeting Agenda
City Council

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

Wednesday, March 2, 2022 5:30 PM

Virtual Meeting
Link to join the meeting can be found below

VIRTUAL MEETING GUIDELINES AND PUBLIC COMMENT

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. Physical meetings will not be in the City Council Chamber until further notice. City Council meetings will be live-streamed on Channel 17, on the City's website, and on the City's Facebook page. Those members of the community that would like to participate in the meetings remotely may do so by joining the virtual meeting at: <https://bit.ly/MHCityCouncilMeeting> or by calling (669) 900-9128, then enter the webinar id: 873 3200 8380#.

Public comment may be provided in the following ways:

- Join the virtual City Council meeting via the link above, when public comment is opened, raise your virtual hand and be called upon to speak for up to 3 minutes (YOU MUST BE RUNNING THE MOST CURRENT VERSION OF ZOOM TO BE UNMUTED)
- Join the virtual meeting by calling the number above, dial *9 to raise your hand, and be called upon to speak for up to 3 minutes
- Public comment is intended for comments. Questions posed during public comment are not generally answered. If you have questions, send them to the City Clerk at ccpubliccomment@morganhill.ca.gov to receive a response.
- Send public comments in writing to the City Clerk at ccpubliccomment@morganhill.ca.gov

* Please note that comments made on Facebook are not considered public comment.

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:30 p.m. for the purpose of conducting Planning Commission Interviews.

SPECIAL MEETING

5:30 p.m. Planning Commission Interviews

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

OTHER BUSINESS

1. INTERVIEW CANDIDATES TO FILL ONE (1) SEAT ON THE PLANNING COMMISSION

Recommendation:

1. Discuss the characteristics/traits that a successful applicant(s) would possess;
2. Conduct Interviews;
3. Council Members identify top applicant(s) and provide recommendation to the Mayor; and
4. Discuss and/or appoint applicant(s).

Estimated Time: 90 Minutes

REGULAR MEETING

PROCLAMATIONS

Proclaiming the month of March 2022 as Youth Arts Month

CITY COUNCIL REPORTS

Council Member Spring

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PUBLIC COMMENT

This opportunity for public comment, is for items that are not on the agenda. If you would like to make comments on an item that is on the agenda, please wait until we get to that item to offer your comments. Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the City Council is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

2. RECEIVE UPDATE REGARDING PAVEMENT REHABILITATION PLANNING

Recommendation:

Receive update on pavement rehabilitation planning.

3. ACCEPT BRITTON MIDDLE SCHOOL PEDESTRIAN ENHANCEMENT PROJECT

Recommendation:

1. Accept as complete the Britton Middle School Pedestrian Enhancement Project;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County

4. **AWARD 2022 SIDEWALK REPAIR PROJECT TO ASG BUILDERS, INC.**

Recommendation:

1. Adopt a resolution amending the Fiscal Year 2021-22 adopted budget to appropriate an additional \$13,407 from Fund 346: Public Facilities for the 2022 Sidewalk Repair Project;
2. Award a contract to ASG Builders, Inc. in the amount of \$67,860; and authorize the expenditure of 40% construction contingency funds not to exceed \$27,144 for a total authorization of \$95,004; and
3. Authorize the City Manager to execute and administer that certain construction contract with ASG Builders, Inc.

5. **AWARD AGREEMENT FOR COMPLETION OF THE SEWER PIPE INSPECTION AND CONDITION ASSESSMENT**

Recommendation:

Approve and authorize the City Manager to execute an agreement with Water Works Engineers, LLC. in the amount of \$679,852 inclusive of a 10% contingency to complete the sewer pipeline inspection and condition assessment project.

6. **ADOPT RESOLUTION ADDING SECTION 20516 COST SHARE TO THE MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES RESOLUTION NO. 21-050**

Recommendation:

Adopt resolution adding Section 20516 Cost Share to the Management, Professional, and Confidential Employees Resolution No. 21-050.

7. **ADOPT RESOLUTION AMENDING THE CITY'S SOLID WASTE BUDGET AND APPROVE AN AMENDMENT TO THE FISCAL AGENT SERVICE AGREEMENT WITH THE COUNTY OF SANTA CLARA**

Recommendation:

1. Adopt a Resolution appropriating an additional \$156,658 to the City's Countywide Solid Waste Program (Fund 246);
2. Accept the first amendment to the Fiscal Agent Service Agreement with the County of Santa Clara to increase the amount of the contract by \$119,170 for a total contract amount of \$528,136;
3. Authorize the City Manager to execute and administer the amendment with the County of Santa Clara; and
4. Authorize the City Manager to extend the term of the Fiscal Agent Service

Agreement with the County of Santa Clara for up to four additional one-year terms.

8. **ADOPT RESOLUTION AUTHORIZING SUBMITTAL OF APPLICATIONS FOR THE ANNUAL RECYCLING PAYMENT PROGRAM AND A ONE-TIME REGIONAL GRANT TO SUPPORT SB 1383 PROGRAMS**

Recommendation:

Adopt a resolution authorizing the City's application for recycling program funding through the annual CalRecycle payment program and for a one-time regional grant application to fund activities related to SB 1383 compliance.

9. **APPROVE FINAL MAP FOR SAN SEBASTIAN PHASE 3A - TRACT NO. 10530 AND RELATED SUBDIVISION IMPROVEMENTS AGREEMENT**

Recommendation:

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

10. **APPROVE AN IMPROVEMENT AGREEMENT WITH MORGAN HILL MULTIFAMILY LLC FOR THE BUTTERFIELD VILLAGE PROJECT**

Recommendation:

1. Approve an Improvement Agreement with Morgan Hill Multifamily LLC;
2. Authorize the City Manager to execute the Improvement Agreement; and
3. Authorize the recordation of the Improvement Agreement.

11. **APPROVE THE CONSULTANT AGREEMENT WITH CIVITAS ADVISORS IN THE AMOUNT NOT TO EXCEED \$64,500 FOR THE FORMATION OF MORGAN HILL DOWNTOWN PROPERTY BUSINESS IMPROVEMENT DISTRICT (MHDPBID) AND DIRECT THE CITY MANAGER TO SIGN THE PETITION IN SUPPORT OF THE DOWNTOWN PBID FORMATION**

Recommendation:

1. Approve and authorize the City Manager to execute and administer a consulting agreement with Civitas Advisors not to exceed \$64,500 to form a Morgan Hill Downtown Property Business Improvement District (MHDPBID); and
2. Direct the City Manager to sign the MHDPBID petition indicating the City's

support of the PBID formation.

12. APPROVE THE JANUARY 28 & 29, 2022 GOAL SETTING MINUTES AND FEBRUARY 16, 2022 CITY COUNCIL MEETING MINUTES

Recommendation:

Approve the January 28 & 29, 2022 Goal Setting Minutes and February 16, 2022 City Council Meeting Minutes.

OTHER BUSINESS

13. MONTHLY BUDGET UPDATE AND JANUARY 2022 FINANCIAL AND INVESTMENT REPORTS

Recommendation:

Accept and file report.

Estimated Time: 10 Minutes

14. ADOPT RESOLUTION CERTIFYING THE INITIATIVE PETITION TITLED: CITIZENS' INITIATIVE AMENDING THE GENERAL PLAN TO REQUIRE VOTER APPROVAL OF ANY FUTURE MONTEREY ROAD LANE REDUCTION AND DIRECT STAFF TO PREPARE AN IMPACT REPORT

Recommendation:

1. Adopt resolution accepting the City Clerk's Certificate of Sufficiency for the Initiative Petition Titled: Citizens' initiative amending the General Plan to require voter approval of any future Monterey Road lane reduction; and
2. Direct staff to prepare an impact report under Elections Code section 9212 within 30 days and no later than April 1, 2022, for City Council consideration at the April 6, 2022 City Council meeting.

Estimated Time: 15 Minutes

PUBLIC HEARING (TO BE HEARD AT 8:00 P.M.)

15. REVIEW AND ADOPT NEW CITY COUNCIL DISTRICT MAP

Recommendation:

1. Review and discuss draft maps 103, 104, 105, 106, 108, and NDC Green, including what about the maps work and does not work and what communities of interest would be protected or potentially divided; and
2. Adopt resolution adopting a City Council District map.

Estimated Time: 60 Minutes

PUBLIC HEARINGS

16. ADOPT INDUSTRIAL PRESERVATION AND OPTIMIZATION POLICY

Recommendation:

Adopt an Industrial Land Preservation and Optimization Policy

Estimated Time: 30 Minutes

17. ADOPT ZONING CODE AMENDMENT TO SECTION 18.26.020 (LAND USE REGULATIONS) OF CHAPTER 18.26 (INDUSTRIAL ZONING DISTRICTS) OF TITLE 18 (ZONING) TO MODIFY THE LAND USES PERMITTED IN THE INDUSTRIAL ZONING DISTRICTS

Recommendation:

1. Open/close the public hearing.
2. Waive first and second reading of the Ordinance Amendment; and
3. Introduce Ordinance Amendment as recommended by staff and amended by the Planning Commission.

Estimated Time: 30 Minutes

18. ADOPTION AND RATIFICATION OF ORDINANCE NO. 2320 PREVIOUSLY ADOPTED AS AN URGENCY ORDINANCE

Recommendation:

1. Open/close the public hearing;
2. Waive first and second reading of the Ordinance;
3. Introduce Ordinance; and
4. Adopt resolution placing Ordinance on the November 2022 ballot.

Estimated Time: 15 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

SUSTAINABLE MORGAN HILL



VISION

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

Choose Morgan Hill

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

City Council Ongoing Priorities

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

2020-2021 Strategic Priorities

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



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



CITY COUNCIL STAFF REPORT

MEETING DATE: March 2, 2022

PREPARED BY:

Kim Mancera, Municipal Services Assistant

APPROVED BY: City Manager

INTERVIEW CANDIDATES TO FILL ONE (1) SEAT ON THE PLANNING COMMISSION

RECOMMENDATION(S)

1. Discuss the characteristics/traits that a successful applicant(s) would possess;
2. Conduct Interviews;
3. Council Members identify top applicant(s) and provide recommendation to the Mayor; and
4. Discuss and/or appoint applicant(s).

Estimated Time: 90 Minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

Preserving our Community History

2020-2021 Strategic Priorities

Economic Development

REPORT NARRATIVE:

The City Council is recruiting to fill one (1) unexpired term on the Planning Commission with a term ending June 1, 2023. The recruitment resulted in a total of four new applicants; Paul Lake, Thomas Spitters, Chelsea Doiguchi, and Mark Grisedale.

All applicants have been invited to interview before the City Council on March 2, 2022. All applicants have confirmed availability. Their applications are attached for Council consideration.

COMMUNITY ENGAGEMENT:

Involve

Recruitment efforts were undertaken to encourage citizens to apply for City Council appointment consideration to the Planning Commission via the Morgan Hill Times, City Website, Government Access Channel, Facebook, NextDoor, outreach to community groups, and the weekly 411 emails.

ALTERNATIVE ACTIONS:

The City Council may choose not to make an appointment to fill the vacant seat. If the City Council desires, it could decide to re-open the application process to solicit more applicants to fill the seat not appointed at the March 2, 2022 meeting.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Planning Commissioners serve four-year terms with possible reappointment consideration. Every year, recruitment efforts are conducted to maintain the seven (7) member Commission.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with the actions to interview and appoint, as the recruitment and appointment process is accommodated in the Administrative Services operating budget.

CEQA (California Environmental Quality Act):

Not a Project.

The interview and appointment of commissioners is not a project, as defined in Section 15378 of the State CEQA guidelines.

Chapter 2.22 - MASTER PROVISIONS FOR BOARDS AND COMMISSIONS*

Sections:

2.22.010 - Establishment of boards and commissions.

- A. There are established within the city the following boards and commissions:
 - 1. Planning commission;
 - 2. Parks and recreation commission;
 - 3. Library, culture and arts commission; and
 - 4. Disaster council.
- B. Unless otherwise set forth, all members of boards, commissions and committees shall be residents of the city and shall continue to be residents of the city during their terms of office. Notwithstanding the foregoing, individuals who reside within the Morgan Hill Unified School District boundary and who do not otherwise reside in any city other than Morgan Hill may be appointed to boards, commissions and committees provided that no more than thirty percent of the members of any board, commission or committee shall be non-Morgan Hill residents.
- C. Members shall be appointed by the mayor subject to approval of a majority vote of the city council and may be removed without cause by vote of any three members of the city council.
- D. The appointment terms of members may be extended, at the discretion of the city council, until such time as a successor member may be appointed and take office.
- E. Vacancies in the commission occurring other than by expiration of term shall be filled for the unexpired term in the same manner as original appointments.
- F. The members of the commission shall organize the commission and shall elect from its members a chair and vice-chair and such other officers as may be necessary in accordance with adopted city council policy.

(Ord. 1778 N.S. § 2 (part), 2006)

(Ord. No 1930 N.S., § 2, 4-22-2009; Ord. No. 1935 N.S., § 1, 6-3-2009)

2.22.030 - Clerk and secretary.

The city clerk or designate shall also act as clerk for each of the boards and commissions and shall have authority to sign any official notices and also to certify any resolution of the commissions or boards. The city council may appoint a person not a member of the commission or board to act as secretary of the

commission or board. The secretary shall keep a record of all proceedings of said board or commission, its resolutions, its findings and actions, which records shall be a public record and kept with the city clerk in the City Hall building.

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.040 - Rules of procedure.

- A. The chair shall preside at all meetings of the board or commission. The vice chair shall assume the duties of the chair in the absence of or in case of inability of the chair.
- B. A majority of the members of the commission or board shall constitute a quorum for the transaction of business.
- C. Unless otherwise specified herein, each board or commission may adopt its own rules and regulations for the transaction of its business. Such rules shall be subject to approval of the city council before becoming effective.

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.050 - Rules of attendance.

If any member is absent from three of any six consecutive regular board or commission meetings, unless such absence is with the permission of the chair, or vice chair in absence of the chair, expressed in the official minutes, the member's seat shall be deemed vacated. The city manager shall so notify the city council and the council shall take action to fill the seat within a reasonable period of time.

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.060 - Meetings.

Unless otherwise specified, the commission shall hold regular meetings once every two months at a designated time and place which shall be fixed and determined by the commission and entered upon in its minutes. Special meetings of the commission may be called at any time by the chair or by a majority of the members of the board upon notice being given to all members of the board and to all news media at least twenty-four hours in advance of the meetings, as required by the laws of the state of California.

(Ord. 1778 N.S. § 2 (part), 2006)

(Ord. No. 1930 N.S., § 3, 4-22-2009)

2.22.070 - Compensation.

Members of the boards and commissions shall serve without compensation but may receive reimbursement for actual and necessary expenditures made or incurred in the performance of their prescribed duties in accordance with state law and the Municipal Code and policies of the city of Morgan Hill.

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.080 - Effect.

Nothing in this chapter shall be construed as restricting or curtailing any of the powers of the city council or city officers as defined by the laws of the state of California or by this Municipal Code. Except as otherwise set forth in Chapter 2.36, the city council declares that the public interest and convenience require the appointment of the boards and commissions established pursuant to Section 2.22.010 to act purely in an advisory capacity to the city council.

(Ord. 1778 N.S. § 2 (part), 2006)

Chapter 2.36 - PLANNING COMMISSION*

Sections:

2.36.010 - Created—Statutory authority.

The planning commission is established pursuant to the authority contained in Chapter 3 of Title VII of the California Government Code, entitled "Local Planning, " as existing or hereafter amended. Reference shall be made to said Chapter 3 for interpretation of this chapter.

(Ord. 811 N.S. § 1 (II-3-1), 1987)

2.36.020 - Membership—Terms of office—Vacancies.

- A. The city planning commission shall consist of seven members. Members of the planning commission shall serve the following terms:
1. In the year 1998, three members shall be appointed to serve terms ending June 1, 2001;
 2. The four members who were appointed in 1996 shall serve terms ending June 1, 1999;
 3. Thereafter, all terms shall be for four years and shall expire on June 1st.

(Ord. 1778 N.S. § 5, 2006; Ord. 1407 N.S. § 2, 1998; Ord. 1083 N.S. § 1, 1992; Ord. 811 N.S. § 1 (II-3-2), 1987)

2.36.030 - Meetings.

The commission shall hold regular meetings at least twice a month or as otherwise deemed necessary by the commission. All meetings of the commission shall be held in the city council chambers at City Hall or other location designated by minute order of the city council or at a location deemed necessary or appropriate by the planning commission.

(Ord. 1197 N.S. § 1 (part), 1994; Ord. 811 N.S. § 1 (II-3-3), 1987)

2.36.040 - Powers and duties.

The planning commission shall have the powers and shall perform all the duties conferred and imposed upon city planning commissions by the applicable provisions of Chapter 3 of Title VII of the Government Code of the state and, in addition, the planning commission shall:

- A. Perform all the functions assigned to the commission by the subdivision and zoning ordinances (Titles 17 and 18 of this code) of the city, and all general laws of the state of California;
- B. Serve as an advisory body to the city council on matters related to city growth and

- development and on such other matters as may be requested by the council;
- C. Promote public interest in and understanding of the subdivision and zoning ordinances of the city, and also of all master plans and other official plans and regulations pertaining to planning which have been approved officially by the city council;
 - D. Review and advise the city council on all proposed amendments to Title 17, Subdivisions, and Title 18, Planning and Land Use Regulations;
 - E. Approve or disapprove application for designation of cultural resources and historic districts pursuant to Chapter 18.75 of this code, or as amended;
 - F. Approve or disapprove permits sought to remove or demolish a cultural resource, cultural resource site or historic district pursuant to Chapter 18.75 of this code, or as amended.

(Ord. 1111 N.S. §§ 2, 3, 1992; Ord. 899 N.S. § 18, 1989; Ord. 811 N.S. § 1 (II-3-4), 1987)

Print**Commission Application - Submission #31614****Date Submitted: 12/14/2021****First Name**

Chelsea

Last Name

Doiguchi

Address1**Address2****City**

Morgan Hill

State

CA

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

High School Teacher

Are you a registered voter?

yes

**Please list any properties you own in Morgan Hill****Do you have any relatives currently employed by the City of Morgan Hill?**

No

**If yes, please provide name**

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission



Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.



Please upload a letter of interest or cover letter*

Cover Letter - City of Morgan Hill.pdf

Please upload a resume*

CHELSEA.pdf

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

No

What skills and/or experience do you possess that would be important to your role as a commissioner?*

I am a highly motivated and informed resident of Morgan Hill. I have worked closely with the Urban Land Institute as well several land use professionals over the last 6 years in my high school classroom.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The role of the planning commission is to approve various land use permits serves as an advisory board to the city council on issues relating to the growth and development of Morgan Hill.

What would you like to accomplish as a commissioner?*

I would like to provide my knowledge and insights on land use. As a resident of Morgan Hill and long time bay area native, I understand the wants and needs of the community.

What are the greatest opportunities facing the community in regards to this commission?*

In regards to the planning commission, I believe the greatest opportunities facing the community are the various potential sites up for re-development, the opportunity to responsibly and sustainably develop land and transform Morgan Hill in to well-designed, market-responsive, and financeable place to live.

If you are an incumbent seeking reappointment:

Are you next in line to serve as Chair or Vice-Chair?

☐ Yes

☐ No

Are you currently serving on a committee

☐ Yes

☐ No

Are you assigned to a special project?

☐ Yes

☐ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Chelsea Doiguchi

Date*

12/14/202

1:00 PM

City of Morgan Hill
Planning Commission
17575 Peak Avenue
Morgan Hill, CA 95037

December 15, 2021

Dear Planning Commissioners,

I am excited to be applying for a seat on the planning commission for the city of Morgan Hill. This opportunity appears to be a great fit, as I am very familiar with the cultural diversity of the community having lived in the bay area for 34 years. I have been living in Morgan Hill (Paradise neighborhood) for almost 6 years. I grew up in Mountain View, just 40 minutes from Morgan Hill. I also attended public schools in Mountain View. I am an energetic and committed individual who understands the challenges a city must undergo. As a high school social studies teacher at Los Altos High School, I believe in creating socially conscious citizens that have the skills and knowledge to meet the unique challenges of the twenty-first century as well as providing the knowledge and support to help students achieve their personal and academic success.

One way I do this is by having my senior economics students do an Urban Plan Project. I have worked collaboratively with the Urban Land Institute (ULI) for the past 6 years to teach my students leadership skills on responsible uses of land and in creating sustainable thriving communities. Students learn how forces of our market economy clash and collaborate with non-market forces of our representative democracy to create the built environment. I have worked closely with over 30 ULI member volunteers who are all local land use professionals including various city managers, planning commissioners, city council members, mayors, economic development managers, etc. These individuals have spent hours in my classroom working with my students on their site plans for their development projects as well as communicating with me about their careers. I have grown to enjoy learning about city planning. When I recently told them about this opening all of them encouraged me to apply and said I would learn so much about land use.

I have taught high school social studies for over 11 years in very diverse cities including Vacaville, Salinas, Campbell and Los Altos. I collaborate weekly with the social studies department, have served as course team lead for various social studies courses, have been a focus group leader for the school's WASC (Western Association of Schools and Colleges) Plan, have coached JV softball, and am currently a site building representative for our MVLA DTA (teachers association).

Prior to teaching, I attended the University of California, Davis where I received my teaching credential and master's degree in education. I went to the University of California, Irvine and received a bachelor's degree in psychology and social behavior and criminology, law and society with a minor in education.

Being born and raised in this area, I am very familiar with Silicon Valley's diverse population and rich culture. I have seen so much change in public/private land use. From this knowledge, I believe this position with the planning commission would be a perfect opportunity for me to continue growing as an informed community member, educator and as an individual to best serve the residents and City of Morgan Hill. I have always had a passion for working with the community that extends beyond the classroom.

I have attached my resume as well as the required paperwork. If you have any questions, please feel free to call me at any time. I look forward to hearing from you soon and welcome the opportunity to discuss my qualifications further. Thank you for your consideration.

Sincerely,

Chelsea Doiguchi

Chelsea Doiguchi

[REDACTED]
[REDACTED]

CHELSEA DOIGUCHI

EDUCATION

- Master of Arts in Education, University of California, Davis
- Single Subject Social Science Credential, University of California, Davis
- Bachelor of Arts in Psychology and Social Behavior; Bachelor of Arts in Criminology, Law and Society; Minor in Education, University of California, Irvine

CREDENTIAL

- Single Subject Teaching Credential – Social Science

SUMMARY OF QUALIFICATIONS

- Highly motivated, enthusiastic, and caring educator who believes all students can be successful
- Ability to create stimulating and quality lessons to meet the learning objectives of each student
- Effective classroom management built around respect, cooperation, and trust

EXPERIENCE

- | | | | |
|-------------------------------|-----------------------|---------------|-----------------|
| Social Studies Teacher | Los Altos High School | Los Altos, CA | 8/2014- Present |
|-------------------------------|-----------------------|---------------|-----------------|
- Experience in teaching AP Psychology, Economics, U.S. History, World Studies and Contemporary World Issues.
 - Economics - Worked collaboratively with the Urban Land Institute to implement the Urban Plan Project for high school seniors. Attended various trainings and workshops as well as worked closely with land use professionals over the past 6 years.
 - Planned and implemented lessons aligned with Common Core Standards
 - Collaborated weekly with social studies department producing common lessons, assessments and rubrics
 - Provided differentiated lessons and scaffolded assignments and assessments to meet the needs of English Language Learners and students with 504 and IEPs.
 - WASC Focus Group Co-Lead
 - Collaborated with and led a focus group for WASC school report.
 - Reviewed our previous self- study
 - Collected data to justify our school's progress and goals
 - Prepared a report of our findings and future steps in our school's new self-study for future implementation
 - Co-Course Team Lead: Contemporary World Issues, Economics, AP Psychology
 - Club Advisor for Student Led Clubs- One Step at a Time (collaborated with NAMI of Santa Clara County), Random Acts of Kindness, STEAM LAHS
 - JV Softball Coach, 2014-2016
 - DTA Site Building Representative 2018- Present

- Social Science Teacher** Del Mar High School San Jose, CA 9/2013-6/2014
Experience in teaching AP Government and Politics, Economics, Government, and Plato Online Course. Planned and implemented lessons aligned with Common Core Standards. Collaborated weekly with social studies department producing common units and worked closely with English department creating interdisciplinary common assessments. Provided differentiated lessons and scaffolded assignments and assessments to meet the needs of English Language Learners and students with 504 and IEPs.
- Social Science Teacher** North Salinas High School Salinas, CA 9/2010-9/2013
Experience in teaching Government, Economics, U.S. and World History. Ability in creating engaging lesson plans by connecting the material to the students' interests. Foster a learning environment by taking an active interest in my students in and outside the classroom. Supply differentiated instruction to meet the needs of all learners; provide modifications for English Language Learners and students with 504s and IEPs. Ability to teach TR classes (transitional classes) that incorporate teaching strategies for scaffolding the learning process for English learners. Plan, develop and administer exams, including but not limited to benchmark and CSTs. Involved in school-wide special events and collaborated with the Social Science and Special Education departments. Appointed Social Science course lead; developed department-wide common assessments and used data-based facts to report students' learning to the Principal. Assisted in an after school tutorial program for students failing two or more classes. Participated in Gradual Release of Responsibility Training (GRR), Constructing Meaning (CM), and Common Core State Standards Workshop for Social Science. Served as the Club advisor for softball and coached two years of Junior Varsity girl's softball.
- Student Teacher** Vacaville High School Vacaville, CA 1/2010-6/2010
Planned and implemented California standards-based curriculum as well as followed a district-wide pacing guide in U.S. History. Taught in a culturally diverse classroom setting with several students with IEPs and 504 Plans as well as students who were classified as ELLs. Provided scaffolding to make work accessible for all students. Prepared and administered exams including benchmark assessments. Participated in school-wide special events, faculty/department meetings and report card preparation.
- Student Teacher** Willis Jepson Middle School Vacaville, CA 10/2009-12/2009
Taught a culturally diverse 8th grade U.S. History class with several students who were classified as ELLs as well as students with IEP and 504 Plans. Provided modifications to make work accessible for all students. Prepared and administered exams including benchmark assessments.
- Substitute Teacher** Vacaville Unified School District Vacaville, CA 3/2010-6/2010
Taught at high schools in the Vacaville Unified School District. Followed and implemented California standards-based lesson plans.
- Humanities Out There Tutor** Century High School Santa Ana, CA 12/2008-3/2009
Tutored and taught U.S. History lessons to a primarily low SES student population with several students who were identified as ELLs. Revised and made accommodations to make work obtainable for all students. Participated in meetings with University of California, Irvine Humanities Out There program directors to prepare lessons.
- Elementary School Mentor** Wilson Elementary School Costa Mesa, CA 3/2007-6/2007
Tutored and taught modified science lessons to a school population which was 99% socioeconomically disadvantaged and 77% of students who were classified as English Learners through UC Irvine's Department of Education after school Links Program.
- Drop-Out Recovery Liaison** Valley Vista High School Fountain Valley, CA 3/2008-6/2009
Volunteered and tutored culturally diverse, low SES, at-risk students in various subjects at Valley Vista Continuation School. Sat-in during student interventions with the school psychologist and student support team. Hired as a drop-out recovery liaison by the Huntington Beach Union High School District. Contacted parents of students who were put on a district-wide drop-out list, referred students to alternative education

programs (Adult Education, ACCESS, GRE preparation, community college), in contact with various school registrars and probation officers to verify students' enrollment.

SPECIAL INTERESTS

- Teaching Leadership, Student Government, Mock Trial, and Peer Counseling
- Coaching girl's softball, club advisor
- WASC coordination

ADDITIONAL TRAINING

- NFHS Fundamentals of Coaching and CIF Certified
- AP Training October 2013, AP Government and Politics
- AP Training June 2017, AP Psychology

HONORS AND AWARDS

- Received SURP Grant at the University of California, Irvine (Summer Undergraduate Research Opportunities Program). Performed research on pre-service teachers in the MAT program with faculty mentor Dr. Lindsey E. Richland
- Deans Honor List (2 quarters). University of California, Irvine

Print**Commission Application - Submission #31939****Date Submitted: 1/5/2022****First Name**

Mark

Last Name

Grisedale

Address1**Address2****City**

Morgan Hill

State

CA

Zip

95038-2094

Home Phone Number**Cell Phone Number****email address****Occupation**

Financial Advisor

Are you a registered voter?

yes

**Please list any properties you own in Morgan Hill****Do you have any relatives currently employed by the City of Morgan Hill?**

No

**If yes, please provide name**

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission



Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Parks and Recreation Commission



Please upload a letter of interest or cover letter*

MG PC2.docx

Please upload a resume*

MG PC1.docx

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

St. Catherine School Board
Santa Clara County Fish & Game Commission



What skills and/or experience do you possess that would be important to your role as a commissioner?*

Financial Services
Business and Finance
Health Care



What do you understand the role of the commission to be and why would you like to serve on this commission?*

The role of the planning commission is to affect the future of Morgan Hill with respect to growth and development. I would like to be a part of this decision making process.



What would you like to accomplish as a commissioner?*

To see the growth and development of Morgan Hill progress in a balanced and respectful manner.



What are the greatest opportunities facing the community in regards to this commission?*

Morgan Hill is a very desirable community and as such the demand for living here and locating businesses here is high and will continue in this manner. I believe we need a fair and balanced approach based on the desires and needs best for the community.



If you are an incumbent seeking reappointment:

Are you next in line to serve as Chair or Vice-Chair? ☐ Yes ☒ No	Are you currently serving on a committee ☐ Yes ☒ No
Are you assigned to a special project? ☐ Yes ☒ No	If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Mark Grisedale

Date*

1/5/2022

6:45 PM

Dr. Mark Grisedale DVM

Morgan Hill, CA 95038

I have lived and/or worked in Morgan Hill for about 13 years raising my two boys here. Now that the boys are out of the home, I intend to become more involved in issues important to me and our community. I currently serve as a commissioner on the Santa Clara County Fish & Game Commission. I have been on the School Board of St. Catherine School. I am currently a member of LeTip and Rotary. I feel my experience, concern and common sense approach would be an asset to the Planning Commission and the community as a whole. Thank you for your consideration.

Mark

Dr. Mark Grisedale DVM

Morgan Hill, CA 95038

I do not have a resume but will provide my educational and work history. All dates are approximate.

EDUCATION:

1980-1982 Bakersfield College

1982-1985 Cal Poly San Luis Obispo

1985-1989 University of California- Davis

I have a B.S. in Veterinary Science and a Doctor of Veterinary Medicine degree

WORK EXPERIENCE

Childhood – 1989: I was a cowboy working on my family's cattle ranch

1989-1992 – Peninsula Equine, equine veterinarian

1992-1997 – Self employed equine veterinarian

1998-2011 – Stanford University Cardiothoracic Surgery Department (part time research)

1997-present – Self employed independent financial advisor

Print

Commission Application - Submission #31206

Date Submitted: 11/19/2021

First Name

Paul

Last Name

Lake

Address1

Address2

City

Morgan Hill

State

CA

Zip

95037

Home Phone Number

Cell Phone Number

email address

Occupation

Senior Director - Cloud IT Business Operations - Oracle Inc.

Are you a registered voter?

yes

Please list any properties you own in Morgan Hill

Do you have any relatives currently employed by the City of Morgan Hill?

No

If yes, please provide name

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[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission



Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Parks and Recreation Commission



Please upload a letter of interest or cover letter*

Paul H. Lake Morgan-Hill Cover Letter.docx

Please upload a resume*

Paul H. Lake CV-2021.pdf

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

I currently serve on the Library Arts and Culture Commission and my current term is up in April 2022. I would like some new blood to take my place and also have an opportunity to continue to serve Morgan Hill

What skills and/or experience do you possess that would be important to your role as a commissioner?*

have served on the Library, Arts and Culture commission for several terms including Chair and am already familiar with collaborating and working with City government and fellow Commissioners and community stakeholders. While I was on the LCAC, we were able to achieve several cultural and Art events, to bring the community together. This goal of acceptance of a diverse Morgan Hill, tolerance for others and building a safe and well planned city are very important to me. I think my LCAC business experience combined with my LCAC experience will be helpful to the Planning Commission.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The Planning Commission seeks feedback from the community, and advises the City on matters related to permits and city planning, growth and development

What would you like to accomplish as a commissioner?*

I would like to be able to work with other team members of the planning commission to leave a legacy of a well planned city, one that is safe, sustainable and enjoyable for Morgan Hill children and their families.

What are the greatest opportunities facing the community in regards to this commission?*

1) Expanding the central business district into other arteries beyond the strip on Monterey. 2) Planning for a smooth commute traffic flow in and around Morgan Hill 3) Preserving green space

If you are an incumbent seeking reappointment:

Are you next in line to serve as Chair or Vice-Chair?

☐ Yes

☒ No

Are you currently serving on a committee

☒ Yes

☐ No

Are you assigned to a special project?

☐ Yes

☒ No

If you are assigned to a special project, please describe the project.

(LCAC) Art A La Carte for children on April 23, 2022

Please review the City Council Ethics Policy

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Paul H. Lake

Date*

11/19/2022

12:30 PM

From startups to global corporations, a premier executive portfolio of proven expertise with 20 years in Silicon Valley high tech leadership in Customer Support/Success, Development, Project Management, Cloud Business Operations, Organizational Training, Mergers & Acquisitions, Procurement & Vendor Management.

- **Leadership & Building:** Values based leadership and a proven track record in creating high performance teams
- **Strategy:** Possesses solid experience in building agile, scalable and creative workplace models
- **Organizational Development:** Track record of merging and training different teams to build a cohesive unit
- **Customer Focus:** Engagement with customers & partners, aligning actions for their success
- **Analytical Thinking:** Strong ability to dissect complex issues, communicate and formulate actions plans

Senior Director Business Operations, Global Business Units Cloud **Oracle** Sept 2012 – current

- Created a 6 member Business Operations team for an acquired Industry Cloud Ops IT team of 400+
- > \$80M CAPEX > 80 Data Centers, \$20M OPEX (Cisco, DiData, MS Azure, Splunk, AWS, Equinix, DRT)
- C-level communication and approvals as part of the CAPEX and Vendor Management process
- Procurement for Data center Compute Racks, Circuits, Network gear, memory, disk, space and power
- Negotiated contracts with 3rd Party software vendors, resulting in cost savings of over \$5M in 4 years
- Negotiated contracts with data center partners, resulting in cost savings over \$4M in 3 years
- Created and trained team on a deal review process, improving velocity for GBU cloud deal volume >600 a year
- Created and trained team on M&A playbook, improving efficiency, eliminated contractual delays and liability
- Integrated at least 1 cloud M&A a year (e.g. Micros, Textura, Opower, Aconex, ClearTrial)

Senior Director, Customer Support and Dev, Health Sciences Cloud **Oracle** Sept 2010 – Sept 2012

- Led Change Management efforts to make acquired companies successful within Oracle, post-merger
- Integrated and led acquired Phase Forward and Oracle legacy Health Science support teams
- Led 80+ global team of Cloud Support, Customer Success Managers, and Development Support
- Executed organizational training plan to implement a cloud support model from on-premise support
- Increased Customer Satisfaction from 83% to 91%
- Reduced support costs by implementing a proactive Top Account Customer Success program
- Managed \$10 Million dollar CAPEX and OPEX budget tied to the 24x7 global support

Director, Siebel CRM OnDemand Cloud Support **Oracle** Redwood City, CA. March 2006 – Sept 2010

- Member of PeopleSoft M&A Integration Team, then asked to manage Siebel cloud support team of 130
- Developed unifying organizational training plan for merged team, keeping churn due to acquisition to below 2%
- Led a global Cloud team to increase customer satisfaction by 20% in 6 months
- Created Customer Success Advisory team, improved customer on-boarding and higher customer adoption
- 2008 awards - **Outstanding Team award**, Outstanding **'Leadership and Passion'** award

Senior CRM Customer Support Manager **PeopleSoft** Pleasanton, CA. March 2002 – March 2006

- Managed PeopleSoft CRM support team of 30 to achieve Customer Sat scores greater than 92% for over 2 years
- Developed and trained team on preventative support practices as part of **Proactive Support Pilot**
- Implemented **Top 10 Customers Success Program**, reducing upgrade/install issues by 80%
- Honored with a CRM Support **'Commitment to Excellence'** award

Customer Support Director	Annuncio Software Mountain View, CA. Feb 2000– March 2002
----------------------------------	--

- Built, trained and managed a top performing Cloud Customer Success team of 12 at a cloud startup
- Instituted weekly Resolution meetings with Dev and Support to resolve top priority customer issues
- Successfully advocated for enterprise level cloud testing, dramatically reducing customer down time
- Awarded Annuncio’s **‘Top Dog’** honor for **‘Strongest Customer Advocate’**

San Jose State University, San Jose

Master of Science in Engineering Management

California State University, East Bay

Bachelor of Science in Computer Science

Middlesex University, London

Associate Degree, Computer Studies

San Jose State University, San Jose

Certified Customer Support Manager

IESE & University of Michigan

Executive Insight Program

Stanford School of Business and Design

Executive Leadership Customer Innovation Program

Paul H. Lake

I am happiest when I am communicating and collaborating. I promote a team culture of high performance. I inspire others and keep my team focused on the larger goal through change.



I am fair, respectful, insightful and fun. I have a positive attitude that is infectious. I lead by example, and instill confidence and a 'can do' attitude. I love to build teams.

I am very excited to apply for a position on the Morgan Hill Planning Commission. I have served several terms on the Morgan Hill Library, Arts and Culture Commission, including a term as Chair. It is a most fulfilling honor to serve the City of Morgan Hill, and I am eager to continue to do, and I am very excited about the opportunity to server on the Planning Commission.

I think my experience working with the LCAC and the City Council, combined with my business and professional skills will enable me to make a positive and impactful contribution to the Planning Commission.

At the start-up Annuncio Software, I was recruited to help build and train the Customer Support team. When Annuncio sold to PeopleSoft, my career continued in Customer Success/Technical Support leadership positions, at PeopleSoft and then at Oracle.

I have managed 2 large cloud support teams at Oracle, first in the CRM ERP space, and then in the Health Sciences and Clinical Trials space. Most recently, I have a created a Cloud Business Operations team, with a charter to negotiate contracts, data center and infrastructure supplier procurement and renewals.

I think that my understanding of organizational culture and people management, gathered from my training, and my experiences in startup, medium or global companies, gives me a unique and valuable skill set that I can offer to any organization that is trying to design to scale, or trying to improve team execution.

Being inclusive, transparent, supportive, honest and respectful are 'must-haves' in my book. In addition, organizational and training is key to developing high performing team, so organizational training and development has been an integral component for each team I have managed.

It has also been my pleasure to work with and to help other organizations, such as:

- Oracle recruitment promotional video - <https://www.youtube.com/watch?v=gsqsOw9-eAU>
- Morgan Hill City Commissioner, Library, Arts and Culture. Head of Commission for 2017
- Former Guest Lecturer at California State University East Bay in 'Leadership and Change Management'
- Guest speaker at YALI (Young African Leaders Initiative) on Team Leadership
- Guest panelist at Technology Services World on 'Realizing the value of Saas'
- Guest speaker for Oracle Support at the SoCal CRM Customer Summit
- Guest presenter at SSPA Conference at the Venetian in Las Vegas on 'Successful SaaS Strategy'
- Guest presenter at Hitachi Chemical on 'Coaching Your Bench'

Print**Commission Application - Submission #31445****Date Submitted: 12/3/2021****First Name**

Thomas

Last Name

Spitters

Address1**Address2****City**

Morgan Hill

State

California

Zip

95037

Home Phone Number**Cell Phone Number****email address****Occupation**

Self - Employed Consultant - Accountant

Are you a registered voter?

yes

**Please list any properties you own in Morgan Hill**

N / A.

Do you have any relatives currently employed by the City of Morgan Hill?

No

**If yes, please provide name**

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission



Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Library, Culture, and Arts Commission



Please upload a letter of interest or cover letter*

Cover.Letter.Planning.Commission.2021.txt

Please upload a resume*

Resume-Thomas-H.-Spitters.pdf

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.*

N / A. Have applied for a position in the Library Culture and Arts Commission (2021) only.

What skills and/or experience do you possess that would be important to your role as a commissioner?*

Organizational skills and systemic, structured work ethic and drive. Reasonableness and people consideration.

What do you understand the role of the commission to be and why would you like to serve on this commission?*

The role of the Morgan Hill Planning Commission is chiefly to oversee city development and growth. I would like to serve on the Morgan Hill City Planning Commission given my experience growing up locally and knowledge of municipal development, real estate and public finances. These are areas in which I am capable and able to make a local contribution.

What would you like to accomplish as a commissioner?*

Given the various present and future goals of the commission -- achieving those goals in a constructive, efficient, people and environmentally considered and oriented way.

What are the greatest opportunities facing the community in regards to this commission?*

Additional real estate development, commercial banking from agriculture and its role locally, development of downtown commerce, redevelopment of parts of town, water reclamation; preserving the local culture; other.

If you are an incumbent seeking reappointment:

Are you next in line to serve as Chair or Vice-Chair?

☐ Yes

☒ No

Are you currently serving on a committee

☐ Yes

☒ No

Are you assigned to a special project?

☒ Yes

☐ No

If you are assigned to a special project, please describe the project.

Please review the City Council Ethics Policy

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.*

Thomas Heaton Spitters, C.P.A.

Date*

12/3/2021

2:30 PM

Thomas H. Spitters

San Francisco, California, United States



[REDACTED]



[REDACTED]



[REDACTED]

Summary

See specialties. Seeking cross - border experience. Seeking additional computer language / software development experience.

Specialities: Over ten years' accounting experience including taxation, attestation, transactions, information technology and business integration.

Experience



Accountant

Accountancy - California

2004 - Present (18 years +)

C.P.A. -- Various -- www.consultancy.yahoosites.com

CompTIA, CISSP, Information Security -- <http://www.itsmfusa.org/member/spitters>



SYSTEMS / AUDITING / ACCOUNTING / IT CONSULTING

Consulting

Jan 2001 - Present (21 years +)

A business providing accounting support including SAP as well as accounting compliance, attestation, information technology, and tax and business planning services.



Student / Political (Policy) Activist / (Sports) Education Development Worker

Santa Clara University

1989 - Present (33 years +)



Contributor

Dui Hua Foundation

2003 - 2020 (18 years)

Documentary (and other) Contributor.



Consultant - Attendee

China SF

2016 - 2018 (3 years)



Attendee

1999 - 2016 (18 years)

Various events.

**Attendee - Accountant / Consultant**

Silicon Valley Asia Business Forum
2014 - 2015 (2 years)

**Senior Staff accounting**

Phillip Goodman Accountancy Corporation
Aug 1999 - Jan 2001 (1 year 6 months)
in a public tax practice and in a number of attestation engagements.

**Bookkeeping / Accounting**

Various.
Jun 1993 - Nov 1999 (6 years 6 months)
General accounting and bookkeeping for a variety of growing businesses including insurance and employee benefits, hospitality, real estate and some investments / securities.

**Accounting / Bookkeeping**

May 1997 - Jul 1999 (2 years 3 months)
Accounting.

**Agency Accountant**

NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY
May 1995 - Nov 1996 (1 year 7 months)
Duties included all critical business aspects of accounting and bookkeeping for a growing financial services agency.

**Consultant**

SEQUOIA RESEARCH
Jun 1994 - May 1995 (1 year)
A firm established in 1994 to serve small businesses in the formulation of business plans including capital budgeting, marketing plans, and accounting and bookkeeping.

Education**VARIOUS OnLine**

Certificates -- CompTia, CISSP, CISA, Computer and Information Systems Security/
Information Assurance
2016 - 2020
Review and Study of Computer and Computing Security Curricula.

**Université de Paris**

Certificat, Cours du Chinois Fondamental.
1981 - 2020

Etudes en économie et sciences sociales, faits divers.



Tulane University Law School

Program, Corporate

2005 - 2006

An academic program emphasizing knowledge of legal accounting compliance with the Sarbanes - Oxley Act of 2002 and SEC regulations.

MIS Training Institute - IT Audit Certificate - 12/04

Completion of curriculum for IT Audit Certificate included knowledge of IT auditing and controls, auditing business applications, controlling client/server operations and competency with other IT audit issues.

SAP - FI Academy Certified Consultant and FI Implementation Case Team Leader



San Jose State University

2000 - 2003

Tax School.



Santa Clara University

Masters; Bachelor; Certification, Business Administration; Arts; French; International Business Program

1989 - 1993

Undergraduate arts & sciences, graduate business studies. Courses in accounting, finances, management, economics, language, ethics, programming,



Santa Clara University

Bachelor - Arts & Sciences., Language.

1989 - 1993

Business Management & Administration, Arts & Sciences.

Licenses & Certifications



CITP 2008 - AICPA

Issued Jan 2008 - Expires Dec 2008



SCU International Business Cert. - Santa Clara University



Various Software Development / End - user / Functional. - Various ERP and Accounting Software Begun in 1997.



CompTIA Security SYO-401 - Simplilearn

204823

Skills

Accounting / IS / CLR • People • Marketing • Accounting • Internal Controls • Auditing • Small Business • Business Planning • Sarbanes-Oxley Act • Tax

Honors & Awards



NRCC Business Award - NRCC

Mar 2005

... for business citizenship.

CITY COUNCIL STAFF REPORT

MEETING DATE: March 2, 2022

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

RECEIVE UPDATE REGARDING PAVEMENT REHABILITATION PLANNING

RECOMMENDATION(S)

Receive update on pavement rehabilitation planning.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Maintaining Infrastructure

2020-2021 Strategic Priorities

Transportation

REPORT NARRATIVE:

City staff are in the process of finalizing the design and bidding the 2022 Pavement Rehabilitation Project. As planned, the project prioritizes the repair of the City's arterial and collector roadways, while allocating some of the available funds to the resurfacing of residential streets. With annual funding from State Senate Bill 1 (Road Repair and Accountability Act of 2017), and Measure B (2016 voter approved countywide half-cent tax to enhance transportation), the City will again resurface a significant number of roadways in 2022.

This update is provided now to provide the Council with a high level outline of future pavement rehabilitation planning. The current plan for rehabilitation for roadways is outlined below:

2021 Pavement Rehabilitation Project - Completed

- Tennant Avenue from Vineyard Avenue to Monterey Road
- Peak Avenue from Dunne Avenue to Wright Avenue
- DeWitt Avenue from Alkire Avenue to Claremont Avenue
- Main Avenue from DeWitt Avenue to Peak Avenue
- Wright Avenue from Peak Avenue to Monterey Road

- Farallon Avenue from Alkire Avenue to Peak Avenue
- Alkire Avenue from DeWitt Avenue to Peak Avenue
- Torrey Court
- Central Ave
- Park Way

2022 Planned Pavement Rehabilitation

- East Dunne Avenue from Hill Road to City limit (Grant Funded)
- Jackson Oaks Area Drive and Streets within Jackson Oaks neighborhood
- Hill Road from Dunne south to City limit
- Murphy Road from San Pedro to the City limit
- Main Avenue from Monterey to Butterfield
- Hilltop Court
- Rustling Oaks Court
- Condit Road from San Pedro to Tennant
- Church from San Pedro to Barrett
- Mast between Church and Vineyard
- Vineyard Blvd between Tennant and Mast
- Main Ave from DeWitt to John Telfer
- Via Grande
- Hidalgo Court
- La Giralda Court

2023 Planned Pavement Rehabilitation

- Dunne Avenue Overpass from Condit Road to Laurel Road
- Del Monte Second to Keystone
- Keystone Avenue
- Streets within western Jackson Meadows Neighborhoods
- West Central Avenue and adjacent streets, including Park Way, Lindo Lane, El Toro Court
- East Central from Monterey to McLaughlin
- Streets within La Crosse Neighborhood
- Monterey from Main to Cochrane
- Arterial Street Sealing – Streets TBD

2024 Planned Pavement Rehabilitation

- Llagas Road
- Streets within Woodland Acres Neighborhood
- Sunnyside Avenue

- Arterial Street Sealing – Streets TBD

The plan is consistent with the City's past practice of prioritizing arterial and collector streets, while beginning the process of repairing the worst residential streets in the City. The City has successfully maintained its weighted pavement condition index (between 71-74) over the last 5 years through investment of General Fund dollars and the addition of the SB1 and Measure B funding. The Council will receive a more comprehensive infrastructure update, including pavement management, as part of the upcoming budget process.

COMMUNITY ENGAGEMENT:

City staff are working 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.

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. Current appropriations for the 2022 Pavement Rehabilitation Project were funded through the Fiscal Year 2020/21 and 2021/22 Budget.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with receiving the report. Award of the project and final costs for the 2021 Pavement Rehabilitation project will return to the Council for approval.

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.

2021 Pavement Rehabilitation Project - Completed

- Tennant Avenue from Vineyard Avenue to Monterey Road
- Peak Avenue from Dunne Avenue to Wright Avenue
- DeWitt Avenue from Alkire Avenue to Claremont Avenue
- Main Avenue from DeWitt Avenue to Peak Avenue
- Wright Avenue from Peak Avenue to Monterey Road
- Farallon Avenue from Alkire Avenue to Peak Avenue
- Alkire Avenue from DeWitt Avenue to Peak Avenue
- Torrey Court
- Central Ave
- Park Way

2022 Planned Pavement Rehabilitation

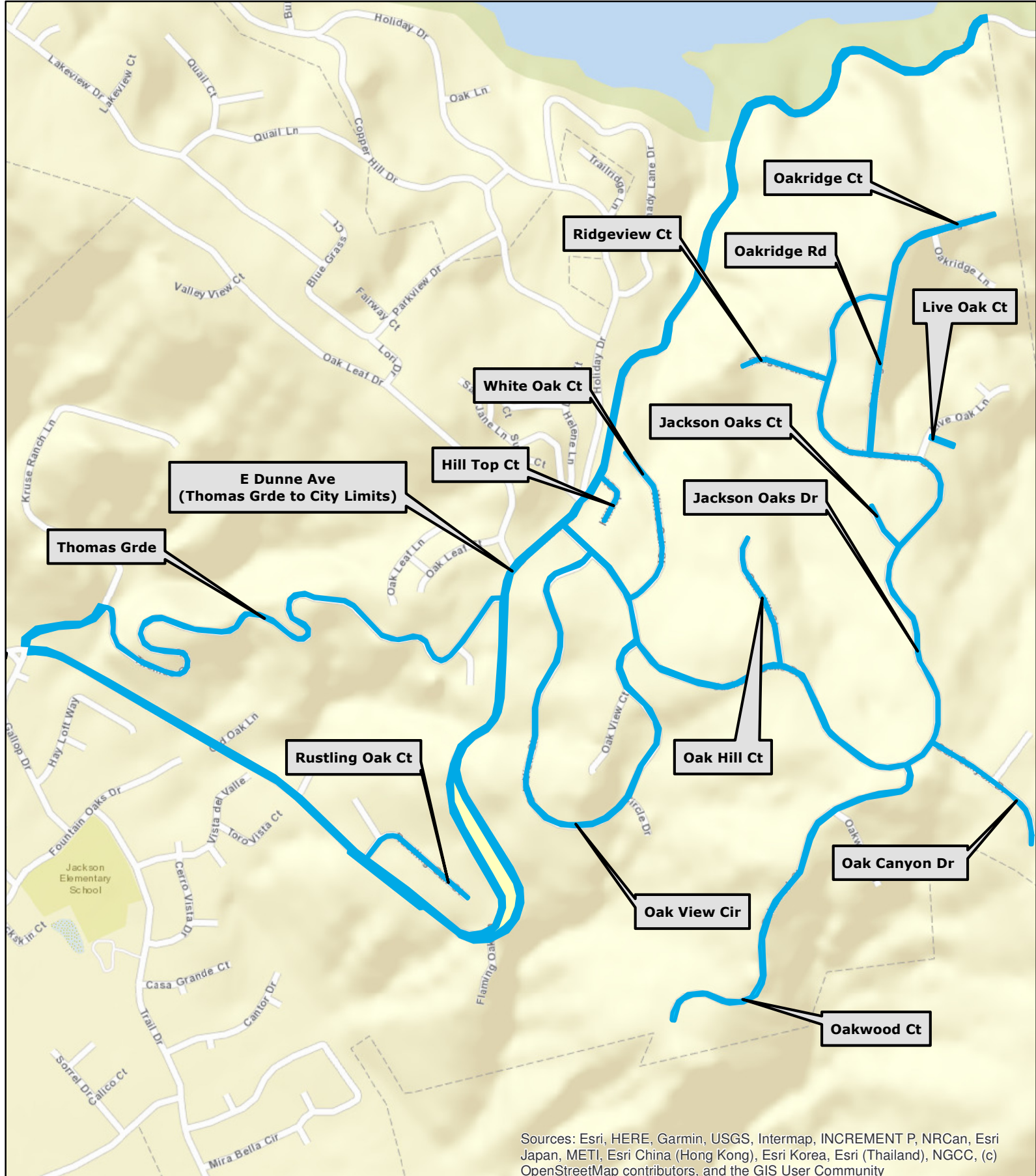
- East Dunne Avenue from Hill Road to City limit (Grant Funded)
- Jackson Oaks Area Drive and Streets within Jackson Oaks neighborhood
- Hill Road from Dunne south to City limit
- Murphy Road from San Pedro to the City limit
- Main Avenue from Monterey to Butterfield
- Hilltop Court
- Rustling Oaks Court
- Condit Road from San Pedro to Tennant
- Church from San Pedro to Barrett
- Mast between Church and Vineyard
- Vineyard Blvd between Tennant and Mast
- Main Ave from DeWitt to John Telfer
- Via Grande
- Hidalgo Court
- La Giralda Court

2023 Planned Pavement Rehabilitation

- Dunne Avenue Overpass from Condit Road to Laurel Road
- Del Monte Second to Keystone
- Keystone Avenue
- Streets within western Jackson Meadows Neighborhoods
- West Central Avenue and adjacent streets, including Park Way, Lindo Lane, El Toro Court
- East Central from Monterey to McLaughlin
- Streets within La Crosse Neighborhood
- Monterey from Main to Cochrane
- Arterial Street Sealing – Streets TBD

2024 Planned Pavement Rehabilitation

- Llagas Road
- Streets within Woodland Acres Neighborhood
- Sunnyside Avenue
- Arterial Street Sealing – Streets TBD



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community



CITY OF MORGAN HILL

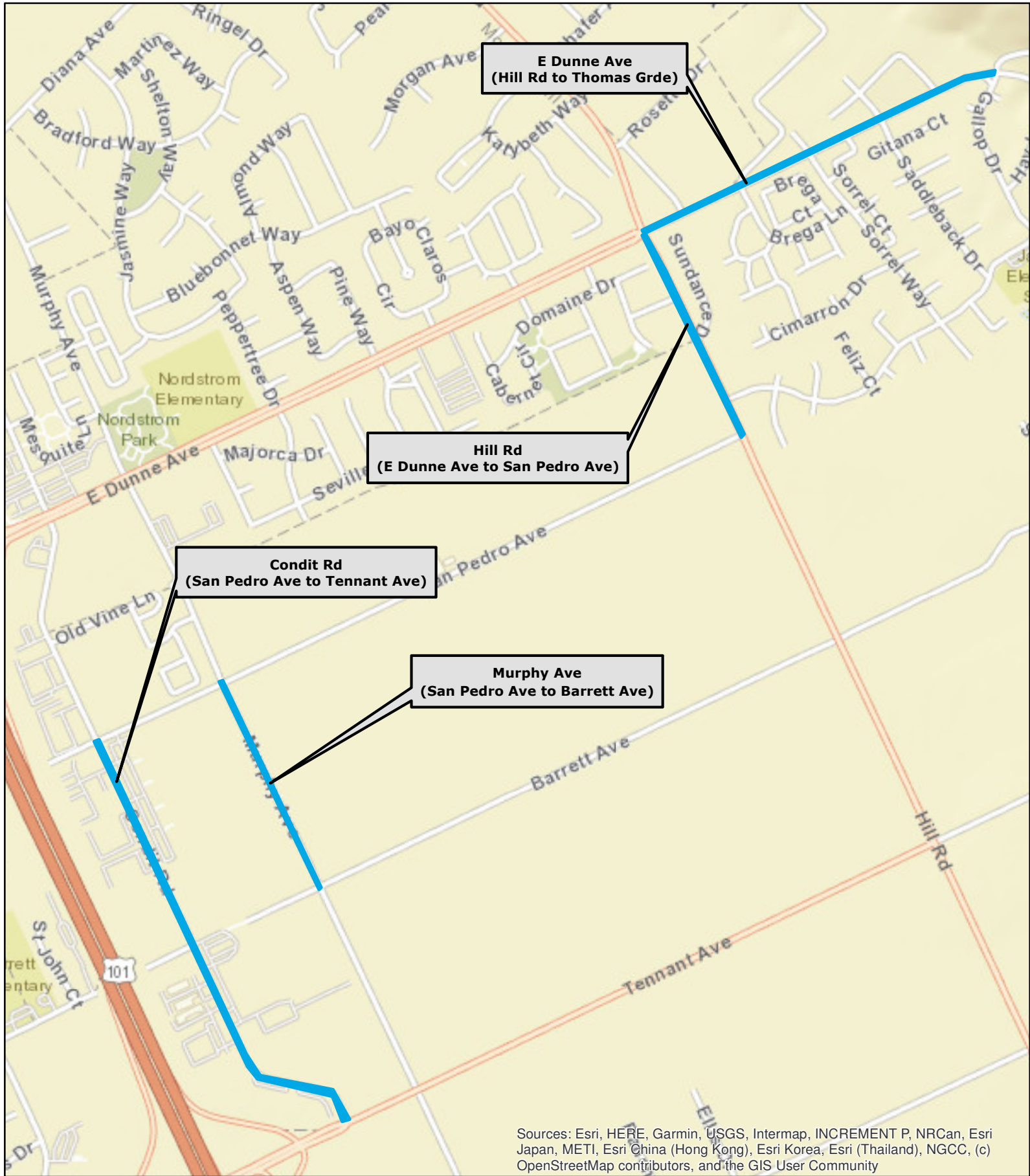
**Engineering and Utilities Department
CIP Engineering Division**

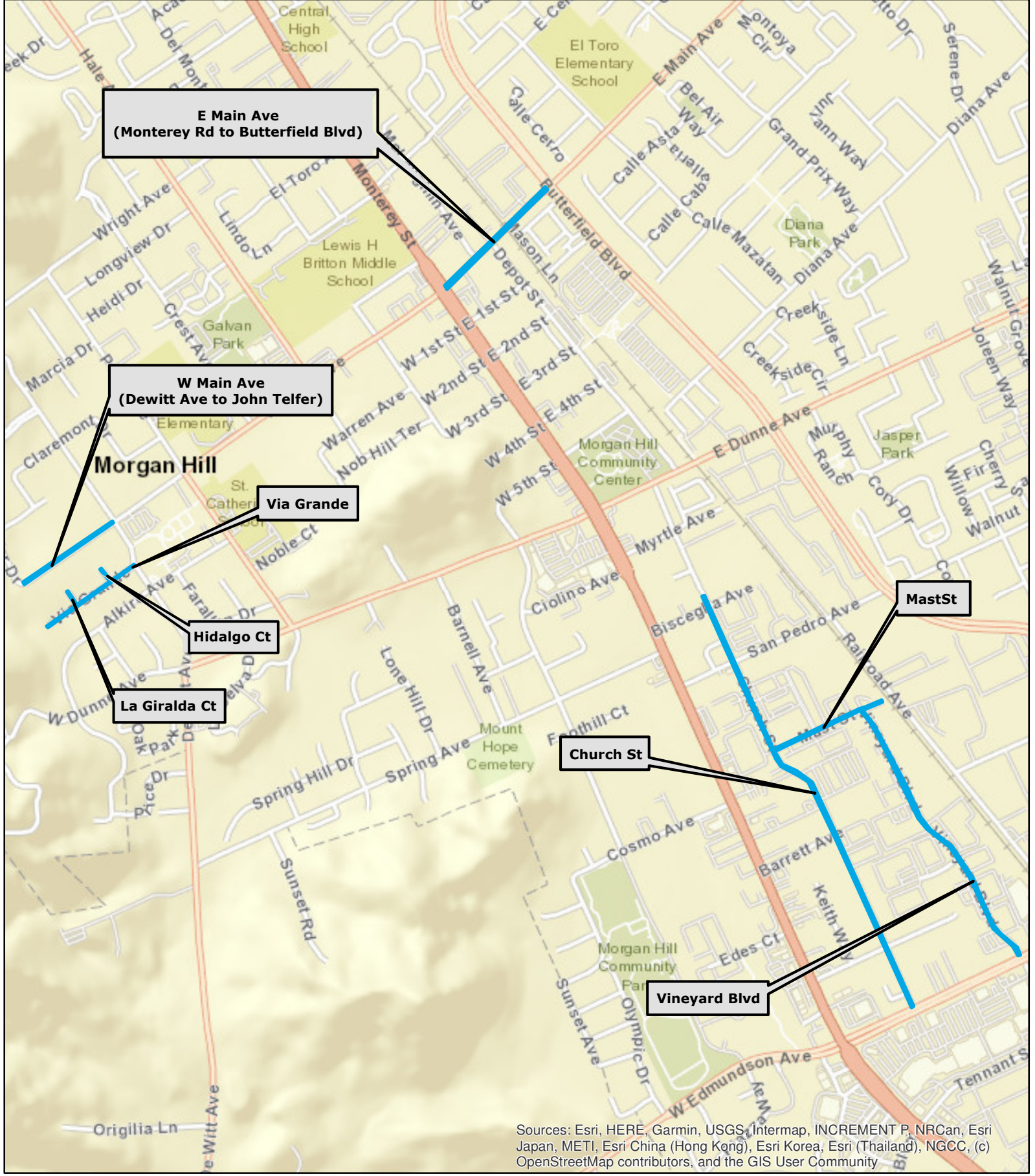
2022 PAVEMENT RESURFACING PROJECT



820 410 0 820 1,640 2,460 Feet

Page 43 of 558





CITY COUNCIL STAFF REPORT

MEETING DATE: March 2, 2022

PREPARED BY:

Yat Cho, Senior Project Manager

APPROVED BY: City Manager

ACCEPT BRITTON MIDDLE SCHOOL PEDESTRIAN ENHANCEMENT PROJECT

RECOMMENDATION(S)

1. Accept as complete the Britton Middle School Pedestrian Enhancement Project;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

Estimated Time: Not Applicable

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Supporting our Youth, Seniors, and Entire Community

2020-2021 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

REPORT NARRATIVE:

On March 17, 2021, the Britton Middle School Pedestrian Enhancement Project was awarded to Redgwick Construction Co. in the amount of \$748,729 with a contingency of \$112,310. The scope of work for this project included increased lighting, undergrounding of overhead utilities along the west side of Monterey Road in front of Britton Middle School, new sidewalk improvements along the school frontage on both Monterey Road and Central Avenue, and additional driveway modifications to two driveways at Central Avenue between Monterey Road and Del Monte Avenue.

The project began on July 5, 2021 and was substantially completed by December 31, 2021. Five change orders were authorized in the amount of \$82,204 due to additional work not in the original scope and unforeseen conditions (Attachment 2). The final

construction contract with Redgwick Construction Co is \$830,933. Staff recommends accepting this project as it is complete in accordance with the plans and specifications. Staff further recommends and directs the Clerk to file the Notice of Completion (Attachment 3).

Once the project is accepted, staff will continue to work on the reimbursement of the Community Development Block Grant (CDBG). A total of up to \$350,121 is eligible for the work completed along Central Avenue between Monterey Road and Del Monte Avenue.

COMMUNITY ENGAGEMENT:

Inform

Prior to and during the course of construction, staff provided regular project updates to the School District, neighborhood businesses, and residents on the status of the project. Staff worked with the contractor to minimize interruptions during school within the surrounding neighborhood. Weekly construction activities were updated on Nextdoor and the City's website.

ALTERNATIVE ACTIONS:

Accepting the project in accordance with the contract documents is a required process and enables the City to release any retained funds owed to the contractor per California Public Contract Code Section 7107.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

June 6, 2018 - City Council adopted the FY 2018-19 through FY 2023-24 Capital Improvement Budget which identifies funding for the proposed project.

March 17, 2021 - City Council authorized City Manager to Execute and Administer a Community Development Block Grant (CDBG) Agreement and awarded Britton Middle School Pedestrian Enhancement Project

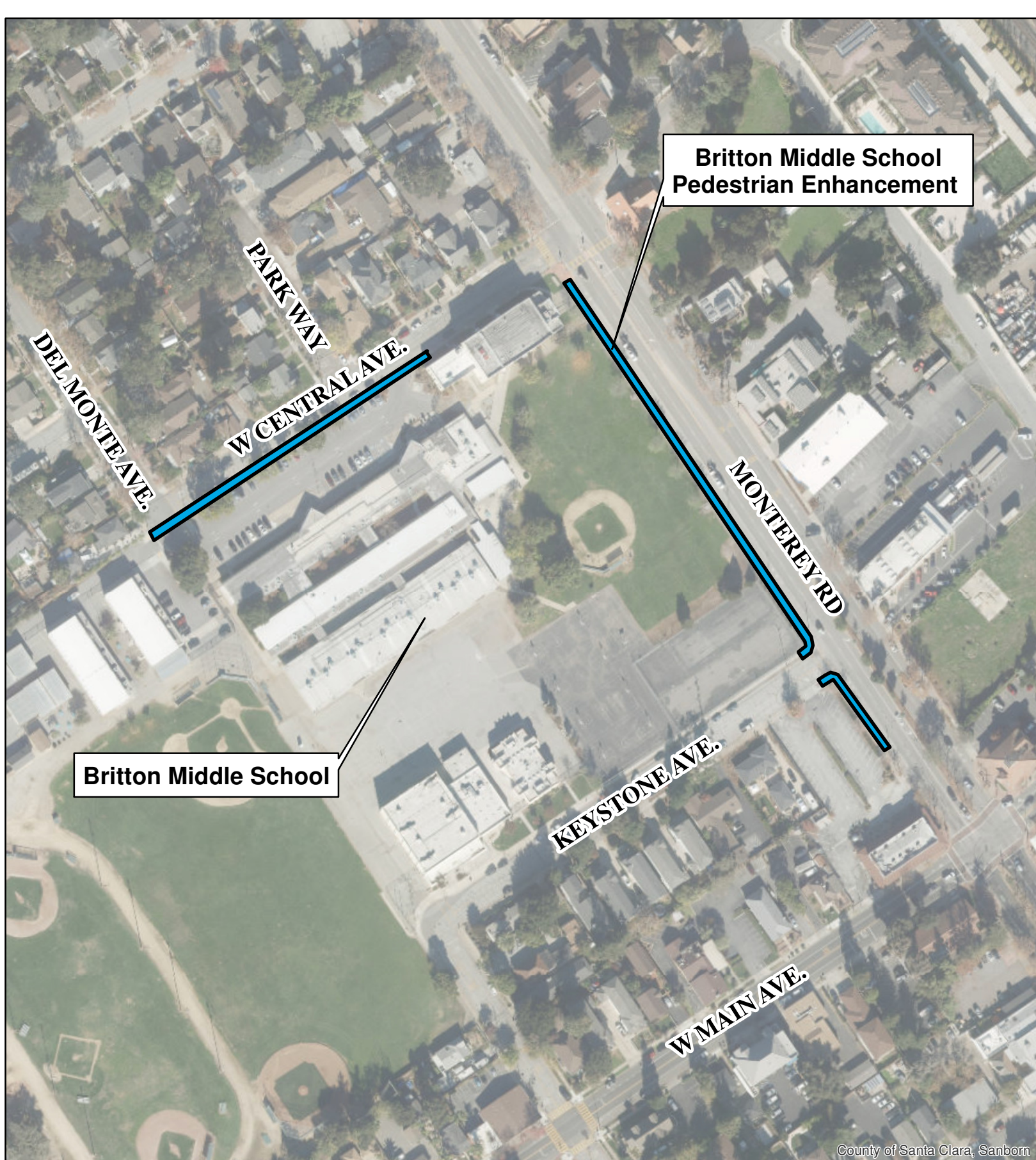
FISCAL AND RESOURCE IMPACT:

The final contract amount for the Britton Middle School Pedestrian Project is \$830,933. The project was awarded to Redgwick Construction Co. in the amount of \$748,729 with an authorized contingency of \$112,310 (Total of \$861,039). The project is funded in the adopted Capital Improvement Program budget, under Project #551008, RDCS School Safety Improvements, utilizing School Pedestrian & Traffic Safety Funds (355). Once the project is accepted, an amount of up to \$350,121 from CDBG Block Grant will be submitted for approval. The reimbursed amount will return to the School Pedestrian & Traffic Safety Fund (355).

Five change orders were authorized in the amount of \$82,204. The balance of \$30,106 will be returned to the RDCS School Safety Improvements (355).

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.



**Engineering and Utilities Department
CIP Engineering Division**

Document Path: G:\R-14\PROJ\Agustin\GIS\Britton Middle School Pedestrian Enhancement.mxd

Britton Middle School Pedestrian Enhancement



0 75 150 300 450 600

Feet

CIP Contract Acceptance Funding Closeout Statement

Project:	Britton Middle School Pedestrian Enhancement Project			
Project No:	551008			
Date of Project Award:	17-Mar-21	Project Award Amount:		\$748,729
Funding Source:	F355	Contingency Authorized:		\$112,310
Date of Project Acceptance:	2-Mar-22	Total Authorized:		\$861,039
		Actual Base Contract Spent:		\$748,729

Change Orders				
	Description	Date	Council Approval Req'd? (Y/N)	
C.O. #1:	Remobilization Cost	26-Jul-21	N	\$12,793.35
C.O. #2:	Miscellaneous T&M Work	8-Sep-21	N	\$30,743.27
C.O. #3:	Additional Paving Work at Keystone/Monterey Road and updated Demolition Quantities for Project	15-Sep-21	N	\$22,523.83
C.O. #4:	Overages and Underages on various Bid Items	28-Oct-21	N	\$9,298.03
C.O. #5:	Additional Sidewalk work at Del Monte/Central Avenue	21-Dec-21	N	\$6,845.63
			Total C.O.:	\$82,204.11

Additional Appropriations		
Source	Amount	Date
None		

		Total Construction Amount (Base Contract plus CO's):	\$830,933.11
Construction Fund Balance:	\$30,105.89		

Recording Requested By:

When Recorded Mail To:

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION

Civil Code §§ 8182, 8184, 9204, and 9208

NOTICE IS HEREBY GIVEN THAT:

1. The undersigned is the Owner or agent of the Project described below.
2. Owner's full name is City of Morgan Hill.
3. Owner's address is 17575 Peak Avenue, Morgan Hill, CA 95037.
4. The nature of Owner's interest in the Project is:
XX Fee ownership ___ Lessee ___ Other:
5. Construction work on the Project performed on Owner's behalf is generally described as follows: Sidewalk and Safety Enhancement Project
6. The name of the original Contractor for the Project is: Redgwick Construction Co
7. The Project was completed on: December 31, 2021
8. The Project is along Monterey Road between Keystone Avenue and Central Avenue and Central Avenue between Monterey Road and Del Monte Avenue

Verification: In signing this document, I, the undersigned, declare under penalty of perjury under the laws of the State of California that I have read this notice, and I know and understand the contents of this notice, and that the facts stated in this notice are true and correct.

Date and Place

Signature

Scott Creer, City Engineer

CITY COUNCIL STAFF REPORT

MEETING DATE: March 2, 2022

PREPARED BY:

Cynthia Iwanaga, Management Analyst

APPROVED BY: City Manager

AWARD 2022 SIDEWALK REPAIR PROJECT TO ASG BUILDERS, INC.

RECOMMENDATION(S)

1. Adopt a resolution amending the Fiscal Year 2021-22 adopted budget to appropriate an additional \$13,407 from Fund 346: Public Facilities for the 2022 Sidewalk Repair Project;
2. Award a contract to ASG Builders, Inc. in the amount of \$67,860; and authorize the expenditure of 40% construction contingency funds not to exceed \$27,144 for a total authorization of \$95,004; and
3. Authorize the City Manager to execute and administer that certain construction contract with ASG Builders, Inc.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining Infrastructure

2020-2021 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

The purpose of this item is to present the Council with an opportunity to review and consider the contract prepared to complete the City's 2022 Sidewalk Repair Project. The scope of work for the 2022 Sidewalk Repair Project will include the removal and replacement of concrete sidewalks at various locations within the City. Over 4,120 square feet of sidewalks will be repaired with this project. The exact locations and City bid documents are attached.

In soliciting bids for this sidewalk repair contract, the City advertised in the Morgan Hill Times on December 31, 2021. Bids were posted on the City website and on two online services, Public Purchase and Online Plan Services, whose subscribers include hundreds of contractors as well as Northern California Builders Exchanges. General Engineering (A) and Concrete (C-8) contractors registered on the City's bidders list were also informed of the bid opportunity via email.

A non-mandatory virtual pre-bid meeting was held on January 12, 2022. The bid opening was held on February 3, 2022 via a virtual meeting, and 12 bids were received as listed below:

Bidder's Name	Bid Amount
1. ASG Builders, Inc.	\$ 67,860.00
2. U.S. Engineering, Inc.	\$ 78,660.00
3. Becon, Inc.	\$ 78,750.00
4. iTECH Solution	\$ 79,220.00
5. Norcal Contractor	\$ 92,832.00
6. F J & I Engineering	\$ 96,640.00
7. Innovate Concrete, Inc.	\$ 98,005.60
8. Bear Construction	\$100,820.00
9. Duran Construction Group	\$115,544.40
10. Asphalt Surfacing, Inc.	\$120,362.00
11. Golden Bay Construction, Inc.	\$148,048.00
12. FBD Vanguard Construction, Inc.	\$172,106.00

The low bidder, ASG Builders, Inc., has two years of experience and has completed projects for the City of Gilroy and the City of Santa Clara, including sidewalk replacement projects. Staff recommends a 40% contingency of \$27,144, which will yield a total construction authorization of \$95,004 for the sidewalk repair and replacement contract. Due to the competitive pricing received, staff is recommending the 40% contingency to allow for additional sidewalk repairs this year. Staff recommends that the City Council award the contract to ASG Builders, Inc. in the amount of \$67,860, and authorize the City Manager to execute and administer the agreement. The project is scheduled to begin in late March or early April 2022.

COMMUNITY ENGAGEMENT:

Inform

Contractor will post signs at the sidewalk repair sites to inform pedestrians and cars of

the construction underway. Notification will also be posted on the City's website, Twitter, and Nextdoor Morgan Hill to inform residents that sidewalk repairs will be underway throughout the City beginning in March 2022.

ALTERNATIVE ACTIONS:

An alternative action would be to delay the repair of citywide sidewalks.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

While the City Council has not previously taken action on this particular item, conducting sidewalk repairs is an ongoing public safety activity and the Council has approved numerous contracts for sidewalk repairs in the past.

FISCAL AND RESOURCE IMPACT:

The total authorized amount for this contract is \$95,004 which includes a 40% contingency of \$27,144. The adopted Capital Improvement Program CIP Project 574015; Fund 355, School Pedestrian and Traffic Safety will fund \$81,597 of the costs. An additional \$13,407 will be appropriated from Fund 346: Public Facilities via the attached budget scorecard.

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 alterations 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 ASG Builders, Inc. ("Contractor") for work on the 2022 Sidewalk Repair 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 _____, 2022, (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 Other 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 Sixty-Seven Thousand Eight Hundred Sixty Dollars (\$67,860) (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 forty-five (45) 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: (408) 779-7259
Attn: City Clerk
Email: michelle.bigelow@morganhill.ca.gov
Copy to:keri.russell@morganhill.ca.gov

Contractor:

Name: ASG Builders, Inc.
Address: 800 W El Camino Real, Suite 180
City/State/Zip: Mountain View, CA 94040
Phone: (818) 370-7148
Attn: Sepideh Gholami
Email: Sepideh@asgbuilders.com
Copy to:_____

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.

[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: _____

Attest:

Michelle Bigelow
City Clerk

Date: _____

Approved as to Form:

Donald A. Larkin
City Attorney

Date: _____

CONTRACTOR:

ASG BUILDERS, INC.

Sepideh

Signature

Sepideh Gholami, CEO
Name/Title [print]

Date: 2/9/2022

Corporate entities must provide a second signature:

Arash

Signature

Arash Saffarpour, CFO
Name/Title [print]

Date: 2/9/2022

1062661
Contractor's License Number(s)

01/31/2024
Expiration Date(s)

Seal:

1000562841
Contractor's DIR Registration Number(s)

06/30/2024
Expiration Date

END OF CONTRACT

RESOLUTION NO. 21-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL APPROVING AN AMENDMENT TO
THE CITY'S FISCAL YEAR 2021-2022 BUDGET IN THE
PUBLIC FACILITIES (NON-AB 1600) (FUND NO. 346) TO
APPROPRIATE \$13,407, THEREFOR**

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

WHEREAS, the reasons supporting this Resolution are set forth in detail in that certain City Council Staff Report entitled "Award 2022 Sidewalk Repair Contract to ASG Builders, Inc." submitted for City Council consideration at its meeting of March 2, 2022, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Annual Budget for Fiscal Year 2021-2022 as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

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

WHEREAS, the City Council determines that adoption of this Resolution is in the public interest.

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

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

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

- a. That the City's previously adopted Fiscal Year 2021-2022 Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and

- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2021-2022 Budget of City.

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

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 2nd day of March 2022 by the following vote:

AYES:	COUNCIL MEMBERS:	None
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATION ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 21-_____ adopted by the City Council at the meeting held on the 2nd day of March 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

AGENDA BUDGET SCORECARD**FISCAL YEAR 2021-2022****ADJUSTMENT #**

013

FUND:

346 Public Facilities (Non AB1600)

DEPARTMENT:

8049 Public Facility/Non AB1600

OBJECT:

86360 CONSTRUCTION

AGENDA DATE:

03/02/22

AGENDA ITEM TITLE:

Award 2022 Sidewalk Repair Contract to ASG Builders, Inc.

	07/01/21 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/22 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	1,100,016	911,488	372,377	1,639,127
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	210,530	966,121	(755,591)
RECOMMENDED ACTION		-	13,407	(13,407)
RESULT OF RECOMMENDED ACTION	<u>1,100,016</u>	<u>1,122,018</u>	<u>1,351,905</u>	<u>870,129</u>

SPECIFICATIONS AND CONTRACT DOCUMENTS
for

2022
SIDEWALK REPAIR PROJECT



MORGAN HILL, CALIFORNIA
COMMUNITY SERVICES DEPARTMENT

January 2022

NOTICE INVITING INFORMAL BIDS

- 1. Bid Acceptance.** The City of Morgan Hill (“City”), will accept electronic PDF format (portable document format) bids for its 2022 Sidewalk Repair Project (“Project”), by or before Thursday, February 3, 2022, at 11:00 a.m., via e-mail to cynthia.iwanaga@morganhill.ca.gov, at which time the bids will be publicly opened and read aloud via a Zoom meeting at <https://bit.ly/MHSidewalkRepairBidOpening> No late bids will be accepted.
- 2. Project Information.**

2.1 Location and Description. The Project is located at various locations throughout Morgan Hill, and the Scope of Work is described as follows:

Removal and replacement of damaged concrete sidewalk, including root removal.

2.2 Time for Completion. The planned timeframe for commencement and completion of construction of the Project is Spring 2022 with anticipated start in late March 2022.

2.3 Estimated Cost. The estimated construction cost is \$79,000.
- 3. License and Registration Requirements.**

3.1 License. This Project requires a valid California contractor’s license for the following classification(s): A (General Engineering) or C-8 (Concrete).

3.2 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.
- 4. Contract Documents.** The plans, specifications, bid and contract documents for the Project (“Contract Documents”) may be obtained from the City of Morgan Hill website at <http://www.morgan-hill.ca.gov/bids.aspx> or at www.publicpurchase.com
- 5. Bid Proposal and Security.**

5.1 Bid Proposal Form. Each Bid must be submitted using the Bid Proposal form provided with the Contract Documents.

5.2 Bid Security. The Bid Proposal must be accompanied by a PDF copy of the bid security of ten percent (10%) of the maximum bid amount, in the form of a PDF of the cashier's or certified check made payable to City, or a PDF of the bid bond executed by a surety licensed to do business in the State of California on the Bid Bond form included with the Contract Documents. The City will request the original bid security documents, e.g., wet signed bid bond or cashier's check, from the two lowest bidders. The two lowest bidders will then have 48 hours to overnight the original bid security documents to the City. Submitted bid packages that do not include a PDF copy of the bid security documents will be deemed non-responsive. The bid security must guarantee that upon award of the bid, the bidder will execute the Contract and submit payment and performance bonds and insurance certificates as required by the Contract Documents within ten (10) days after issuance of the notice of award.

6. Prevailing Wage Requirements.

6.1 General. 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.

6.2 Rates. These prevailing rates are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight (8) hours. The rate for holiday and overtime work must be at least time and one-half (1/2).

6.3 Compliance. The Contract will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations, under Labor Code Section 1771.4.

- 7. Performance and Payment Bonds.** The successful bidder will be required to provide performance and payment bonds for one hundred percent (100%) of the Contract Price.
- 8. Substitution of Securities.** Substitution of appropriate securities in lieu of retention amounts from progress payments is permitted under Public Contract Code Section 22300.
- 9. Subcontractor List.** Each bidder must submit the name, location of the place of business, and California contractor license number and DIR registration number for each Subcontractor who will perform work or service or fabricate or install work for the prime contractor in excess of one half (1/2)

of one percent (1%) of the bid price, using the Subcontractor List form included with the Contract Documents.

- 10. Instructions to Bidders.** Additional and more detailed information is provided in the Instructions for Bidders, which should be carefully reviewed by all bidders before submitting a Bid Proposal.
- 11. Non-Mandatory Bidders' Conference.** A non-mandatory bidders' conference will be held on Wednesday, January 12, 2022 at 9:30 a.m., via a Zoom meeting. Please pre-register at the following link: <https://bit.ly/SidewalkRepairPreBid> The purpose of the conference is to acquaint all prospective bidders with the Contract Documents and the Work. The bidders' conference is not mandatory.

By: Michelle Bigelow, City Clerk

Date: December 13, 2021

Publication Dates: 1) December 31, 2021

END OF NOTICE INVITING INFORMAL BIDS

INSTRUCTIONS TO BIDDERS

Each Bid Proposal submitted to the City of Morgan Hill ("City") for its 2022 Sidewalk Repair Project ("Project") must be submitted in accordance with the following instructions and requirements:

1. Bid Submission.

1.1 General. Each bid ("Bid Proposal") must be in electronic PDF format, signed and e-mailed to designated City staff, using the form provided in the Contract Documents, by or before the date and time set forth in the Notice Inviting Informal Bids, or as amended by subsequent addendum. Hard copy or Faxed Bid Proposals will not be accepted, unless otherwise specified. Late submissions will not be accepted. City reserves the right to postpone the date and time for receiving or opening bids. Each bidder is solely responsible for all of its costs to prepare and submit its bid and by submitting a bid waives any right to recover those costs from City. The bid price(s) must include all costs to perform the Work as specified, including all indirect costs such as applicable taxes, insurance and field offices.

1.2 E-mail Bid Submittal. The City of Morgan Hill ("City") will accept bids via e-mail to cynthia.iwanaga@morganhill.ca.gov for its 2022 Sidewalk Repair Project ("Project"), by or before Thursday, February 3, 2022 at 11:00 a.m., at which time the bids will be publicly opened and read aloud via a Zoom meeting at <https://bit.ly/MHSidewalkRepairBidOpening>

Bids must be received by the City staff's e-mail inbox no later than 11:00 a.m. on February 3, 2022. No late bids will be accepted.

Please note: If City is unable to confirm that the bidder's DIR registration is current, City must disqualify the bidder and return its bid unopened (Labor Code section 1725.5).

2. Examination of Contract Documents and Project Site. Each bidder is solely responsible for diligent and thorough review of the Contract Documents (as defined in the General Conditions), examination of Project site, and reasonable and prudent inquiry concerning known and potential site conditions prior to submitting a Bid Proposal. However, bidders should not enter onto City's property or the Project site without prior written authorization from City. Bidders are responsible for reporting any errors or omissions in the Contract Documents to City prior to submitting a Bid Proposal, subject to the limitations of Public Contract Code Section 1104. City expressly disclaims responsibility for assumptions the bidder might draw from the presence or absence of information provided by City.

3. **Requests for Information.** Questions regarding the Project, the bid procedures or any of the Contract Documents must be submitted in writing to cynthia.iwanaga@morganhill.ca.gov no later than Friday, January 21, 2021 at 5:00 p.m.
4. **Addenda.** Any addenda issued prior to the bid opening are part of the Contract Documents. Subject to the limitations of Public Contract Code section 4104.5, City reserves the right to issue addenda prior to bid time.
5. **Brand Designations and “Or Equal” Substitutions.** 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 desired, and bidders may request use of any equal material, product, thing, or service. All data substantiating the proposed substitute as an “equal” item must be submitted with the written request for substitution. This provision does not apply to materials, products, things, or services that may lawfully be designated by a specific brand or trade name under Public Contract Code Section 3400(c).
 - 5.1 **Pre-Bid Requests.** Any request for submission made before the Contract is awarded must be submitted to the City Engineer at least ten (10) days before the opening of bids so that all interested bidders may be notified of any approved alternative.
 - 5.2 **Post-Award Requests.** After the Contract is awarded, Contractor may submit a substitution within fourteen (14) days after the date of award of the Contract, or as specified in the Special Conditions.
6. **Bidders Interested in More Than One Bid.** No person, firm, or corporation may submit or be a party to more than one (1) Bid Proposal unless alternate bids are specifically called for. However, a person, firm, or corporation that has submitted a subcontract proposal or quote to a bidder may submit subcontract proposals or quotes to other bidders.
7. **Bid Proposal Form and Enclosures.** Each Bid Proposal must be completed using the Bid Proposal form included in the Contract Documents. The Bid Proposal form should be fully completed without interlineations, alterations, or erasures. Any necessary corrections must be clear and legible, and must be initialed by the bidder’s authorized representative. A Bid Proposal submitted with terms such as “negotiable,” “will negotiate,” or similar, will be considered non-responsive. Each Bid Proposal must be accompanied by bid security, as set forth in Section 9 below, and by the completed Subcontractor List, and Non-Collusion Declaration using the forms included in the Contract Documents.

- 8. Authorization and Execution.** Each Bid Proposal must be signed by the bidder's authorized representative. A Bid Proposal submitted by a partnership must be signed in the partnership name by a general partner with authority to bind the partnership. A Bid Proposal submitted by a corporation must be signed with the legal name of the corporation, followed by the signature and title of two officers of the corporation with full authority to bind the corporation to the terms of the Bid Proposal, under California Corporation Code section 313.
- 9. Bid Security.** The Bid Proposal must be accompanied by a PDF copy of the bid security of ten percent (10%) of the maximum bid amount, in the form of a PDF of the cashier's or certified check made payable to City, or a PDF of the bid bond executed by a surety licensed to do business in the State of California on the Bid Bond form included with the Contract Documents. The City will request the original bid security documents, for example, wet signed bid bond or cashier's check, from the two lowest bidders. The two lowest bidders will then have 48 hours to overnight the original bid security documents to the City. Submitted bid packages that do not include a PDF copy of the bid security documents will be deemed non-responsive. The bid security must guarantee that upon award of the bid, the bidder will execute the Contract and submit payment and performance bonds and insurance certificates as required by the Contract Documents within ten (10) days after issuance of the notice of award.
- 10. Withdrawal of Bid Proposals.** A Bid Proposal may not be withdrawn for a period of ninety (90) days after the bid opening without forfeiture of the bid security, except as authorized for material error under Public Contract Code Section 5100 et seq.
- 11. Bid Protest.** Any bid protest must be submitted in writing via an e-mail to cynthia.hasson@morganhill.ca.gov and received by Cynthia Hasson, Assistant City Attorney before 5:00 p.m. no later than two (2) working days following bid opening (the "Bid Protest Deadline") and must comply with the following requirements:
- 11.1 General.** Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest. If required by City, the protesting bidder must submit a non-refundable fee in the amount specified by City, based upon City's reasonable costs to administer the bid protest. Any such fee must be submitted to City no later than the Bid Protest Deadline, unless otherwise specified. For purposes of this Section 11, a "working day" means a day that City is open for normal business, and excludes weekends and holidays observed by City.

11.2 Protest Contents. The bid protest must contain a complete statement of the basis for the protest and all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the specific portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address, email address, and telephone number of the person representing the protesting bidder if different from the protesting bidder.

11.3 Copy to Protested Bidder. A copy of the protest and all supporting documents must be concurrently transmitted by fax or by email, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

11.4 Response to Protest. The protested bidder may submit a written response to the protest, provided the response is received by the Assistant City Attorney before 5:00 p.m., within two (2) working days after the Bid Protest Deadline or after actual receipt of the bid protest, whichever is sooner (the "Response Deadline"). The response must include all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address, email address, and telephone number of the person representing the protested bidder if different from the protested bidder.

11.5 Copy to Protesting Bidder. A copy of the response and all supporting documents must be concurrently transmitted by fax or by email, by or before the Response Deadline, to the protesting bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

11.6 Exclusive Remedy. The procedure and time limits set forth in this section are mandatory and are the bidder's sole and exclusive remedy in the event of bid protest. A bidder's failure to comply with these procedures will constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.

11.7 Right to Award. City reserves the right to award the Contract to the bidder it has determined to be the responsible bidder submitting the lowest responsive bid, and to issue a notice to proceed with the Work notwithstanding any pending or continuing challenge to its determination.

- 12. Rejection of Bids; Award of Contract.** City reserves the right, acting in its sole discretion, to waive immaterial bid irregularities, the right to accept or reject any and all bids, or to abandon the Project entirely. The Contract will be awarded, if at all, within ninety (90) days after opening of bids or as

otherwise specified in the Special Conditions, to the responsible bidder that submitted the lowest responsive bid.

- 13. Bonds.** The successful bidder is required to submit payment and performance bonds as specified in the Contract Documents using the bond forms included in the Contract Documents. All required bonds must be calculated on the maximum total Contract price as awarded, including additive alternates, if applicable.
- 14. Evidence of Responsibility.** Within twenty four (24) hours following a request by City, a bidder must submit to City satisfactory evidence showing the bidder's financial resources, the bidder's experience in the type of work being required by City, the bidder's organization available for the performance of the Contract and any other required evidence of the bidder's qualifications to perform the proposed Contract. City may consider such evidence before making its decision awarding the proposed Contract.
- 15. License(s).** The successful bidder and its Subcontractor(s) must possess the California contractor's license(s) in the classification(s) required by law to perform the Work.
- 16. Taxes.** The bid price must include all applicable federal, state, and local taxes.
- 17. Ineligible Subcontractor.** Any Subcontractor who is ineligible to perform work on a public works project under Labor Code Sections 1777.1 or 1777.7 is prohibited from performing work on this Project.
- 18. 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 DIR to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
- 19. Bid Schedule.** Bidders are required to fully complete the Bid Schedule form accompanying the Bid Proposal form with unit prices as indicated, and to submit the completed Bid Schedule with their Bid Proposal.
 - 19.1 Incorrect Totals.** In the event of a computational error for any bid item (base bid or alternate) resulting in an incorrect extended total for that item, the submitted base bid or bid alternate total will be adjusted to reflect the corrected amount (estimated quantity X unit cost), unless the cumulative amount of correction changes the total amount of the base bid or bid alternate by more than five percent (5%). In the event of a discrepancy between the actual total of the itemized or unit prices shown on the Bid Schedule for the base bid, and the amount entered as the base bid on the Bid Proposal form, the actual total of the itemized or unit prices shown on

the Bid Schedule for the base bid will be deemed the base bid price. Likewise, in the event of a discrepancy between the actual total of the itemized or unit prices shown on the Bid Schedule for any bid alternate, and the amount entered for the alternate on the Bid Proposal form, the actual total of the itemized prices shown on the Bid Schedule for that alternate will be deemed the alternate price. Nothing in this provision is intended to prevent a bidder from requesting to withdraw its bid for material error under Public Contract Code Section 5100 et seq.

19.2 Estimated Quantities. The quantities shown on the Bid Schedule are estimated and the actual quantities required to perform the Work may be greater or less than the estimated amount. The Contract Price will be adjusted to reflect the actual quantities required for the Work based on the itemized or unit prices provided in the Bid Schedule, with no allowance for anticipated profit for quantities that are deleted or decreased.

- 20. Subcontractor Work Limits.** The prime contractor must perform at least 50% of the Work on the Project, calculated as a percentage of the base bid price, with its own forces, except for any Work identified as “Specialty Work” in the Contract Documents. The total bid amount for any such Specialty Work, as shown on the Bid Schedule, may be deducted from the base bid price before computing the 50% self-performance requirement. The remaining Work may be performed by qualified Subcontractor(s).
- 21. Local Preference.** Submittals will be evaluated based upon a local preference, which allows local businesses to reduce their bid amounts up to five (5%) percent in order to become the lowest bidder. The local businesses must also affirmatively mark on their bid submittal that they are a local business and that they willing to reduce their bid amount by up to 5% in order to make their bid the lowest. If the lowest price submitted for services is from a non-local business, local businesses who have affirmatively marked their willingness to reduce their bid amount by up to 5%, shall be given the opportunity to lower their bid prices by up to 5% to become the lowest bidder. This reduction in the bid amount will be allowed if their bid is otherwise equally responsive and responsible in meeting the requirements of the City’s Notice Inviting Informal Bids.
- 22. Bidder’s Questionnaire.** A completed, signed Bidder’s Questionnaire using the form provided with the Contract Documents and including all required attachments must be submitted within forty eight (48) hours following a request by City. A bid that does not fully comply with this requirement may be rejected as nonresponsive. A bidder who submits a Bidder’s Questionnaire which is subsequently determined to contain false or misleading information, or material omissions, may be disqualified as non-responsible.

END OF INSTRUCTIONS TO BIDDERS

BID PROPOSAL

2022 Sidewalk Repair Project

_____ (“Bidder”) hereby submits this Bid Proposal to the City of Morgan Hill (“City”) for the above-referenced project (“Project”) in response to the Notice Inviting Informal Bids and in accordance with the Contract Documents referenced therein.

1. **Base Bid.** Bidder proposes to perform and fully complete the Work for the Project as specified in the Contract Documents, within the time required for full completion of the Work, for the following price (“Base Bid”):
\$ _____.

2. **Addenda.** Bidder acknowledges receipt of the following addenda:

Addendum:	Date Received:	Addendum:	Date Received:
#01	_____	#05	_____
#02	_____	#06	_____
#03	_____	#07	_____
#04	_____	#08	_____

3. **Bidder’s Warranties.** By signing and submitting this Bid Proposal, Bidder warrants the following:

- 3.1 **Examination of Contract Documents.** Bidder has thoroughly examined the Contract Documents, and represents that, to the best of Bidder’s knowledge there are no errors, omissions, or discrepancies in the Contract Documents subject to the limitations of Public Contract Code Section 1104.

- 3.2 **Examination of Worksite.** Bidder has had the opportunity to examine the Worksite and local conditions at the Project location.

- 3.3 **Bidder is Qualified.** Bidder is fully qualified to perform the Work.

- 3.4 **Responsibility for Bid.** Bidder has carefully reviewed this Bid Proposal and is solely responsible for any errors or omissions contained in its completed Bid.

4. **Award of Contract .** By signing and submitting this Bid Proposal, Bidder agrees that if Bidder is awarded the Contract for the Project, that within ten (10) days following issuance of the notice of award to Bidder, Bidder will do all of the following:

4.1 Execute Contract. Enter into the Contract with City in accordance with the terms of this Bid Proposal, by signing and submitting to City the Contract prepared by City using the form included with the Contract Documents;

4.2 Submit Required Bonds. Submit to City a payment bond and a performance bond, each for one hundred percent (100%) of the Contract Price, using the bond forms provided and in accordance with the requirements of the Contract Documents; and

4.3 Insurance Requirements. Submit to City the insurance certificate(s) and endorsement(s) as required by the Contract Documents.

- 5. Wage Theft Prevention.** All Bidders are expected to have read and understand the “Wage Theft Prevention Policy” adopted by the City Council on July 26, 2017.

The undersigned Bidder certifies that neither Bidder nor its principals have been found by a final court judgement or final administrative action of an investigatory agency to have violated federal, state or local wage and hour laws within the past five years from the date of the submitted bid. Bidder or its principals who are unable to so certify, must disclose wage and hour violations, and shall provide a copy of (i) the court order and judgment and/or final administrative decision; and (ii) documents demonstrating either that the order/judgment has been satisfied, or if the order/judgment has not been fully satisfied, a written and signed description of Bidder’s efforts to date to satisfy the order/judgment. Signing this bid shall constitute signature of this Certification.

The City, at its sole discretion, may disqualify a bidder based on one or more disclosed judgments consistent with the criteria set forth in the Policy.

- 6. Bid Security.** As a guarantee that if awarded the Contract, it will perform its obligations under Section 4, above, Bidder is enclosing a PDF copy of the bid security in the amount of ten percent (10%) of its maximum bid amount in the following form:

_____ A PDF copy of a cashier’s check or certified check payable to City of Morgan Hill and issued by _____ Bank in the amount of \$ _____.

_____ A PDF copy of the bid bond, using the Bid Bond form included with the Contract Documents, payable to City of Morgan Hill and

executed by a surety licensed to do business in the State of California.

7. Local Preference.

☐ Check this box if you are a local business as defined by the Morgan Hill Municipal Code Section 3.04.030 and would like to apply the local business quotation preference by reducing the bid or proposal price submitted by up to five percent (5%) in order to be the low bidder.

This Bid Proposal is hereby submitted on _____, 20__:

s/ _____

Name and Title [print]

Company Name

License # & Classification;
Expiration Date

DIR Registration # and Expiration Date

Address

Phone

City, State, Zip

E-Mail

END OF BID PROPOSAL

BID SCHEDULE I – GENERAL
2022 SIDEWALK REPAIR PROJECT

NAME OF CONTRACTOR:_____

This Bid Schedule must be completed and submitted with the electronic PDF Bid Proposal. The unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead. The sum of all amounts entered in the “Extended Total” column must be identical to the Base Bid price entered in Section 1 of the Bid Proposal Form. Quantities shown are required for bid purposes and may or may not be final pay quantities. Actual quantities, if different, must be substantiated during the Project by Contractor (either by field measurement, trucking tags, or other means acceptable to the Engineer).

Bid Item	Description of Bid Item	Approximate Quantity/Unit of Measure	Unit Price	Extended Total
1	Remove and replace concrete sidewalks and driveways at locations indicated on attached list.	4,120 sq. ft.		
2	Install ADA Ramp at 17795 Crest Avenue			
3				
4				
5				
6				

Bid Schedule I Total	
-----------------------------	--

END OF BID SCHEDULE

SUBCONTRACTOR LIST

For each Subcontractor who will perform a portion of the Work in an amount in excess of one-half of 1% of the Bidder's total Contract Price,¹ the bidder must list a description of the work, the name of the Subcontractor, its California contractor license number, the location of its place of business, and DIR registration number. **Bidders: Please print legibly. Illegible forms may be rejected.**

DESCRIPTION OF WORK	SUBCONTRACTOR NAME	CALIFORNIA CONTRACTOR LICENSE NUMBER	DIR REG. NO.	LOCATION OF BUSINESS	LOCAL VENDOR ² YES/NO

END OF SUBCONTRACTOR LIST

¹ For street or highway construction this requirement applies to any subcontract of \$10,000 or more.

² A Subcontractor is considered local if its principle place of business is within the city limits of Morgan Hill.

NONCOLLUSION DECLARATION

(To be executed by bidder and submitted with bid)

State of California	)	ss.
	)	
County of _____	)	

The undersigned declares:

I am the _____ [title] of
_____ [business name], the party
making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has no paid and will not pay, any person or entity for such purpose.

This declaration is intended to comply with California Public Contract Code Section 7106 and Title 23 U.S.C Section 112.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city],
_____ [state].

s/ _____

Name [print]

CIVIL CODE ' 1189

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

State of CALIFORNIA)

County of SANTA CLARA)

On _____, before me,

a Notary Public in and for said County and State, personally appeared

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

Place Notary Seal Above

BID BOND

_____ (“Bidder”) has submitted a bid, dated _____, 20____ (“Bid”), to the City of Morgan Hill (“City”) for work on the 2022 Sidewalk Repair Project (“Project”). Under this duly executed bid bond (“Bid Bond”), Bidder as Principal and _____, its surety (“Surety”), are bound to City as obligee in the penal sum of ten percent (10%) of the maximum amount of the Bid (the “Bond Sum”). Bidder and Surety bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. **General.** If Bidder is awarded the Contract for the Project, Bidder will enter into the Contract with City in accordance with the terms of the Bid.
2. **Submittals.** Within ten (10) days following issuance of the notice of award to Bidder, Bidder must submit to City the following:
 - 2.1 **Contract.** The executed Contract, using the form provided by City in the Project contract documents (“Contract Documents”);
 - 2.2 **Payment Bond.** A payment bond for one hundred percent (100%) of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Payment Bond form included with the Contract Documents;
 - 2.3 **Performance Bond.** A performance bond for one hundred percent (100%) of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Performance Bond form included with the Contract Documents; and
 - 2.4 **Insurance.** The insurance certificate(s) and endorsement(s) required by the Contract Documents, and any other documents required under the Instructions for Bidders.
3. **Enforcement.** If Bidder fails to execute the Contract and to submit the bonds and insurance certificates as required by the Contract Documents, Surety guarantees that Bidder forfeits the Bond Sum to City. 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: _____

- 4. Duration; Waiver.** If Bidder fulfills its obligations under Section 2, above, then this obligation will be null and void; otherwise it will remain in full force and effect for ninety (90) days following award of the Contract or until this Bid Bond is returned to Bidder, whichever occurs first. Surety waives the provisions of Civil Code Sections 2819 and 2845.

This Bid Bond is entered into and is effective on _____,
20____.

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgement, Notary Seal, and Attorney-In-Fact Certificate)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

BIDDER'S QUESTIONNAIRE

2022 SIDEWALK REPAIR PROJECT

Within forty eight (48) hours following a request by City, a bidder must submit to City a completed, signed Bidder's Questionnaire using this form and including all required attachments. City may request the Questionnaire from one (1) or more of the apparent low bidders following the bid opening, and may use the completed Questionnaire to evaluate a bidder's qualifications for this Project. The Questionnaire must be filled out completely, accurately, and legibly. Any errors, omissions, or misrepresentations in completion of the Questionnaire may be grounds for rejection of the bid or termination of a Contract awarded pursuant to the bid.

Part 1: General Information

Bidder Business Name: _____ ("Bidder")

Check One: ☐ Corporation
☐ Partnership
☐ Sole Proprietorship
☐ Joint Venture of: _____
☐ Other: _____

Address: _____

Phone: _____

Fax: _____

Owner of Company: _____

Contact Person: _____

Email: _____

Bidder's California Contractor's License Number(s):

Part 2: Bidder Experience

1. How many years has bidder been in business under its present business name? _____

2. Has bidder completed projects similar in type and size to this Project as a general contractor? _____

3. Has bidder ever been disqualified on grounds that it is not responsible? If yes, provide additional information on a separate sheet of paper regarding the disqualification, including the name and address of the agency or owner of the subject project, the type and size of the project, the reasons that bidder was disqualified as not responsible, and the month and year in which the disqualification occurred.

4. Has bidder ever been terminated from a construction project, either as a general contractor or as a subcontractor? If yes, provide additional information on a separate sheet of paper regarding the termination, including the name and address of the agency or owner of the subject project, the type and size of the project, whether bidder was under contract as a general contractor or a subcontractor, the reasons that bidder was terminated, and the month and year in which the termination occurred.

5. Provide information about bidder's past projects performed as general contractor as follows:

5.1 Six (6) most recently completed public works projects within the last three (3) years;

5.2 Three (3) largest completed projects within the last three (3) years; and

5.3 Any project which is similar to this Project.

6. Use separate sheets of paper provide all of the following information for each project identified in response to the above three (3) categories:

- 6.1 Project name
- 6.2 Location
- 6.3 Owner
- 6.4 Owner contact (name and current phone number)
- 6.5 Architect or engineer name
- 6.6 Architect or engineer contact (name and current phone number)
- 6.7 Project manager (name and current phone number)
- 6.8 Description of project, scope of work performed
- 6.9 Initial contract value (at time of bid award)
- 6.10 Final cost of construction (including change orders)
- 6.11 Original scheduled completion date
- 6.12 Time extensions granted (number of days)
- 6.13 Actual date of completion
- 6.14 Number and amount of stop notices or mechanic's liens filed

- 6.15 Amount of liquidated damages assessed against Bidder
- 6.16 Nature and resolution of any claim, lawsuit, and/or arbitration between Bidder and the owner.

Part 3: Verification

In signing this document, I, the undersigned, declare that I am duly authorized to sign and submit this Bidder's Questionnaire on behalf of the named bidder, and that all responses and information set forth in this Bidder's Questionnaire and accompanying attachments are, to the best of my knowledge, true, accurate and complete as of the date of submission. **I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

Signature: _____ Date: _____

By [name, title]: _____

END OF BIDDER'S QUESTIONNAIRE

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and [REDACTED] ("Contractor") for work on the 2022 Sidewalk Repair 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 Other 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 [REDACTED] Dollars (\$ [REDACTED]) (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 forty-five (45) 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: _____
Address: _____
City/State/Zip: _____
Phone: _____
Attn: _____
Email: _____
Copy to: _____

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.

[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: _____

Attest:

Michelle Bigelow
City Clerk

Date: _____

Approved as to Form:

Donald A. Larkin
City Attorney

Date: _____

CONTRACTOR:

[NAME OF CONTRACTOR]

Signature

Name/Title [print]

Date: _____

Corporate entities must provide a second signature:

Signature

Name/Title [print]

Date: _____

Contractor's License Number(s)

Expiration Date(s)

Seal:

Contractor's DIR Registration Number(s)

Expiration Date

END OF CONTRACT

PAYMENT BOND

The City of Morgan Hill ("City") and _____ ("Contractor") have entered into a contract, dated _____, 20__ ("Contract") for work on the 2022 Sidewalk Repair 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 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.

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 _____ ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the 2022 Sidewalk Repair 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 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.

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

_____ ("Contractor") have entered into a contract, dated _____, 20__ ("Contract") for work on the 2022 Sidewalk Repair 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 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.

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 WARRANTY BOND

GENERAL CONDITIONS

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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 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.

(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. Any deductibles or self-insured retentions must be declared to and approved by City. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best’s financial strength rating of “A” or better and a financial size rating of “VIII” or better. 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) **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:** Because 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.

(B) **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" endorsements naming the City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers as additional insureds;
 - b. "Primary and Non-Contributing" endorsements stating that the policy is primary non-contributing;
- (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.

(C) **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.

(D) **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 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 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 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 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 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: 2022 Sidewalk Repair 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 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 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 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 dispute City's response, in writing, within the specified times, 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 that bids were due.

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 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 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 7:00 p.m

3. Right-of-Way. City will provide the right-of-way for performance of the Work. Contractor is solely responsible for any additional area required outside of the designated the right-of-way, unless otherwise provided in the Contract Documents.

(A) 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.

(B) Sidewalk Closure. Contractor must coordinate sidewalk closure with the City staff. Sidewalks on both sides of the street should not be closed or blocked to pedestrian access at the same time.

4. Pre-Construction Meeting. Contractor will attend Pre-Construction meeting during which the City's Project Manager will review the Contract administration procedures and project requirements.

5. Contractor's Construction Schedule. Project Manager will review Contractor's construction schedules and will verify that each schedule is prepared in accordance with the requirements of the Contract Documents.

6. Warranty Bond. As a condition precedent to Final Payment, Contractor must provide a one (1) year Warranty Bond using the form included in the Contract Documents. The Bond Sum for the Warranty Bond shall be fifty (50%) of the final Contract Price, as defined in the General Conditions.

END OF SPECIAL CONDITIONS

CITY OF MORGAN HILL

2022 SIDEWALK REPAIR AND REPLACEMENT PROJECT TECHNICAL PROVISIONS

SCOPE OF WORK:

The Sidewalk Replacement Project will occur at multiple locations within Morgan Hill, CA 95037, and the Scope of Work is described as follows:

- Remove and replace damaged sidewalk totaling approximately 4,120 square feet and remove roots, that is, trees that have been removed prior to the sidewalks being opened up, root removal will be required by the sidewalk contractor.

GENERAL REQUIREMENTS:

1.01 ORDER OF WORK

a. Description: Order of work shall conform to the provisions in the CalTrans "Standard Specifications" (CSS) and these special provisions.

Upon scheduled date of the preconstruction meeting, contractor shall prepare and submit a detailed schedule to the City Project Manager for review and approval. In addition, contractor shall provide and deliver a notice (minimum of 48 hours prior to construction) to all affected residents.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Order of Work" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

1.02 MAINTAINING TRAFFIC

a. Description: Attention is directed to Sections 7-1.03, "Public Convenience", 7-1.04, "Public Safety", and 12, "Construction Area Traffic Control Devices", of the Standard Specifications and to the provisions in "Public Safety" of these special provisions and these special provisions. Nothing in these special

provisions shall be construed as relieving the Contractor from the responsibilities specified in Section 7-1.04.

The Contractor may detour traffic in a route approved by the City Project Manager. Flaggers shall be provided at non-signalized intersections when traffic conditions warrant as determined by the City Project Manager. At least one lane of traffic shall be provided through the construction area during construction. Two lanes of traffic shall be provided through the project area during non-construction time.

Vehicular and pedestrian access to all properties shall be maintained at all times. Contractor shall place "no parking" signs as required in order to prevent the public from blocking the work. Contractor shall provide trench plates where necessary to accommodate access or provide other means of access.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Maintaining Traffic" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

1.03 PUBLIC SAFETY

a. Description: The Contractor shall provide for the safety of traffic and the public in conformance with the provisions in Section 7-1.04, "Public Safety", of the Standard Specifications and these special provisions.

The Contractor shall install temporary railing (Type K) between a lane open to public traffic and an excavation, obstacle or storage area when the following conditions exist:

A. Excavations.—The near edge of the excavation is 12 feet or less from the edge of the lane, except:

1. Excavations covered with sheet steel or concrete covers of adequate thickness to prevent accidental entry by traffic or the public.
2. Excavations less than one foot deep.
3. Trenches less than one foot wide for irrigation pipe or electrical conduit, or excavations less than one foot in diameter.
4. Excavations parallel to the lane for the purpose of pavement widening or reconstruction.
5. Excavations in side slopes, where the slope is steeper than 1:4 (vertical:horizontal).
6. Excavations protected by existing barrier or railing.

B. Temporarily Unprotected Permanent Obstacles.—The work includes the installation of a fixed obstacle together with a protective system, such as a sign structure together with protective railing, and the Contractor elects to install the obstacle prior to installing the protective system; or the Contractor, for the Contractor's convenience and with permission of the City Project Manager,

removes a portion of an existing protective railing at an obstacle and does not replace such railing complete in place during the same day.

C. Storage Areas.—Material or equipment is stored within 12 feet of the lane and the storage is not otherwise prohibited by the provisions of the Standard Specifications and these special provisions.

The approach end of temporary railing (Type K), installed in conformance with the provisions in this section "Public Safety" and in Section 7-1.04, "Public Safety," of the Standard Specifications, shall be offset a minimum of 15 feet from the edge of the traffic lane open to public traffic. The temporary railing shall be installed on a skew toward the edge of the traffic lane of not more than one foot transversely to 10 feet longitudinally with respect to the edge of the traffic lane. If the 15 feet minimum offset cannot be achieved, the temporary railing shall be installed on the 10 to 1 skew to obtain the maximum available offset between the approach end of the railing and the edge of the traffic lane, and an array of temporary crash cushion modules shall be installed at the approach end of the temporary railing.

Temporary railing (Type K) shall conform to the provisions in Section 12-3.08, "Temporary Railing (Type K)," of the Standard Specifications. Temporary railing (Type K), conforming to the details shown on 1999 Standard Plan T3, may be used. Temporary railing (Type K) fabricated prior to January 1, 1993, and conforming to 1988 Standard Plan B11-30 may be used, provided the fabrication date is printed on the required Certificate of Compliance. Temporary crash cushion modules shall conform to the provisions in "Temporary Crash Cushion Module" of these special provisions.

Except for installing, maintaining and removing traffic control devices, whenever work is performed or equipment is operated in the following work areas, the Contractor shall close the adjacent traffic lane unless otherwise provided in the Standard Specifications and these special provisions:

Approach Speed of Public Traffic (Posted Limit)	Work Areas
45 Miles Per Hour	Within 6 feet of a traffic lane but not on a traffic lane
35 to 45 Miles Per Hour	Within 3 feet of a traffic lane but not on a traffic lane

The lane closure provisions of this section shall not apply if the work area is protected by permanent or temporary railing or barrier.

When traffic cones or delineators are used to delineate a temporary edge of a traffic lane, the line of cones or delineators shall be considered to be the edge of the traffic lane, however, the Contractor shall not reduce the width of an existing lane to less than 10 feet without written approval from the City Project Manager.

When work is not in progress on a trench or other excavation that required closure of an adjacent lane, the traffic cones or portable delineators used for the lane closure shall be placed off of and adjacent to the edge of the traveled way. The spacing of the cones or delineators shall be not more than the spacing used for the lane closure. Suspended loads or equipment shall not be moved nor positioned over public traffic or pedestrians.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Public Safety," including furnishing and installing temporary railing (Type K) and temporary crash cushion modules, shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

1.04 DUST CONTROL

a. Description: Dust control shall conform to the provisions in Section 10, "Dust Control", of the Standard Specifications and these Special Provisions.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Dust Control" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

1.05 WATER POLLUTION CONTROL

a. General: *Water pollution control work shall conform to the provisions in Section 7-1.01G, "Water Pollution," of the Standard Specifications and these special provisions.*

Water pollution control work shall conform to the requirements in the "Storm Water Pollution Prevention Plan (SWPPP) and Water Pollution Control Program (WPCP) Preparation Manual" and the "Construction Site Best Management Practices (BMPs) Manual," and addenda thereto issued up to, and including, the date of advertisement of the project, hereafter referred to respectively as the "Preparation Manual" and the "Construction Site BMP Manual" and collectively as the "Manuals." Copies of the Manuals may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone: (916) 445-3520. Copies of the Manuals may also be obtained from the Department's Internet Web Site at: <http://www.dot.ca.gov/hq/construc/stormwater.html>.

The Contractor shall know and fully comply with the applicable provisions of the Manuals and Federal, State, and local regulations that govern the Contractor's operations and storm water discharges from both the project site and areas of disturbance outside the project limits during construction.

Under no circumstances, shall concrete wash water, water from saw-cutting operations or any other contaminated water be allowed to enter the storm drain system or other drainage courses.

Unless arrangements for disturbance of areas outside the project limits are made by the City of Morgan Hill and made part of the contract, it is expressly agreed that the City assumes no responsibility whatsoever to the Contractor or property owner with respect to any arrangements made between the Contractor and property owner to allow disturbance of areas outside the project limits.

The Contractor shall be responsible for the costs and for liabilities imposed by law as a result of the Contractor's failure to comply with the requirements set forth in this section "Water Pollution Control" including, but not limited to, compliance with the applicable provisions of the Manuals and Federal, State, and local regulations. For the purposes of this paragraph, costs and liabilities include, but are not limited to, fines, penalties, and damages whether assessed against the State or the Contractor, including those levied under the Federal Clean Water Act and the State Porter Cologne Water Quality Act.

In addition to the remedies authorized by law, an amount of the money due the Contractor under the contract, as determined by the City of Morgan Hill, may be retained by the State of California until disposition has been made of the costs and liabilities.

The retention of money due the Contractor shall be subject to the following:

A. The City give the Contractor 30 days notice of the City's intention to retain funds from partial payments, which may become due to the Contractor prior to acceptance of the contract. Retention of funds from payments made after acceptance of the contract, may be made without prior notice to the Contractor.

B. No retention of additional amounts out of partial payments will be made if the amount to be retained does not exceed the amount being withheld from partial payments pursuant to Section 9-1.06, "Partial Payments," of the Standard Specifications.

C. If the City has retained funds and it is subsequently determined that the State is not subject to the costs and liabilities in connection with the matter for which the retention was made, the City shall be liable for interest on the amount retained at the legal rate of interest for the period of the retention.

Conformance with the provisions in this section "Water Pollution Control" shall not relieve the Contractor from the Contractor's responsibilities as provided in Section 7, "Legal Relations and Responsibilities," of the Standard Specifications.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Water Pollution Control" shall be considered as

included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

1.06 DAMAGE REPAIR

a. Description: Attention is directed to Section 7-1.16, "Contractor's Responsibility for the Work and Materials", and Section 7-1.11, "Preservation of Property", of the Standard Specifications and these Special Provisions.

Any damage to existing facilities or properties during the period of the work shall be returned to the original condition.

b. Measurement and Payment: All damage to existing facilities shall be repaired and or replaced at the Contractor's expense.

1.07 RESPONSIBILITY FOR DAMAGE

a. General: Responsibility for damage shall conform to the provisions in Section 7-1.12, "Responsibility for Damage", of the Standard Specifications.

1.08 PROGRESS SCHEDULE

a. General: The progress schedule shall be in accordance with Section 8-1.04 of the CSS. Furthermore, on a weekly basis, the schedule shall be updated and submitted to the City Project Manager. This update shall show the progress on salient features, mark the dates of completion and incorporate changes in construction sequencing or in items of construction.

b. Format: The construction schedule shall be a CPM format. The schedule shall be submitted in the following formats: Time-scaled Logic Diagram showing the name of the activity, the logical relationships, the duration, and the actual or scheduled start dates in a bar chart format; and an Activity Report showing the name of the activity, the actual and scheduled finish and start dates, the scheduled and actual durations, the logical relationships and other pertinent data. The schedule shall be subject to review, correction and acceptance by the City Project Manager.

c. Periodically Scheduled Meetings: Periodically scheduled meetings will be required, in which the project teams of the Contractor and his agents and the City can meet to discuss the schedule and progress of project.

d. Measurement and Payment: Full compensation for conforming to the provisions in this section "Progress Schedule" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

1.09 COORDINATION OF WORK

a. Description: The Contractor shall give specified notifications to the property owners effected by the work. All properties affected by the work shall be notified in writing, 48 hours prior to the interruption. In addition, the Contractor shall attempt to notify the affected occupants or residents, in person, on the same day of the work.

Failure to notify property owners with written notification shall result in stopping the project progress.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Coordination of Work" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

1.10 DAILY AND FINAL CLEAN UP

a. Description: The Contractor shall clean up all rubbish and excess materials from the work site on a daily basis, the material storage site, and all ground occupied by Contractor in connection with this work. All tree, roots, wood chips, branches, soil and concrete debris shall be removed from each repair location on a daily basis. The Contractor shall leave all parts of the work in a neat and presentable condition on a daily basis and prior to final inspection of the work by the Project Manager.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Daily and Final Clean Up" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

SIDEWALK REPAIR, CURB & GUTTER REMOVAL AND REPLACEMENT

2.01 MOBILIZATION

a. Description: Mobilization shall conform to the provisions in Section 11, "Mobilization", of the Standard Specifications. Mobilization shall include mobilizing labor and equipment and all necessary incidentals to complete the work at the various addresses listed in the Appendix 1. Underground Service Alert-Northern California (USA) shall be contacted prior to removal of sidewalks, curb and gutters, and trees in order to prevent possible utility damage.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Mobilization" shall be considered as included in the contract unit prices paid for the various items of work involved and no additional compensation will be allowed therefore.

2.02 SCHEDULING

a. Description: The Contractor shall submit a complete, tentative project schedule at the time of the preconstruction meeting. A minimum of five (5) working days prior to beginning work on any of the streets, the Contractor shall submit to the City Project Manager for approval a detailed written schedule of work listing the dates on which individual streets shall be surfaced. Following approval, the Contractor shall adhere diligently to the approved written schedule in the prosecution of the work.

The contractor shall post No Parking signs on affected streets indicating the date of work at least 48 hours prior to the actual work. As previously noted in Section 1.09-Coordination of Work, the Contractor shall also notify individual residents who will be adversely affected by the work in writing via fliers or door hangers at least 48 hours prior to work. The Contractor shall submit for approval by the City Project Manager a sample of the written notification to be supplied to residents. This sample shall be submitted at the time of the preconstruction meeting. Any expenses incurred by delays caused by the failure of the Contractor to adhere to the approved schedule or to properly notify residents shall be borne solely by the Contractor.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Scheduling" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

2.03 PROJECT APPEARANCE

a. Description: The Contractor shall maintain a neat appearance at the work site in all areas visible to the public. Broken concrete, asphalt concrete, soil, tree branches and roots and other debris developed during construction shall be disposed of concurrently with its removal on a daily basis. Stockpiling of

new materials shall be permitted only with the approval of the City Project Manager and only in approved locations.

The Contractor shall sweep the streets daily within the project area as directed by the City Project Manager for the duration of the project. The Contractor shall not sweep construction materials or other debris onto private properties.

The Contractor shall be responsible for any and all damage to public and private property (including driveways, trees, plants, shrubs, fences, etc...) and shall replace with new material or correct any damaged property to the satisfaction of the City Project Manager.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Project Appearance" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

2.04 CONSTRUCTION AREA SIGNS

a. Description: Construction area signs shall be furnished, installed, maintained, and removed when no longer required in conformance with the provisions in Section 12, "Construction Area Traffic Control Devices", of the Standard Specifications and these special provisions.

Attention is directed to the provisions in "Prequalified and Tested Signing and Delineation Materials" of these special provisions. Type II retro reflective sheeting shall not be used on construction area sign panels.

The Contractor shall notify the appropriate regional notification center for operators of subsurface installations at least 2 working days, but not more than 14 calendar days, prior to commencing excavation for construction area sign posts. The regional notification centers include, but are not limited to, the following:

Notification Center	Telephone Number
Underground Service Alert-Northern California (USA)	1-800-642-2444 1-800-227-2600
Underground Service Alert-Southern California (USA)	1-800-422-4133 1-800-227-2600

Excavations required to install construction area signs shall be performed by hand methods without the use of power equipment, except that power equipment may be used if it is determined there are no utility facilities in the area of the proposed post holes.

Sign substrates for stationary mounted construction area signs may be fabricated from fiberglass reinforced plastic as specified under "Prequalified and Tested Signing and Delineation Materials" of these special provisions.

The Contractor may be required to cover certain signs during the progress of the work. Signs that are no longer required or that convey inaccurate information to the public shall be immediately covered or removed, or the information shall be corrected. Covers for construction area signs shall be of sufficient size and density to completely block out the complete face of the signs. The retro-reflective face of the covered signs shall not be visible either during the day or at night. Covers shall be fastened securely so that the signs remain covered during inclement weather. Covers shall be replaced when they no longer cover the signs properly.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Construction Area Signs" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

2.05 TRAFFIC & PEDESTRIAN CONTROL

a. Description: The Contractor shall comply with all of the requirements of the current edition of the State of California "Manual of Traffic Controls for Construction and Maintenance and Work Zones" for traffic control, pedestrian control and all construction area signs. Attention is also directed to Sections 7-1.03, "Public Convenience", and 7-1.04, "Public Safety", of the CSS and these Special Provisions. Nothing in these Special Provisions shall be construed as relieving the Contractor from his responsibility as provided in said Section 7-1.04.

Construction area signs shall be furnished, installed, maintained, and removed when no longer required in accordance with the provisions in Section 12, "Construction Area Traffic Control Devices", of the CSS, the Manual of Traffic Controls and these Special Provisions. **Sidewalk closure signs shall be placed at each sidewalk replacement location.**

When traffic control is not performed in compliance with the submitted Traffic Control Plan, the project shall be suspended until the Contractor conforms to the approved plan. During the period of suspension, all construction expenses incurred shall be the sole responsibility of the Contractor.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Traffic Control" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

2.06 REMOVE AND REPLACE CONCRETE SIDEWALK

a. Description: This work consists of the removal and replacement of damaged concrete sidewalk and the removal and replacement of concrete curb and gutter. Root removal may be necessary at each location. City Project Manager should be consulted prior to root removal. Exact locations of sidewalk replacement and root removals are to be determined by the City Project

Manager. It is anticipated that at least 4,120 SF of concrete sidewalk will be removed and replaced.

Sidewalk replacement Work includes removal and disposal of existing sidewalk, saw-cutting, root removal, expansion joints if required, score joints, removal/replacement & compaction of base material, formwork, curing compound, and rebar doweling per 2007 City Standard Details, to the dimensions at the locations listed in these special provisions (if the sidewalk is attached to curb and gutter it must be doweled every three (3) feet and if it is attached to a park strip, the contractor will need to dowel on both ends) or as directed by the City Project Manager and in conformance with Section 73 Concrete Curbs and Sidewalks, Section 15 Existing Highway Facilities of the CSS and the City's Standard Details for Construction. If truncated domes are needed the City requires 3' X 4', gray color, cast-in-place truncated domes. If curb and gutter or driveway approach work is necessary the City Standard for AC plugs is 2' minimum from edge of gutter pan at a minimum depth/thickness of 6". The City's Standard Details for Construction are attached to these technical specifications.

b. Submittals: Concrete mix design, concrete curing compound, asphalt mix design, and aggregate baserock mix design

c. Order of Work: Contractor shall demo concrete sidewalk or curb & gutter to expose roots. Roots in conflict with the replacement sidewalk shall be **hand cut** and not torn-out using force or equipment. Work shall be performed by an ISA certified arborist. Roots shall be trimmed approximately 3 inches below the aggregate base. Contractor shall perform demo and replacement of sidewalk and all incidentals at each location within 5 working days, including root removals in coordination with current City Tree Contractor/Arborist.

d. Materials: Portland Cement Concrete: Portland cement concrete shall be in conformance with Section 90 "Portland Cement Concrete" of the CSS for Class B Concrete. Curing Compound: shall be in conformance with Section 90 "Portland Cement Concrete" of the CSS. Asphalt Concrete: Asphalt concrete used shall be Type A, 2" medium in accordance with Section 39 of the CSS. Aggregate base: AB shall be Class 2, 3/4" maximum grading, and shall conform to the provisions in Section 26, "Aggregate Bases", of the Standard Specifications and these special provisions.

e. Measurement and Payment: The contract unit price paid, as shown in the Bid Schedule, for "Remove and Replace Concrete Sidewalk" shall include full compensation for performing all of the work listed above, complete in place, including traffic/pedestrian control/signage, and all incidentals as specified in these Standard Specifications and these Special Provisions, 2007 City Design Standards, and as directed by the City Project Manager.

2.07 TREE REMOVAL

Tree removal will be completed by current City Tree Contractor/Arborist

and coordination of this effort will be discussed at the pre-construction meeting. Trees that are removed after the sidewalk is exposed the tree contractor will also remove the roots. Trees that have been removed prior to the sidewalks being opened up, root removal will be required by the sidewalk contractor.

END

City of Morgan Hill
2022 Sidewalk Project List

Address	Sidewalk Ft	Total Sidewalk	# of Trees	Notes
La Crosse / Vineyard	15	75	2 Private	Two locations on NE corner
150 Manor Ct	5	25	1	
160 Manor Ct	30	150	2	3 locations
16856 B Dewitt Ave	20	100	1 private	
16858 B Dewitt Ave	5	25	1 private	
16870 B Dewitt Ave	25	125	1 private	
610 E Dunne	35	175	4	4 locations
230 E Dunne	45	225	4	3 locations on Dunne side of complex
230 E Dunne	30	150	5	3 locations on Butterfield side of complex
17300 Depot St	5	25	1	By Jontys near statue; color concrete
Depot/1st ST	25	125	1	By City parking lot; 3 locations 2 on 1st, 1 Depot

City of Morgan Hill
2022 Sidewalk Project List

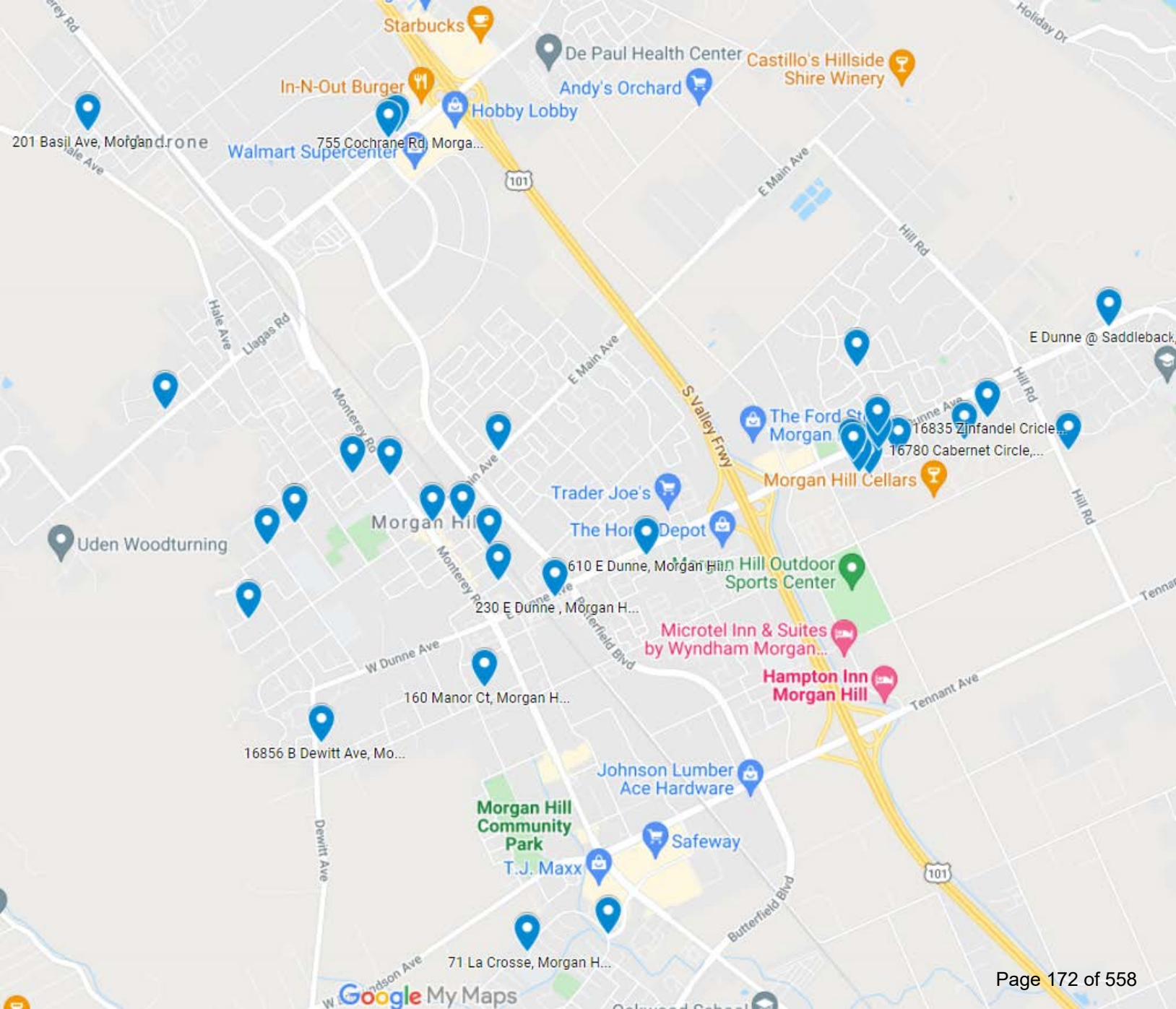
Address	Sidewalk Ft	Total Sidewalk	# of Trees	Notes
17590 Monterey Rd	12	60	1	In front of Wells Fargo; Brick sidewalk
E Main	5	25		cold mix there; across from El Toro on E Main 100' E of Calle Mazatan
17735 Monterey Rd	33	165		Dari Delite; 3 locations (one is 9' planter strip)
17755 Monterey Rd	12	60	1	
17715 Monterey	22	110	2	2 locations
17820 Del Monte Ave	46	230	1	3 locations; 2 are the driveway approach
17795 Crest Ave	20	100	1	Includes an ADA Ramp
17785 Crest Ave	5	25	0	
17745 Peak Ave	20	100	0	On side of address on Marcia Dr
17760 Elaine Ct	56	280	3	5 locations total (26' of planter strip); side of address on Marcia Dr
858 Claremont Ct	15	75	2	2 locations

City of Morgan Hill
2022 Sidewalk Project List

Address	Sidewalk Ft	Total Sidewalk	# of Trees	Notes
852 Claremont Ct	10	50	0	
830 Claremont Dr	20	100	1	2 locations
550 Claremont Dr	25	125	1	Asphalt there now
621 Serpentine Ct	33	165	2	2 locations
201 Basil Ave	10	50	1 private	Ramped too bad to grind; WO 39978
755 Cochrane Rd	15	75	1	
715 Cochrane Rd	10	50	1	
1460 Malaga Ct	5	25	1	
16910 Malaga Dr	10	50		2 locations
16965 Malaga Dr.	10	50	1	
16935 Malaga Dr	20	100	1	

City of Morgan Hill
2022 Sidewalk Project List

Address	Sidewalk Ft	Total Sidewalk	# of Trees	Notes
16985 Malaga Dr	10	50	1	
16975 Malaga Dr.	5	25	1	
1525 Majorca Dr.	50	250		Multitple Locations
1570 Majorca Dr	5	25	1	
16675 Fountan Ave	25	125	1	
E Dunne @ Saddleback	10	50	2	NE corner 2 locations
E Dunne @ Saddleback	30	150	1	SE Corner
1610 Orchard Ct	15	75	1	Ramped; side of address on Jasmine Way
W 5th St	20	100	2	Near bridge; asphalt
		4120	48.0	



CITY COUNCIL STAFF REPORT

MEETING DATE: March 2, 2022

PREPARED BY:

James Sylvain, Deputy Director Utility Services

Inga Alonzo, Management Analyst

APPROVED BY: City Manager

AWARD AGREEMENT FOR COMPLETION OF THE SEWER PIPE INSPECTION AND CONDITION ASSESSMENT

RECOMMENDATION(S)

Approve and authorize the City Manager to execute an agreement with Water Works Engineers, LLC. in the amount of \$679,852 inclusive of a 10% contingency to complete the sewer pipeline inspection and condition assessment project.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment and Preserving Open Space and Agricultural Land
Maintaining Infrastructure

2020-2021 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Wastewater System Master Plan

REPORT NARRATIVE:

The goal of the Sewer Pipeline Inspection and Condition Assessment (Project) that was awarded by the Council to National Plant Services for \$1,174,685 in September 2020 was to provide the data needed for significant future repairs to the City's wastewater system. The project scope in the signed agreement with National Plant was to clean, inspect, and provide condition ratings for approximately 306,626 linear feet of pipe and 1,853 sewer manholes. The inspections and condition assessments would follow the National Association of Sewer Service Companies (NASSCO), Pipe and Manhole Assessment and Certification Programs (PACP and MACP). The Project supports the planning for the repair and the replacement of aging and damaged sewer lines across the City. Ultimately, the repairs and replacement of the pipelines will reduce infiltration and help to prevent sanitary sewer overflows throughout the system.

A few months into the project, the consultant informed the City of an inability to provide the service at the approved contract price and ultimately provided notice they were terminating the agreement for service. Following the cancellation, staff contacted the next lowest consultant from the original solicitation, Water Works Engineers, to see if they were willing to keep the pricing in their original submittal. Although costs in labor and equipment have roughly seen a 10% increase since Water Works first bid the project, they have agreed to keep their original pricing on the remaining work with only a 5% increase per linear foot.

This agreement with Water Works Engineers will allow the City to complete the remaining work with a savings of about \$200,000 lower than the original agreement with National Plant Services as some works were completed by City staff. Staff recommends awarding this agreement to Water Works Engineers.

COMMUNITY ENGAGEMENT:

Since maintenance of the City's wastewater system is a regular and expected City service, no efforts were made to inform the community about this proposed project.

ALTERNATIVE ACTIONS:

The Council could direct staff to reissue an RFP to complete the work, but this is unlikely to produce a lower cost and is very likely to increase the cost of service given recent market trends.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council adopted the current Capital Improvement Program (CIP) Budget including funding for this project on June 17, 2020. Council approved an agreement with National Plant in the amount of \$1,174,685 on September 23, 2020.

FISCAL AND RESOURCE IMPACT:

The Sewer Pipeline Inspection and Condition Assessment Project is a component of CIP Project Sewer System Repair and Replacements (No. 302018) funded through the Sewer CIP Fund 643. There is available funding within this project for this specific purpose.

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.

CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS

Water Works Engineers, LLC

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Water Works Engineers, LLC a California limited liability company ("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, 2023 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service**. The services to be performed by CONSULTANT shall be sewer pipe inspection and condition assessment as further described in **Exhibit A**.
4. **Compensation**. CONSULTANT shall be compensated as follows:
 - 4.1. **Amount**. \$679,852.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Six Hundred Seventy-Nine Thousand Eight Hundred Fifty-Two dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed for the term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing**. CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination**. CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which

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

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

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

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

7.1. **Insurance Types and Amounts.**

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

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

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

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

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

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

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

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

7.2.1.3. Insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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

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

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

renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

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

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

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

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that CONSULTANT or an subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or CONSULTANT learns of such a judgment, decision, or order that was not previously disclosed, CONSULTANT

shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes final or of learning of the final judgment, decision, or order. CONSULTANT and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision, or order within five (5) days of satisfying the final judgment, decision, or order. The City reserves the right to require CONSULTANT to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

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

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

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

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

Address of CONSULTANT is as follows:

Water Works Engineers, LLC
1730 E. El Camino Real, Suite 280
San Mateo, CA 94402

Address of CITY is as follows:

Utilities Division
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

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

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

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

16. **Maintenance of Records.**

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

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

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

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

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

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

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

21. **Defense and Indemnification.**

- 21.1. **Defense and Indemnification for Design Professional Services.** Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM") to the extent of CONSULTANT'S proportionate percentage of fault.
- 21.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 21.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 21.3. **Exceptions.** CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence, or willful misconduct of the CITY.
- 21.4. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 21.5. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT'S failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT'S failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 21.6. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the

INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

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

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

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

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

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

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

[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow

Christina J. Turner

Print Name

Print Name

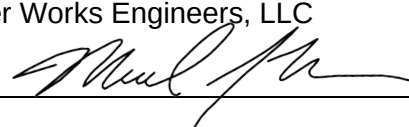
Date: _____

Date: _____

APPROVED AS TO FORM:

Water Works Engineers, LLC

City Attorney

By: 

Donald A. Larkin

Michael J. Fisher, Managing Member

Print Name

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: 2/10/2022

By:

Print Name and Title of Signer.

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

Date: _____

EXHIBIT A SCOPE OF SERVICES

PART 1 – GENERAL

1.1 SUMMARY

The City has a need to clean, inspect, and provide condition ratings for approximately 11,326 linear feet of sewer pipe and 1065 sewer manholes. The inspections and condition assessments shall be in compliance with the National Association of Sewer Service Companies' (NASSCO) Pipe and Manhole Assessment and Certification Programs (PACP and MACP). The Consultant/Contractors shall provide services consistent with the PACP and MACP methodologies for all pipe and manholes noted herein.

This section describes the requirements for equipment, labor, and materials used for the project. The City requires the use of NASSCO's PACP, and MACP version 7.0 or later methodologies and that information be collected and stored using the POSM inspection software program.

The City will consider alternative inspection techniques such as acoustic or electromagnetic methods in situations where CCTV may not be feasible. The Consultant/Contractors may use alternate inspection techniques in addition to CCTV but not as a substitute for CCTV.

1.2 SUBMITTALS

A. Submit a written description of procedures to be used to the City, including product literature for all digital video equipment including, but not limited to cabling, camera, monitor, footage counter, digital video titling device, and recorder.

B. Submit digital photographs and digital videos for each coded observation and of all lines to the City as per paragraph 3.4 of this specification. All deliverables shall be in POSM database format consistent with PACP and MACP version 7.0 or later. Databases shall be submitted in an unlocked Microsoft Access Database in accordance with PACP and MACP guidelines. All digital submittals shall be on a memory stick or portable hard drive.

C. Submit a location map outlining facilities inspected and clearly indicate street names, addresses (if needed), manhole numbers, Pipe Segment Reference numbers (Facility ID's), & length surveyed.

D. Submit all POSM condition log databases to the City. Logs shall record defects according to NASSCO's PACP and MACP version 7 or higher. All digital submittals shall be on a memory stick or portable hard drive.

E. The Contractor shall prepare Traffic control plans (TCPs) covering the range of traffic control situations that may be encountered during the project. TCP's shall be approved by the City Engineering Division prior to the start of work in City Right of Ways.

F. Consultant's project-specific safety plan. Consultant is solely responsible for the safety of workers and the public. Must be provided prior to the start of any field work.

G. Emergency Response Plan in the event of Sanitary Sewer Overflows (SSOs). Provide prior to the start of any field work.

H. Bypass pumping may be needed during the project. The Consultant/Contractor shall prepare and submit bypass pumping plan(s) to the City for approval.

1.3 QUALITY ASSURANCE

I. Comply with all codes, laws, ordinances, and regulations of governmental authorities having jurisdiction over this part of the work.

J. The Consultant/Contractor shall comply with the latest revision of the California Occupational Safety and Health requirements.

K. The Consultant/Contractor shall comply with California Water Quality Regional Board requirements.

L. All main line inspections shall be performed in accordance with the National Association of Sewer Service Companies' (NASSCO) Pipeline Assessment and Certification Program (PACP) version 7.0 format or later. Inspections conducted or submitted in other formats that do not meet all the requirements of this specification are subject to being rejected. Any survey that is rejected must be re-televised to meet the guidelines for CCTV Inspections.

M. All manhole inspections shall be performed in accordance with the National Association of Sewer Service Companies' (NASSCO) Manhole Assessment and Certification Program (MACP) version 7.0 format or later. All Manhole inspections shall be MACP level 1. Inspections conducted or submitted in other formats that do not meet all the requirements of this specification are subject to being rejected. Any survey that is rejected must be re-inspected to meet the guidelines for CCTV Inspections.

N. All surveyors and/or operators must have a valid PACP certification from the National Association of Sewer Service Companies prior to assessing and televising sewer mains within the City sewer system.

O. All surveyors and/or operators must have a valid MACP certification from the National Association of Sewer Service Companies prior to assessing manholes within the City sewer system.

P. Each CCTV survey is to be a full PACP survey, continuous from a starting manhole or access point to a finishing manhole, access point, or utility feature where possible. Any line that is not televised from a starting manhole, access point, or utility feature to a finishing manhole, access point, or ending utility feature will be considered as a partial or incomplete survey and will be rejected unless specified to do so otherwise or if the camera cannot not pass through the entire line due to an obstacle or other defect.

Q. Each CCTV inspection shall be performed one line segment at a time in accordance with NASSCO guidelines. A line segment is defined as the sewer main or lateral assembly from a manhole, cleanout, special chamber, or utility feature to the next in-line manhole, sewer main, special chamber, or utility feature. Any CCTV survey that contains multiple line segments within a single PACP inspection and/or video file will be rejected.

R. Each manhole inspection shall be performed one manhole at a time in accordance with NASSCO guidelines. Any MACP inspection that contains multiple manholes within a single inspection will be rejected.

S. All media, videos, and images are to be televised and recorded in color and shall correctly reflect the true colors within the pipe and on the video display. Videos and inspection stills televised or submitted in black and white will be rejected.

T. All media, videos, and images shall provide a clear, accurate, undistorted, and in-focus picture of the entire periphery of the pipeline for all conditions encountered. Every possible means shall be taken to ensure total viewability of the inside periphery of the pipeline.

U. All digital video files shall be continuous with no evidence of missed footages or “blink-outs”. Proof that the entire pipeline segment was traversed and inspected shall be obvious on the final video recording.

V. All post construction CCTV surveys and assessments are to be conducted after, and only after, all major construction has been completed and the line segment or manhole has passed all required post construction testing. Any line segment or manhole that has been televised or assessed prior to the full completion or testing of any newly constructed or rehabilitated sewer appurtenance will be rejected.

W. DO NOT PROVIDE VOICEOVER PIPE DEFECTS. Voiceover to be used to document operational issues only, equipment issues, or other pertinent information to describe an interruption in image.

1.4 STANDARD ABBREVIATIONS

AMH Access Manhole

CCTV Closed Circuit Televising

ANSI American National Standards Institute

MACP Manhole Assessment and Certification Program

MGO Manhole General Observation

NASSCO National Association of Sewer Service Companies

PACP Pipeline Assessment and Certification Program

RPZ Reduced Pressure Principle Backflow Prevention Assembly

1.5 COORDINATION

Whenever the Consultant/Contractor desires to use a hydrant for water supply, the Consultant/Contractor shall obtain the permission of the City. All costs associated with the use of water supplied from hydrants shall not be paid for separately but shall be deemed to be included in the bid. Operation of hydrant shall be in accordance with the City Water Utility. Use of an RPB device and/or air gap is required.

The Consultant/Contractor shall prepare, submit TCP's and obtain the necessary the permits to work in public right-of-way. The project is located entirely in the City of Morgan Hill consequently the Consultant/Contractor shall coordinate the City Engineering Division for TCP approval and ROW permits.

The Consultant/Contractor shall comply with the Emergency Spill Response Plan requirements detailed the City's 2018 Sanitary Sewer Management Plan which can be found here:

PART 2 - PRODUCTS

2.1 DIGITAL VIDEO SYSTEM & EQUIPMENT

A. CAMERA

1) The television camera used for the inspection shall be one specifically designed and constructed for such inspection. The camera shall be operative in 100 percent humidity conditions. The camera, television monitor, and other components of the digital video system shall be capable of producing picture quality to the satisfaction of the City.

2) The camera unit shall be a color pan and tilt unit with autofocusing and zoom features. The television camera shall have a resolution of 480 lines minimum and shall have a source of illumination attached to it. All CCTV equipment must have the capabilities to televise inspections in color & in full detail. With the monitor adjusted for correct saturation, the six colors plus black and white shall be clearly resolved with the primary and complementary colors in order of decreasing luminance. The gray scale shall appear in contrasting shades of gray with no tint. In order to ensure color constancy, no variation in illumination shall take place while the camera or transporter is in motion. The televised image shall be displayed on a monitor, located in an enclosed space in the television inspection vehicle.

3) CCTV Focus/Iris/Illumination: The adjustment of focus and iris shall allow optimum picture quality to be achieved and shall be remotely operated. The adjustment of focus and iris shall provide a minimum focal range from 6 inches in front of the camera's lens to infinity. The distance along the sewer in focus from the initial point of observation shall be a minimum of twice the vertical height of the sewer. The illumination must allow an even distribution of the light around the sewer perimeter without the loss of contrast or flare out of picture shadowing.

4) The camera shall be self-propelled or mounted on skids and drawn through the sewer by winches for pipelines with an equivalent diameter from 6 to 36 inches. The use of winches and skids shall be approved by the City prior to CCTV inspection services. The inspecting equipment shall be capable of inspecting a length of sewer up to at least 1,000 feet when entry into the sewer may be obtained at each end and up to 750 feet where a self-propelled unit is used, where entry is possible at one end only. The Consultant/Contractor shall maintain this equipment in full working order.

B. Where the CCTV camera or transporter is towed by winch and bond through the sewer, all winches shall be stable with either lockable or ratcheted drums. All bonds shall be steel or of an equally non-elastic material to ensure the smooth and steady progress of the CCTV camera and/or Sonar equipment. All winches shall be inherently stable under loaded conditions.

C. Each inspection unit shall contain a means of transporting the CCTV camera equipment in a stable condition through the sewer under inspection. Such equipment shall ensure the maintained location of the CCTV camera on or near to the central axis of a circular shaped sewer when required in the prime position.

D. Software: CCTV collection software shall be POSM which is compatible with PACP, MACP, and version 7.0 certified or better. All inspection data shall be stored in POSM software database(s) and shall be compatible and transferable to existing City POSM databases.

E. Recordings of all sewer line inspections shall be transferred to a memory stick or portable hard drive. The audio portion of the composite digital video shall be sufficiently free from electrical interference and background noise to provide complete intelligibility of the oral report.

F. Footage Counter Device: Measurement for location of defects during the inspection shall be aboveground by means of a footage counter device. Marking on the cable, or the like, which would require interpolation for depth of manhole, will not be allowed. Accuracy of the distance meter shall be checked by use of a walking meter, roll-a-tape, or other suitable device. The footage counter device shall be accurate to plus or minus 2 feet in 1,000 feet and be subject to approval by the City.

G. Digital video equipment shall include genlocking capabilities to the extent that computer generated data (i.e., footage, date, size, address and location, etc.) as determined by the City can be overlaid onto digital video, and both indicated on the television monitor and permanently recorded on the digital inspection.

PART 3 - EXECUTION

3.1 SEWER LINE CLEANING

All line segments and manholes shall be clean or be cleaned to the point that the entire pipe or manhole is visible unless if specified otherwise. Very light deposits may, in the opinion of City, be acceptable. However, any deposits that obscure a joint, obscure a potential defect, or result in any "holding of flow" shall not be acceptable. Inspections of any pipe sections that are, in the opinion of the City, not properly cleaned shall be re-cleaned and re-televised at no additional cost to the Sewer Utility. The inspection shall be conducted within 36 hours after being cleaned. Under no circumstances shall cleaning or flow control jetting be conducted simultaneously with a CCTV inspection.

The designated sewer sections shall be cleaned using high-velocity jet equipment. The equipment shall be capable of removing dirt, grease, rocks, sand, and other materials and obstructions from the sewer lines and manholes. If cleaning of an entire section cannot be successfully performed from one manhole, the equipment shall be set up on the other manhole and cleaning again attempted. If, again, successful cleaning cannot be performed or the equipment fails to traverse the entire section, it will be assumed that a major blockage exists and the cleaning effort shall be abandoned.

During sewer cleaning operations, satisfactory precautions shall be taken in the use of cleaning equipment to ensure the water pressure created does not damage or cause flooding of property or buildings being served by the sewer.

Roots shall be removed in the sections where root intrusion is a problem. Special attention should be used during the cleaning operation to assure almost complete removal of roots from the joints. Roots which could prevent installation of a pipe liner shall be removed. Procedures may include the use of mechanical equipment such as rodding machines, bucket machines, and winches using root cutters and porcupines, and equipment such as high-velocity jet cleaners.

Sludge, dirt, sand, rocks, grease, and other solid or semisolid material resulting from the cleaning operation shall be captured and removed at the downstream manhole of the section being cleaned, loaded in a suitable container, transported to the South County Regional Wastewater Treatment Facility in Gilroy and disposed of at that facility in accordance with all requirements and charges.

Water used to clean the sewer lines shall be discharged into the sanitary sewer downstream of the cleaning operation. Under no circumstances shall the contractor discharge water used to clean sewer lines onto the ground or into streams.

Acceptance of sewer line cleaning shall be made upon the successful completion of the television inspection and shall be to the satisfaction of the City. If television inspection shows the cleaning to be unsatisfactory, the contractor shall be required to re-clean and re-inspect the sewer line until the cleaning is shown to be satisfactory.

The contractor must have the means to access all manholes and lines that are to be surveyed. Additional equipment may be required to access off-road sewer lines or for manholes which require a tripod and harness for entry.

The Consultant/Contractor must have the means to access all manholes and lines that are to be surveyed. Additional equipment may be required to access off-road sewer lines or for manholes which require a tripod and harness for entry.

3.2 TELEVISION INSPECTION OF SEWER LINE & PROVISIONS

A. Operation of the television inspection equipment shall be controlled from above ground, with a skilled technician at the control panel in the television inspection van controlling the movement of the television camera. The technician shall have the capability to: adjust the brilliance of the built-in lighting system; change the focus of the television camera by remote control; control the pan, tilt, and zoom features of the camera; control the forward and reverse motion of the camera; and determine the camera's position, at any time.

B. Each digitally encoded inspection video shall begin with the camera facing towards the bottom of the manhole and oriented so that the outgoing sewer connection is at the 6 o'clock position. This position shall be held during video recording for a minimum of five (5) seconds then followed by the operator panning then tilting the surrounding above ground area of the entrance manhole prior to lowering the camera to the bottom of the manhole. The CCTV video shall include the view of the camera as it is placed within the manhole, the size measurement of the pipe that is to be inspected, and clearly show which pipe the CCTV camera is inserted. Any notable defects present within the manhole are to be coded as General Observations (MGO's) and to be catalogued only after the initial access point and water level observations have been coded.

C. When the Consultant/Contractor elects to "pull through" a manhole during a CCTV and/or Sonar Inspection, a new inspection will be started at the manhole "pulled through", and the footage re-set to zero (0.0) at the manhole wall where the pipe exits/enters the manhole. The video shall begin with the camera being centered within the "pull through" manhole looking down the line segment to be televised. The Consultant/Contractor shall begin the inspection by cataloguing the initial PACP access and water level codes followed by slowly panning then tilting the camera around the manhole for no less than 5 seconds. The Consultant/Contractor shall also be required to visually capture and catalogue the field measurement of the pipe size at any "pulled through" manhole location.

D. If during an inspection an unmapped manhole is found, follow PACP procedures and code the manhole and close out the inspection. In the corresponding manhole field of the header page, call out and label the unmapped manhole with the Facility ID of the next concurrent downstream manhole with a suffix of "-A" at the end of the field. When proceeding on, start a new inspection

from the said unmapped manhole and note the "Pipe Segment Reference" field in this inspection as "Gm. -" if sanitary sewer or "SWC. -" for storm sewer to indicate that this is different line segment than the one previously televised as this segment will require a new and unique "Facility Id". Should multiple concurrent manholes be encountered during an inspection, the surveyor shall continue the naming convention of applying the next available letter to the end of the corresponding manhole field.

E. If the camera lens becomes covered with sewage, grease, deposits etc. resulting in poor picture quality then the inspection shall be suspended and the camera shall be removed and cleaned. The inspection can then be resumed at the last clear camera location.

F. If the camera fails to pass through the entire pipe section due to the pipeline being inadequately or insufficiently cleaned, this section must be re-cleaned having all the debris removed from the system and the entire length re-televised per this specification.

G. If, and only if, during a normal flow CCTV survey the televising camera cannot pass through the entire pipe section due to a defect, anomaly, or obstruction in the pipe, the Consultant/Contractor shall attempt a reverse setup so that the inspection can be performed from the opposite manhole, wet well, or access point.

H. When a reverse or second inspection is required to complete the inspection of a sewer, the PACP database field "Reverse_Setup" shall be populated with corresponding inspection number. The "Reverse_Setup" field shall be null for all inspections that are not reverse or follow-up inspections.

I. At the start of each sewer length being surveyed or inspected and each reverse setup, the length of pipeline from zero footage (middle of the man) up to the cable calibration point shall be recorded and reported in order to obtain a full record of the sewer length. If the start manhole wall measures something other than 48" in diameter then this shall be noted in the 'Additional Comments' field of the survey.

J. The Consultant/Contractor shall adjust the camera height as necessary to ensure that the camera is centered in the pipeline at the beginning of the inspection. A position tolerance of $\pm 10\%$ of the vertical sewer pipeline diameter dimension will be allowed (i.e. for an 8-inch diameter pipeline the camera shall be centered within ± 0.8 inches of the center of the pipeline). Inspections of any pipe sections in which the camera, in the opinion of the City, is skewed or not properly centered within the main shall be re-televised at no additional cost to the Sewer Utility.

K. When beginning a CCTV inspection, the operator shall verify the diameter of the pipeline to be inspected by inserting a tape measure or surveying rod into the manhole and measure the pipeline diameter to the nearest 1/10th inch. Video proof of this measurement shall be captured during the CCTV inspection after the camera has been adequately positioned so that this measurement can be clearly read. This measurement is also to be recorded in the "height" field of the inspection database.

L. All CCTV surveys must list all required PACP information in their respective fields in addition to but not limited to the following information:

1. Drainage Area
2. Pipe Segment Reference
3. Total Length

4. Length Surveyed
5. Pipe Material (Original material if lined)
6. Lining Method (If lined)
7. Year Renewed (If rehabbed / lined)
8. Purpose
9. Media Label (CCTV Consultant/Contractor Co.)
10. Location Code
11. Weather

M. The Consultant/Contractor shall televise all sanitary and storm sewer mainlines utilizing a crawling camera with full pan, tilt, & zoom capabilities. Inspections televised via other means or methods will be rejected unless directed to do so otherwise. If picture quality is unsatisfactory, the Consultant/Contractor may attempt to re-televise the segment(s) utilizing satisfactory equipment and/or methods. Unsatisfactory inspections will be rejected by the City. No payment will be made for an unsatisfactory inspection.

N. All distances and time stamps called out for each PACP code, observation, or defect must be listed as a positive, rational number. Surveys that do not list positive numbers for distances and time stamps will be rejected.

O. At the start of each sewer length, a data generator shall electronically generate and clearly display on the viewing monitor and subsequently on the final recording a record of data in alpha-numeric form containing the following minimum information:

1. Automatic update of the camera's footage position in the sewer line from adjusted zero.
2. Sewer dimensions in inches
3. Manhole numbers (must conform to City's identification number)
4. Date of survey
5. Road name (nearest)/location
6. Direction of survey, i.e., downstream or upstream
7. Time of start of survey
8. Material of construction of the pipe
9. Consultant/Contractor

P. The size and position of the data display shall be such as not to interfere with the main subject of the picture.

Q. Once the survey of the pipeline is under way, the following minimum information shall be continually displayed:

1. Automatic update of the camera's footage position in the sewer line from adjusted zero.
2. Sewer dimensions in inches
3. Manhole numbers (must conform to City's identification number)
4. Direction of survey, i.e., downstream or upstream

R. CCTV Camera Speed: The speed of the CCTV camera in the sewer shall be limited to 30 feet per minute (0.5 ft per second) for all inspections in compliance with NASSCO guidelines. Manual winches, power winches, TV cable, and powered rewinds or other devices shall not obstruct the camera view or interfere with proper documentation of the sewer conditions to move the camera through the sewer line.

S. The inspection shall be performed with the camera traveling in a forward direction. The camera shall only travel backward as needed to allow a fuller view of a defect or observation. Inspections that are accomplished with the camera traversing backward or in reverse will be rejected.

T. While in motion, the CCTV camera is to be fully zoomed out and fixed to the “home position” where the camera head is kept at the level horizon and is centered and pointed true down the alignment of the pipe for the duration of each CCTV survey. Only when necessary to fully capture defects/observations or to avoid getting the camera lens dirty should the camera be allowed to leave the home position or use the zoom, pan, or tilt features. After the flow conditions have normalized in the pipe or the full extent of an observation/defect has been captured the camera must return to the level home position.

U. Excessive use of the pan, tilt, or zoom features, including using any of the features simultaneously, shall be avoided. The operator shall not use the pan, tilt, or zoom features of the camera until the camera tractor is at a full and complete stop.

V. The operator shall bring the camera to a complete stop at all suspected defects, noted observations, and service connections, panning then tilting the camera as necessary to closely view the defect/observation in question. The full extent of the defect/observation shall be observed.

W. When coding any defect or observation, the operator shall adjust the camera back to the “home position” as best as possible while showing the defect/observation in its entirety in relation to the pipe. The operator shall cease all movements of the camera head and tractor to allow for a clear photograph of the defect/observation while the observation is being cataloged.

X. At each coded observation, the following minimum information shall be displayed:

1. The PACP code and/or PACP code description.
2. The footage position of the defect.
3. The “Additional_Info” field in any cases where it is utilized.

Y. During the CCTV inspection, lighting intensity shall be adjusted as necessary to minimize glare and maximize viewing ability.

Z. Upon reaching an end point manhole or other access point, the camera shall be maneuvered to the center of the manhole and tilted upward and slowly panned for a minimum of 5 seconds in order to view the interior of the manhole in full detail. Any notable defect observed within the manhole or access point shall be coded as a General Observation (MGO) and be catalogued prior to coding the manhole (AMH) to close out the inspection.

AA. If for any reason the Consultant/Contractor’s equipment becomes disabled or lodged inside the sewer and cannot further proceed, the Consultant/Contractor shall be responsible for retrieving the equipment and restoring the sewer at no additional cost to the City.

3.3 MANHOLE INSPECTION

A. The inspection crew shall mobilize to the site of the manhole inspection and immediately establish traffic control measures per Santa Clara County, and/or City Gilroy requirements. The Contractor shall provide any measures required to protect pedestrians. The crew shall inspect each manhole and record required information.

B. A diligent effort shall be made to locate all structures. Metal detectors shall be used to locate buried manholes. Once a buried manhole has been located, it shall be marked with paint and/or flagging, if necessary. All pertinent information available shall be recorded including area photo, address, etc. Consultant/Contractor shall notify project manager weekly with a list of those manholes that could not be fully inspected due to unable to locate, buried, surcharged, could not open, not access, other. The Project manager may arrange to have some or all these manholes exposed, or otherwise made accessible for full inspection. The Project manager will notify Consultant/Contractor of the status and may authorize re-inspection provided the Consultant/Contractor is still working on-site.

3.4 MANDATORY MANHOLE INSPECTION HEADER INFORMATION

Once the manhole is located, the following mandatory information shall be recorded on the inspection form (template is located in the forms section). Note that the mandatory fields noted below are more inclusive than the MACP requirements. All available information shall be collected and recorded for those manholes that are buried, could not open, surcharged, etc.

- a. Manhole Number (City standard Asset Number)
- b. Sheet number
- c. Purchase Order No.
- d. Date
- e. Time
- f. Surveyor's Name
- g. Certification Number
- h. System owner
- i. Locality (City)
- j. Drainage area (tributary Pump Station Number)
- k. Map number
- l. Location (street number and name)
- m. Downstream pipe length (feet)
- n. Rim to grade (inches)
- o. Pre-cleaning method (using approved MACP codes)
- p. Location code (using approved MACP codes)
- q. Manhole surface type (using approved MACP codes)
- r. Potential for runoff (using approved MACP codes)
- s. Access point type (using approved MACP codes)
- t. Inspection status (using approved MACP codes)
- u. Area photo image reference (using CITY standard naming convention)
- v. Internal photo image reference (using CITY standard naming convention)

3.5 MANHOLE COMPONENT OBSERVATIONS

The inspection crew shall complete all fields within the manhole component/observation section of the inspection form. The following information shall be collected:

- a. Cover type (solid, vented, bolted)
- b. Cover size (top surface diameter in inches)
- c. Cover material
- d. Number of vent holes
- e. Cover/Frame fit (cover to frame fit, MACP codes)

- f. Cover condition (MACP codes)
- g. Cover insert type
- h. Cover insert condition
- i. Frame condition
- j. Frame seal condition
- k. Frame offset distance
- l. Frame seal inflow
- m. Wall material
- n. Interior wall coating
- o. Wall diameter
- p. Bench present
- q. Channel installed
- r. Additional remarks relevant to the manhole

3.6 MANHOLE INTERIOR INSPECTION

The inspection crew shall determine the types of defects within the manhole, document each defect on the manhole form and take a photograph of each defect. The manhole chimney, cone, wall, bench and channel will be inspected for structural integrity, signs of I/I and the presence of roots. All documentation shall follow NASSCO MACP standards. Each defect will be documented on the inspection form with the following information:

- a. Defect number
- b. Component of manhole containing defect
- c. Defect code (using approved MACP codes)
- d. Image Reference (using CITY approved file naming structure)

3.7 CONNECTING PIPE DETAILS

Each pipe entering and exiting the manhole shall be photographed where possible and inspected to determine diameter, pipe material, debris levels and rim to invert distance (to 0.1 feet). The pipe inspection will include the following information:

- a. Pipe photo (using CITY approved file naming structure)
- b. Pipe direction (incoming or outgoing)
- c. Pipe clock positions (6=outgoing)
- d. Pipe diameter
- e. Pipe material (using PACP codes)
- f. Rim to invert distance (measured to nearest 1/10th of a foot)
- g. Pipe special condition (drops, force mains, etc. using approved MACP codes)
- h. Debris depth
- i. Connecting structure number if manhole or cleanout, service line clock position, stub out clock position, etc.
- j. Pipe seal condition (using approved MACP codes)
- k. Pipe seal roots (using approved MACP codes)
- l. Observed pipe defects, obstructions, roots, etc. (using PACP codes)

3.8 MANHOLE SKETCH, MAP UPDATE AND NOTES

The inspection crew shall complete the manhole plan view sketch noting all connecting pipes. Any special observations or notes may be added to the profile sketch on the field form.

Influent and effluent lines in each manhole shall be compared to the existing map and corrections noted in the sketch section of the field form.

3.9 NOTIFICATIONS

Consultant/Contractor shall promptly notify the City whenever they encounter any of the following conditions:

Potentially illicit connections draining into the sanitary sewer system or cross connections between the sanitary and storm drain systems.

Potentially hazardous materials (liquid or solid). Pipe collapse or blockage requiring immediate attention. Locations of system surcharging.

Locations of sulfide odor or other hazardous atmospheric conditions.

Any defects posing imminent danger to the public (missing lids, covers broken during inspection, sink holes, etc.).

Sewage spills or evidence of sewage spills.

3.10 DOCUMENTATION OF THE TELEVISION RESULTS

A. Television Inspection Logs: Develop and keep digital location records that clearly show the location in relation to an adjacent manhole of each infiltration point observed during inspection. In addition, record other points of significance such as locations of building sewers, unusual conditions, roots, storm sewer connections, broken pipe, presence of scale and corrosion, and other discernible features.

B. Photographs: A digital photograph or digital video still shall be captured for each coded observation. If no defects are present provide one still image of pipe for information purposes. All digital still images shall be in JPEG file format. For all digital still images, the file naming format shall be generated using a concatenation of standard PACP database fields in the format Facility_ID" _ "Upstream_MH" _ "Downstream_MH" _ "Direction" _ "PACP_Code" _ "Distance" (multiple digital still images may have "-01", "-02", "-03" at end of file name).

C. Video Recordings: A visual and audio recording of all areas of the lines shall be of a single line segment, performed and produced in MPEG 1 file format. Videos shall also be non-proprietary and able to be viewed with Windows Media Player. For all digital encoded inspection videos, the file naming format shall be generated using a concatenation of standard PACP database fields in the format "Facility_ID" _ "Upstream_MH" _ "Downstream_MH" _ "Direction" _ "Date".

4.0 REHABILITATION PROGRAM DEVELOPMENT

The Consultant/Contractor shall prepare a prioritized rehabilitation program including a table summary, by pipe segment, that includes type of defect, severity, recommended rehabilitation/repair method, schedule and cost estimate. The Consultant/Contractor shall use best technical expertise and engineering judgment to develop the rehabilitation program. For example, making judgements

about when it more appropriate to replace a pipe segment instead of doing repairs will be needed for this project.

The City will make available record drawings or other records to help identify construction constraints or conditions that may influence the selection of recommended rehabilitation methods. The final product shall be comparable to the 15 - 20% design level. The expectation is sufficient detail will be developed to hand off to a design team to produce construction documents for the various project. A final rehabilitation report shall be prepared and include, at a minimum, summary tables, maps/drawings, cost estimates for pipe and manhole repair projects. The final report signed and sealed by Professional Engineer. The Consultant/Contractor will coordinate with the City's O&M staff to identify areas of concern and areas that require frequent maintenance.

Consultant Work Plan and Project Management

Water Works Engineers shall follow the Project Management plan laid out in pages 20-31 of their original proposal dated June 18, 2020 but with the adjusted scope (linear footage, manholes, pricing) in the attached Exhibit B.

Exhibit B
Schedule of Compensation Rates

Item (Nominal Pipe Size)	Unit	Easement	Right-of-Way	Quantity	# Segments	Unit Price (Cleaning)	Unit Price (CCTV)	Cleaning Cost	CCTV Cost	Total Cost
0 (Unknown D)	LF	386	747	1,133	11	\$1.50	\$1.25	\$1,699.50	\$1,416.25	\$3,115.75
4" D	LF		89	89	1	\$1.50	\$1.25	\$133.50	\$111.25	\$244.75
6" D (1)	LF	15,227	24,845	40,073	224	\$1.37	\$1.20	\$54,900.01	\$48,087.60	\$102,987.61
8" D	LF	10,722	10,957	21,679	140	\$1.35	\$1.15	\$29,266.65	\$24,930.85	\$54,197.50
10" D	LF	528	3,636	4,164	13	\$1.35	\$0.84	\$5,621.40	\$3,497.76	\$9,119.16
12" D	LF	6	647	654	8	\$1.35	\$0.84	\$882.90	\$549.36	\$1,432.26
14" D	LF	738	9	747	4	\$1.35	\$0.84	\$1,008.45	\$627.48	\$1,635.93
15" D	LF	4,250	8,397	12,647	48	\$1.35	\$0.84	\$17,073.45	\$10,623.48	\$27,696.93
16" D	LF	980	3,939	4,918	13	\$1.35	\$0.84	\$6,639.30	\$4,131.12	\$10,770.42
18" D	LF	1,894	5,188	7,082	23	\$1.35	\$0.84	\$9,560.70	\$5,948.88	\$15,509.58
21" D	LF	4,440	9,282	13,772	39	\$1.40	\$0.84	\$19,280.80	\$11,568.48	\$30,849.28
24" D	LF	4,653	5,077	9,730	28	\$1.45	\$0.84	\$14,108.50	\$8,173.20	\$22,281.70
30 " D (New)	LF	1,853	9,473	11,326	27	\$1.75	\$1.00	\$19,820.50	\$11,326.00	\$31,146.50
						Unit Price				Other Costs
Mobilization	LS			1		\$35,000				\$35,000
Cleanout inspection (7)	each			159		\$125				\$19,875
Manhole Cleaning	each			1065		\$80.00				\$85,200.00
Manhole inspection	each			1065		\$55.00				\$58,575.00
Bypass pumping (2)	Force Account			1		\$50,000.00				\$50,000.00
Debris disposal	per 10 cy			1		\$910.00				\$910.00
Traffic Control Plans (3)	LS			1		\$2,500.00				\$2,500.00
Rehabilitation Program (4)	LS			1		\$60,000.00				\$55,000.00
Total										\$618,047.37
10% Contingency										\$61,805.00
Agreement Total										\$679,852.37

Notes

- (1) 6" liners and point repairs where the liner has reduced ID by greater than 5% may not be possible to CCTV.
- (2) By-Pass Pumping stipend, locations are unknown at this time.
- (3) Traffic Control assumes "typical" MUTCD compliant TCPs that do not require PE stamp to be submitted to the City as part of encroachment permit package.
- (4) Condition assessment summary shall include details for all pipes. For the purposes of estimating effort assumed that 10% of the pipes assessed will have condition scoring which requires development of repair / rehabilitation / replacement methodology and/or enhanced O&M recommendations and project bundling as part of the prioritized rehabilitation program. Videos will be transferred monthly to the City in a format compatible with POSM software.
- (5) Encroachment permits (Fee will be waived, but Water Works will have to apply for them where applicable).
- (6) Duration of project is 6-9 months from Notice To Proceed (NTP).
- (7) Assumes cleanouts are exposed and accessible.

EXHIBIT C
SCHEDULE OF PERFORMANCE

Duration of project is 6-9 months from the Notice to Proceed.

EXHIBIT D
Third Party Data Use Agreement

1. CONSULTANT agrees that it shall not use any information provided by CITY for any purpose other than for PROJECT without the prior express written consent of CITY. CONSULTANT also hereby acknowledges that the data delivered by CITY is for use by CONSULTANT only, and is not to be released to any other party by any means whatsoever, including the Internet, without prior written consent of CITY. CONSULTANT shall provide written notice to CITY of any subcontractor with whom Geographic Information System data (GIS DATA) is shared for purposes of completing the PROJECT.
2. All data and files are intended for the use within the ordinary course of users' business and may not be sold, placed on the internet or otherwise provided to other parties. All data shall comply with all statutes such as California State Law, Government Code section 6254.21 which prohibits any state or local agency from posting the home address or telephone number of any "elected or appointed official," residing spouse, or child on the internet, and Revenue and Taxation Code sections 408, 408.1, 408.3, and 409 permitting the County Assessor to collect fees for certain information.
3. CITY, as rightful owners, shall retain all rights, title, interest, and copyright of the data. Any products using the GIS DATA must give credit to CITY as the source of the information. Any and all derivative products of the GIS DATA are owned by CITY and may not be used for any purpose other than the PROJECT without prior written permission of CITY. All derivative products and resulting data shall be provided to CITY Project Manager and CITY GIS Manager at the completion of the PROJECT.
4. CONSULTANT and CITY understand and agree that the information provided pursuant to this Agreement is the product of professional services paid for by CITY and shall remain property of CITY. CONSULTANT may retain copies, including copies stored on magnetic media, only for information and reference, in connection with CONSULTANT'S use for PROJECT.
5. All of the above terms and conditions apply to any subcontractor retained by CONSULTANT.
6. In the event of a conflict between the terms and provisions of this Third Party Data Use Agreement and the terms and provisions of the SERVICE AGREEMENT, the terms of the SERVICE AGREEMENT shall govern and control.

CITY COUNCIL STAFF REPORT

MEETING DATE: March 2, 2022

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

ADOPT RESOLUTION ADDING SECTION 20516 COST SHARE TO THE MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES RESOLUTION NO. 21-050

RECOMMENDATION(S)

Adopt resolution adding Section 20516 Cost Share to the Management, Professional, and Confidential Employees Resolution No. 21-050.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

On November 17, 2021, the City Council adopted resolution number 21-050 adjusting the salary schedule for Management, Professional, and Confidential Employees (Resolution No. 21-050). The resolution also includes the employees sharing of employer's CalPERS rate of 6.12% beginning with the pay period including July 1, 2022. Resolution No. 21-050 lacks the required language for Section 20516 Cost Share and CalPERS requires the City Council to adopt a new resolution adding Section 20516 Cost Share to the Resolution No. 21-050. This is one of the steps in the procedures to amend the City's CalPERS contract in order to ensure that employees receive credit for their increased contributions.

COMMUNITY ENGAGEMENT:

Inform

This staff report is to inform the community of the proposed adoption of the resolution to add Section 20516 Cost Share to the Management, Professional, and Confidential Employees Resolution No. 21-050.

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On November 17, 2021, the City Council adopted Resolution Number 21-050 adjusting the salary schedule for Management, Professional, and Confidential Employees.

FISCAL AND RESOURCE IMPACT:

None.

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. - _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL ADDING SECTION 20516 COST
SHARE (EMPLOYEES SHARING ADDITIONAL COST) TO
THE MANAGEMENT, PROFESSIONAL, AND
CONFIDENTIAL EMPLOYEES RESOLUTION NO. 21-050**

WHEREAS, the City Council of the City of Morgan Hill adopted a Resolution No. 21-050 adjusting the salary schedule for Management, Professional, and Confidential employees on November 17, 2021; and

WHEREAS, one of the steps in the procedures to amend the California Public Employee's Retirement System (CalPERS) contract is the adoption by the City Council of the City of Morgan Hill of a resolution that shall contain the Section 20516 Cost Share, and

WHEREAS, the Section 20516 Cost Share shall contain the following summary:

Effective pay period beginning June 26, 2022 (or as soon as administratively possible with CalPERS after June 26, 2022), all miscellaneous members (Classic and PEPR) in the Management, Professional, and Confidential Employees Resolution shall share the employer's CalPERS contribution rate at 6.12%.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morgan Hill does hereby add Section 20516 Cost Share to the Management, Professional, and Confidential Employees Resolution No. 21-050.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 2nd day of March 2022 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

Michelle Bigelow, City Clerk

∞ CERTIFICATION ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at the meeting held on March 2, 2022.

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

DATE: _____

Michelle Bigelow, City Clerk

RESOLUTION NO. 21-050

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADJUSTING THE SALARY SCHEDULE FOR MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES (THIS RESOLUTION RESCINDS RESOLUTION NO. 21-025)

WHEREAS, the City Manager has presented to the City Council of the City of Morgan Hill a recommended set of salary ranges and benefits for the Management, Professional, and Confidential employees; and

WHEREAS, the City Council of the City of Morgan Hill has reviewed said recommendations;

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

SECTION 1 - SALARY RANGES

- A. Effective December 26, 2021, base salaries for Groups 1-A, 1-B, 1-C, and 1-D, increase by 4%. See Salary Schedule attached as **Exhibit A**.
- B. Effective the pay period including January 1, 2023, base salaries for Groups 1-A, 1-B, 1-C, and 1-D, increase by 2%, or 2.5% if San Francisco Bay Area CPI for Urban Wage Earners and Clerical Workers for the twelve month period ending June 30 is higher than 2%. See Salary Schedule attached as **Exhibit B and Exhibit C**.
- C. Groups 1-A, 1-B, 1-C, and 1-D base salary ranges include the employee PERS contribution which is deducted from payroll (See SECTION 3, E-H.)

SECTION 2 - ESTABLISHMENT OF COMPENSATION AND JOB DESCRIPTIONS FOR GROUPS 1-A, 1-B, 1-C, and 1-D

- A. The City Manager will establish the monthly compensation for the classifications in Group 1-A. In order to attract high quality executive managers, foster job security within a professional climate, and provide the flexibility to remain competitive within the area job market, the City Manager has authority to enter into individual employment agreements with each executive manager; provided that the terms of the employment agreement do not exceed the total compensation permitted by this Resolution.

Employees listed in Group 1-A may receive a severance allowance as provided for in an individual employment agreement when they are separated in good standing from employment; provided that such separation is not for cause, or for reasons listed in Government Code 19572, or for any employee who voluntarily resigns from City service for personal reasons.

- 1. The City Manager shall establish an allowance amount, not to exceed six months' salary, which is determined to be in the best interest of the city for the following executive

City of Morgan Hill
Resolution No. 21-050
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classifications of the Group 1-A:

Assistant City Manager for Administrative Services*
Assistant City Manager for Development Services
Chief of Police
Public Services Director

**Currently Unfunded Position*

2. The City Manager shall establish an allowance amount, not to exceed three months' salary, which is determined to be in the best interest of the City for the remaining classifications of the Group 1-A.
3. This severance allowance is in addition to any unused vacation or administrative leave pay unused at the time of separation.
- B. Each Department Director will recommend to the City Manager the proposed monthly salary to be paid to each of the employees whose classification appears in Group 1-B, 1-C, and 1-D. Upon approval of the City Manager, the monthly salary will be set within the prescribed range for each classification. The City Manager has the authority to increase the monthly compensation for employees in Group 1-B, 1-C, and 1-D, by a maximum of 10% within the prescribed range each fiscal year based on each individual employee's performance.
- C. The City will contribute 2% of an employee's base salary to a City-sponsored IRS 457 deferred compensation program of the employee's choice (ICMA or Empower).
- D. When it is proposed by the Personnel Officer that a new classification be created or an existing classification be changed, the City Manager shall submit justification for approval of that action to the City Council and if that action is approved, the City Manager will have the authority to approve new and revised job descriptions.

SECTION 3 - CONTRIBUTIONS TO THE CalPERS RETIREMENT SYSTEM, GROUPS 1-A, 1-B, 1-C, and 1-D

- A. For "Classic Members" as defined by the Public Employees' Pension Reform Act of 2013 (PEPRA) and in the CalPERS retirement system:
 1. Non-Safety (miscellaneous) employees listed in Groups 1-A, 1-B, 1-C, and 1-D will receive CalPERS retirement benefits under the 2.5% at age 55 plan.
 2. Safety (sworn) employees listed in Groups 1-A and 1-B, will receive CalPERS retirement benefits under the 3% at age 50 plan.
- B. For "New Members" as defined by PEPRA and in the CalPERS retirement system:
 1. Non-Safety (miscellaneous) employees listed in Groups 1-A, 1-B, 1-C, and 1-D will receive

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CalPERS retirement benefits under the 2.0% at 62 plan.

2. Safety (sworn) employees listed in Groups 1-A and 1-B will receive CalPERS retirement benefits under the 2.7% at age 57 plan.

C. CalPERS defines a "New Member" as:

1. A new hire who is brought into CalPERS membership for the first time on or after January 1, 2013, and who has no prior membership in any other California public retirement system.
 2. A new hire who is brought into CalPERS membership for the first time on or after January 1, 2013, and who is not eligible for reciprocity with another California public retirement system.
 3. A member who established CalPERS membership prior to January 1, 2013, and who is hired by a different CalPERS employer after January 1, 2013, after a break in service of greater than six months.
 4. CalPERS refers to all members that do not fit the definition of a "new member" as a "classic member."
- D. Non-Safety (miscellaneous) employees: Beginning with CalPERS rates effective July 1, 2013, the City and Non-Safety (miscellaneous) Management, Professional, and Confidential employees agreed to split future employer rate increases at a 50/50 ratio. This methodology will be used in subsequent years should CalPERS increase the Miscellaneous contribution rates.
- E. The Miscellaneous "Classic Members" shall contribute, in addition to the "Classic Members" rate of 8.0%, an additional 5.165% towards the "Classic Members" CalPERS contribution rate for FY 2021-22. The total "Classic Members" employee contribution obligation shall be 13.165%.
- F. The Miscellaneous "New Members" shall contribute, in addition to the "New Members" rate of 7.0%, an additional 5.165% towards the "New Members" CalPERS contribution rate for FY 2020-21. The total "New Members" employee contribution obligation shall be 12.165%.
- G. Effective July 1, 2022 miscellaneous employees will share the employer's CalPERS contribution rate at 6.12%. The employee's contribution towards employer's share of pension cost will be capped at 6.12%. The City and employees agree to split any rate decreases below the FY 2022-23 employer's CalPERS contribution rate of 28.77% at a 50/50 ratio.
- H. Safety (sworn) PEPPA employees: Beginning with CalPERS rates effective July 1, 2013, at which time the City's employer contribution PEPPA rate was 11.5%, the City and Association agreed that, beginning with CalPERS PEPPA rates effective July 1, 2013, safety (sworn) PEPPA employees would not pay less than 11.50% and would split future increases to the City's employer PEPPA contribution rates, including both the normal cost and any unfunded actuarial liability at a 50/50 ratio. For example, the City's employer CalPERS safety PEPPA obligation was 12.114% in FY 16-17 with the PEPPA employees' obligation was at 11.50%. Therefore, City paid half of the 0.614% increase over the base year City's employer PEPPA

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cost of 11.50% (equal to 0.307%) and safety PEPRA employees paid the other half (also equal to 0.307%). This methodology has been used in each year subsequent to FY 2016-17 and will be used in future years should CalPERS increase the City's employer Safety PEPRA contribution rates. The Safety PEPRA employees CalPERS contributions rate for 2021-22 shall be 14.709% (13.00% employee + 1.709% of the employer share).

- I. Safety (sworn) Classic employees: Beginning December 30, 2018, the City and Safety (sworn) Management, Professional, and Confidential employees agreed, in addition to employee CalPERS rate of 9.0%, a 6.12% towards the employer's share of pension costs (i.e. the total safety (Sworn) employee contribution for FY 2019-20 shall be 15.12% (9.00% employee + 6.12% of the employer share). The total employee contribution shall remain at 15.12% for the Safety (sworn) classic employees during the term of the Morgan Hill Police Officers' Association Memorandum of Understanding (MOU), which is December 30, 2018 – December 31, 2021.

SECTION 4 - HEALTH CARE CONTRIBUTIONS AND IRS 125 PLAN, GROUPS 1-A, 1-B, 1-C, and 1-D

- A. The City will contribute to the City's medical and dental plans as follows:
 1. For employees with family coverage, up to \$2,178/month in 2022 and up to \$2,309/month in 2023.
 2. For employees with employee plus one coverage, up to \$1,662/month in 2022 and up to \$1,762/month in 2023.
 3. For employees with employee only coverage, up to \$831/month in 2022 and up to \$881/month in 2023.
 4. Employees enrolling in City health but not using the maximum amount available from the City for their premium category (employee only, employee + 1, employee + family) shall not be entitled to the surplus. Employees enrolling in plans whose cost exceeds the maximum amount available from the City for their premium category shall have the difference deducted on a pre-tax basis from their paycheck.
 5. Employees who waive medical coverage and annually provide proof of alternate medical coverage shall be entitled to a taxable health in lieu payment of six hundred ten dollars (\$610) per month.
 6. If an employee waives medical and elects dental coverage, the employee will receive the taxable health in lieu payment of six hundred ten dollars (\$610) per month but will pay the appropriate dental premium.
- B. The City will continue to provide coverage under the Concern Employee Assistance Program.
- C. The City will continue to offer an IRS Section 125 program.

SECTION 5 - GENERAL BENEFIT PROVISIONS, GROUPS 1-A, 1-B, 1-C, AND 1-D

The City will comply with the requirements of the City Personnel Rules and Regulations and the Fair Labor Standards Act governing the use of taking and reporting time off work for management employees.

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A. Holidays

1. The City will grant the following paid holidays to employees:

New Year's Day
Martin Luther King, Jr. Day
President's Day
Cesar Chavez Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Day after Thanksgiving
Christmas Eve
Christmas Day

One-half (1/2) day holiday to be used during the furlough period or on the last workday before the holiday.

Two floating holidays which must be used during the fiscal year.

2. Holidays are paid at a rate of eight hours of time off; employees on alternate work schedules must use additional leave balances to receive full pay on a holiday.
3. With the approval of the employee's supervisor, employees may "float" holidays to another day within the same fiscal year provided they work on the holiday.

B. Sick Leave Accrual

1. Sick Leave credit for employees will be accumulated on the basis of eight hours of sick leave per month (96 hours per year).
2. The City will, at the end of each calendar year, pay each employee twenty-five percent of the unused sick leave earned that year unless the employee requests not to receive such a payment.
3. The balance of the unused sick leave will then be accumulated on an unlimited basis.
4. Upon retirement, 100% of the employee's unused sick leave balance will be credited to the employee's retirement eligibility. This amount would then be converted into time in service and added to the employee's retirement eligibility. (Reference - City contract with CalPERS, Section 20862.8)
5. Each employee may take 16 hours of personal leave time during the fiscal year which is charged against the current year's sick leave accrual.

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6. The City Manager may negotiate establishing a leave "bank" with new employees at time of hire.

C. Vacation Leave Accrual

1. Each employee will be credited vacation on the basis of 120 hours per year for the first five years of City service. After five years of service, vacation will be credited on the basis of 160 hours per year.
2. The maximum accumulation of vacation will be no more than that earned for two years.
3. Additional vacation accrual will not be provided until the employee's vacation balance drops below the maximum accrual limit as of June 30 in any given year.
4. The City Manager may negotiate vacation accrual rates and/or establish a leave "bank" with new employees at time of hire.

D. Administrative Leave, Groups 1-A, 1-B, and 1-C

1. Employees listed in Groups 1-A, 1-B, and 1-C receive and may use up to 72 hours of administrative leave with pay per fiscal year.
2. Administrative leave time for employees in Groups 1-A, 1-B, and 1-C will be available for one additional year if not used in the fiscal year that it was initially available. If, however, the administrative leave time that was carried over to the following fiscal year is not used during the second year, it will be lost at the end of the second fiscal year. In effect, the maximum amount of administrative leave time that may be available to an employee at any given time is 144 hours.
3. Effective July 1, 2016, new employees who are hired during any month other than July, will initially receive prorated administrative leave hours of six (6) hours per month depending on date of hire and the hours will be banked at time of hire (i.e. employees hired in the month of August would receive 66 hours of administrative leave because they will be working a total of eleven (11) months in the fiscal year). All regular, full-time employees will receive 72 hours of administrative leave each fiscal year following their hire date. Part-time employees have prorated benefits and their total administrative leave hours will be prorated based on their position allocation.

E. Leave Cash Out

Employees listed in Groups 1-A, 1-B, 1-C and 1-D may cash out up to 120 hours of accrued vacation, administrative leave, or a combination of the two, per calendar year. Employees must make an irrevocable election by December 1 of each year for the following calendar year stating their intent to cash out and the eligible number of hours. If employees do not request payment of the elected cash amount by November 1 of each year, Payroll will automatically cash out the amount designated by the employee on or after the pay period including November 1st.

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F. Bereavement Leave

Management, Professional, and Confidential employees shall, per occurrence, be granted Bereavement Leave when a death occurs in the employee's or spouse's immediate family. For the purpose of this section, "immediate family" is defined as father, mother, brother, sister, spouse, natural or legally adopted child, step-child, in-laws, grandparents, and grandchildren. Up to three (3) days of bereavement leave shall be granted when the death and service are within the State of California and up to five (5) days when the death or service is outside the State. Bereavement Leave usage shall not be charged against the employee's Sick Leave or Vacation Time. Employees may also use up to two (2) additional days of Sick Leave to supplement their allotted Bereavement Leave if other circumstances require absence during this time, subject to the approval of the employee's supervisor and deducted from the employee's other leave banks.

Special circumstances beyond this definition may be considered on a case-by-case basis and must be approved by the City Manager. This leave will not affect the twenty-five percent cash out of sick leave for the same calendar year.

G. Professional Development

It shall be the philosophy of the City to encourage employees to attend classes, seminars, conferences, etc. which will enable the employee to develop professionally. Such attendance must be approved by the Department Director or the City Manager. The City may request employees who complete such a course to report or train other employees in the skills they have attained.

1. Tuition Reimbursement Program

Employees are eligible to receive tuition reimbursement of up to \$3,000 per fiscal year for the cost of books and tuition for classes or courses beneficial to the employee's career development. All classes must be approved in advance by the Department Director or City Manager. Reimbursement will take place upon a successful completion or passing of the course.

2. Membership Dues

For employees listed in Groups 1-A and 1-B, the City shall provide a personal membership dues reimbursement of up to \$1,200 per fiscal year for costs associated with joining and participating in Morgan Hill community service organizations such as Rotary or Kiwanis. Reimbursement of membership dues for community service organizations requires the prior approval by the Department Director or the City Manager.

H. Life and Disability Insurance

The City shall pay the premiums for short-term disability, long-term disability, and life insurance plans.

1. Life insurance levels shall be as follows for the employees listed in Section 1:

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Group 1-A	\$250,000
Group 1-B	\$150,000
Group 1-C	\$100,000
Group 1-D	\$100,000

This amount decreases when the employee reaches age 65, 70, and 75. The Life Insurance benefit will be paid to the employee's beneficiary upon the death of the employee as outlined in the program documents.

2. Short-term disability coverage for employees shall be at the maximum rate of \$1,384 per week based on 66 $\frac{2}{3}$ % of the actual weekly salary after an eight-day elimination period.
3. Long-term disability coverage for employees shall be at the maximum rate of \$6,000 per month based on 66 $\frac{2}{3}$ % of the actual monthly salary after a 60-day elimination period.

I. Retirement Medical Plan

Upon retirement, employees may continue enrollment in the medical insurance plans provided by CalPERS without an interruption of coverage. Such enrollment will be contingent upon the employee meeting the requirements of the medical plans provided by CalPERS and paying the monthly premium to CalPERS at the employee's expense. It will be the employee's responsibility to make sure the insurance premium is paid to CalPERS before the due date. Failure to do so will result in the employee being terminated from their medical coverage.

J. Special Assignment Pay

Special Assignment Pay may be granted to employees who have assumed, for an extended period, significant additional responsibilities outside their current classification. The request for special assignment shall describe the assignment, justify why it is to be performed by the designated employee, and give a specific duration for completion of the assignment with a start and end date. Special assignment pay is up to 10% above the employee's normal pay rate. The special assignment and related compensation may be revoked at any time at the discretion of the Department Director, or the City Manager or designee. Special Assignment Pay will be requested in advance by the Department Director and authorized by the City Manager or designee, and then processed by the Human Resources Division. Special Assignment Pay shall be discontinued on the date originally identified for completion of the assignment, unless an extension of specific duration is approved by the City Manager or designee prior to the end of the original assignment end date. This pay will not be considered additional compensation as defined by the California Public Employees' Retirement Systems (CalPERS).

K. Employee Uniform Allowance

Safety employees in Groups 1-A and 1-B will be eligible for the following uniform allowance:

Chief of Police and Police Captain:	\$1,400
Police Support Services Manager:	\$810

L. Work Schedule

The City Manager will establish the standard work schedule for employees. Based on the needs of the City, the City Manager may at his/her discretion, change the work schedules of

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employees at any time.

M. Auto Allowance

The City Manager may establish a monthly allowance for selected employees listed in Groups 1-A and 1-B who use their personal vehicles on City business. Based on the needs of the City, the City Manager may, at his/her discretion, change the auto allowance of employees at any time. The current monthly allowance range is \$225 - \$325.

N. Cell Phone Allowance

The City Manager may establish a monthly allowance for selected employees who use their personal cell phones on City business. Based on the needs of the City, the City Manager may, at his/her discretion, change the cell phone allowance of employees at any time. The current monthly allowance is established in Administrative Policy III019.

O. Bilingual Pay

Employees identified by the City Manager/Department Head to use another language in their work and who are certified by the process described below shall receive the following compensation:

- a. Employees shall receive a monthly stipend of \$150.
- b. The Certification process shall be completed by a provided contractor by Human Resources or a 3 person panel (established by Human Resources) to determine conversational competence. Employees shall be subject to recertification every 2 years unless waived by City.
- c. An eligible employee may request to be tested for bilingual certification at any time and the test shall occur within a reasonable amount of time.

SECTION 6-EFFECTIVE DATE

This resolution shall be effective December 26, 2021. Compensation shall be made available to only those employees covered by this section who are still employed as a Management, Professional, or Confidential employee with the City as of the effective date of this agreement. As of the effective date of this Resolution, Resolution No. 21-025 shall be superseded and rescinded.

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PASSED, APPROVED, AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 17th day of November 2021 by the following vote:

AYES:	COUNCIL MEMBERS:	Borgioli, Constantine, Martinez Beltran, McKay, Spring
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:

DocuSigned by:
Rich Constantine
02EAF5805788457

RICH CONSTANTINE, Mayor

ATTEST:

DocuSigned by:
Michelle Bigelow
C0FCB7EABA7C4C8...

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. 21-050 adopted by the City Council at the meeting held on the 17th day of November 2021.

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

DATE: 11/18/2021

DocuSigned by:
Michelle Bigelow
C0FCB7EABA7C4C8...

MICHELLE BIGELOW, City Clerk

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EXHIBIT A

CITY OF MORGAN HILL MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEE GROUP SALARY SCHEDULE

Effective: December 26, 2021

* Currently Unfunded Positions

Job Classification	Bottom of Range	Top of Range Monthly
Group 1-A: Executive Management		
Assistant City Manager for Administrative Services *	\$15,495	\$20,361
Assistant City Manager for Development Services	\$15,495	\$20,361
Chief of Police	\$15,495	\$20,361
Public Services Director	\$15,495	\$20,361
Community Services Director *	\$14,760	\$19,436
Development Services Director	\$14,760	\$19,436
Economic Development Director	\$14,760	\$19,436
Engineering and Utilities Director *	\$14,760	\$19,436
Finance Director	\$14,760	\$19,436
Housing Director	\$14,760	\$19,436
Communications and Engagement Director	\$12,736	\$16,736
Human Resources Director	\$12,736	\$16,736
Information Technology Director	\$12,736	\$16,736
Group 1-B: Middle Management		
Police Captain	\$12,989	\$17,066
Building Official	\$12,736	\$16,736
Deputy Director for Engineering	\$12,736	\$16,736
Deputy Director for Utilities Services	\$12,736	\$16,736
Housing Manager*	\$12,736	\$16,736
Planning Manager *	\$12,736	\$16,736
Program Administrator	\$12,736	\$16,736
Assistant City Attorney	\$11,934	\$15,655
Assistant to the City Manager *	\$11,934	\$15,655
City Clerk	\$11,934	\$15,655
Economic Development Manager*	\$11,259	\$14,769
Environmental Services Administrator	\$11,259	\$14,769
Principal Planner	\$11,259	\$14,769
Senior Civil Engineer	\$11,259	\$14,769
Senior Project Manager	\$11,259	\$14,769
Budget Manager	\$10,411	\$13,693
Building Manager *	\$10,411	\$13,693
Communications and Engagement Manager *	\$10,411	\$13,693
Community Services Manager *	\$10,411	\$13,693
Environmental Services Manager	\$10,411	\$13,693
Information Services Manager *	\$10,411	\$13,693
Maintenance Manager	\$10,411	\$13,693
Police Support Services Manager	\$10,411	\$13,693
Recreation Manager	\$10,411	\$13,693
Supervising Civil Engineer	\$10,411	\$13,693
Utility Systems Manager	\$10,411	\$13,693
Accounting Manager *	\$9,691	\$12,739
Financial and Policy Analyst *	\$9,691	\$12,739
Police Administrative Manager	\$9,691	\$12,739
Public Services Administrative Manager	\$9,691	\$12,739
Senior Planner	\$9,691	\$12,739
Community Services Supervisor	\$8,780	\$11,203
Council Services and Records Manager *	\$8,780	\$11,203
Deputy City Attorney *	\$8,780	\$11,203
Economic Development Coordinator	\$8,780	\$11,203
Emergency Services Coordinator	\$8,780	\$11,203
GIS / Land Use Data Administrator	\$8,780	\$11,203
Maintenance Services Coordinator	\$8,780	\$11,203
Older Adult Services Supervisor	\$8,780	\$11,203
Programmer Analyst	\$8,780	\$11,203
Senior Human Resources Analyst	\$8,780	\$11,203
Risk Management Analyst (.50 FTE)	\$4,185	\$5,491
Group 1-C: Confidential Exempt		
Administrative Analyst	\$8,369	\$10,982
Legal Specialist	\$7,530	\$9,907
Group 1-D: Confidential Non-Exempt		
Accounting Technician	\$6,676	\$8,761
Human Resources Technician	\$6,676	\$8,761
Human Resources Assistant *	\$5,228	\$6,839

***Monthly figures are rounded to the nearest \$1.00

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EXHIBIT B

CITY OF MORGAN HILL MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEE GROUP SALARY SCHEDULE

CPI below 2% Increase is 2%
Effective: December 25, 2022

* Currently Unfunded Positions

Job Classification	Bottom of Range	Top of Range Monthly
Group 1-A: Executive Management		
Assistant City Manager for Administrative Services *	\$15,805	\$20,768
Assistant City Manager for Development Services	\$15,805	\$20,768
Chief of Police	\$15,805	\$20,768
Public Services Director	\$15,805	\$20,768
Community Services Director *	\$15,055	\$19,825
Development Services Director	\$15,055	\$19,825
Economic Development Director	\$15,055	\$19,825
Engineering and Utilities Director *	\$15,055	\$19,825
Finance Director	\$15,055	\$19,825
Housing Director	\$15,055	\$19,825
Communications and Engagement Director	\$12,991	\$17,071
Human Resources Director	\$12,991	\$17,071
Information Technology Director	\$12,991	\$17,071
Group 1-B: Middle Management		
Police Captain	\$13,249	\$17,408
Building Official	\$12,991	\$17,071
Deputy Director for Engineering	\$12,991	\$17,071
Deputy Director for Utilities Services	\$12,991	\$17,071
Housing Manager *	\$12,991	\$17,071
Planning Manager *	\$12,991	\$17,071
Program Administrator	\$12,991	\$17,071
Assistant City Attorney	\$12,173	\$15,968
Assistant to the City Manager *	\$12,173	\$15,968
City Clerk	\$12,173	\$15,968
Economic Development Manager *	\$11,485	\$15,065
Environmental Services Administrator	\$11,485	\$15,065
Principal Planner	\$11,485	\$15,065
Senior Civil Engineer	\$11,485	\$15,065
Senior Project Manager	\$11,485	\$15,065
Budget Manager	\$10,620	\$13,967
Building Manager *	\$10,620	\$13,967
Communications and Engagement Manager *	\$10,620	\$13,967
Community Services Manager *	\$10,620	\$13,967
Environmental Services Manager	\$10,620	\$13,967
Information Services Manager *	\$10,620	\$13,967
Maintenance Manager	\$10,620	\$13,967
Police Support Services Manager	\$10,620	\$13,967
Recreation Manager	\$10,620	\$13,967
Supervising Civil Engineer	\$10,620	\$13,967
Utility Systems Manager	\$10,620	\$13,967
Accounting Manager *	\$9,885	\$12,993
Financial and Policy Analyst *	\$9,885	\$12,993
Police Administrative Manager	\$9,885	\$12,993
Public Services Administrative Manager	\$9,885	\$12,993
Senior Planner	\$9,885	\$12,993
Community Services Supervisor	\$8,956	\$11,427
Council Services and Records Manager *	\$8,956	\$11,427
Deputy City Attorney *	\$8,956	\$11,427
Economic Development Coordinator	\$8,956	\$11,427
Emergency Services Coordinator	\$8,956	\$11,427
GIS / Land Use Data Administrator	\$8,956	\$11,427
Maintenance Services Coordinator	\$8,956	\$11,427
Older Adult Services Supervisor	\$8,956	\$11,427
Programmer Analyst	\$8,956	\$11,427
Senior Human Resources Analyst	\$8,956	\$11,427
Risk Management Analyst (.50 FTE)	\$4,269	\$5,601
Group 1-C: Confidential Exempt		
Administrative Analyst	\$8,536	\$11,201
Legal Specialist	\$7,680	\$10,105
Group 1-D: Confidential Non-Exempt		
Accounting Technician	\$6,810	\$8,936
Human Resources Technician	\$6,810	\$8,936
Human Resources Assistant *	\$5,333	\$6,976

***Monthly figures are rounded to the nearest \$1.00

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EXHIBIT C

CITY OF MORGAN HILL MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEE GROUP SALARY SCHEDULE

CPI more than 2% Increase is 2.5%
Effective: December 25, 2022

* Currently Unfunded Positions

Job Classification	Bottom of Range	Top of Range Monthly
Group 1-A: Executive Management		
Assistant City Manager for Administrative Services *	\$15,882	\$20,870
Assistant City Manager for Development Services	\$15,882	\$20,870
Chief of Police	\$15,882	\$20,870
Public Services Director	\$15,882	\$20,870
Community Services Director *	\$15,129	\$19,922
Development Services Director	\$15,129	\$19,922
Economic Development Director	\$15,129	\$19,922
Engineering and Utilities Director *	\$15,129	\$19,922
Finance Director	\$15,129	\$19,922
Housing Director	\$15,129	\$19,922
Communications and Engagement Director	\$13,055	\$17,155
Human Resources Director	\$13,055	\$17,155
Information Technology Director	\$13,055	\$17,155
Group 1-B: Middle Management		
Police Captain	\$13,313	\$17,493
Building Official	\$13,055	\$17,155
Deputy Director for Engineering	\$13,055	\$17,155
Deputy Director for Utilities Services	\$13,055	\$17,155
Housing Manager *	\$13,055	\$17,155
Planning Manager *	\$13,055	\$17,155
Program Administrator	\$13,055	\$17,155
Assistant City Attorney	\$12,232	\$16,046
Assistant to the City Manager *	\$12,232	\$16,046
City Clerk	\$12,233	\$16,046
Economic Development Manager *	\$11,541	\$15,138
Environmental Services Administrator	\$11,541	\$15,138
Principal Planner	\$11,541	\$15,138
Senior Civil Engineer	\$11,541	\$15,138
Senior Project Manager	\$11,541	\$15,138
Budget Manager	\$10,672	\$14,036
Building Manager *	\$10,672	\$14,036
Communications and Engagement Manager *	\$10,672	\$14,036
Community Services Manager *	\$10,672	\$14,036
Environmental Services Manager	\$10,672	\$14,036
Information Services Manager *	\$10,672	\$14,036
Maintenance Manager	\$10,672	\$14,036
Police Support Services Manager	\$10,672	\$14,036
Recreation Manager	\$10,672	\$14,036
Supervising Civil Engineer	\$10,672	\$14,036
Utility Systems Manager	\$10,672	\$14,036
Accounting Manager *	\$9,934	\$13,057
Financial and Policy Analyst *	\$9,934	\$13,057
Police Administrative Manager	\$9,934	\$13,057
Public Services Administrative Manager	\$9,934	\$13,057
Senior Planner	\$9,934	\$13,057
Community Services Supervisor	\$8,999	\$11,483
Council Services and Records Manager *	\$8,999	\$11,483
Deputy City Attorney *	\$8,999	\$11,483
Economic Development Coordinator	\$8,999	\$11,483
Emergency Services Coordinator	\$8,999	\$11,483
GIS / Land Use Data Administrator	\$8,999	\$11,483
Maintenance Services Coordinator	\$8,999	\$11,483
Older Adult Services Supervisor	\$8,999	\$11,483
Programmer Analyst	\$8,999	\$11,483
Senior Human Resources Analyst	\$8,999	\$11,483
Risk Management Analyst (.50 FTE)	\$4,290	\$5,629
Group 1-C: Confidential Exempt		
Administrative Analyst	\$8,578	\$11,256
Legal Specialist	\$7,718	\$10,155
Group 1-D: Confidential Non-Exempt		
Accounting Technician	\$6,843	\$8,980
Human Resources Technician	\$6,843	\$8,980
Human Resources Assistant *	\$5,359	\$7,010

***Monthly figures are rounded to the nearest \$1.00



CITY COUNCIL STAFF REPORT

MEETING DATE: March 2, 2022

PREPARED BY:

Tanya Carothers, Environmental Services Administrator

APPROVED BY: City Manager

ADOPT RESOLUTION AMENDING THE CITY'S SOLID WASTE BUDGET AND APPROVE AN AMENDMENT TO THE FISCAL AGENT SERVICE AGREEMENT WITH THE COUNTY OF SANTA CLARA

RECOMMENDATION(S)

1. Adopt a Resolution appropriating an additional \$156,658 to the City's Countywide Solid Waste Program (Fund 246);
2. Accept the first amendment to the Fiscal Agent Service Agreement with the County of Santa Clara to increase the amount of the contract by \$119,170 for a total contract amount of \$528,136;
3. Authorize the City Manager to execute and administer the amendment with the County of Santa Clara; and
4. Authorize the City Manager to extend the term of the Fiscal Agent Service Agreement with the County of Santa Clara for up to four additional one-year terms.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment

Advancing Regional Initiatives

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to adopt a resolution appropriating an additional \$156,658 in the City's Countywide Solid Waste Program (Attachment 1), and to approve a first amendment to the City's Fiscal Agent Service Agreement (Service Agreement) with the County of Santa Clara (County) (Attachment 2).

Countywide Solid Waste Program Background:

In July 2021, City of Morgan Hill staff began providing Technical Advisory Committee (TAC) Administrator and Contracting Agent roles for administering the work of the Countywide Solid Waste Program. The County has retained the third role of Fiscal Agent for these programs and is the entity authorized and responsible for collecting County solid waste fees as well as managing and reporting to the State on various Countywide solid waste planning efforts.

County Service Agreement

A Service Agreement with the County provides fiscal agent and related planning services for the Countywide Solid Waste Program. On March 3, 2021, the City Council authorized the City Manager to execute an agreement with the County for Fiscal Agent and Related Planning Services subject to review and approval by the City Attorney. On June 22, 2021, the County Board of Supervisors (BOS) authorized execution of the agreement, and the City and County entered into a FY 2022 Service Agreement for the amount of \$408,966.

The proposed \$119,170 increase to the Service Agreement is needed to cover costs related to fiscal agent contract services that were included in the original scope of work, but not accounted for in the original dollar amount of the agreement. The contract services to be covered by the proposed amendment are as follows:

Fiscal Agent Contract Service

Edible Food Capacity Study	\$ 50,000
Organic Capacity Study Update	\$ 45,450
Biennial Audit for FY 21-22	\$ 23,720
Total Amendment to Service Agreement	\$119,170

The proposed amendment (Attachment 2) would increase the Service Contract amount from \$408,966 to \$528,136, as shown below:

County Service Agreement Amendment Summary

Original Amount of Service Agreement	\$408,966
Proposed First Amendment to Service Agreement	\$119,170
Amended Amount of Service Agreement	\$528,136

Staff recommends approval of the Amendment to the Service Agreement in order to fund the County's administration of the Edible Food Capacity study, Organic Capacity Study Update, and Biennial Audit for FY 21-22.

Additional Funds for Countywide Solid Waste Program Budget

When the original countywide solid waste budget was established, it was estimated that \$1,000,000 would be enough to cover costs for contract services under the Countywide Solid Waste Program budget. However, having entered into the various contracts needed for the countywide program, the City budget for this program is currently short by \$37,488 in addition to the \$119,170 proposed to be added to the Service

Agreement.

Staff recommends that the Council adopt the attached resolution (Attachment 1) appropriating \$156,658 (\$37,488 + \$119,170) of additional funds to the City's Countywide Solid Waste Program budget to cover costs for contracts which have exceeded the originally estimated \$1,000,000 budget.

Extension of the Term of the Fiscal Service Agent Agreement

While the County Service Agreement provides for four one-year extensions, the original Council Report did not make it clear that the City Manager was authorized to execute the extensions – though that was the clear intention of the parties when the agreement was drafted. The fourth recommended action of the report is solely focused on clarifying this ambiguity by clearly authorizing the City Manager to execute four one-year extensions of this agreement.

COMMUNITY ENGAGEMENT:

Not Applicable

The subject of this staff report is entirely administrative in nature and does not impact services directly provided to the Morgan Hill community. Given this, no community engagement was conducted prior to this meeting.

ALTERNATIVE ACTIONS:

The City Council could decline approval of the Resolution appropriating an additional \$156,658 to the City's Countywide Solid Waste Program budget, and could also decline to approve the first amendment to the Fiscal Agent Service Agreement. This would leave the City unable to pay for County management of the Edible Food Capacity Study, Organic Capacity Study Update and Biennial Audit, all work that was scoped as part of the original Service Agreement. Additionally, if the Council declined to appropriate the additional funds, the City would be unable to pay for existing contracts in the Countywide Solid Waste Program in their entirety.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 3, 2021, the City Council authorized the City Manager to execute an agreement with the County of Santa Clara for Fiscal Agent and Related Planning Services subject to the review and approval of the City Attorney.

FISCAL AND RESOURCE IMPACT:

As described above, there is currently \$1,000,000 authorized in Fund 246 for Countywide Solid Waste Administrative Services Contracts. The First Amendment to the County Service Agreement (\$119,170) plus the appropriation of additional funds to the budget to cover costs of existing contracts (\$37,488) will bring the total amount of Countywide Solid Waste Administrative Services contracts to \$1,156,658. The additional \$156,658 will be appropriated to Fund 246 via the attached resolution and budget scorecard.

As Fiscal Agent, the County is the entity authorized and responsible for collecting County solid waste fees. The City sends a Fund Transfer Request quarterly to the County to cover costs related to the City's role as TAC Administrator and Contracting Agent as well as all contract costs. The City's Fund Transfer Requests will be adjusted to cover the costs associated with the requested increased appropriation. Because of the Fund Transfer Requests, in no case would Fund 246 go into a negative balance. However, there is a possibility that Fund 246 will have a positive balance at the end of the year if some of the planned contract expenditures come in under budget. Any balance in Fund 246 at the end of the year would be available for future expenditures on the countywide solid waste programs.

CEQA (California Environmental Quality Act):

Not a Project

The activities associated with this item are administrative activities that will not result in direct changes to the physical environment.

RESOLUTION NO. 21-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL APPROVING AN AMENDMENT TO
THE CITY'S FISCAL YEAR 2021-2022 BUDGET IN THE
COUNTYWIDE SOLID WASTE PROGRAM
ADMINISTRATION (FUND NO. 246) TO APPROPRIATE
\$156,658**

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

WHEREAS, the reasons supporting this Resolution are set forth in detail in that certain City Council Staff Report entitled "Adopt Resolution Amending the City's Solid Waste Budget and Approve an Amendment to the Fiscal Agent Service Agreement with the County of Santa Clara" submitted for City Council consideration at its meeting of March 2, 2022, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Annual Budget for Fiscal Year 2021-2022 as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

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

WHEREAS, the City Council determines that adoption of this Resolution is in the public interest.

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

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

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

- a. That the City's previously adopted Fiscal Year 2021-2022 Budget, as the same has been amended to date, is hereby further amended in accordance with and as

reflected on Exhibit A attached hereto and incorporated herein by this reference;
and

- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2021-2022 Budget of City.

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

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 2nd day of March 2022 by the following vote:

AYES:	COUNCIL MEMBERS:	None
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ **CERTIFICATION** ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 21-_____ adopted by the City Council at the meeting held on the 2nd day of March 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2021-2022

ADJUSTMENT #

012

FUND:

246

Countywide Solid Waste Administration

DEPARTMENT:

5820

Countywide Solid Waste Administration

OBJECT:

42231

CONTRACT SERVICES

AGENDA DATE:

03/02/22

AGENDA ITEM TITLE:

Amendment to Agreement - Countywide Solid Waste Program

	07/01/21 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/22 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	-	1,324,763	1,324,763	-
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		156,658	156,658	-
RESULT OF RECOMMENDED ACTION	-	1,481,421	1,481,421	-

FIRST AMENDMENT TO SERVICE AGREEMENT COUNTYWIDE SOLID WASTE FISCAL AGENT SERVICES

This First Amendment to Service Agreement Countywide Solid Waste Fiscal Agent Services ("FIRST AMENDMENT") is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, in its capacity as contracting agent on behalf of the Recycling and Waste Reduction Commission Technical Advisory Committee, ("CITY") and County of Santa Clara, a political subdivision of the State of California, ("SERVICE PROVIDER") (each, individually a "PARTY" and collectively the "PARTIES").

RECITALS

The following recitals are a substantive part of this Agreement:

1. On June 22, 2021, the CITY and SERVICE PROVIDER entered into a Service Agreement Countywide Solid Waste Fiscal Agent Services" for services for a maximum compensation of Four Hundred Eight Thousand Nine Hundred Sixty-Six and no/100 dollars (\$408,966.00) ("SERVICE AGREEMENT"). The SERVICE AGREEMENT is attached as Exhibit "1" to this Agreement.
2. This First Amendment to SERVICE AGREEMENT ("FIRST AMENDMENT") is entered into pursuant to the action of the Morgan Hill City Council taken on _____, 2022, and the action of the County of Santa Clara Board of Supervisors taken on _____, 2022.
3. In consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the PARTIES agree to amend the SERVICE AGREEMENT as specified below.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

SERVICE AGREEMENT, attached hereto 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 of SERVICE AGREEMENT shall be amended and replaced in its entirety by the following:

4.1. Amount. The total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed FIVE HUNDRED TWENTY-EIGHT THOUSAND ONE HUNDRED THIRTY-SIX AND NO/100 DOLLARS (\$528,136.00) for the first year of the term dollars and shall be billed based on the rate and basis set forth in Exhibit B dated January 10, 2022. If the Parties extend the term of this Agreement pursuant to the provisions of Section 2 above, the compensation for any such one-year extension shall be determined pursuant to Section IX. D of Exhibit D.

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B. Exhibit A – Scope of Services to SERVICE AGREEMENT shall be amended by adding the following as Paragraph F to the Scope of Services:

F. Fiscal Agent shall manage the contracts listed below and has the authority under this Agreement to pay directly for those contracts. Fiscal Agent shall include its payments for those contracts in the invoices that Fiscal Agent submits to the CITY for services under this Agreement. The CITY shall reimburse Fiscal Agent for payments that Fiscal Agent made directly for those contracts in amounts not to exceed the following for each respective contract:

1. Edible Food Recovery Contract: \$50,000
2. Organic Capacity Study Update: \$45,450
3. Biennial Audit for FY21: \$23,720

2. **Conflicts.** In the event of a conflict between the terms and provisions of this FIRST AMENDMENT and the terms and provisions of the SERVICE AGREEMENT, the terms of this FIRST AMENDMENT shall govern and control.

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Signatures on the Next Page

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

Christina J. Turner, City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

COUNTY OF SANTA CLARA

Donald A. Larkin, City Attorney

By: _____
President, Board of Supervisors

Mike Wasserman

Date: _____

Date: _____

APPROVED AS TO FORM AND
LEGALITY:

Signed and Certified that Copy of this
Document has been delivered by
Electronic or other means to the
President, Board of Supervisors.
Attest:

DocuSigned by:
Willie Nguyen
A1756187CF04415...

Deputy County Counsel

Date: 2/24/2022

By: _____
TIFFANY LENNEAR
Title: Clerk of the Board of Supervisors

Date: _____

SERVICE AGREEMENT
Countywide Solid Waste Fiscal Agent Services

THIS AGREEMENT is entered into and becomes effective on JUN 22 2021 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, in its capacity as contracting agent on behalf of the Recycling and Waste Reduction Commission Technical Advisory Committee, ("CITY"), and County of Santa Clara, a political subdivision of the State of California 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 March 3, 2021.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2022 at which time SERVICE PROVIDER'S services shall be completed. The Parties, upon mutual agreement, are authorized to extend the term of this Agreement for up to four additional one-year terms. Any such extension shall be in writing and signed by both Parties to this Agreement. The costs for any such one-year extension shall be determined pursuant to Section IX.D of the June 4, 2013, Agreement Creating the Santa Clara County Recycling and Waste Reduction Technical Advisory Committee ("June 4, 2013, MOA"), attached hereto as **Exhibit D**.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be Fiscal Agent for Countywide Solid Waste Activities as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$408,966.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed four hundred eight thousand nine hundred sixty-six dollars for the first year of the term dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the Parties extend the term of this Agreement pursuant to the provisions of Section 2 above, the compensation for any such one-year extension shall be determined pursuant to Section IX.D of **Exhibit D**.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an accounting summary 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 quarterly basis unless otherwise specified in **Exhibit B**. All accounting summaries shall be sent to the CITY addressed to the department head or project manager identified below in Section 12 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of accounting summary by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any quarterly rate charge should be prorated when services were interrupted or provided for only part of the quarter). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one half 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 Recycling and Waste Reduction Commission Implementation Committee's judgment were necessary and reasonable.
 - 4.3. **Compensation for Additional Services.** Prior to performing any services not included in the Scope of Services in Section 3 above and in excess of the total compensation set forth in Section 4.1, CITY and SERVICE PROVIDER must execute a mutual written agreement

consistent with Section 19, below, specifying the scope of and compensation for the additional work.

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

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 the SERVICE PROVIDER'S profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. SERVICE PROVIDER shall perform all work and services under this Agreement in conformance with the time schedule set forth on Exhibit C, "Schedule of Performance," attached hereto and incorporated herein by this reference. 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.

7. **Insurance Requirements.** SERVICE PROVIDER shall maintain or cause to be maintained the following insurance coverage: (i) comprehensive general and automobile liability with limits of liability not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate; (ii) workers' compensation providing statutory coverage; (iii) employer's liability with liability limits of \$1,000,000; and (iv) and such other insurance or self-insurance as shall be necessary to insure it against any claim or claims for damages arising under the Agreement. The requirements of this section maybe satisfied through a self-insurance program. A certificate of coverage will be produced upon request.

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

9. **Compliance with Law.**

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

9.2. 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.

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

11. **California Public Records Act.** SERVICE PROVIDER is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If CITY's proprietary information is contained in documents or information submitted to SERVICE PROVIDER, and CITY claims that such information falls within one or more CPRA exemptions, CITY must clearly mark such information "CONFIDENTIAL AND

PROPRIETARY,” and identify the specific lines containing the information. In the event of a request for such information, COUNTY will make best efforts to provide notice to CITY prior to such disclosure. If CITY contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before SERVICE PROVIDER is required to respond to the CPRA request. If CITY fails to obtain such remedy within the time the SERVICE PROVIDER is required to respond to the CPRA request, SERVICE PROVIDER may disclose the requested information.

CITY further agrees that it shall defend, indemnify and hold SERVICE PROVIDER harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney’s fees) that may result from denial by SERVICE PROVIDER of a CPRA request for information arising from any representation, or any action (or inaction), by CITY.

12. **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:

County of Santa Clara
RWRD Program Manager
County of Santa Clara
1553 Berger Drive
San Jose, CA 95112

Address of CITY is as follows:

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

13. **Maintenance of Records.**

13.1. **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.

13.2. **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 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 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.

- 13.3. **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 Recycling and Waste Reduction Commission Implementation Committee. SERVICE PROVIDER shall provide CITY, in its capacity as contracting agent for the Recycling and Waste Reduction Commission Technical Advisory Committee, with copies of these items upon demand.

14. **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.

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

16. **No Assignment.** Neither party to this Agreement shall assign any portion of this Agreement without prior written consent of the other party. Any party's attempted assignment without prior approval of the other party shall be void.

17. **Third Party Beneficiaries.** Unless otherwise explicitly specified in this Agreement, this Agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties.

18. Defense and Indemnification

18.1. CITY shall defend, indemnify and hold SERVICE PROVIDER, its officers, employees, and agents harmless from any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement, but only in proportion and to the extent such liability, loss, expenses, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of CITY, its officers, agents or employees.

18.2. SERVICE PROVIDER shall defend, indemnify and hold CITY, its officers, employees, and agents harmless from any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement, but only in proportion and to the extent such liability, loss, expenses, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of SERVICE PROVIDER, its officers, agents or employees.

19. **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.

20. **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.

21. **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.

22. **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.

23. **Binding Agreement.** Notwithstanding the provisions of Section 16 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.

24. **Contract Execution.** Unless otherwise prohibited by law or SERVICE PROVIDER 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 SERVICE PROVIDER.

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[Signatures on Next Page]

25. **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

DocuSigned by:
Michelle Bigelow
City Clerk/Deputy City Clerk

DocuSigned by:
Christina Turner
City Manager

Michelle Bigelow
Print Name

Christina J. Turner
Print Name

Date: 6/7/2021

Date: 6/7/2021

APPROVED AS TO FORM:

COUNTY OF SANTA CLARA

DocuSigned by:
Donald A. Larkin
City Attorney

Mike Wasserman JUN 22 2021
President, Board of Supervisors Date

Donald A. Larkin
Print Name

Mike Wasserman

Date: 6/7/2021

Signed and certified that copy of this document
has been delivered by electronic or other
means to the President, Board of Supervisors.
Attest:

APPROVED AS TO FORM AND
LEGALITY:

DocuSigned by:
Willie Nguyen 6/4/2021
A1756187CF04415
Willie Nguyen Date
Deputy County Counsel

Megan Doyle JUN 22 2021
Megan Doyle Date
Clerk of the Board of Supervisors

EXHIBIT A SCOPE OF SERVICES

Fiscal Agent

A. Core Duties. The Fiscal Agent serves as the treasurer of the Countywide Funds and is responsible for collecting the Solid Waste Planning Fee ("SWPF") from all solid waste disposal facilities and non-disposal facilities located within Santa Clara County. The Fiscal Agent also collects and receives grant funds and revenues from other sources. The Fiscal Agent shall diligently pursue collection of all SWPF funds and shall keep the Implementation Committee ("IC") apprised of the amount and entity owing delinquent payments, as well as of the status of collection activity initiated by the Fiscal Agent regarding the delinquent payments. The Fiscal Agent shall manage all funds in accordance with generally accepted government accounting procedures. The Fiscal Agent shall keep Countywide Funds segregated from all other funds administered by the Fiscal Agency in separately numbered and coded accounts that are readily identifiable as those containing Countywide Funds; shall credit appropriate interest income earned on such funds in each fiscal year; and shall not expend, use or transfer and funds except in accordance with the Annual Workplan and Budget approved by the IC and the Recycling and Waste Reduction Commission (Commission), or as otherwise directed by the IC. The Fiscal Agent shall transfer Countywide Funds to the Contracting Agent as directed by the IC, in accordance with the procedures in Attachment 5 of the Agreement Creating the Santa Clara County Recycling and Waste Reduction Technical Advisory Committee as executed on June 4th 2013. The Fiscal Agent shall work cooperatively and collaboratively with the IC, the TAC Administrator (Administrator), and the Contracting Agent.

B. Quarterly and Annual Budget Status. The Fiscal Agent shall prepare and submit quarterly budget updates to the IC every three (3) months, and shall provide a Year-End Budget Report. These reports shall be formatted in a clear and concise manner such that all expenditures, revenues, movement of monies, reallocation of funds and adjustments to the budget are detailed by project and line item (i.e., numerical reference and narrative description). The Year-End Budget Report shall be submitted to the IC on or before October 31st each year. The IC may, at any time, request additional budget information, detail, documentation and updates. The Fiscal Agent shall respond promptly to all such requests.

C. Biennial Audit. The Fiscal Agent shall arrange for an audit by an independent third party Certified Public Accounting Firm (CPA) to be conducted every other year beginning with an audit of the 2021/2022 fiscal year. The Fiscal Agent may utilize the CPA firm retained by the jurisdiction of which the Fiscal Agent is a part, to perform that PARTY'S annual audit. In such event, the results of the audit of the Countywide Funds and accounts shall be clearly and separately called out in the CPA's audit report. The results of the audit shall be reported to the IC on or before January 15th every other year.

D. Evaluation of the Fiscal Agent. Each year, the Fiscal Agent shall prepare a self-evaluation, along with the Year-End Budget Report, for submittal to the IC. The self-evaluation shall include a description of key work tasks performed, any duties or tasks not completed, and any non-planned work tasks completed. The report will include recommendations and suggestions for improving the services of the Fiscal Agent. The self-evaluation shall be submitted at the same time as the Year-End Budget Report. The IC will review the report at a regular meeting and discuss any suggested or needed changes or improvements. The IC will rate the overall performance of the Fiscal Agent based upon the ability of the Fiscal Agent to perform its duties in a timely manner and in

accordance with the requirements of this Agreement. The final recommendations and feedback of the IC will be recorded in the minutes and also in a letter from the IC Chair to the Fiscal Agent. This feedback will be used by the Fiscal Agent to make any changes, based on requirements of this Agreement, to operations and procedures and/or work tasks for the next fiscal year. In addition to the annual review of the Fiscal Agent, the IC may, at any time, discuss questions, concerns or issues of performance with the designate representative of the Fiscal Agent.

E. Countywide Solid Waste Planning Activities required by State Law. The Fiscal Agent will also perform additional solid waste planning activities required by State Law and typically completed by County agencies including:

1. Disposal reporting;
2. Nondisposal facility element updates; and
3. Other responsibilities in waste management planning which are mandated by State law under the Integrated Waste Management Act of 1989 and other legislation and regulations

Compensation for the Fiscal Agent's performance of these additional solid waste planning activities shall be included in the proposed costs that the Fiscal Agent shall provide to the Administrator under Section IX.D of **Exhibit D**. Costs for the performance of these additional solid waste planning activities shall be paid with Countywide Funds, as those funds are defined in **Exhibit D**.

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Payment for Services.

Compensation for the first year of Fiscal Agent Services (FY 21/22) shall not exceed the budget estimate provided by Santa Clara County to the IC at its January 14, 2021 meeting as follows:

Staff Services	\$226,696	
Indirect Costs, Services and Supplies	\$182,270	

Compensation for future years shall be based on the proposed costs submitted by Santa Clara County to the IC by September 15 of each year. The proposed costs will be reviewed by the IC as part of review of the Annual Workplan and Budget. If there is a question or concern about the proposed costs, the Chair of the IC and the Administrator will meet with the Fiscal Agent concerning the issues. Upon approval of the Annual Workplan and Budget by the IC and the Commission, the Contracting Agent will prepare an amendment to this agreement to be signed by the Fiscal Agent and the Contracting Agent to perform services for the new fiscal year.

Prior to performing any services for work performed and expenses incurred beyond the Scope of Services in Section 3 of the Agreement, and in excess of the total compensation set forth in Section 4.1 of the Agreement, CITY and SERVICE PROVIDER must execute a mutual written agreement consistent with Section 19 of the Agreement, specifying the scope of and compensation for the additional work.

EXHIBIT C

SCHEDULE OF PERFORMANCE

The following describes the major tasks to be completed as detailed in Exhibit A. These tasks shall be completed pursuant to the schedule specified in the Annual Workplan approved for each year of the agreement.

- Collection of Fees, including management of delinquent payments and reporting compliance
- Collection and Receipt of other Funding Sources
- Core Accounting and Record Keeping
- Transfer of Funds to Contracting Agent
- Quarterly and Annual Budget Reports
- Biennial Audit
- Annual Self-Evaluation
- Annual Cost Estimate for Following Fiscal Year
- Additional Solid Waste Planning Activities required by State Law, including:
 1. Disposal reporting;
 2. Nondisposal facility element updates; and
 3. Other responsibilities in waste management planning and contract management which are mandated by State law under the Integrated Waste Management Act of 1989 and other legislation and regulations.

Exhibit D

AGREEMENT
CREATING THE SANTA CLARA COUNTY
RECYCLING AND WASTE REDUCTION
TECHNICAL ADVISORY COMMITTEE

THIS AGREEMENT, is made and entered into this 4th day of June 2013 by and between the COUNTY OF SANTA CLARA, a political subdivision of the State of California; CITY OF CAMPBELL, a municipal corporation of the State of California; CITY OF CUPERTINO, a municipal corporation of the State of California; CITY OF GILROY, a municipal corporation of the State of California; CITY OF LOS ALTOS, a municipal corporation of the State of California; TOWN OF LOS ALTOS HILLS, a municipal corporation of the State of California; TOWN OF LOS GATOS, a municipal corporation of the State of California; CITY OF MILPITAS, a municipal corporation of the State of California; CITY OF MONTE SERENO, a municipal corporation of the State of California; CITY OF MORGAN HILL, a municipal corporation of the State of California; CITY OF MOUNTAIN VIEW, a municipal corporation of the State of California; CITY OF PALO ALTO, a municipal corporation of the State of California; CITY OF SAN JOSE, a municipal corporation of the State of California; CITY OF SANTA CLARA, a chartered municipal corporation of the State of California; CITY OF SARATOGA, a municipal corporation of the State of California; and CITY OF SUNNYVALE, a municipal corporation of the State of California.

All of the above-mentioned entities are hereinafter collectively referred to as "PARTIES" or individually as "PARTY."

RECITALS:

- A. In 1989, the California Legislature passed and enacted the California Integrated Waste Management Act, known as "AB 939", (Public Resources Code Section 40000 et. seq) requiring jurisdictions to divert 25% of waste from disposal by 1995 and 50% of waste from disposal by 2000. AB 939 required each County to develop and periodically update a County Integrated Waste Management Plan and to appoint an AB 939 Local Task Force.
- B. Prior to 1992, the Solid Waste Committee of the Santa Clara County Intergovernmental Council advised the cities and the County on solid waste and recycling issues. The Technical Advisory Committee, also originally convened by the Intergovernmental Council, provided technical advice to the Solid Waste Committee on solid waste and recycling issues.
- C. On or about February 1992, the Santa Clara County Board of Supervisors and the cities in Santa Clara County designated the Solid Waste Committee of the Intergovernmental Council as the AB 939 Task Force for Santa Clara County.
- D. On February 4, 1992, the Santa Clara County Board of Supervisors replaced the Solid Waste Committee of the Intergovernmental Council with the Solid Waste Commission of Santa Clara County ("Commission") in order to streamline the

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decision-making process on solid waste and recycling issues. (Ordinance No. NS-300.495) The powers and duties of the Commission are defined in Chapter XVII, Division A6 of the County of Santa Clara Ordinance Code.

- E. On December 4, 2001, the Santa Clara County Board of Supervisors approved Ordinance No. NS-300.658 changing the name of the Commission to the Recycling and Waste Reduction Commission of Santa Clara County.
- F. The Commission advises city councils and the Board of Supervisors in Santa Clara County on countywide solid waste and recycling planning issues and on the County Solid Waste Management Plan/County Integrated Waste Management Plan.
- G. The By-Laws of the Commission (also approved by the County Board of Supervisors on February 4, 1992) continued the existence of the Recycling and Waste Reduction Technical Advisory Committee (the "TAC"). The purpose of the TAC was to provide technical advice to the Commission on solid waste management and policy; to bring together a wide spectrum of viewpoints and expertise on countywide solid waste and recycling issues affecting individual jurisdictions; and to assist in development of policies, programs and revisions and amendments to countywide plans.
- H. On an annual basis, the TAC prepares and submits an Annual Workplan and Budget for review and approval by the Commission. The Commission-approved Annual Workplan is then implemented by the TAC using funds in the Commission-approved Annual Budget.
- I. In accordance with the AB 939 provisions for financing solid waste diversion and planning activities, the County of Santa Clara levies and collects the Countywide Solid Waste Planning Fee ("SWPF") on each ton of solid waste disposed at landfills located within the County, on tons taken to non-disposal facilities located within the county and subsequently transported for disposal to landfills outside Santa Clara County, and on tons transported directly to disposal facilities located outside Santa Clara County. The current SWPF of \$0.78 per ton was established by the County Board of Supervisors on May 19, 2009. Funds from the SWPF are used to fund the activities and programs of the Commission and the TAC. In addition, funds from grants, voluntary contributions from other agencies and other revenue sources are used to fund these activities and programs. Such funds, including monies from the SWPF, are referred to herein as "Countywide Funds".
- J. In 2011, Assembly Bill 341 ("AB 341") was signed into law establishing a statewide goal of diverting 75% of solid waste from disposal by 2020 and requiring The California Department of Resources, Recycling and Recovery to prepare and submit a plan to the Legislature on or before January 1, 2014 on how to achieve this goal.
- K. Since the TAC was originally established, the field of solid waste management and recycling has become much more complex and the PARTIES must comply with an increasing number of laws and regulations. In order to achieve the statewide goal of 75% diversion, many materials currently disposed in landfills must be segregated and

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processed at new facilities, and channeled into useful purposes. New infrastructure, diversion systems and enhanced producer responsibility measures must be implemented in order to accomplish this goal.

- L. Commensurate with changes in the breadth and complexity of the solid waste and recycling field, the work and functions of the TAC have evolved over time to encompass not only providing advice to the Commission, but also recommending, implementing and monitoring countywide public education and diversion programs included in the Commission-approved Annual Workplan and Budget where it is cost effective for the PARTIES to jointly provide such programs.
- M. The TAC requires expanded powers and authority to monitor ongoing staffing support for programs in the Commission-approved Annual Workplan as well as the power and authority to recommend, monitor and audit the funding for these programs, at the levels contained in the Commission-approved Annual Budget.
- N. In order to address these issues, the Commission appointed the Ad Hoc Committee for TAC Organizational Study, and the TAC appointed the TAC Ad Hoc Organizational Study Subcommittee. Pursuant to recommendations from these Committees, the County retained Arroyo Associates in 2010 to conduct an independent Organizational Study. The study evaluated the countywide integrated waste management programs and services and provided operational and organizational recommendations to enhance the efficiency and effectiveness of the countywide solid waste management system. The Commission's Ad Hoc Committee held a meeting on May 29, 2012 with representatives of the TAC and the public to discuss the recommendations of the Organizational Study and options for restructuring the operating parameters of the TAC.
- O. The purpose of this Agreement is to implement the recommendations of the Commission's Ad Hoc Committee and the TAC Ad Hoc Subcommittee to revise the functions, powers, membership, structure and duties of the TAC to make these consistent with the manner in which the TAC currently functions; and to simplify the reporting relationship between the Commission and the TAC. Such changes are desired by the PARTIES in order to facilitate countywide and regional approaches for meeting the statewide goal of 75% diversion articulated in AB 341; remaining in compliance with the existing requirements of AB 939, SB 1016 and all other state and federal laws and regulations, and planning for the goal of zero waste in the future.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

I. PURPOSES AND FUNDING

The Santa Clara County Recycling and Waste Reduction Technical Advisory Committee ("TAC") is hereby established to replace the Recycling and Waste Reduction Technical Advisory Committee referred to in Article V of the Commission Bylaws dated October 2001.

A. *Purposes.* The purposes of the TAC are:

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1. To implement the Commission-approved Annual Workplan and Budget;
2. To advise the Commission and the decision-making bodies of all PARTIES on technical and policy issues related to solid waste management and recycling including plans to achieve the statewide AB 341 goal of 75% diversion by 2020 and plans for working toward the goal of zero waste;
3. To bring together a wide spectrum of viewpoints and expertise to focus on countywide solid waste management, issues affecting individual communities, and solid waste and recycling issues affecting public environmental health;
4. To assist in development of policies, programs and revisions and amendments to countywide plans that can meet countywide needs and, thus, receive countywide approval;
5. To provide a forum for exchange of solid waste, recycling, composting and other diversion information;
6. To inform the PARTIES' respective agencies and jurisdictions about issues and recommendations of the Commission, and perform follow-up actions, as necessary;
7. To recommend Commission approval of countywide programs to maximize the effectiveness of local funds spent for public education and recycling programs, and to implement and monitor such programs.
8. To assist with future master planning for facilities and infrastructure, as requested by the Commission.
9. To perform technical and policy review and make technical and policy recommendations to the Commission and technical recommendations to the PARTIES concerning best practices in solid and hazardous waste management; recycling, composting, diversion programs, source reduction; litter reduction on land; reduction of litter that originates from the storage, collection, transportation, and processing of solid waste, recyclable materials and organic materials that affects water quality in local creeks, San Francisco Bay, and oceans; and 'cradle-to-cradle' extended producer responsibility for products and packaging from creation through use and ultimate recycling or other disposition, with regard to:
 - a. The feasibility of technical proposals;
 - b. Analysis of issues and problems in solid waste management;
 - c. Proposed and/or needed national and state legislation and policies;
 - d. New infrastructure required to achieve countywide goals, and;
 - e. Financing and management options for creation of such infrastructure.
10. To perform other duties as directed by the Commission.

B. Funding. The TAC is funded by the Solid Waste Planning Fee ("SWPF") that is charged to customers by the operators of all disposal and non-disposal facilities located within the County of Santa Clara, and remitted, by those facility operators, to the County of Santa Clara. The SWPF is also charged on tons of solid waste that are hauled directly to out-of-county disposal facilities. The amount of the SWPF is established by the Board of Supervisors based upon input and recommendations from the Commission and the TAC Implementation Committee. Additional revenues come from grants, voluntary contributions of other agencies and other sources. These, together with the SWPF funds constitute the Countywide Funds used to fund the Commission-approved Annual Workplan and Budget.

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II. COMPOSITION

A. Voting members, not to exceed 27 in number, shall include:

1. One (1) staff person from each City or Town that is a PARTY
2. Three (3) staff persons from the County as follows:
 - a. One (1) to represent the Unincorporated Area
 - b. One (1) to represent County interests related to environmental health
 - c. One (1) to represent County interests related to integrated waste management
3. One (1) staff person from the Santa Clara Valley Water District
4. Up to eight (8) persons from non-governmental organizations appointed by the Commission as follows:
 - a. No more than three (3) representing for-profit industry groups and/or business organizations (however, no member shall represent a single for-profit company)
 - b. No more than four (4) representatives of non-profit groups that advocate for source reduction, recycling programs, sustainability, and/or producer responsibility
 - c. No more than two (2) representatives of institutions of higher learning located within Santa Clara County

B. *Appointment of Members.* All members representing a public agency shall be re-designated annually via a letter on agency letterhead addressed to the TAC Administrator ("Administrator"). The Commission will accept requests and nominations for non-governmental organizations to serve on the TAC. The Administrator will publish a notice in a daily local newspaper of general circulation to a minimum of two-hundred fifty thousand (250,000) people in September of every other year announcing that nominations and requests to serve are being accepted. The Administrator will take other reasonable and cost-effective measures to distribute the announcement via other media, including, but not limited to, websites, local publications and social media, to reach persons who might not see the notice in a daily newspaper. The Commission will select the non-governmental organizations to be represented on the TAC. Those organizations will, in turn, submit a letter to the Administrator designating a member and an alternate. Members representing non-governmental organizations shall serve for a period of two (2) years beginning in January. At the end of that time, the Commission shall select the non-governmental organizations to be represented on the TAC for the new two (2) year term. The initial group of non-governmental organization representatives will be selected by the Commission on or before December 31, 2013 and will begin serving their terms on January 1, 2014. The Administrator will publish a notice in the newspaper, and distribute the notice via other suitable media, in September 2013 announcing that the Commission will consider nominations and applications for non-governmental organizations to be represented on the TAC.

C. *Alternates.* Each PARTY may designate one or more alternate representative(s) to serve in the absence of the regular member. The alternate(s) will be designated in writing as described in Section II B. Alternates may serve on TAC committees,

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subcommittees, and ad hoc subcommittees.

D. *Vacancies.* Each PARTY is responsible for designating a replacement for its member if the member can no longer serve. In the event of a vacancy, the Chair shall, by letter, request that the PARTY designate a new member. If a vacancy occurs with regard to a representative of a non-governmental organization, the Administrator shall notify the non-governmental organization to designate a new member. In the event the non-governmental organization declines, the TAC shall notify the Commission and request that a new non-governmental organization be selected to fill the remainder of the term created by the vacancy.

E. *Attendance.* Attendance at meetings is vital to the proper and effective functioning of the TAC. Three (3) consecutive absences or a member missing over fifty percent (50%) of the TAC meetings in a calendar year are sufficient grounds for the Administrator to notify the member and request their attendance. Should a PARTY be unable to send its representative to meetings for an extended period of time, the PARTY shall notify the Chair in writing on letterhead and a replacement representative will not be requested from that PARTY.

III. QUORUM AND VOTING

A. *Quorum.* A quorum consists of thirteen (13) voting members physically present at a meeting.

B. *Voting.* Actions of the TAC shall be taken by a majority vote of the members present at the meeting. Each member has one vote. (See Section VI B for voting and quorum requirements for the Implementation Committee that differ from those for the full TAC.)

C. *Attendance From A Remote Location.* In the event of an unavoidable schedule conflict, a member may participate in a meeting from a remote location via telephone or video-conference provided that all requirements of the Brown Act (Government Code Section 54950, et seq.) are met and further provided that the scheduled meeting room has the technical capability to accommodate the request. In such event, the member will notify the Administrator at least ten (10) days in advance of the meeting and ask to attend from a remote location. The Administrator will advise the member if this is possible. If so, the Administrator will comply with all Brown Act requirements including stating the alternate location in the meeting notice. The member shall also comply with all Brown Act requirements in Government Code Section 54953 (b), including, but not limited to, posting a meeting notice and agenda on the door of the remote location for the duration of the meeting, and allowing members of the public to participate in the meeting from the remote location along with the member. The member's vote will be counted; however, the member will not be included in the count to determine a quorum. Attendance from a remote location is to be used only in rare cases of unavoidable schedule conflicts. In-person attendance and participation at meetings is strongly preferred and encouraged.

D. *Bylaws.* The TAC may, as necessary, recommend adoption of Bylaws for its

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governance to the Commission for approval, and operate according to Bylaws approved by the Commission. In the event revisions to Commission-approved Bylaws are desired, the TAC may recommend such revisions to the Commission.

IV. OFFICERS AND THEIR RESPONSIBILITIES

A. *Officer Positions.* The officers of the TAC shall be the Chair, Vice Chair, and the Subcommittee Chairs. The Chair and Vice Chair of the TAC must be voting members or alternates representing a PARTY.

B. *Election and Term.* Each officer shall be elected by majority vote of a quorum of the voting membership at the last meeting of each calendar year or as soon thereafter as possible. All officers' terms begin with the first meeting of each calendar year.

C. *Duties.* The Chair of the TAC shall be responsible for chairing all meetings of the TAC and the Implementation Committee (IC), and representing the TAC and the IC at Commission meetings. The Chair shall approve the draft agendas for TAC and IC meetings, except that any agenda item proposed by two (2) or more voting members must be placed on the next available agenda. The Vice Chair shall serve as the Chair in the Chair's absence. The Chairs of the Subcommittees shall be responsible for calling meetings of their respective Subcommittees and chairing those meetings. The Subcommittee Chairs shall approve the draft agendas for their respective Subcommittees except that any items proposed by two (2) or more voting members of a Subcommittee shall be placed on the next available Subcommittee agenda.

V. MEETINGS

A. *Meetings.* The TAC shall meet monthly at the time and place published on the agendas. Additional meetings may be called as needed. The Chair shall provide every member of the TAC with seventy-two (72) hours written notice of regular and additional TAC meetings. The agenda for each meeting shall be developed by the Administrator in consultation with the TAC Chair, and shall be approved by the Chair.

B. *Conduct of Meetings.* All meetings of the TAC, including all Committees, Subcommittees, Ad Hoc Committees and Subcommittees and any closed sessions with legal counsel, shall be properly noticed and conducted in accordance with the "Brown Act" (Government Code Section 54950 et seq.) Except for official meetings of the TAC and its Committees, Subcommittees and Ad Hoc Committees and Subcommittees, nothing herein shall be interpreted to require meetings between staff members of the individual PARTIES (including designated representatives of the PARTIES) to be subject to the Brown Act, where the Brown Act would not otherwise apply. Each PARTY is individually responsible for ensuring it complies with the Brown Act. Wherever this Agreement is silent with regard to procedure, Robert's Rules of Order shall apply.

VI. IMPLEMENTATION COMMITTEE

A. *Composition and Duties.* The TAC Implementation Committee (IC) is comprised of one voting member from each PARTY to this Agreement plus one voting member from the Santa Clara Valley Water District (SCVWD). The PARTY'S

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IC representative is usually also the PARTY'S TAC representative. Each PARTY and the SCVWD may also designate an alternate. The purpose of the IC is to make decisions and recommendations on all fiscal, management and administrative issues of the TAC. The IC selects, monitors and provides oversight of the Administrator, the Fiscal Agent, the Contracting Agent, and legal counsel to the TAC. The IC recommends the level and setting of the SWPF to the Commission.

B. Quorum, Voting and Meetings. A quorum of the IC is nine (9) voting members. (Note: the City of San Jose representative counts as two (2) voting members toward the IC quorum.) The affirmative vote of at least eight (8) voting members of the IC, including PARTIES collectively representing at least forty percent (40%) of the population of the incorporated and unincorporated areas of the County of Santa Clara, is necessary to approve any measure brought before the IC. (For purposes of calculating whether or not the forty percent (40%) figure has been reached, the population of each PARTY shall be counted; however, no population shall be attributed to the SCVWD due to the fact that it encompasses such a large percentage of the population of the entire incorporated and unincorporated County.) Each member of the IC shall have one vote, with the exception of the City of San Jose which shall have two (2) votes. The IC shall meet at least annually to consider and recommend approval of the Annual Workplan and Budget to the Commission for the upcoming fiscal year. The Chair may call other meetings of the IC as needed. All IC meetings are open to the public and to all TAC members. Participation and discussion by all TAC members and by members of the public is encouraged. The Chair of the IC forwards all recommendations made by the IC directly to the Commission, and also makes an informational report to the TAC on the recommendations forwarded to the Commission. The Chair shall strive to achieve consensus among IC members. Consensus is defined as general agreement in sentiment or belief. If clear consensus cannot be reached, the Chair will call for a vote of the voting members present. In such event, the Chair will report the recommendation of the IC along with the dissenting opinion(s) and viewpoints, to the Commission and to the TAC. In the event of a tie, the Chair will report that outcome and the viewpoint(s) expressed that led to that outcome. In the alternative, the Chair may, in the Chair's sole discretion, re-agendize the item for another IC meeting.

C. Use of Outside Contractors. The IC is responsible for selecting any consultant(s) or contractor(s) ("Outside Contractors") to perform tasks included in the Commission-approved Annual Workplan and Budget and who are to be paid from Countywide Funds, using a process created in consultation with the Contracting Agent. The IC is responsible for reviewing and approving the parameters of any contracts with Outside Contractors, including the scope(s) of work, schedules of performance, use of subcontractors, and compensation for such Outside Contractors. The IC then directs the Contracting Agent to conduct the procurement process for Outside Contractors and to execute contracts with the selected Outside Contractor(s).

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VII. TAC SUBCOMMITTEES

A. Issue and Policy Subcommittees. Issue and policy subcommittees shall be established as needed by the TAC. The TAC will evaluate and establish standing Subcommittees in December of each year. Additional Subcommittees may be established at other times throughout the year as needed.

B. Membership and Meetings. Membership on all issue and policy Subcommittees is open to all TAC voting members and designated alternates. There is no maximum size for each Subcommittee. The TAC shall appoint a Chair for each Subcommittee. A quorum is two (2) or more Subcommittee members. Subcommittees may elect a Vice-Chair to serve in the Chair's absence. Subcommittee chairs shall be responsible for calling and chairing meetings. The Subcommittee chairs shall approve the draft agenda and report the activities and recommendations of the Subcommittee to the TAC. Subcommittee chairs shall strive to achieve consensus among members. Consensus is defined as general agreement in sentiment or belief. If clear consensus cannot be reached, the Chair will call for a vote of the voting members present. In such event, the Chair will report the recommendation of the Subcommittee along with the dissenting opinion(s) and viewpoints, to the TAC. In the event of a tie, the Subcommittee Chair will report that outcome and the viewpoint(s) expressed that led to that outcome. In the alternative, the Subcommittee Chair, in consultation with the TAC Chair, may decide to re-agendize the item for discussion at another meeting.

C. Ad Hoc Subcommittees. The TAC may establish Ad Hoc Subcommittees as needed to address specific issues or problems. The TAC shall appoint a Chair for each Ad Hoc Subcommittee. All Ad Hoc Subcommittees shall follow the same operating procedures as the standing issue and policy subcommittees. The TAC Chair shall monitor the work of all Ad Hoc Subcommittees, and all such Subcommittees shall be promptly disbanded by the TAC once their tasks have been accomplished.

VIII. TAC ADMINISTRATOR

A. Duties. The TAC Administrator provides administration and management services to the TAC and carries out the Annual Workplan. Duties of the Administrator include, but are not limited to: scheduling meetings of the TAC and all committees, subcommittees, and ad hoc subcommittees; preparing agendas and meeting minutes; maintaining all TAC records and files; notifying the TAC of correspondence received and preparing outgoing correspondence; completing all tasks in the Annual Workplan; providing monthly reports at TAC meetings on the status of the Workplan; and other duties as directed by the IC. The Administrator reports to the Chair of the TAC. The Administrator shall work cooperatively and collaboratively with the IC, the Fiscal Agent and the Contracting Agent. The Administrator is paid from funds in the adopted TAC budget.

B. Selection. The IC shall select a PARTY or an Outside Contractor to serve as the Administrator for the TAC. The IC will receive and evaluate proposal(s) and make a recommendation to the Commission on selection of an Administrator, as further described in Attachment 2.

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C. Initial Administrator. The initial Administrator for the TAC shall be the County of Santa Clara, Integrated Waste Management Division ("County IWMD"). The initial staff provided is described on Attachment 1. In the event of a change in the initial staff, the procedures described in Attachment 2 shall be followed. In the event the IC determines there is a need for a change in the Administrator in the future (due to costs, availability of designated employees or for other reasons), or in the event the County IWMD is unable or unwilling to serve, the procedures for selection of a new Administrator in Attachment 2 shall be followed.

D. If Administrator Is Also A PARTY. In the event the Administrator is a PARTY, that PARTY shall appoint a TAC/IC representative whose function is to represent the PARTY's point of view on issues, policy and fiscal matters. The PARTY'S TAC/IC representative shall be a person who is not be involved in the work of the Administrator. This designation shall be made in writing on the PARTY'S letterhead to the Chair of the TAC. The person(s) fulfilling the duties of the Administrator shall act as staff to the TAC, TAC committees and subcommittees, and to the IC.

E. Contract With Administrator. All duties and responsibilities of the Administrator, and a list and description of all staff assigned to provide Administrator services, shall be included in a contract between the Contracting Agent and the Administrator. The contract term may be for a single year or for multiple years, at the discretion of the IC. In the event that the Administrator is a PARTY, a letter agreement will be prepared between the Contracting Agent and the Administrator, containing all of the duties, responsibilities, staffing commitments and costs for the Administrator to serve for the upcoming fiscal year. The letter agreement will include the Annual Workplan and costs for the Administrator's services. The letter agreement shall state that the Administrator agrees to provide the described services at the approved costs for the upcoming fiscal year and that all employee and overhead costs will be maintained at the levels specified in the agreement for that fiscal year. With regard to the initial Administrator, the first letter agreement shall be prepared and executed prior to July 1, 2014 to reflect the costs and the scope of work to be performed for FY 2014/15. If the Administrator and the Contracting Agent are the same PARTY, the letter agreement will be prepared and signed by a staff person designated to represent the Administrator and also signed by a separate staff person designated to represent the Contracting Agent.

F. Annual Workplan and Budget. As the work of the TAC progresses each year, the Administrator will maintain a list of potential work items to be placed in the Annual Workplan for the upcoming fiscal year. Beginning with preparation of the Annual Workplan and Budget for fiscal year 2014/15, the following schedule will apply. In November of each year, the IC will review the list of potential work items compiled by the Administrator, add additional items as needed, and direct the Administrator to prepare a proposed Workplan and Budget for the upcoming fiscal year. The proposed Annual Workplan will contain the elements described in Attachment 3.

The Administrator shall submit the final draft of the proposed Annual Workplan and

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Budget to the IC no later than December 15 of each year. If required, the IC will provide revisions and comments to the Administrator, who will then revise and finalize the Annual Workplan and Budget. The IC will approve the Annual Workplan and Budget on or before January 31 of each year and forward it to the Commission for approval. Commission approval is anticipated to be during the month of February. Upon approval by the Commission, the Contracting Agent will prepare agreements with the Administrator, the Fiscal Agent and the Contracting Agent that include the approved Annual Workplan and Budget (for the Administrator) and the approved costs and duties (for the Fiscal Agent and the Contracting Agent) as described in Sections VIII E, IX D and X C. The agreements will be signed by designated representatives of the Administrator, the Fiscal Agent and the Contracting Agent. In the event the Administrator, the Fiscal Agent and/or the Contracting Agent are the same PARTY, that PARTY shall designate separate representatives to execute the agreements on behalf of the Administrator, the Fiscal Agent and the Contracting Agent. Said agreements shall be fully executed and in place prior to July 1 of each year.

G. Annual Reporting and Evaluation. The Administrator shall prepare a self-evaluation/audit report to the IC including significant accomplishments, work items planned but not accomplished, work items not planned but completed, and the status of all work items in the Annual Workplan. The report will include recommendations and suggestions for improving the work of the Administrator and will be submitted on or before September 15 each year. The IC will consider the report at a regular meeting and discuss and provide recommendations and feedback to the Administrator. The IC will rate the overall implementation and effectiveness of the Workplan and, in turn, rate the performance of the Administrator based upon the ability of the Administrator to meet the timelines and budget in the Workplan and to effectively support the Commission and the TAC. The final recommendations and feedback of the IC will be recorded in the minutes and also in a letter from the IC Chair to the Administrator. This feedback will be used by the Administrator to make any required changes in operations, procedures and/or work tasks for the next fiscal year. In addition to the annual review of the Administrator, the IC may, at any time, discuss questions, concerns or issues of performance with the Administrator.

IX. FISCAL AGENT

A. Duties. The Fiscal Agent serves as the treasurer of the Countywide Funds and is responsible for collecting the SWPF from all solid waste disposal facilities and non-disposal facilities located within Santa Clara County. The Fiscal Agent also collects and receives grant funds and revenues from other sources. The Fiscal Agent shall diligently pursue collection of all SWPF funds and shall keep the IC apprised of the amount and entity owing delinquent payments, as well as of the status of collection activity initiated by the Fiscal Agent regarding the delinquent payments. The Fiscal Agent shall manage all funds in accordance with generally accepted government accounting procedures. The Fiscal Agent shall keep Countywide Funds segregated from all other funds administered by the Fiscal Agent in separately numbered and coded accounts that are readily identifiable as those containing Countywide Funds; shall credit appropriate interest income earned on such funds in each fiscal year; and shall not expend, use or transfer

TAC MEMORANDUM OF AGREEMENT

any funds except in accordance with the Annual Workplan and Budget approved by the IC and the Commission, or as otherwise directed by the IC. In the event the Fiscal Agent is not also the Contracting Agent, the Fiscal Agent shall transfer Countywide Funds to the Contracting Agent as directed by the IC, in accordance with the procedures in Attachment 5. The Fiscal Agent shall work cooperatively and collaboratively with the IC, the Administrator, and the Contracting Agent.

B. Initial Fiscal Agent. The initial Fiscal Agent shall be the County of Santa Clara. The specific contact person shall be designated in writing to the Administrator and to the TAC Chair. In the event the IC determines there is a need for a change in the Fiscal Agent in the future (due to costs, lack of availability of designated employees or for other reasons), or in the event the County is unable or unwilling to serve, the following procedures for selection of a new Fiscal Agent shall be followed.

C. Selection. Any PARTY willing to serve as the Fiscal Agent may be nominated by another PARTY. The nominated PARTY(IES) will submit a letter proposal to the IC containing the costs for performing the services of the Fiscal Agent, including all employee and overhead costs and all proposed expenses. If the same PARTY is also already serving, or is proposing to serve, as the Administrator, the Contracting Agent, or both, the proposed costs to perform each function shall be separately specified. The IC will hold discussions with representatives of the nominated PARTY(IES) as needed. The recommendation of the IC will be forwarded to the Commission for approval. Upon receipt of Commission approval, the Contracting Agent will execute an agreement with the new Fiscal Agent that includes the approved costs for the PARTY to provide Fiscal Agent services for the upcoming fiscal year.

D. Payment For Services. The Fiscal Agent shall provide the Administrator with proposed costs to perform the duties of TAC Fiscal Agent for the upcoming fiscal year upon request. The proposed costs shall be at the level of detail described in Attachment 2. If the Fiscal Agent is also serving as the Administrator, the Contracting Agent, or both, the proposed costs to perform each function shall be separately specified. The proposed costs will be reviewed by the IC as part of review of the Annual Workplan and Budget. If there is a question or concern about the proposed costs, the Chair of the IC and the Administrator will meet with the Fiscal Agent concerning the issues. Upon approval of the Annual Workplan and Budget by the IC and the Commission, the Contracting Agent will prepare an agreement to be signed by the Fiscal Agent and the Contracting Agent to perform services for the new fiscal year. In the event that the Contracting Agent and the Fiscal Agent are the same PARTY, the agreement shall be signed by the designated employee of the PARTY serving as the Fiscal Agent and the (separate) designated employee of the PARTY serving as the Contracting Agent.

E. Quarterly and Annual Budget Status. The Fiscal Agent shall prepare and submit quarterly budget updates to the IC every three (3) months, and shall provide a Year-End Budget Report. These reports shall be formatted in a clear and concise manner such that all expenditures, revenues, movement of monies, reallocation of funds and adjustments to the budget are detailed by project and line item (i.e. numerical reference and narrative

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description). The Year-End Budget Report shall be submitted to the IC on or before October 31 each year. The IC may, at any time, request additional budget information, detail, documentation and updates. The Fiscal Agent shall respond promptly to all such requests.

F. *Biennial Audit.* The Fiscal Agent shall arrange for an audit by an independent third party Certified Public Accounting Firm (CPA) to be conducted every other year beginning with an audit of the 2013/14 fiscal year. The Fiscal Agent may utilize the CPA firm retained by the jurisdiction of which the Fiscal Agent is a part, to perform that PARTY's annual audit. In such event, the results of the audit of the Countywide Funds and accounts shall be clearly and separately called out in the CPA's audit report. The results of the audit shall be reported to the IC on or before January 15 every other year.

G. *Evaluation of the Fiscal Agent.* Each year, the Fiscal Agent shall prepare a self-evaluation, along with the Year-End Budget Report, for submittal to the IC. The self-evaluation will include a description of key work tasks performed, any duties or tasks not completed, and any non-planned work tasks completed. The report will include recommendations and suggestions for improving the services of the Fiscal Agent. The self-evaluation shall be submitted at the same time as the Year-End Budget Report. The IC will review the report at a regular meeting and discuss any suggested or needed changes or improvements. The IC will rate the overall performance of the Fiscal Agent based upon the ability of the Fiscal Agent to perform its duties in a timely manner and in accordance with all requirements of this Agreement. The final recommendations and feedback of the IC will be recorded in the minutes and also in a letter from the IC Chair to the Fiscal Agent. This feedback will be used by the Fiscal Agent to make any required changes in operations and procedures and/or work tasks for the next fiscal year. In addition to the annual review of the Fiscal Agent, the IC may, at any time, discuss questions, concerns or issues of performance with the designated representative of the Fiscal Agent.

X. CONTRACTING AGENT

A. *Duties.* The Contracting Agent executes contracts with Outside Contractors, including the Administrator and the Fiscal Agent (where applicable) that have been requested and approved by the IC. The Contracting Agent consults with the IC to establish a procurement process for Outside Contractors, and then conducts that process once the IC has approved a scope of work, schedule, budget and other parameters of the contract that will be awarded by the Contracting Agent. The Contracting Agent shall conduct the procurement process and execute all contracts within a reasonable period of time after being directed to do so by the IC. The Contracting Agent shall provide a copy of any contract executed on behalf of the TAC to any PARTY, any TAC member, and to any PARTY or person designated by any PARTY or the IC upon request. The governing body of the Contracting Agent, at its discretion, may delegate authority to execute agreements and contracts approved by the IC to a designated employee. Notice of any such delegation of authority shall be provided in writing to the Chair of the IC and to the Administrator.

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In the event the Contracting Agent is not also the Fiscal Agent, the Contracting Agent shall receive Countywide Funds transferred to the Contracting Agent by the Fiscal Agent on a periodic basis as described in Attachment 5. The Contracting Agent shall manage all Countywide Funds in accordance with generally accepted government accounting procedures. The Contracting Agent shall keep Countywide Funds segregated from all other funds administered by the Contracting Agent in separately numbered and coded accounts that are readily identifiable as Countywide Funds, and shall not expend, use or transfer any funds except as specifically directed by the IC. At the close of the fiscal year, the Contracting Agent shall, pursuant to the procedures in Attachment 5, comply with all directions from the IC with regard to retention of funds for contracts with Outside Contractors that are still in effect, and with regard to return of unexpended or unencumbered funds to the Fiscal Agent. The Fiscal Agent shall work cooperatively and collaboratively with the IC, the Administrator, and the Contracting Agent.

B. Initial Contracting Agent. The initial Contracting Agent shall be the County of Santa Clara. The specific contact person shall be designated in writing to the Administrator and to the TAC Chair. In the event the IC determines there is a need for a change in the Contracting Agent in the future (due to costs, lack of availability of designated employees or for other reasons), or in the event the County is unable or unwilling to serve, the procedures for selection of a new Contracting Agent shall be the same as those for selection of a Fiscal Agent as described in Section IX C.

C. Payment For Services. The Contracting Agent shall provide the Administrator with proposed costs to perform the duties of TAC Contracting Agent for the upcoming fiscal year upon request. The proposed costs shall be at the level of detail described in Attachment 2. If the Contracting Agent is also serving as the Administrator, the Fiscal Agent, or both, the proposed costs to perform each function shall be separately specified. The proposed costs will be reviewed by the IC as part of review of the Annual Workplan and Budget. If there is a question or concern about the proposed costs, the Chair of the IC and the Administrator will meet with the Contracting Agent concerning the issues. Upon approval of the Annual Workplan and Budget by the IC and the Commission, the Administrator will prepare an agreement to be signed by the Contracting Agent and the Administrator to perform services for the new fiscal year. In the event that the Administrator and the Contracting Agent are the same PARTY, the agreement shall be signed by the designated employee of the PARTY serving as the Contracting Agent and the (separate) designated employee of the PARTY serving as the Administrator.

D. Annual Contract Status Report. The Contracting Agent shall prepare and submit an annual report to the IC on the status of all contracts (listing all contracts in progress, expired, terminated, and the amount of work and budget remaining in each) on or before October 31 each year. The report shall also note the amount of Countywide Funds held by the Contracting Agent, and specify the amount(s) of funds encumbered for contracts, and the amount(s) of funds that are unspent and unencumbered. The IC may, at any time, request additional information, detail, documentation and updates on any or all contracts. The Contracting Agent shall respond promptly to all such requests.

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E. *Audits.* The Contracting Agent shall cooperate with and provide all information and documentation required in order to complete the bi-annual audit described in Section IX F. In the event the IC decides that any actions or activities of the Contracting Agent are not in compliance with this Agreement, or if the IC determines there are other reasons for an audit to be performed, the IC may perform an audit of the Countywide Funds received and expended by the Contracting Agent. In such event, the Contracting Agent shall cooperate fully, and in a timely manner, with persons performing the audit.

F. *Evaluation of the Contracting Agent.* Each year, the Contracting Agent shall prepare a self-evaluation, along with the Annual Contract Status Report, for submittal to the IC. The self-evaluation will include a description of key work tasks performed, any duties or tasks not completed, and any non-planned work tasks completed. The report will include recommendations and suggestions for improving the services of the Contracting Agent. The self-evaluation shall be submitted at the same time as the Annual Contract Status Report. The IC will review the report at a regular meeting and discuss any suggested or needed changes or improvements. The IC will rate the overall performance of the Contracting Agent based upon the ability of the Contracting Agent to perform its duties in a timely manner and in accordance with all requirements of this Agreement. The final recommendations and feedback of the IC will be recorded in the minutes and also in a letter from the IC Chair to the Contracting Agent. This feedback will be used by the Contracting Agent to make any required changes in operations and procedures for the next fiscal year. In addition to the annual review of the Contracting Agent, the IC may, at any time, discuss questions, concerns or issues of performance with the designated representative of the Contracting Agent.

XI. LEGAL COUNSEL

A. *Selection.* The IC may select an attorney or firm that is experienced in solid waste, recycling and municipal law to research legal issues, proposed legislation, and to provide legal advice to the TAC ("Legal Counsel") as provided for in the Commission-approved Annual Workplan and Budget. Legal Counsel may be a City Attorney or County Counsel (i.e. an employee of one of the PARTIES) or may be an outside attorney or law firm. The IC will interview and select Legal Counsel as needed, and direct the Contracting Agent to prepare a contract with Legal Counsel for the provision of legal services. The IC shall direct the work of Legal Counsel. The Administrator may assist in coordination of activities with Legal Counsel, but shall not give direction without prior authorization from the IC. Legal Counsel shall not be responsible for providing legal advice to individual PARTIES related to their individual compliance with Public Resources Code Section 40000 et. seq., but may provide such services under separate contract with any PARTY or PARTIES.

XII. OTHER AGREEMENTS OF THE PARTIES

A. *Term of Agreement.* The term of this Agreement shall commence on the date the last duly authorized representative of the PARTIES executes it. This Agreement shall remain in effect until terminated by the PARTIES or until eight (8) or more PARTIES containing more than fifty percent (50%) of the population of the incorporated and unincorporated areas of County of Santa Clara withdraw from the Agreement, whichever

TAC MEMORANDUM OF AGREEMENT

occurs first. A PARTY may withdraw from the Agreement by providing written notice to the Administrator, stating the effective date of the PARTY'S withdrawal. The withdrawal of a PARTY shall not entitle that PARTY to receive or retain any portion of the SWPF.

B. Ethical Code of Conduct. All TAC members and Alternates shall adhere to the Ethical Code of Conduct in Attachment 4. All TAC members and Alternates shall attend a TAC-sponsored ethics training every other year beginning in FY 2013/14. The Administrator shall arrange for this training and include the cost in the Annual Workplan and Budget for each year the training is required to be conducted.

C. Counterparts. This Agreement may be executed and delivered in any number of copies ("counterparts") by the PARTIES, including by means of facsimile and e-mail or PDF copies. When each PARTY has signed and delivered at least one counterpart to the Administrator, each counterpart shall be deemed an original, and taken together, shall constitute one and the same Agreement, which shall be binding and effective as to the PARTIES hereto.

D. Non-Compliance With State and Federal Laws. No PARTY shall, by entering into this Agreement, participating in the TAC or the IC, or agreeing to serve as Administrator, Fiscal Agent, Contracting Agent, and/or Legal Counsel, assume or be deemed to assume responsibility for any other PARTY in complying with the requirements of state and federal solid waste and recycling laws, including but not limited to, the California Integrated Waste Management Act of 1989 as amended (Public Resources Code Section 40000 et seq). This Agreement is intended solely for the convenience and benefit of the PARTIES hereto and shall not be deemed for the benefit of any third party and may not be enforced by any third party, including, but not limited to, the United States Environmental Protection Agency and the California Department of Resources, Recycling and Recovery, or any person acting on their behalf or in their stead.

E. Indemnification. In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the PARTIES pursuant to Government Code Section 895.6, the PARTIES agree that all losses or liabilities incurred by a PARTY, or by the Santa Clara Valley Water District in carrying out its duties under Section VI. Implementation Committee shall not be shared pro rata, but instead the PARTIES agree that pursuant to Government Code Section 895.4, each of the PARTIES hereto shall fully defend, indemnify and hold harmless each of the other PARTIES, and the Santa Clara Valley Water District in the carrying out of its duties under Section VI. Implementation Committee, from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying PARTY, its officers agents or employees, or in connection with or arising from any work, authority or jurisdiction delegated to such PARTY under this Agreement. No PARTY, nor any officer, board member, employee or agent thereof, shall be responsible for any damage or liability incurred by reason of the negligent acts or omissions or willful misconduct of the other PARTIES hereto, their officers, board members, employees or agents under or in connection with or arising from any work, authority or jurisdiction delegated to such

TAC MEMORANDUM OF AGREEMENT

PARTY under this Agreement.

F. *Entire Agreement.* This Agreement supersedes any prior arrangement or agreement among the PARTIES regarding the composition, structure, duties and powers of the TAC including, but not limited to, the TAC Rules of Procedure dated May 22, 2006, but does not supersede any other agreements between any of the PARTIES.

G. *Amendments.* This Agreement may be amended by unanimous written agreement of the PARTIES. All PARTIES agree to bring any proposed amendments to this Agreement to their Council or Board, as applicable, within three (3) months following acceptance by the IC. The IC shall, on a biennial basis, evaluate this Agreement and determine if any amendments are needed. The first biennial evaluation shall be in 2015. The IC may recommend amendments on a more frequent basis if desired.

H. *Venue.* In the event that suit shall be brought by any PARTY to this Agreement, the PARTIES agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

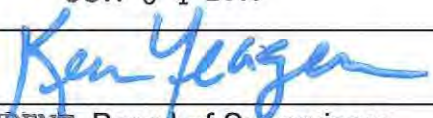
I. *Attachments.* Attachments 1 through 5 are attached hereto and incorporated herein by this reference.

TAC MEMORANDUM OF AGREEMENT

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the dates shown below.

COUNTY OF SANTA CLARA, a public entity of the State of California

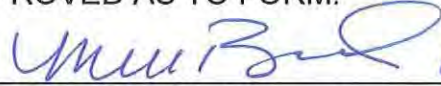
Date: JUN 04 2013

By: 

PRESIDENT Board of Supervisors

KEN YEAGER

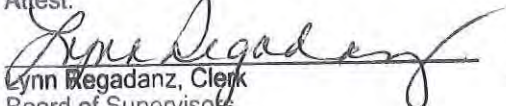
APPROVED AS TO FORM:

By:  6/3/2013

Deputy County Counsel

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

Attest:


Lynn Regadanz, Clerk
Board of Supervisors

TAC MEMORANDUM OF AGREEMENT

CITY OF CAMPBELL

Date: _____

By: _____

Name: Mark Linder

Title: City Manager

APPROVED AS TO FORM:

By: _____

Name: _____

Title: City Attorney

CITY OF CUPERTINO

Date: _____

By: _____

Name: David Brandt

Title: City Manager

APPROVED AS TO FORM:

By: _____

Name: _____

Title: City Attorney

CITY OF GILROY

Date: _____

By: _____

Name: Thomas Haglund

Title: City Administrator

APPROVED AS TO FORM:

By: _____

Name: _____

Title: City Attorney

CITY OF LOS ALTOS

Date: _____

By: _____

Name: Marcia Somers

Title: City Manager

APPROVED AS TO FORM:

By: _____

Name: _____

Title: _____

TOWN OF LOS ALTOS HILLS

Date: _____

By: _____

Name: Carl Cahill

Title: City Manager

APPROVED AS TO FORM:

By: _____

Name: _____

Title: Town Attorney

TAC MEMORANDUM OF AGREEMENT

TOWN OF LOS GATOS

Date: _____

By: _____

Name: Greg Larson

Title: Town Manager

APPROVED AS TO FORM:

By: _____

Name: _____

Title: Town Attorney

CITY OF MILPITAS

Date: _____

By: _____

Name: Tom Williams

Title: City Manager

APPROVED AS TO FORM:

By: _____

Name : Michael J. Ogaz

Title: City Attorney

CITY OF MONTE SERENO

Date: _____

By: _____

Name: Brian Loventhal

Title: City Manager

APPROVED AS TO FORM:

By: _____

Name : _____

Title: _____

CITY OF MORGAN HILL

Date: _____

By: _____

Name: Steve Rymer

Title: City Manager

APPROVED AS TO FORM:

By: _____

Name : _____

Title: City Attorney

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CITY OF MOUNTAIN VIEW

Date: _____

By: _____

Name: Daniel H. Rich

Title: City Manager

APPROVED AS TO FORM:

By: _____

Name : Jannie L. Quinn

Title: City Attorney

CITY OF PALO ALTO

Date: _____

By: _____

Name: James Keene

Title: City Manager

APPROVED AS TO FORM:

By: _____

Name: _____

Title: City Attorney

CITY OF SAN JOSE

Date: _____

By: _____

Name: Norberto Dueñas

Title: Deputy City Manager

APPROVED AS TO FORM:

By: _____

Name : Rosa Tsongtaatarii

Title: Senior Deputy City Attorney

CITY OF SANTA CLARA

Date: _____

By: _____

Name: Julio J. Fuentes

Title: City Manager

APPROVED AS TO FORM:

By: _____

Name: Richard E. Nosky, Jr.

Title: City Attorney

CITY OF SARATOGA

Date: _____

By: _____

Name: Dave Anderson

Title: City Manager

APPROVED AS TO FORM:

By: _____

Name: Richard Taylor

Title: City Attorney

TAC MEMORANDUM OF AGREEMENT

CITY OF SUNNYVALE

Date: _____

APPROVED AS TO FORM:

By: _____

Name: Gary M. Luebbers

Title: City Manager

By: _____

Name: Joan A. Borger

Title:

TAC MEMORANDUM OF AGREEMENT

ATTACHMENT 1

INITIAL STAFFING OF ADMINISTRATOR

The following is the initial staff complement for the Administrator:

Staff Person	% FTE Committed To Administrator Duties	% FTE Committed To County Unincorporated Duties
Elizabeth Constantino, Program Manager II Provides oversight of all Annual Workplan tasks and all functions of the Administrator.	0.82 FTE	0.18 FTE
Lisa Rose, Senior Management Analyst Coordinates the Green Business Program, serves as staff to the Commission, and performs various other duties.	0.87 FTE	0.13 FTE
Clifton Chew, Management Analyst Serves as staff to the TAC, prepares state reporting and DRS, and performs various other duties.	0.80 FTE	0.20 FTE
Zachary DeVine, Management Analyst Contracts monitoring, budget tracking, Outreach Specialist, and various other duties.	0.67 FTE	0.33 FTE
Sue Sherrin, Associate Management Analyst B, Green Business Specialist	0.98 FTE	0.02 FTE
Sarah Smith, Management Analyst Home Composting Education Program Coordinator	1.0 FTE	0.00 FTE
Joanne Chapa, Office Specialist III	0.94 FTE	0.06 FTE

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ATTACHMENT 2

SELECTION PROCESS FOR THE ADMINISTRATOR

1. **Selection.** The IC shall select a PARTY or an Outside Contractor to serve as the Administrator for the TAC. As part of the selection process, the potential candidate(s) shall submit a proposal to the IC for providing Administrator services. The proposal shall include: a detailed scope of work for the upcoming fiscal year, detailed costs and work hours for the completion of each task, and a list of the employees proposed to perform each part of the Annual Workplan, as well as the administrative and management duties of the Administrator. The proposal shall also include a resume and description of the education, experience and expertise of each proposed staff member highlighting experience in solid waste management, recycling, diversion programs, producer responsibility, public education and outreach, legislative analysis, budgeting, public sector management, administration and policy development. It is of great importance that each member of the Administrator staff possess a high level of experience and expertise in the listed areas. The proposal shall designate the duties and activities to be carried out by each employee. The IC will review the proposal(s) and conduct interview(s) with the potential Administrator(s). The IC will select an Administrator and recommend approval to the Commission.

2. **Change in Administrator Staff.** In the event any member of the Administrator's staff is unable or unavailable to serve in the capacity indicated in the original proposal, the IC shall work with the Administrator to determine if an acceptable alternate staff member is available. This shall include, if desired by the IC, having representatives from the IC participate in the selection process for the alternate staff person; review the resumes, references and writing samples of proposed candidates; attend and participate in interviews; and provide input to the decision-making process for selection of the proposed alternate staff member. If the proposed alternate staff person is not acceptable to the IC, and the IC determines that the employee who is unavailable is a key employee, the IC may give written notice to the Administrator that the TAC will seek another Administrator, and the IC may recommend to the Commission that the selection process for a new Administrator be commenced. Upon receipt of Commission approval, the IC will begin that process. The Administrator shall serve until such time as either a replacement Administrator is selected and approved by the Commission, or (if the Administrator is not a PARTY) until the current contract for the services of the Administrator expires, whichever occurs first. In the IC's sole discretion, the services of the Administrator may be terminated prior to the selection of a new Administrator. In the event the Administrator is not a PARTY, an early termination clause shall be placed in the contract with the Administrator for use by the IC in the event a key staff person becomes unavailable.

3. **Key Employee.** A "key employee" includes, but is not limited to, any one of the following:
 - a. An employee who is performing twenty percent (20%) or more of the work hours in the Annual Workplan.

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- b. An employee whose work tasks require a high level of technical expertise and experience in recycling, solid and/or hazardous waste management programs and practices.
- c. An employee whose work tasks require a high level of professional judgment that is the product of numerous years of experience in recycling, solid and hazardous waste management, and/or in work for public agencies.
- d. An employee whose work tasks involve a high level of interaction with the public (e.g. in trainings, liaison with businesses or non-profit organizations, etc.).
- e. An employee whose work tasks involve presentations or testimony to public agencies (e.g. City Councils, the Board of Supervisors) and/or community organizations (e.g. service organizations, community groups, homeowner's associations, etc.).

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ATTACHMENT 3

ELEMENTS TO BE CONTAINED IN THE ANNUAL WORKPLAN AND BUDGET

1. **Scope of Work.** The proposed Annual Workplan and Budget will contain a detailed scope of work for each proposed task, the employee work hours estimated to complete each task, the name(s) of the specific employees that will perform the work for each task, the cost of the work hours for each task, all proposed overhead costs for the Administrator and all other projected costs. If the Administrator is a public agency, the costs may be shown as a percentage of each Full Time Equivalent (FTE) and the cost therefore, as long as the position (such as 'Analyst I') and the name of the employee filling that position are indicated, along with the fully burdened cost of the specified percentage of each FTE. The proposed Annual Workplan shall contain a list of key milestones for each task.
2. **Administrative Tasks.** The Workplan shall include a task for providing administrative support for the TAC including work hours to prepare meeting agendas, to schedule meetings, attend meetings, prepare minutes and correspondence, and carry out the direction of the TAC and all Committees and Subcommittees. The Workplan shall also include a separate task for providing administrative support to the Commission including work hours to prepare agendas, attend Commission meetings, prepare minutes, and carry out the direction of the Commission, its Committees and Subcommittees.
3. **Other Staff Commitments.** The proposed Workplan will contain a listing of the other duties and responsibilities of each assigned employee (other than the work to be performed as Administrator for the TAC and the Commission) including the work hours and a general description of the key tasks and projects to be performed. This will serve as a cross-check (regardless of whether the Administrator is a public agency or a private firm) to ensure that the time of each employee is not overcommitted, and that sufficient time exists for each employee to complete all their assigned tasks.
4. **Fiscal Agent and Contracting Agent Costs.** The Administrator shall consult with the Fiscal Agent and with the Contracting Agent (in the event they are separate PARTIES) and shall incorporate the proposed costs for the services of each into the proposed Workplan and Budget. Such costs shall be clearly and separately identified for each function (and identified separately from those of the Administrator) and shall include the costs for employee time, expenses (such as bank fees), overhead charges and all other proposed costs.
5. **Cost Detail For Comparison.** The budget shall be formatted in a clear and concise manner such that all projected expenditures and revenues are detailed by project and line item. The proposed Workplan and Budget shall contain sufficient detail about proposed work hours and costs such that a comparison can be made between the proposed costs for the current Administrator, the current Fiscal Agent and the current

TAC MEMORANDUM OF AGREEMENT

Contracting Agent, and other potential providers of these services.

- 6. Projected Amount of Fund Transfer From Fiscal Agent to Contracting Agent.** In the event the Fiscal Agent and the Contracting Agent are different PARTIES, the budget shall include the projected amount of funds to be transferred from the Fiscal Agent to the Contracting Agent in order to pay for contracts with Outside Contractors that will be awarded by the Contracting Agent in the upcoming year. Such projections shall take into account all funds currently held by the Contracting Agent (if any) and the amount of such funds already encumbered for contracts in progress. The projection shall be accompanied by a recommendation as to the frequency of fund transfers from the Fiscal Agent to the Contracting Agent that will be required to fund contracts awarded by the Contracting Agent for the upcoming year (e.g. annual one-time transfer of funds, quarterly transfer of funds, or other recommended timing.)
- 7. Discussion Concerning Potential Conflicts.** Once the initial draft of the proposed Annual Workplan is prepared, the IC Chair, the Administrator, the Fiscal Agent and the Contracting Agent shall meet to review and discuss the Workplan and shall work cooperatively to identify and address any potential conflicts that could arise with regard to policies of the Administrator, the Fiscal Agent or the Contracting Agent. Examples include proposed sale of recycling containers or other goods at less than the purchase price (i.e. subsidized cost of compost bins for the home composting program); provision of recycling grants, prizes, incentives; and other such items. At the direction of the IC Chair, the Administrator shall further investigate any potential conflicts that have been identified, and shall, in consultation with the Fiscal Agent and the Contracting Agent, research and propose solutions for each. If solutions cannot be found, the issue may be presented to the IC for further consideration and/or the IC Chair may direct the Administrator to revise the Workplan and Budget to remove the items creating the potential conflict. In this event the IC Chair will inform the IC of such action when the Annual Workplan and Budget are considered for approval.

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ATTACHMENT 4

CODE OF ETHICAL CONDUCT

1. Members shall strive to conduct all meetings, discussions and deliberations in a spirit of collaboration and partnership. Members shall treat all persons with respect and courtesy. In the course of discussions, members shall make their arguments on the merits of the issue rather than engaging in personal remarks or attacks on persons holding positions other than their own.
2. All members shall remain aware that the activities of the TAC are funded by fees raised from the public; and that the TAC is recommending expenditures of public funds. Members shall act prudently and in the best interest of the public when making fiscal and policy decisions.
3. Members shall voluntarily recuse themselves from all discussions and votes, and shall refrain from expressing any opinion to other members on issues where any one of the following apply:
 - a. The member holds a financial interest such that the member could financially benefit from the action or issue being considered.
 - b. The member is an owner or investor of a business the TAC is considering doing business with.
 - c. The member owns land that is being considered for purchase or lease by the TAC or by any program funded by the TAC.
 - d. A charity, community group or non-governmental organization to which the member belongs or contributes funds would receive funds from the TAC for projects or services.
 - e. A person in the member's family could benefit financially from the action or issue being considered. Family includes the members' spouse, children, step-children, grandchildren and step-grandchildren, as well as siblings and parents of the member and the member's spouse.
4. A member recusing themselves shall mean (a) announcing the member has a conflict of interest when the item is opened for discussion, (b) leaving the meeting room before discussion on the matter commences, and (c) not returning to the room until after discussion and any vote on the matter is concluded.
5. Members shall periodically conduct a self-assessment and inventory of any potential conflicts of interest they may have and, if the member is unsure whether or not a conflict exists, the member shall discuss the issue with the TAC Chair, the Administrator, TAC Legal Counsel or legal counsel for the member's own agency.
6. In the event a member fails to recuse him or her self during discussion of an issue where the member appears to have a conflict of interest, the Chair of the meeting shall ask the member to recuse him or her self and shall halt discussion about the issue until the member has left the room.
7. Members shall not engage in financial transactions using non-public information nor allow the improper use of such information to further any personal or private interest.

TAC MEMORANDUM OF AGREEMENT

8. Members shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the TAC, or whose interests may be substantially affected by actions of the TAC. Gifts do not include coffee, tea, donuts, discounts available to the general public, greeting cards or plaques of minor intrinsic value. It is appropriate and prudent for members to decline even items of minor intrinsic value from sources described in this section.
9. Members shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the TAC to take any type of action or to approve any contract, program or other commitment.
10. Members shall not use their membership on the TAC for private gain.
11. Members shall always act impartially and objectively and not give preferential treatment to any organization or individual.
12. Members shall not seek or accept any contract to provide services to the TAC for a period of at least six (6) months after termination of their membership on the TAC.
13. Members shall adhere to, and be vigilant that the TAC adheres to, all applicable state, federal and local laws and regulations.
14. All members shall participate in a TAC-sponsored Ethics Training biennially.
15. Members shall endeavor to avoid any actions or statements that violate, or that create the appearance that they are violating, the law or any ethical standards set forth in this Attachment.

TAC MEMORANDUM OF AGREEMENT

ATTACHMENT 5
PROCEDURES FOR TRANSFER OF COUNTYWIDE FUNDS FROM FISCAL AGENT
TO CONTRACTING AGENT

The following procedures shall be used in the event the Fiscal Agent and the Contracting Agent are different PARTIES.

1. As part of its review and approval of the Annual Workplan and Budget, the IC shall establish the amount of funds and the schedule for transfer of funds from the Fiscal Agent to the Contracting Agent for the upcoming fiscal year.
2. Upon approval of the Annual Workplan and Budget by the Commission, the IC may take appropriate actions consistent with the Annual Workplan and Budget, including but not limited to, the following:
 - A. Direct the Fiscal Agent to transfer specific amount(s) of Countywide Funds to the Contracting Agent on a specified schedule. The schedule may call for annual, quarterly, or more frequent transfers, as needed for the fiscal year.
 - B. Adjust the timing and/or the amount(s) of funds to be transferred by the Fiscal Agent to the Contracting agent if circumstances change during the year, or if there are other reasons to do so.
 - C. In the event the IC directs a change in the scope of work for an existing Outside Contractor that will increase the cost of the work, the IC may direct the Fiscal Agent to transfer additional funds to the Contracting Agent to pay for the amended scope of work.
3. In the event the Fiscal Agent is also serving as the Administrator, the IC shall direct the Fiscal Agent to transfer funds to the Contracting Agent for payment of the Administrator. The Contracting Agent shall pay the Administrator pursuant to the contract executed between the Contracting Agent and the Administrator.
4. If a single PARTY is serving as the Fiscal Agent and the Contracting Agent, the IC may direct that PARTY to retain a specified amount of Countywide Funds to pay the PARTY for performing the services of Fiscal Agent and Contracting Agent.
5. In the event a single PARTY is serving as the Fiscal Agent, the Administrator and the Contracting Agent, the IC will direct the PARTY to implement the Annual Workplan and Budget as approved by the IC and the Commission. This includes paying the costs specified in the approved Budget for the PARTY performing the duties of the Administrator, the Fiscal Agent and the Contracting Agent, as well as carrying out the duties of each.
6. If the Contracting Agent is, at any time, running out of funds or projects a shortfall in funds due to changed conditions or circumstances, the Contracting Agent shall immediately inform the IC and the Fiscal Agent and proceed according to the directions of the IC.
7. When making transfers of funds to the Contracting Agent, the Fiscal Agent shall make the required arrangements for an electronic transfer of funds or for preparation of a check made payable to the Contracting Agent.
8. If the Contracting Agent does not receive funds from the Fiscal Agent pursuant to the schedule directed by the IC, the Contracting Agent shall promptly inform the Fiscal Agent and the Fiscal Agent shall promptly arrange for the funds to be transferred.

TAC MEMORANDUM OF AGREEMENT

9. At the end of the fiscal year, the IC will review the Year End Contract Status Report from the Contracting Agent, the Year-End Budget Report from the Fiscal Agent, and the Year-End Report from the Administrator. The IC may direct the Contracting Agent to transfer unspent, unencumbered funds to the Fiscal Agent or to retain such funds for use in the following fiscal year. The Contracting Agent will promptly comply with the directions of the IC.

10. If the IC directs the Contracting Agent to transfer unspent funds to the Fiscal Agent, the Fiscal Agent shall acknowledge receipt of such funds to the Contracting Agent and shall note the transfer in the accounting records of the Fiscal Agent pursuant to generally accepted government accounting procedures.

CITY COUNCIL STAFF REPORT

MEETING DATE: March 2, 2022

PREPARED BY:

Tanya Carothers, Environmental Services Administrator

APPROVED BY: City Manager

ADOPT RESOLUTION AUTHORIZING SUBMITTAL OF APPLICATIONS FOR THE ANNUAL RECYCLING PAYMENT PROGRAM AND A ONE-TIME REGIONAL GRANT TO SUPPORT SB 1383 PROGRAMS

RECOMMENDATION(S)

Adopt a resolution authorizing the City's application for recycling program funding through the annual CalRecycle payment program and for a one-time regional grant application to fund activities related to SB 1383 compliance.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment

Advancing Regional Initiatives

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider adopting a resolution (Attachment 1) that would allow the City to apply for the following two CalRecycle funding opportunities:

Beverage Container Recycling Payment Program

The State of California has annually provided payments to all communities for over a decade to support beverage container recycling and litter reduction or cleanup efforts. The City's share of approximately \$12,000 is an anticipated funding source in the adopted budget and contributes to the City's environmental services budget. On May 4, 2016, the City Council adopted a Resolution authorizing the annual submission of a funding request for the Beverage Container Recycling Payment Program. The 2016 resolution recently expired and a new one is needed to apply for the annual funds over the next five years.

SB 1383 Local Assistance Grant Program

The State of California is currently providing a one-time assistance grant to all communities to support implementation of programs required under SB 1383. Eligible programs under the grant can include those related to Mandatory Organic Waste Recycling, Procurement, and/or Edible Food Recovery Programs. Jurisdictions may partner in the grant application for a larger regional grant. The City is proposing to use grant funds totaling \$138,410 on behalf of both the City of Morgan Hill and the City of Gilroy to: 1) provide the cities' contributions to the Edible Food Recovery Program that is managed regionally and supports countywide food recovery infrastructure upgrades and expansion; and 2) complete a Food Waste Prevention Project in both communities. To qualify for the grant funds, all that is needed is a simple resolution from the Council authorizing the grant application which will list Morgan Hill as the Lead Participant in a grant partnership with the City of Gilroy. To support the application for CalRecycle's SB 1383 Local Assistance Grant Program, the City of Gilroy has provided a Letter of Authorization (Attachment 2) which allows the City of Morgan Hill to: 1) submit a regional grant application; 2) act as Lead Agency on behalf of the City of Gilroy; and 3) execute all documents necessary to implement the proposed projects under the Local Assistance Grant Program.

COMMUNITY ENGAGEMENT:

Not Applicable and Empower

Obtaining the payment program grant is consistent with the City's ongoing waste management programs and does not call for any additional community engagement. While applying for the food waste prevention grant did not necessitate advance community engagement, implementing the project will essentially be one big community engagement activity as various methods are used to encourage and empower residents in preventing the generation of food waste.

ALTERNATIVE ACTIONS:

The Council could decide to not approve the resolution and direct staff to not apply for the available funding. This would result in missed opportunities for the City to engage with the community on issues of state-required solid waste recycling and management, and also increased difficulties reaching recycling targets.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 4, 2016, the City Council adopted a Resolution authorizing submission of a funding request for the Beverage Container Recycling Payment Program.

FISCAL AND RESOURCE IMPACT:

Ongoing revenues and expenses of approximately \$12,000 will be included in the City's proposed budget for beverage container recycling. One-time revenues and expenses of approximately \$138,410 will be included in the City's proposed budget for SB 1383 compliance and program implementation. Beverage container recycling programs and SB 1383 compliance activities are included in the work program of the Public Services Department.

CEQA (California Environmental Quality Act):

Not a Project

Since the resulting activity is an administrative program, it will not result in a change to the physical environment, this action is not a project under the California Environmental Quality Act.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL
AUTHORIZING SUBMITTAL OF AN APPLICATION FOR PAYMENT PROGRAMS
AND RELATED AUTHORIZATIONS, AND SUBMITTAL OF A REGIONAL GRANT
APPLICATION FOR WHICH THE CITY OF GILROY IS ELIGIBLE**

WHEREAS, Public Resources Code sections 48000 et seq. authorize the Department of Resources Recycling and Recovery (CalRecycle) to administer various grant programs (grants) in furtherance of the State of California's (state) efforts to reduce, recycle, and reuse solid waste generated in the state thereby preserving landfill capacity and protecting public health and safety and the environment; and

WHEREAS, the SB 1383 Local Assistance Grant Program allows regional grant projects; and

WHEREAS, pursuant to Public Resources Code sections 48000 et seq., 14581, and 42023.1(g) CalRecycle has established various payment programs to make payments to qualifying jurisdictions; and

WHEREAS, in furtherance of this authority CalRecycle is required to establish procedures governing the administration of the payment programs; and

WHEREAS, CalRecycle grant application procedures, and procedures for administering payment programs require, among other things, an applicant's governing body or regional applicant's governing body, as applicable, to declare by resolution certain authorizations related to administration of Calrecycle grant and payment programs.

NOW, THEREFORE, BE IT RESOLVED that the Morgan Hill City Council authorizes the City of Morgan Hill to submit an SB 1383 Local Assistance Grant Program regional application on behalf of itself as Lead Agency and the City of Gilroy as the participating jurisdiction; and

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City of Morgan Hill is authorized to submit an application to CalRecycle for any and all payment programs offered; and

BE IT FURTHER RESOLVED that the City Manager, or his/her designee, is hereby authorized and empowered to execute on behalf of the City of Morgan Hill all grant-related documents, including, but not limited to, applications, payment requests, agreements, and amendments necessary to secure grant funds and to implement the approved grant project; and

BE IT FURTHER RESOLVED that the City Manager or his/her designee, is hereby authorized as Signature Authority to execute all documents necessary to implement and secure payments; and

BE IT FURTHER RESOLVED that these authorizations are effective for five (5) years from the date of adoption of this resolution.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 2nd day of March 2022 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:

DATE:_____

Richard Constantine, Mayor

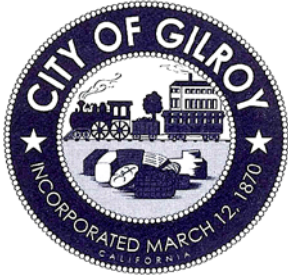
CERTIFICATION

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. ____, adopted by the City Council at the meeting held on March 2, 2022.

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

DATE:_____

Michelle Bigelow, CITY CLERK



City of Gilroy

7351 Rosanna Street
Gilroy, California
95020-6197

Telephone (408) 846-0250
Facsimile (408) 846-0421
<http://www.ci.gilroy.ca.us>

February 1, 2022

RE: Letter of Authorization for the Local Assistance Grant Program

I am the City Administrator of the City of Gilroy. I am authorized to contractually bind the City of Gilroy. Pursuant to this authority, I hereby authorize the City of Morgan Hill to submit a regional application and act as Lead Agency on behalf of the City of Gilroy for CalRecycle's SB 1383 Local Assistance Grant Program. The City of Morgan Hill is hereby authorized to execute all documents necessary to implement the project under the Local Assistance Grant Program.

This authorization is effective until September 1, 2024.

Sincerely,

Jimmy Forbis
City Administrator

CITY COUNCIL STAFF REPORT

MEETING DATE: March 2, 2022

PREPARED BY:

Charlie Ha, Supervising Civil Engineer

APPROVED BY: City Manager

APPROVE FINAL MAP FOR SAN SEBASTIAN PHASE 3A - TRACT NO. 10530 AND RELATED SUBDIVISION IMPROVEMENTS AGREEMENT

RECOMMENDATION(S)

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

Estimated Time: Not applicable

COUNCIL PRIORITIES, GOALS & STRATEGIES

2020-2021 Strategic Priorities

Economic Development

REPORT NARRATIVE:

San Sebastian Phase 3A – Tract No. 10530 is a 57-lot subdivision located at the northeast intersection of Peet Road and Half Road (see attached Site Map - Attachment 1). The developer, Toll CA XX, L.P., has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on February 12, 2013.

The developer has also furnished the City with the necessary documents to complete the processing of the Final Map (Attachment 2) and has made provisions to provide the City with the required fees, security, and insurance prior to recordation of the Final Map. The Final Map conforms to the requirements of the Subdivision Map Act, and conditions of approval have been met. The City Council is required to approve the map if it conforms to all the requirements of the Subdivision Map Act, and any conditions of approval for the Tentative Map. Staff recommends that City Council approve the Final Map and authorize the City Manager to sign a Subdivision Improvements Agreement (Attachment 3) pending review and approval by the City Attorney.

COMMUNITY ENGAGEMENT:

Inform

On February 12, 2013, the Planning Commission approved the Tentative Map. Residents within a 300-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 the Tentative Map requirements.

ALTERNATIVE ACTIONS:

There is no feasible alternative action as the developer has met the requirements of the tentative map conditions approved by the Planning Commission to file for a final map approval.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On November 18, 2020, the City Council approved the San Sebastian Phase 3 Final Map.

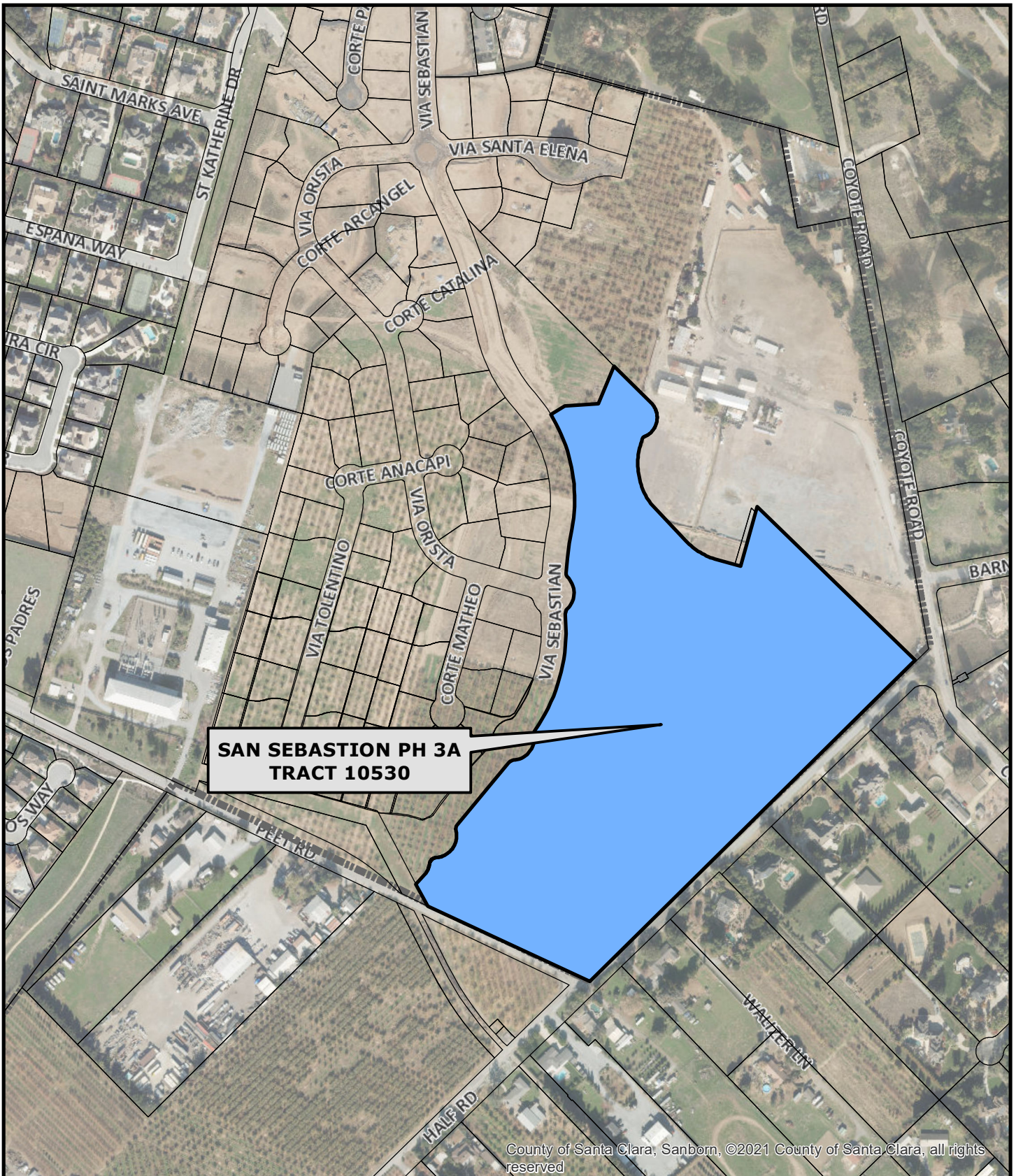
FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Project

An Environment Impact Report was adopted by the City Council on February 27, 2013.



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CITY OF MORGAN HILL

**Land Development Department
Engineering and Utilities Division**

Document Path: G:\R-14\PROJ\GIS\John\Charlie_SanSebastian_3A.mxd

SITE MAP SAN SEBASTIAN PHASE 3A



0 125 250 500 750 1,000
Feet

OWNERS' STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY SHOWN ON THE SUBDIVISION WITHIN THE DISTINCTIVE SYMBOL LINE OF THIS MAP ENTITLED "TRACT 10530, SAN SEBASTIAN PHASE 3A", CONSISTING OF ELEVEN (11) SHEETS, THIS STATEMENT BEING ON SHEET ONE (1) THEREOF; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE HAVE CAUSED SAID MAP TO BE PREPARED FOR RECORD, AND DO CONSENT TO THE MAKING AND FILING OF SAID MAP.

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

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

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: EASEMENTS FOR NON-VEHICULAR PUBLIC ACCESS OVER THOSE CERTAIN AREAS DESIGNATED AS "PUBLIC ACCESS EASEMENT" (PAE).

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED IN FEE FOR PUBLIC PURPOSES: THE STREETS, OR PORTION THEREOF, TO THE CITY OF MORGAN HILL, DESIGNATED AS (PUBLIC) AND SHOWN AS "PEET ROAD", FOR PUBLIC STREET AND UTILITY PURPOSES.

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE LOTS AND PARCELS WITHIN THE "SAN SEBASTIAN" SUBDIVISIONS, EASEMENTS OVER THOSE CERTAIN AREAS DESIGNATED AS "INGRESS AND EGRESS EASEMENT" (IEE) FOR RECIPROCAL RIGHTS OF INGRESS AND EGRESS.

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

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE LOTS AND PARCELS WITHIN THE "SAN SEBASTIAN" SUBDIVISIONS, EASEMENTS OVER, UNDER, OR UPON THOSE CERTAIN AREAS DESIGNATED AS "PRIVATE SANITARY SEWER EASEMENT" (PSSE) FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE SANITARY SEWER FACILITIES. SAID EASEMENT SHALL BE CONVEYED TO AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION CREATED FOR THE "SAN SEBASTIAN" SUBDIVISIONS.

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE LOTS AND PARCELS WITHIN THE "SAN SEBASTIAN" SUBDIVISIONS, THEIR LICENSEES, VISITORS, AND TENANTS, FOR THE PURPOSES OF INGRESS, EGRESS, PARKING (WHERE DESIGNATED) AND FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE UTILITIES UNDER, UPON AND OVER THE STREETS DESIGNATED AS (PRIVATE), AND SHOWN AS "CORTE BORREMEO" ("PARCEL G"), "VCORTE AGUSTIN" ("PARCEL H"), "VIA AVINO" ("PARCEL I"), "VIA SANTA ELENA" ("PARCEL J"), AND "CORTE SIMON" ("PARCEL K"). SAID PARCELS SHALL BE CONVEYED TO, AND MAINTAINED BY, THE HOMEOWNERS ASSOCIATION CREATED FOR THE "SAN SEBASTIAN" SUBDIVISIONS, AS STATED IN THE COVENANTS, CONDITIONS, AND RESTRICTIONS.

WE HEREBY RESERVE FOR THE BENEFIT OF OWNERS OF LOTS CREATED BY THIS MAP AND THE PRESENT AND SUCCESSOR MEMBERS OF THE HOME OWNERS ASSOCIATION CREATED FOR THE "SAN SEBASTIAN" SUBDIVISIONS, "PARCEL B", "PARCEL C", "PARCEL D", "PARCEL E", AND "PARCEL F" DELINEATED AND DESIGNATED AS "OPEN SPACE" FOR THE PURPOSE OF LANDSCAPING, RECREATIONAL AMENITIES, STORM WATER MANAGEMENT AND ALL OTHER APPURTENANCES THERETO. SAID PARCELS SHALL BE CONVEYED TO, AND MAINTAINED BY, THE HOMEOWNERS ASSOCIATION CREATED FOR THE "SAN SEBASTIAN" SUBDIVISIONS. AS STATED IN THE COVENANTS, CONDITIONS AND RESTRICTIONS. NO FURTHER SUBDIVISIONS AND OR RESIDENTIAL DEVELOPMENT OF SAID PARCELS SHALL BE ALLOWED.

WE HEREBY STATE THAT "PARCEL A", MAY BE SUBDIVIDED FURTHER INTO BUILDABLE LOTS, SUBJECT TO THE PROVISIONS OF THE "RESIDENTIAL DEVELOPMENT CONTROL SYSTEM" (R.D.C.S.) OF THE CITY OF MORGAN HILL.

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

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

OWNER: TOLL CA XX, L.P., A CALIFORNIA LIMITED PARTNERSHIP

BY: TOLL WEST COAST LLC,
A DELAWARE LIMITED LIABILITY COMPANY
GENERAL PARTNER

NAME: TODD CALLAHAN

ITS: Division President

OWNER ACKNOWLEDGMENT

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

STATE OF CALIFORNIA }
COUNTY OF Alameda }ss.

ON December 23 2021, BEFORE ME, Judy Carreno, A NOTARY PUBLIC, PERSONALLY APPEARED Todd Callahan WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

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

WITNESS MY HAND.
NOTARY'S SIGNATURE: Judy Carreno
NAME OF NOTARY (PLEASE PRINT): Judy Carreno
PRINCIPAL COUNTY OF BUSINESS: Alameda
MY COMMISSION NUMBER: 2375126
MY COMMISSION EXPIRES: September 14, 2025

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY, THAT IS TRUE AND COMPLETE AS SHOWN, IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF TOLL CA XX, L.P., A CALIFORNIA LIMITED PARTNERSHIP, COMPLETED FEBRUARY 06, 2019. 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 DECEMBER 2023, AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED FINAL MAP.

Bryan Pierce 12/21/2021
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: 1-6-22



John K. King
ACTING CITY SURVEYOR - MANNA & BRUNETTI
P.L.S. NO. 6809

NOTES:

- 1.) THE DISTINCTIVE SYMBOL LINE INDICATES THE BOUNDARIES OF THE LAND SUBDIVIDED BY THIS FINAL MAP.
- 2.) THE AREA WITHIN THE DISTINCTIVE SYMBOL LINE IS 29.11 ACRES, MORE OR LESS.
- 3.) THE PROPERTY OWNER IS PROVIDING CONSTRUCTIVE NOTICE HEREON THAT EACH LOT IS SUBJECT TO THE REQUIREMENTS OF A DEVELOPMENT AGREEMENT, AND THAT COMMITMENTS UNDER THE AGREEMENT, WHICH THE CITY HAS PERMITTED THE PROPERTY OWNER TO DELAY, MUST BE FULFILLED BY THE SUBSEQUENT PROPERTY OWNER(S).
- 4.) A GEOTECHNICAL INVESTIGATION REPORT WAS PREPARED BY ENGEO, INC. JOB NO. 9301.000.000 AND IS ON FILE WITH THE CITY OF MORGAN HILL

CITY ENGINEER'S STATEMENT

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

DATE: 1/11/21



Scott C. Creer
CITY ENGINEER
CITY OF MORGAN HILL, CALIFORNIA
R.C.E. NO. 58879

STATEMENT OF THE PLANNING COMMISSION

I HEREBY STATE THAT THE TENTATIVE MAP FOR THE WITHIN FINAL MAP SHOWN HEREON WAS CONDITIONALLY APPROVED BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL ON FEBRUARY 12, 2013, BY RESOLUTION NUMBER 13-13, APPLICATION NUMBER SD-09-07.

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

STATEMENT OF THE CITY CLERK

I HEREBY STATE THAT THIS FINAL MAP, CONSISTING OF ELEVEN (11) SHEETS, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL AT A MEETING OF SAID COUNCIL HELD ON THE _____ DAY OF _____, 2022; AND THAT SAID COUNCIL DID ACCEPT, SUBJECT TO THEIR IMPROVEMENT IN ACCORDANCE WITH CITY STANDARDS, ON BEHALF OF THE PUBLIC, THE DEDICATION OF THE "PUBLIC SERVICE EASEMENT" (PSE), THE "EMERGENCY VEHICLE ACCESS EASEMENT" (EVAE), THE "PUBLIC ACCESS EASEMENT" (PAE), AND "PEET ROAD" 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 TOLL CA XX, L.P., A CALIFORNIA LIMITED PARTNERSHIP.

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

TRACT 10530
SAN SEBASTIAN, PHASE 3A

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

A SUBDIVISION OF "PARCEL B" AS SHOWN ON THE MAP ENTITLED "TRACT 10534, SAN SEBASTIAN PHASE 3" FILED NOVEMBER 24, 2020, IN BOOK 934 OF MAPS, PAGES 31 THROUGH 34, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND "PARCEL B", "PARCEL D" AND "PARCEL E" AS SHOWN ON THE MAP ENTITLED "TRACT 10478, SAN SEBASTIAN PHASE 2C" FILED DECEMBER 10TH, 2019 IN BOOK 928 OF MAPS, PAGES 1 THROUGH 6, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
DECEMBER 2021

JOB #092030

SHEET 1 OF 11 SHEETS

REFERENCES:

(R1)	PARCEL MAP	-	872-M-16
(R2)	AMENDED MAP, TRACT 10330	-	909-M-29
(R3)	TRACT 10478	-	928-M-1
(R4)	TRACT 10534	-	934-M-31
(R5)	TRACT 10529	-	934-M-28

EASEMENT NOTES:

1. THE EASEMENT DESCRIBED IN THE EASEMENT AGREEMENT (WATER LINES) RECORDED JULY 27, 2016 AS DOCUMENT NO. 23382281, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND IN THE FIRST AMENDMENT TO EASEMENT AND INFRASTRUCTURE IMPROVEMENT AGREEMENT RECORDED MAY 25, 2018 AS DOCUMENT NO. 23941928, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, CANNOT BE PLOTTED FROM RECORD INFORMATION, AND IS THEREFORE NOT SHOWN ON THIS MAP.

BASIS OF BEARINGS:

THE BEARING OF N11°17'00"W BETWEEN TWO FOUND MONUMENTS ALONG THE MONUMENT LINE OF COYOTE ROAD AS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP, SAN SEBASTIAN" FILED MAY 23, 2014 IN BOOK 872 OF MAPS, PAGES 16 THROUGH 23, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.

LEGEND

---	BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
---	EXISTING LOT LINE
---	NEW LOT LINE
---	MONUMENT LINE/CENTERLINE
---	NEW EASEMENT LINE
---	EXISTING EASEMENT LINE
---	TIE LINE
●	FOUND MONUMENT IN WELL, AS NOTED
○	FOUND MONUMENT, AS NOTED
○	SET BRASS DISK IN WELL, TAGGED PLS 8859
○	SET IRON PIPE, TAGGED PLS 8859
○	BOUNDARY
○	EMERGENCY VEHICLE ACCESS EASEMENT
○	FOUND
○	IRON PIPE
○	PUBLIC SERVICE EASEMENT
○	PUBLIC ACCESS EASEMENT
○	PRIVATE SANITARY SEWER EASEMENT
○	INGRESS AND EGRESS EASEMENT
○	PRIVATE STORM DRAIN EASEMENT
○	PACIFIC GAS AND ELECTRIC COMPANY
○	MONUMENT TO MONUMENT
(T)	TOTAL DIMENSION
(R)	RADIAL BEARING
(C)	CALCULATED
()	RECORD DATA IF DIFFERENT FROM MEASURED

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	119.79'	68.00'	100°55'50" (R1)
C2	18.53'	22.00'	048°14'48" (R1)
C3	71.76'	500.00'	008°13'24" (R3)
C4	49.71'	460.00'	006°11'32" (R1)
C5	17.84'	22.00'	046°27'28" (R1)
C6	113.13'	68.00'	095°19'31" (R1)
C7	16.57'	22.00'	043°08'53" (R1)
C8	382.89'	500.00'	043°52'32" (R3)
C9	359.61'	540.00'	038°09'22" (R1)
C10	22.00'	1160.00'	001°05'12" (R1)
C11	18.46'	22.00'	048°04'43" (R1)
C12	106.53'	68.00'	089°45'32" (R1)
C13	35.49'	68.00'	029°54'20" (R3)
C14	71.04'	68.00'	059°51'12" (R3)
C15	18.46'	22.00'	048°04'43" (R1)
C16	135.58'	1160.00'	006°41'47" (R1)
C17	371.07'	500.00'	042°31'18" (R1)
C18	341.38'	460.00'	042°31'18" (R3)
C19	78.18'	460.00'	009°44'18" (R1)
C20	89.76'	1200.00'	004°17'09" (R3)
C21	207.25'	1200.00'	009°53'44" (R3)
C22	297.01'	1200.00'	014°10'52" (R1)
C23	30.48'	22.00'	079°23'23" (R1)
C24	36.85'	60.00'	035°11'09" (R1)
C25	88.76'	280.00'	018°09'43" (R2)
C26	106.42'	210.00'	029°02'10" (R4)
C27	216.47'	210.00'	059°03'39" (R4)
C28	130.59'	64.00'	116°54'38" (R4)

TRACT 10530
SAN SEBASTIAN, PHASE 3A

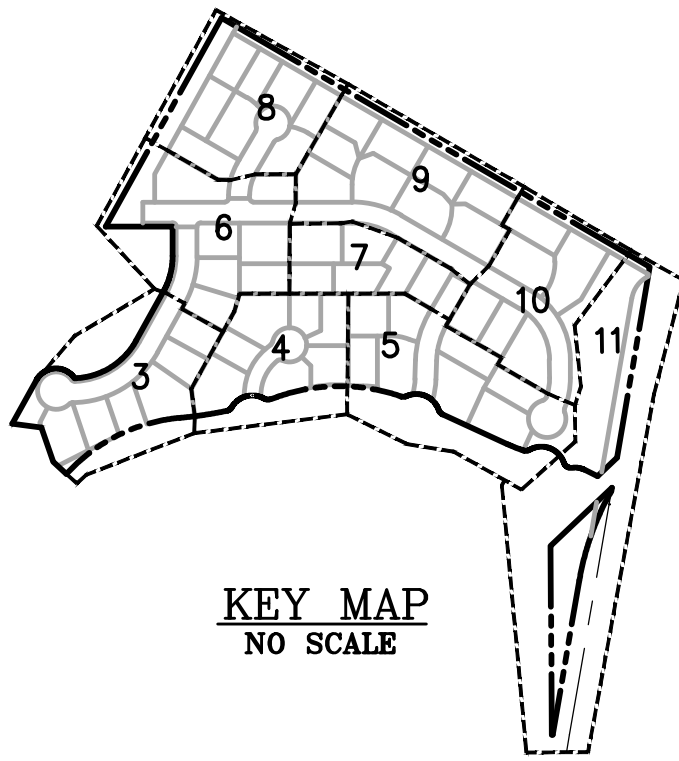
CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

A SUBDIVISION OF "PARCEL B" AS SHOWN ON THE MAP ENTITLED "TRACT 10534, SAN SEBASTIAN PHASE 3" FILED NOVEMBER 24, 2020, IN BOOK 934 OF MAPS, PAGES 31 THROUGH 34, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND "PARCEL B", "PARCEL D" AND "PARCEL E" AS SHOWN ON THE MAP ENTITLED "TRACT 10478, SAN SEBASTIAN PHASE 2C" FILED DECEMBER 10TH, 2019 IN BOOK 928 OF MAPS, PAGES 1 THROUGH 6, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
DECEMBER 2021

JOB #092030

SHEET 2 OF 11 SHEETS



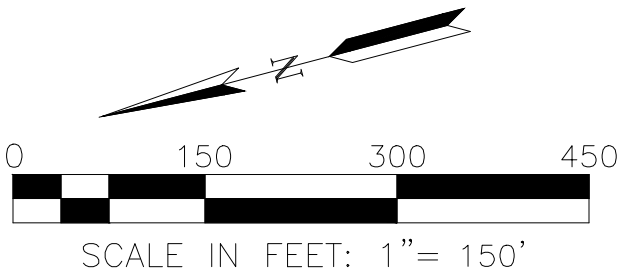
LINE	BEARING	DIST
L1	N75°45'37"W	23.40' (R1)
L2	N44°39'32"E	40.00' (R1)
L3	N64°05'08"W	40.25' (R3)
L4	N31°33'47"E	49.45' (R3)
L5	N75°20'51"E	68.00' (R)(R3)
L6	N50°12'49"W	40.00' (R1)
L7	N85°54'38"E	40.00' (R)(R3)
L8	N79°54'29"W	40.00' (R)(R3)
L9	N57°34'13"E	40.00' (R)(R3)
L10	N39°47'11"E	202.98' (R1)

LINE	BEARING	DIST
L11	N39°47'11"E	66.78' (R3)
L12	N74°49'47"W	68.00' (R3)
L13	N74°49'47"W	238.39' (C)(R3)
L14	N74°49'47"W	56.63' (916-M-51)
L15	N39°47'11"E	280.00' (R3)
L16	N57°34'13"E	51.93' (R1)
L17	N86°15'28"E	103.91' (R4)
L18	N22°19'22"E	84.17' (R4)
L19	N42°04'27"E	40.80' (R4)
L20	N28°16'20"W	77.44' (R4)

LINE	BEARING	DIST
L21	N28°16'20"E	242.20' (R1)
L22	N84°27'00"W	52.53' (R3)
L23	N28°16'20"W	250.40' (R1)
L24	N65°05'34"W	448.15' (R1)
L25	N65°05'34"W	73.56' (C)(R1)
L26	N74°49'47"W	83.99' (R4)
L27	N45°47'37"W	143.74' (R4)
L28	N15°10'13"E	22.49' (R1)
L29	N15°10'13"E	2.68' (R1)
L30	N15°10'13"E	47.69' (R1)

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.

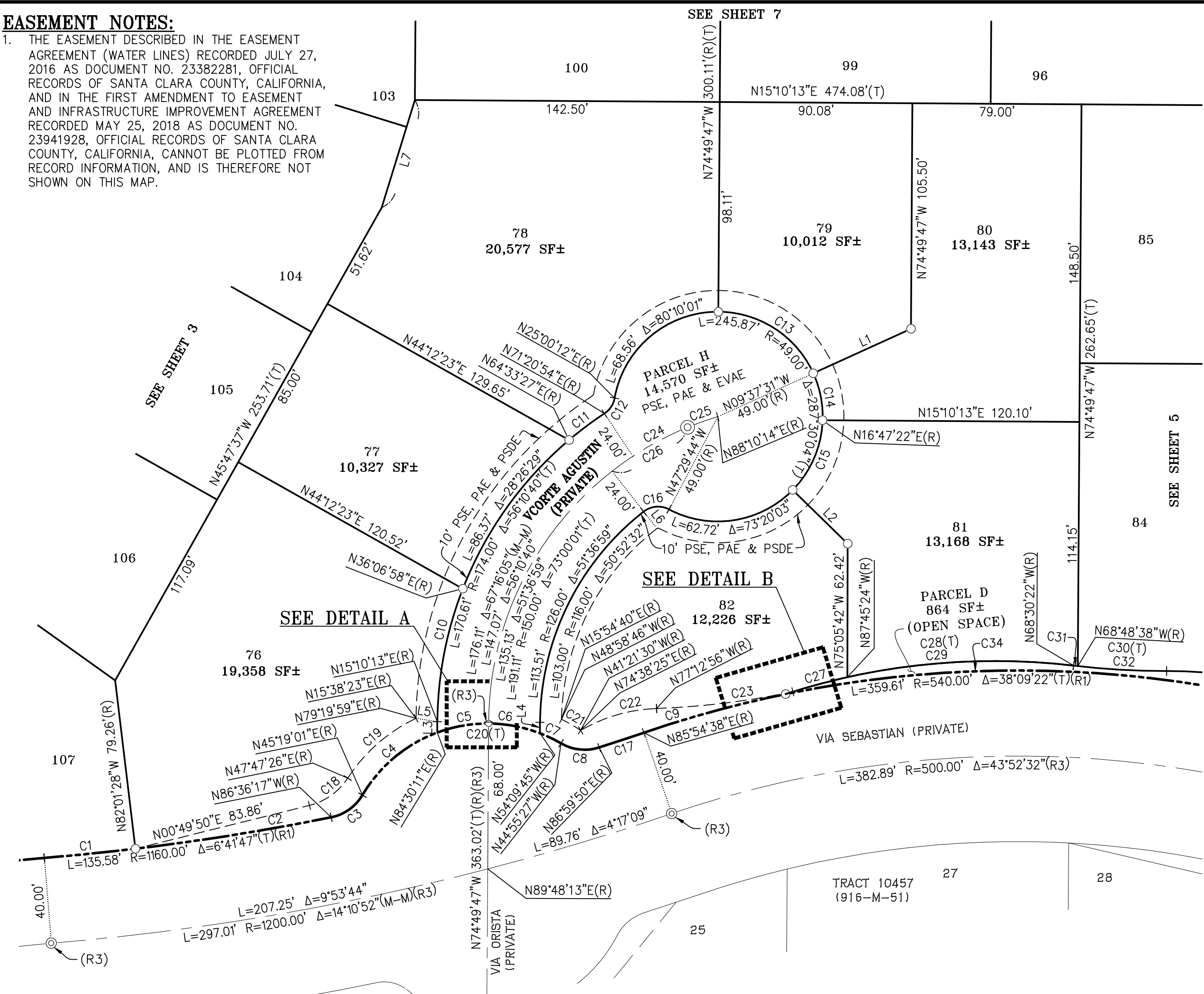


DETAIL
NOT TO SCALE

SEE DETAIL

EASEMENT NOTES:

1. THE EASEMENT DESCRIBED IN THE EASEMENT AGREEMENT (WATER LINES) RECORDED JULY 27, 2016 AS DOCUMENT NO. 23382281, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND IN THE FIRST AMENDMENT TO EASEMENT AND INFRASTRUCTURE IMPROVEMENT AGREEMENT RECORDED MAY 25, 2018 AS DOCUMENT NO. 23941928, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, CANNOT BE PLOTTED FROM RECORD INFORMATION, AND IS THEREFORE NOT SHOWN ON THIS MAP.



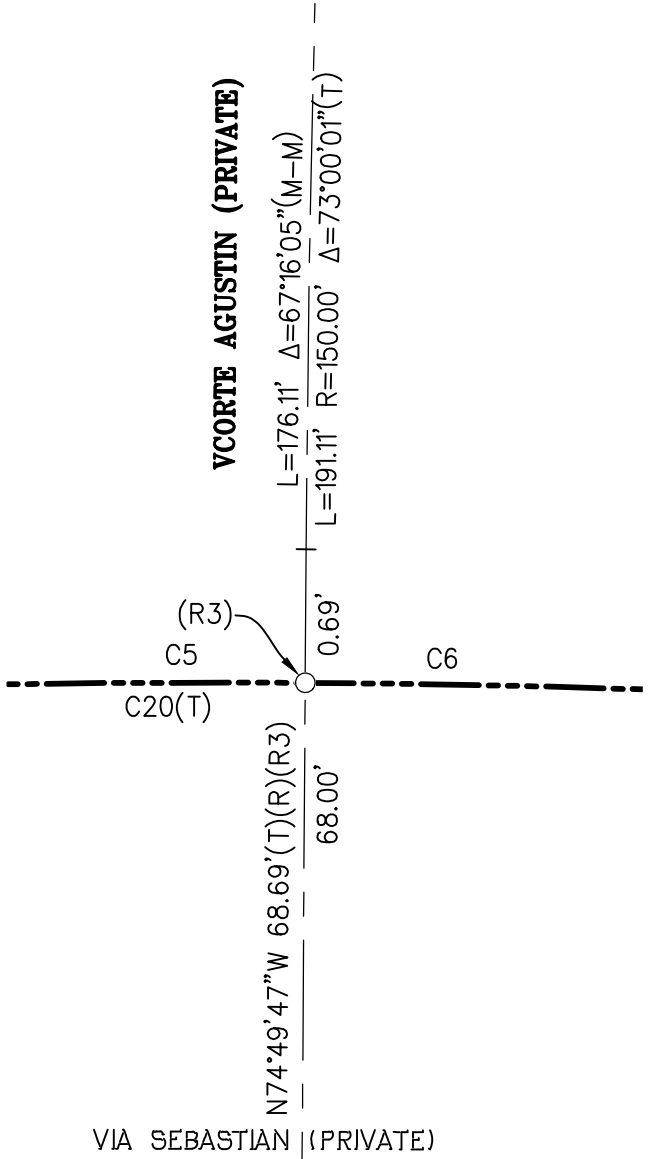
CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	42.84'	1160.00'	002°06'58"
C2	92.73'	1160.00'	004°34'49"
C3	18.46'	22.00'	048°04'43"
C4	46.51'	68.00'	039°11'10"
C5	24.53'	68.00'	020°40'02"
C6	24.53'	68.00'	020°40'02"
C7	10.96'	68.00'	009°14'18"
C8	18.46'	22.00'	048°04'43"
C9	68.74'	540.00'	007°17'35"
C10	63.61'	174.00'	020°56'45"
C11	20.62'	174.00'	006°47'27"
C12	8.90'	11.00'	046°20'42"
C13	55.76'	49.00'	065°12'16"
C14	22.59'	49.00'	026°24'53"
C15	36.24'	49.00'	042°22'51"
C16	12.62'	11.00'	065°43'04"
C17	22.00'	1160.00'	001°05'12"

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C18	22.54'	30.00'	043°02'23"
C19	42.94'	78.00'	031°32'32"
C20	106.53'	68.00'	089°45'32"
C21	10.38'	78.00'	007°37'16"
C22	37.33'	76.00'	028°08'38"
C23	64.22'	370.00'	009°56'41"
C24	29.03'	150.00'	011°05'25"
C25	15.01'	150.00'	005°43'55"
C26	40.98'	150.00'	015°39'06"
C27	26.40'	316.75'	004°46'33"
C28	136.34'	316.75'	024°39'46"
C29	106.42'	316.75'	019°15'02"
C30	43.56'	369.25'	006°45'32"
C31	1.96'	369.25'	000°18'17"
C32	41.60'	369.25'	006°27'15"
C33	3.52'	316.75'	000°38'12"
C34	221.56'	540.00'	023°30'28"

SEE SHEET 7

SEE DETAIL B

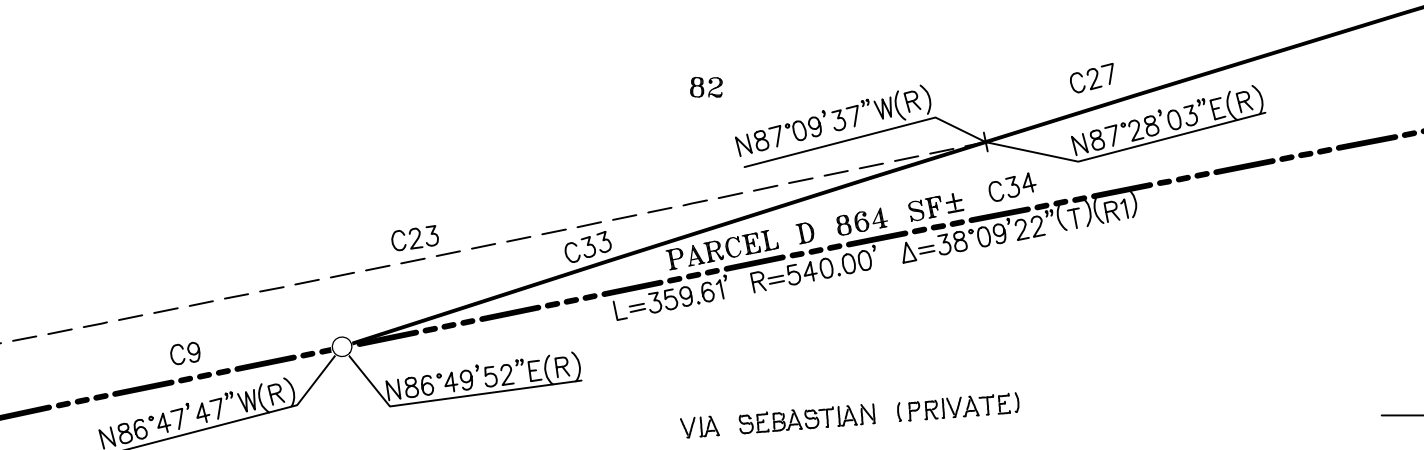
SEE DETAIL A



DETAIL A

1"=1'

LINE TABLE		
LINE	BEARING	DIST
L1	N09°37'31"W	50.23'
L2	N59°10'13"E	35.93'
L3	N74°49'47"W	5.07'
L4	N74°49'47"W	5.07'
L5	N23°44'59"E	10.11'
L6	N66°47'12"E	10.00'
L7	N58°02'42"W	52.66'



DETAIL B

1"=1'

LEGEND

- BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
- EXISTING LOT LINE
- NEW LOT LINE
- MONUMENT LINE/CENTERLINE
- NEW EASEMENT LINE
- EXISTING EASEMENT LINE
- TIE LINE
- FOUND MONUMENT IN WELL, AS NOTED
- FOUND MONUMENT, AS NOTED
- SET BRASS DISK IN WELL, TAGGED PLS 8859
- SET IRON PIPE, TAGGED PLS 8859
- BOUNDARY
- EMERGENCY VEHICLE ACCESS EASEMENT
- FOUND
- IRON PIPE
- PSE
- PAE
- PSSE
- IEE
- PSDE
- PG&E
- (M-M)
- (T)
- (R)
- (C)
- ()

REFERENCES:

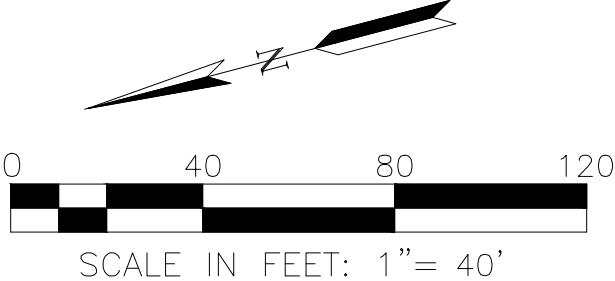
- (R1) PARCEL MAP - 872-M-16
- (R2) AMENDED MAP, TRACT 10330 - 909-M-29
- (R3) TRACT 10478 - 928-M-1
- (R4) TRACT 10534 - 934-M-31
- (R5) TRACT 10529 - 934-M-28

NOTES:

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

BASIS OF BEARINGS:

THE BEARING OF N11°17'00"W BETWEEN TWO FOUND MONUMENTS ALONG THE MONUMENT LINE OF COYOTE ROAD AS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP, SAN SEBASTIAN" FILED MAY 23, 2014 IN BOOK 872 OF MAPS, PAGES 16 THROUGH 23, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.



TRACT 10530
SAN SEBASTIAN, PHASE 3A

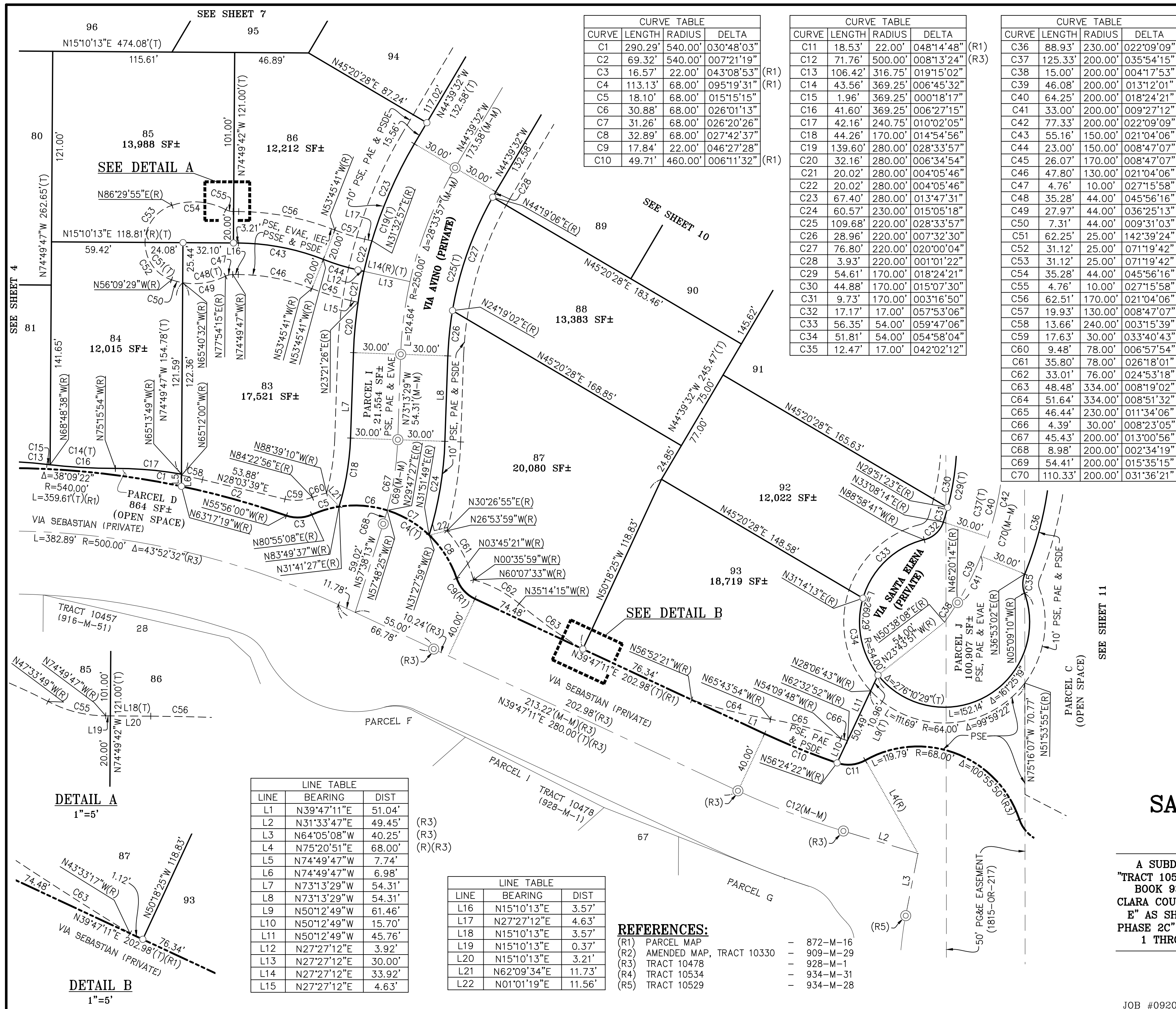
CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

A SUBDIVISION OF "PARCEL B" AS SHOWN ON THE MAP ENTITLED "TRACT 10534, SAN SEBASTIAN PHASE 3" FILED NOVEMBER 24, 2020, IN BOOK 934 OF MAPS, PAGES 31 THROUGH 34, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND "PARCEL B", "PARCEL D" AND "PARCEL E" AS SHOWN ON THE MAP ENTITLED "TRACT 10478, SAN SEBASTIAN PHASE 2C" FILED DECEMBER 10TH, 2019 IN BOOK 928 OF MAPS, PAGES 1 THROUGH 6, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
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DECEMBER 2021

JOB #092030

SHEET 4 OF 11 SHEETS



LEGEND

-----	BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
=====	EXISTING LOT LINE
=====	NEW LOT LINE
-----	MONUMENT LINE/CENTERLINE
-----	NEW EASEMENT LINE
-----	EXISTING EASEMENT LINE
.....	TIE LINE
◎	FOUND MONUMENT IN WELL, AS NOTED
●	FOUND MONUMENT, AS NOTED
⊙	SET BRASS DISK IN WELL, TAGGED PLS 8859
○	SET IRON PIPE, TAGGED PLS 8859
BNDRY	BOUNDARY
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
FND	FOUND
IP	IRON PIPE
PSE	PUBLIC SERVICE EASEMENT
PAE	PUBLIC ACCESS EASEMENT
PSSE	PRIVATE SANITARY SEWER EASEMENT
IEE	INGRESS AND EGRESS EASEMENT
PSDE	PRIVATE STORM DRAIN EASEMENT
PG&E	PACIFIC GAS AND ELECTRIC COMPANY
(M-M)	MONUMENT TO MONUMENT
(T)	TOTAL DIMENSION
(R)	RADIAL BEARING
(C)	CALCULATED
()	RECORD DATA IF DIFFERENT FROM MEASURED

EASEMENT NOTES:

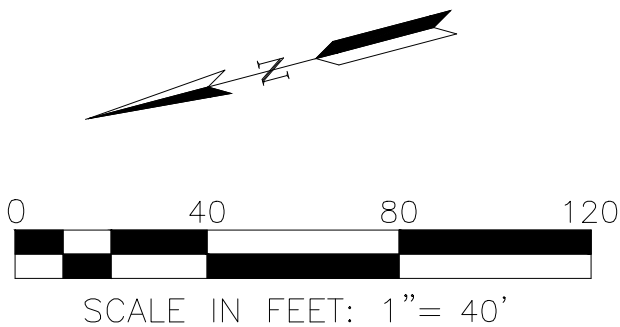
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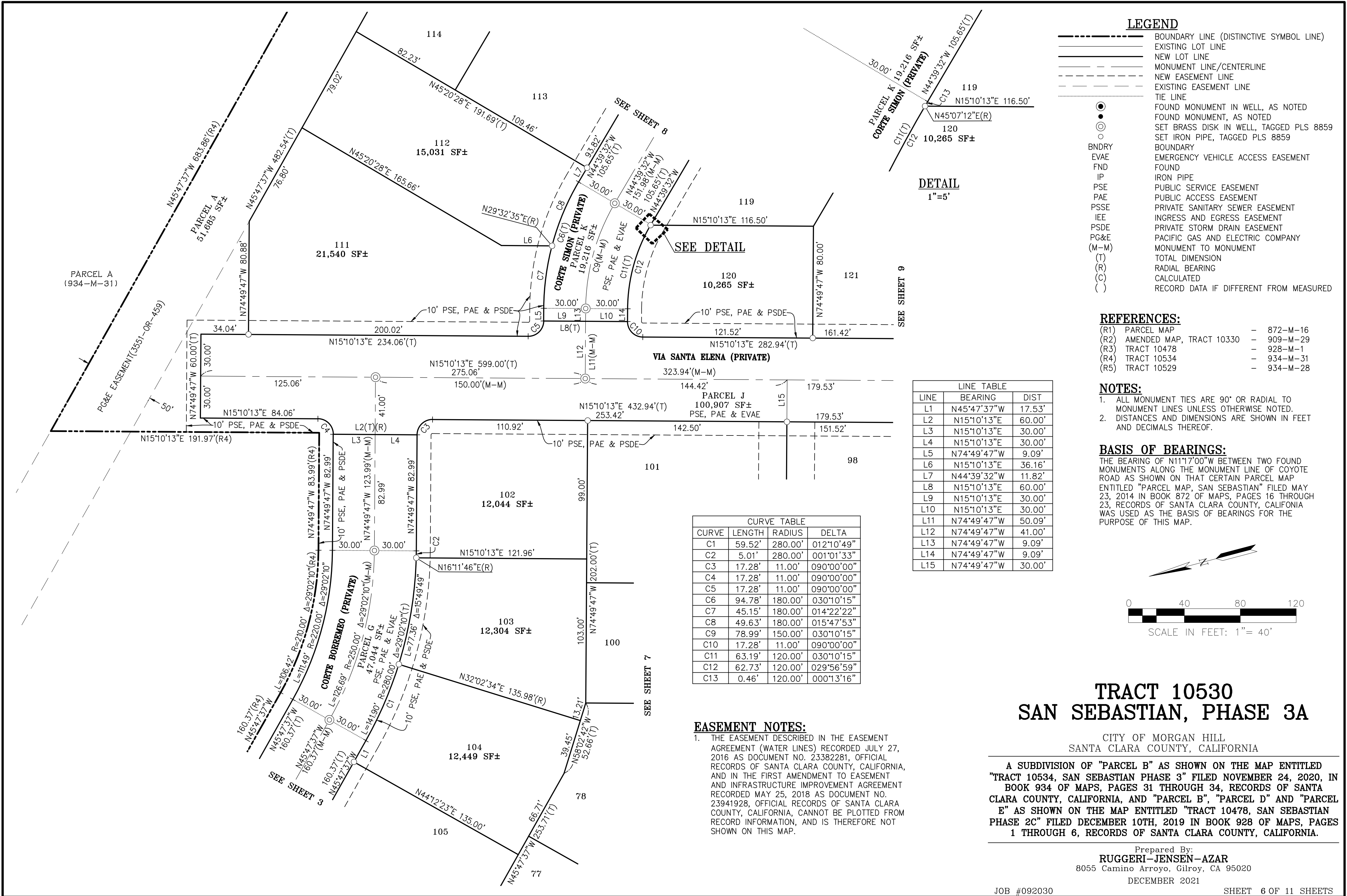


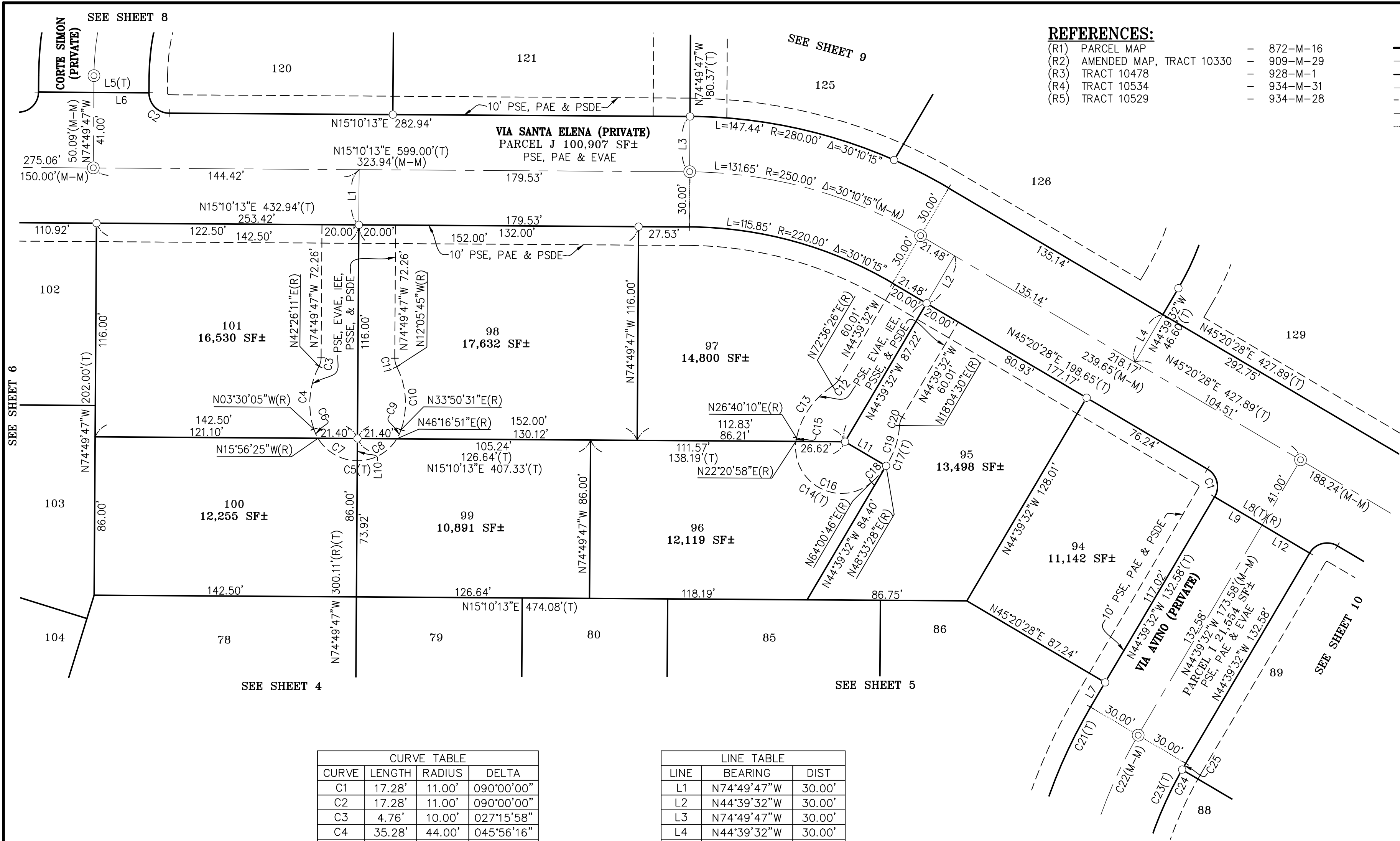
TRACT 10530
SAN SEBASTIAN, PHASE 3A

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

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Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
DECEMBER 2021





REFERENCES:

- (R1) PARCEL MAP
 - (R2) AMENDED MAP, TRACT 10330
 - (R3) TRACT 10478
 - (R4) TRACT 10534
 - (R5) TRACT 10529
- 872-M-16
 - 909-M-29
 - 928-M-1
 - 934-M-31
 - 934-M-28

LEGEND

- BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
 - EXISTING LOT LINE
 - NEW LOT LINE
 - MONUMENT LINE/CENTERLINE
 - NEW EASEMENT LINE
 - EXISTING EASEMENT LINE
 - TIE LINE
 - FOUND MONUMENT IN WELL, AS NOTED
 - FOUND MONUMENT, AS NOTED
 - SET BRASS DISK IN WELL, TAGGED PLS 8859
 - SET IRON PIPE, TAGGED PLS 8859
 - BNDRY
 - EVAE
 - FND
 - IP
 - PSE
 - PAE
 - PSSE
 - IEE
 - PSDE
 - PG&E
 - (M-M)
 - (T)
 - (R)
 - (C)
 - ()
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TOTAL DIMENSION
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NOTES:

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BASIS OF BEARINGS:

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SCALE IN FEET: 1" = 40'

TRACT 10530
SAN SEBASTIAN, PHASE 3A

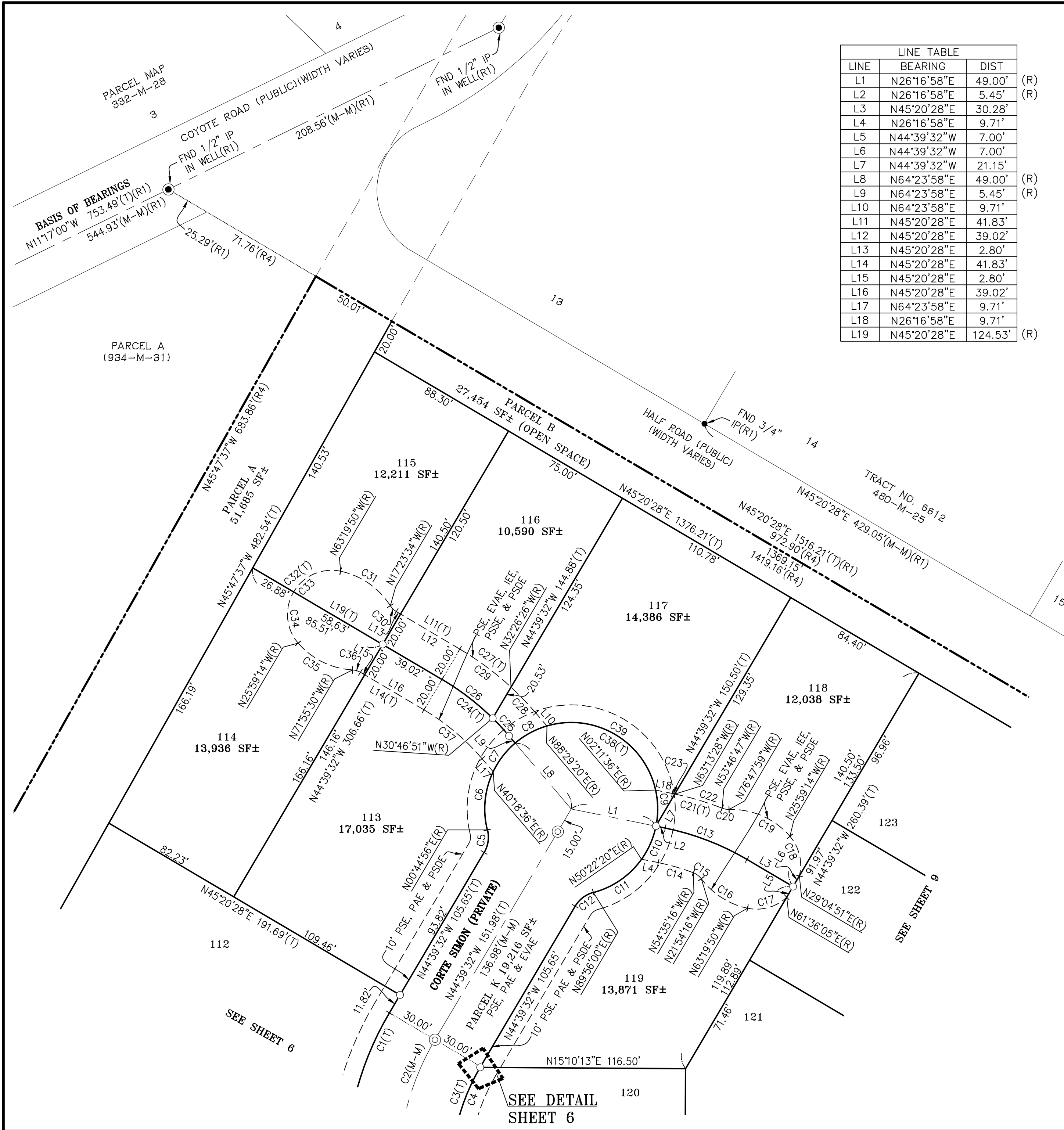
CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

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Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
DECEMBER 2021

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	17.28'	11.00'	090°00'00"
C2	17.28'	11.00'	090°00'00"
C3	4.76'	10.00'	027°15'58"
C4	35.28'	44.00'	045°56'16"
C5	62.25'	25.00'	142°39'24"
C6	5.43'	25.00'	012°26'19"
C7	25.70'	25.00'	058°53'22"
C8	25.70'	25.00'	058°53'22"
C9	5.43'	25.00'	012°26'19"
C10	35.28'	44.00'	045°56'16"
C11	4.76'	10.00'	027°15'58"
C12	4.76'	10.00'	027°15'58"
C13	35.28'	44.00'	045°56'16"
C14	62.25'	25.00'	142°39'24"
C15	1.88'	25.00'	004°19'11"
C16	60.36'	25.00'	138°20'12"
C17	35.28'	44.00'	045°56'16"
C18	11.87'	44.00'	015°27'19"
C19	23.41'	44.00'	030°28'57"
C20	4.76'	10.00'	027°15'58"
C21	139.60'	280.00'	028°33'57"
C22	124.64'	250.00'	028°33'57"
C23	109.68'	220.00'	028°33'57"
C24	76.80'	220.00'	020°00'04"
C25	3.93'	220.00'	001°01'22"

LINE TABLE		
LINE	BEARING	DIST
L1	N74°49'47"W	30.00'
L2	N44°39'32"W	30.00'
L3	N74°49'47"W	30.00'
L4	N44°39'32"W	30.00'
L5	N15°10'13"E	60.00'
L6	N15°10'13"E	30.00'
L7	N44°39'32"W	15.56'
L8	N45°20'28"E	60.00'
L9	N45°20'28"E	30.00'
L10	N74°49'47"W	12.08'
L11	N45°20'28"E	25.93'
L12	N45°20'28"E	30.00'



LINE TABLE		
LINE	BEARING	DIST
L1	N26°16'58"E	49.00'
L2	N26°16'58"E	5.45'
L3	N45°20'28"E	30.28'
L4	N26°16'58"E	9.71'
L5	N44°39'32"W	7.00'
L6	N44°39'32"W	7.00'
L7	N44°39'32"W	21.15'
L8	N64°23'58"E	49.00'
L9	N64°23'58"E	5.45'
L10	N64°23'58"E	9.71'
L11	N45°20'28"E	41.83'
L12	N45°20'28"E	39.02'
L13	N45°20'28"E	2.80'
L14	N45°20'28"E	41.83'
L15	N45°20'28"E	2.80'
L16	N45°20'28"E	39.02'
L17	N64°23'58"E	9.71'
L18	N26°16'58"E	9.71'
L19	N45°20'28"E	124.53'

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	94.78'	180.00'	030°10'15"
C2	78.99'	150.00'	030°10'15"
C3	63.19'	120.00'	030°10'15"
C4	62.73'	120.00'	029°56'59"
C5	13.23'	17.00'	044°35'32"
C6	33.83'	49.00'	039°33'40"
C7	20.60'	49.00'	024°05'22"
C8	20.60'	49.00'	024°05'22"
C9	20.60'	49.00'	024°05'22"
C10	20.60'	49.00'	024°05'22"
C11	33.83'	49.00'	039°33'40"
C12	13.23'	17.00'	044°35'32"
C13	49.89'	150.00'	019°03'30"
C14	20.71'	130.00'	009°07'46"
C15	5.70'	10.00'	032°40'59"
C16	31.81'	44.00'	041°25'34"
C17	24.03'	25.00'	055°04'05"
C18	24.03'	25.00'	055°04'05"
C19	39.02'	44.00'	050°48'45"
C20	4.02'	10.00'	023°01'12"
C21	29.49'	170.00'	009°56'15"
C22	28.02'	170.00'	009°26'41"
C23	1.46'	170.00'	000°29'34"
C24	49.89'	150.00'	019°03'30"
C25	13.56'	150.00'	005°10'49"
C26	36.33'	150.00'	013°52'41"
C27	56.55'	170.00'	019°03'30"
C28	20.29'	170.00'	006°50'24"
C29	36.25'	170.00'	012°13'06"
C30	4.76'	10.00'	027°15'58"
C31	35.28'	44.00'	045°56'16"
C32	62.25'	25.00'	142°39'24"
C33	31.12'	25.00'	071°19'42"
C34	31.12'	25.00'	071°19'42"
C35	35.28'	44.00'	045°56'16"
C36	4.76'	10.00'	027°15'58"
C37	43.24'	130.00'	019°03'30"
C38	230.21'	49.00'	269°11'04"
C39	80.14'	49.00'	093°42'16"

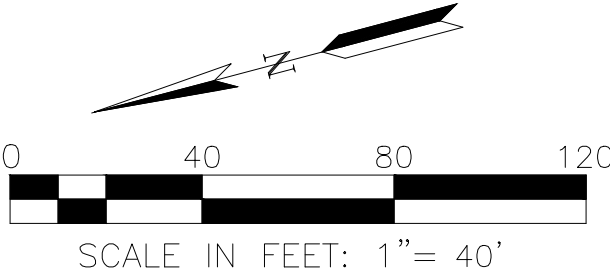
- LEGEND**
- BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
 - EXISTING LOT LINE
 - NEW LOT LINE
 - MONUMENT LINE/CENTERLINE
 - NEW EASEMENT LINE
 - EXISTING EASEMENT LINE
 - TIE LINE
 - FOUND MONUMENT IN WELL, AS NOTED
 - FOUND MONUMENT, AS NOTED
 - SET BRASS DISK IN WELL, TAGGED PLS 8859
 - SET IRON PIPE, TAGGED PLS 8859
 - BNDRY
 - EVAE
 - FND
 - IP
 - PSE
 - PAE
 - PSSE
 - IEE
 - PSDE
 - PG&E
 - (M-M) MONUMENT TO MONUMENT
 - (T) TOTAL DIMENSION
 - (R) RADIAL BEARING
 - (C) CALCULATED
 - () RECORD DATA IF DIFFERENT FROM MEASURED

- EASEMENT NOTES:**
1. THE EASEMENT DESCRIBED IN THE EASEMENT AGREEMENT (WATER LINES) RECORDED JULY 27, 2016 AS DOCUMENT NO. 23382281, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND IN THE FIRST AMENDMENT TO EASEMENT AND INFRASTRUCTURE IMPROVEMENT AGREEMENT RECORDED MAY 25, 2018 AS DOCUMENT NO. 23941928, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, CANNOT BE PLOTTED FROM RECORD INFORMATION, AND IS THEREFORE NOT SHOWN ON THIS MAP.

- 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.

- REFERENCES:**
- (R1) PARCEL MAP -- 872-M-16
 - (R2) AMENDED MAP, TRACT 10330 -- 909-M-29
 - (R3) TRACT 10478 -- 928-M-1
 - (R4) TRACT 10534 -- 934-M-31
 - (R5) TRACT 10529 -- 934-M-28

BASIS OF BEARINGS:
THE BEARING OF N11°17'00"W BETWEEN TWO FOUND MONUMENTS ALONG THE MONUMENT LINE OF COYOTE ROAD AS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP, SAN SEBASTIAN" FILED MAY 23, 2014 IN BOOK 872 OF MAPS, PAGES 16 THROUGH 23, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.



TRACT 10530 SAN SEBASTIAN, PHASE 3A

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

A SUBDIVISION OF "PARCEL B" AS SHOWN ON THE MAP ENTITLED "TRACT 10534, SAN SEBASTIAN PHASE 3" FILED NOVEMBER 24, 2020, IN BOOK 934 OF MAPS, PAGES 31 THROUGH 34, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND "PARCEL B", "PARCEL D" AND "PARCEL E" AS SHOWN ON THE MAP ENTITLED "TRACT 10478, SAN SEBASTIAN PHASE 2C" FILED DECEMBER 10TH, 2019 IN BOOK 928 OF MAPS, PAGES 1 THROUGH 6, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
DECEMBER 2021

JOB #092030

SHEET 8 OF 11 SHEETS

REFERENCES:

- (R1) PARCEL MAP
(R2) AMENDED MAP, TRACT 10330
(R3) TRACT 10478
(R4) TRACT 10534
(R5) TRACT 10529
- 872-M-16
— 909-M-29
— 928-M-1
— 934-M-31
— 934-M-28

LEGEND

- BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
--- EXISTING LOT LINE
--- NEW LOT LINE
--- MONUMENT LINE/CENTERLINE
--- NEW EASEMENT LINE
--- EXISTING EASEMENT LINE
--- TIE LINE
- FOUND MONUMENT IN WELL, AS NOTED
● FOUND MONUMENT, AS NOTED
○ SET BRASS DISK IN WELL, TAGGED PLS 8859
○ SET IRON PIPE, TAGGED PLS 8859
- BNDRY
○ EVAE
○ FND
○ IP
○ PSE
○ PAE
○ PSSE
○ IEE
○ PSDE
○ PG&E
○ (M-M)
○ (T)
○ (R)
○ (C)
○ ()
- BOUNDARY
EMERGENCY VEHICLE ACCESS EASEMENT
FOUND
IRON PIPE
PUBLIC SERVICE EASEMENT
PUBLIC ACCESS EASEMENT
PRIVATE SANITARY SEWER EASEMENT
INGRESS AND EGRESS EASEMENT
PRIVATE STORM DRAIN EASEMENT
PACIFIC GAS AND ELECTRIC COMPANY
MONUMENT TO MONUMENT
TOTAL DIMENSION
RADIAL BEARING
CALCULATED
RECORD DATA IF DIFFERENT FROM MEASURED

EASEMENT NOTES:

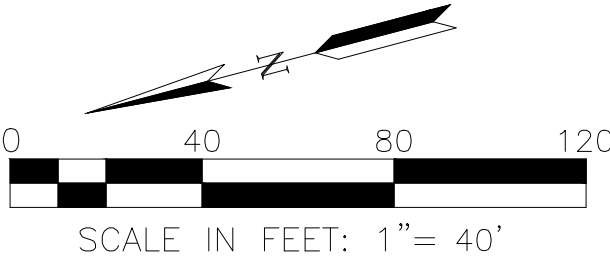
1. THE EASEMENT DESCRIBED IN THE EASEMENT AGREEMENT (WATER LINES) RECORDED JULY 27, 2016 AS DOCUMENT NO. 23382281, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND IN THE FIRST AMENDMENT TO EASEMENT AND INFRASTRUCTURE IMPROVEMENT AGREEMENT RECORDED MAY 25, 2018 AS DOCUMENT NO. 23941928, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, CANNOT BE PLOTTED FROM RECORD INFORMATION, AND IS THEREFORE NOT SHOWN ON THIS MAP.

NOTES:

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

BASIS OF BEARINGS:

THE BEARING OF N11°17'00"W BETWEEN TWO FOUND MONUMENTS ALONG THE MONUMENT LINE OF COYOTE ROAD AS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP, SAN SEBASTIAN" FILED MAY 23, 2014 IN BOOK 872 OF MAPS, PAGES 16 THROUGH 23, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.



**TRACT 10530
SAN SEBASTIAN, PHASE 3A**

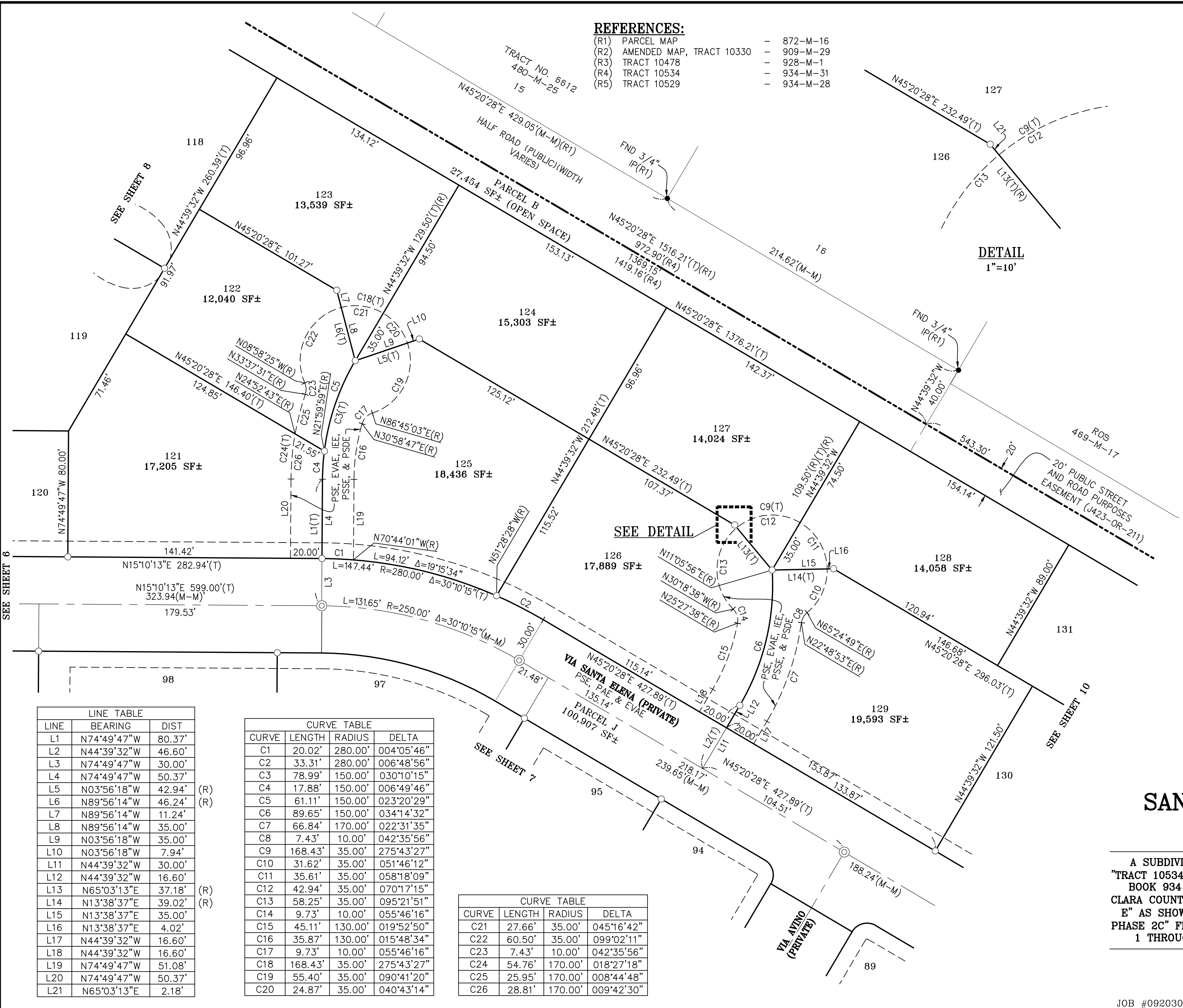
CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

A SUBDIVISION OF "PARCEL B" AS SHOWN ON THE MAP ENTITLED "TRACT 10534, SAN SEBASTIAN PHASE 3" FILED NOVEMBER 24, 2020, IN BOOK 934 OF MAPS, PAGES 31 THROUGH 34, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND "PARCEL B", "PARCEL D" AND "PARCEL E" AS SHOWN ON THE MAP ENTITLED "TRACT 10478, SAN SEBASTIAN PHASE 2C" FILED DECEMBER 10TH, 2019 IN BOOK 928 OF MAPS, PAGES 1 THROUGH 6, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
DECEMBER 2021

JOB #092030

SHEET 9 OF 11 SHEETS



LINE TABLE		
LINE	BEARING	DIST
L1	N74°49'47"W	80.37'
L2	N44°39'32"W	46.60'
L3	N74°49'47"W	30.00'
L4	N74°49'47"W	50.37'
L5	N03°56'18"W	42.94'
L6	N89°56'14"W	46.24'
L7	N89°56'14"W	11.24'
L8	N89°56'14"W	35.00'
L9	N03°56'18"W	35.00'
L10	N03°56'18"W	7.94'
L11	N44°39'32"W	30.00'
L12	N44°39'32"W	16.60'
L13	N65°03'13"E	37.18'
L14	N13°38'37"E	39.02'
L15	N13°38'37"E	35.00'
L16	N13°38'37"E	4.02'
L17	N44°39'32"W	16.60'
L18	N44°39'32"W	16.60'
L19	N74°49'47"W	51.08'
L20	N74°49'47"W	50.37'
L21	N65°03'13"E	2.18'

CURVE TABLE				
CURVE	LENGTH	RADIUS	DELTA	
C1	20.02'	280.00'	004°05'46"	
C2	33.31'	280.00'	006°48'56"	
C3	78.99'	150.00'	030°10'15"	
C4	17.88'	150.00'	006°49'46"	
C5	61.11'	150.00'	023°20'29"	
C6	89.65'	150.00'	034°14'32"	
C7	66.84'	170.00'	022°31'35"	
C8	7.43'	10.00'	042°35'56"	
C9	168.43'	35.00'	275°43'27"	
C10	31.62'	35.00'	051°46'12"	
C11	35.61'	35.00'	058°18'09"	
C12	42.94'	35.00'	070°17'15"	
C13	58.25'	35.00'	095°21'51"	
C14	9.73'	10.00'	055°46'16"	
C15	45.11'	130.00'	019°52'50"	
C16	35.87'	130.00'	015°48'34"	
C17	9.73'	10.00'	055°46'16"	
C18	168.43'	35.00'	275°43'27"	
C19	55.40'	35.00'	090°41'20"	
C20	24.87'	35.00'	040°43'14"	

CURVE TABLE				
CURVE	LENGTH	RADIUS	DELTA	
C21	27.66'	35.00'	045°16'42"	
C22	60.50'	35.00'	099°02'11"	
C23	7.43'	10.00'	042°35'56"	
C24	54.76'	170.00'	018°27'18"	
C25	25.95'	170.00'	008°44'48"	
C26	28.81'	170.00'	009°42'30"	

EASEMENT NOTES:

1. THE EASEMENT DESCRIBED IN THE EASEMENT AGREEMENT (WATER LINES) RECORDED JULY 27, 2016 AS DOCUMENT NO. 23382281, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND IN THE FIRST AMENDMENT TO EASEMENT AND INFRASTRUCTURE IMPROVEMENT AGREEMENT RECORDED MAY 25, 2018 AS DOCUMENT NO. 23941928, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, CANNOT BE PLOTTED FROM RECORD INFORMATION, AND IS THEREFORE NOT SHOWN ON THIS MAP.

LEGEND

- BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
- EXISTING LOT LINE
- NEW LOT LINE
- MONUMENT LINE/CENTERLINE
- NEW EASEMENT LINE
- EXISTING EASEMENT LINE
- TIE LINE
- FOUND MONUMENT IN WELL, AS NOTED
- FOUND MONUMENT, AS NOTED
- SET BRASS DISK IN WELL, TAGGED PLS 8859
- SET IRON PIPE, TAGGED PLS 8859
- BOUNDARY
- EMERGENCY VEHICLE ACCESS EASEMENT
- FOUND
- IRON PIPE
- PUBLIC SERVICE EASEMENT
- PUBLIC ACCESS EASEMENT
- PRIVATE SANITARY SEWER EASEMENT
- INGRESS AND EGRESS EASEMENT
- PRIVATE STORM DRAIN EASEMENT
- PACIFIC GAS AND ELECTRIC COMPANY
- MONUMENT TO MONUMENT
- TOTAL DIMENSION
- RADIAL BEARING
- CALCULATED
- RECORD DATA IF DIFFERENT FROM MEASURED

REFERENCES:

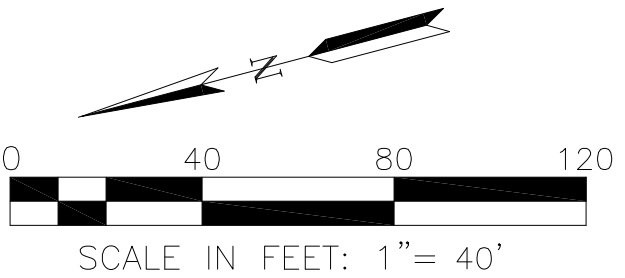
- (R1) PARCEL MAP - 872-M-16
- (R2) AMENDED MAP, TRACT 10330 - 909-M-29
- (R3) TRACT 10478 - 928-M-1
- (R4) TRACT 10534 - 934-M-31
- (R5) TRACT 10529 - 934-M-28

NOTES:

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

BASIS OF BEARINGS:

THE BEARING OF N11°17'00"W BETWEEN TWO FOUND MONUMENTS ALONG THE MONUMENT LINE OF COYOTE ROAD AS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP, SAN SEBASTIAN" FILED MAY 23, 2014 IN BOOK 872 OF MAPS, PAGES 16 THROUGH 23, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.



TRACT 10530
SAN SEBASTIAN, PHASE 3A

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

A SUBDIVISION OF "PARCEL B" AS SHOWN ON THE MAP ENTITLED "TRACT 10534, SAN SEBASTIAN PHASE 3" FILED NOVEMBER 24, 2020, IN BOOK 934 OF MAPS, PAGES 31 THROUGH 34, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND "PARCEL B", "PARCEL D" AND "PARCEL E" AS SHOWN ON THE MAP ENTITLED "TRACT 10478, SAN SEBASTIAN PHASE 2C" FILED DECEMBER 10TH, 2019 IN BOOK 928 OF MAPS, PAGES 1 THROUGH 6, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
DECEMBER 2021

JOB #092030

SHEET 10 OF 11 SHEETS

LINE TABLE		
LINE	BEARING	DIST
L1	N75°16'07"W	53.15'
L2	N45°20'28"E	60.00'
L3	N45°20'28"E	30.00'
L4	N75°16'07"W	53.15'
L5	N75°16'07"W	53.15'
L6	N35°28'31"W	39.45'
L7	N35°28'31"W	30.00'
L8	N35°28'31"W	9.45'
L9	N75°16'07"W	17.20'
L10	N44°39'32"W	89.00'
L11	N35°28'31"W	10.32'
L12	N75°16'07"W	49.17'
L13	N35°28'31"W	10.32'

(R)

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	32.06'	200.00'	009°11'01"
C2	125.33'	200.00'	035°54'15"
C3	64.25'	200.00'	018°24'21"
C4	77.33'	200.00'	022°09'09"
C5	109.68'	220.00'	028°33'57"
C6	105.76'	220.00'	027°32'35"
C7	3.93'	220.00'	001°01'22"
C8	17.28'	11.00'	090°00'00"
C9	25.36'	170.00'	008°32'45"
C10	54.61'	170.00'	018°24'21"
C11	44.88'	170.00'	015°07'30"
C12	9.73'	170.00'	003°16'50"
C13	88.93'	230.00'	022°09'09"
C14	48.74'	230.00'	012°08'28"
C15	20.03'	230.00'	004°59'19"
C16	20.03'	230.00'	004°59'19"
C17	16.84'	230.00'	004°11'42"
C18	104.18'	150.00'	039°47'36"
C19	7.70'	10.00'	044°07'20"
C20	159.17'	35.00'	260°33'39"
C21	66.55'	35.00'	108°56'54"
C22	159.17'	35.00'	260°33'39"
C23	37.64'	35.00'	061°36'45"
C24	38.97'	130.00'	017°10'24"
C25	46.08'	200.00'	013°12'01"
C26	33.00'	200.00'	009°27'12"

LEGEND

---	BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
---	EXISTING LOT LINE
---	NEW LOT LINE
---	MONUMENT LINE/CENTERLINE
---	NEW EASEMENT LINE
---	EXISTING EASEMENT LINE
---	TIE LINE
●	FOUND MONUMENT IN WELL, AS NOTED
○	FOUND MONUMENT, AS NOTED
○	SET BRASS DISK IN WELL, TAGGED PLS 8859
○	SET IRON PIPE, TAGGED PLS 8859
BNDRY	BOUNDARY
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
FND	FOUND
IP	IRON PIPE
PSE	PUBLIC SERVICE EASEMENT
PAE	PUBLIC ACCESS EASEMENT
PSSE	PRIVATE SANITARY SEWER EASEMENT
IEE	INGRESS AND EGRESS EASEMENT
PSDE	PRIVATE STORM DRAIN EASEMENT
PG&E	PACIFIC GAS AND ELECTRIC COMPANY
(M-M)	MONUMENT TO MONUMENT
(T)	TOTAL DIMENSION
(R)	RADIAL BEARING
(C)	CALCULATED
()	RECORD DATA IF DIFFERENT FROM MEASURED

EASEMENT NOTES:

- THE EASEMENT DESCRIBED IN THE EASEMENT AGREEMENT (WATER LINES) RECORDED JULY 27, 2016 AS DOCUMENT NO. 23382281, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND IN THE FIRST AMENDMENT TO EASEMENT AND INFRASTRUCTURE IMPROVEMENT AGREEMENT RECORDED MAY 25, 2018 AS DOCUMENT NO. 23941928, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, CANNOT BE PLOTTED FROM RECORD INFORMATION, AND IS THEREFORE NOT SHOWN ON THIS MAP.

REFERENCES:

- | | | | |
|------|--------------------------|---|----------|
| (R1) | PARCEL MAP | - | 872-M-16 |
| (R2) | AMENDED MAP, TRACT 10330 | - | 909-M-29 |
| (R3) | TRACT 10478 | - | 928-M-1 |
| (R4) | TRACT 10534 | - | 934-M-31 |
| (R5) | TRACT 10529 | - | 934-M-28 |

NOTES:

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

BASIS OF BEARINGS:

THE BEARING OF N11°17'00"W BETWEEN TWO FOUND MONUMENTS ALONG THE MONUMENT LINE OF COYOTE ROAD AS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP, SAN SEBASTIAN" FILED MAY 23, 2014 IN BOOK 872 OF MAPS, PAGES 16 THROUGH 23, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.

CURVE	LENGTH	RADIUS	DELTA
C1	71.76'	500.00'	008°13'24"
C2	71.09'	200.00'	020°21'53"
C3	32.04'	200.00'	009°10'41"
C4	5.61'	200.00'	001°36'26"
C5	26.43'	200.00'	007°34'14"
C6	34.07'	786.00'	002°29'02"
C7	97.58'	786.00'	007°06'47"
C8	141.54'	786.00'	010°19'02"
C9	50.90'	4954.00'	000°35'19"
C10	49.71'	460.00'	006°11'32"
C11	18.53'	22.00'	048°14'48"
C12	119.79'	68.00'	100°55'50"
C13	30.48'	22.00'	079°23'23"
C14	36.85'	60.00'	035°11'09"
C15	51.81'	54.00'	054°58'04"
C16	12.47'	17.00'	042°02'12"
C17	88.93'	230.00'	022°09'09"
C18	68.76'	230.00'	017°07'47"
C19	79.97'	82.00'	055°52'36"
C20	125.33'	200.00'	035°54'15"
C21	15.00'	200.00'	004°17'53"
C22	110.33'	200.00'	031°36'21"
C23	207.31'	200.00'	059°23'25"
C24	175.25'	200.00'	050°12'24"
C25	111.69'	64.00'	099°59'22"

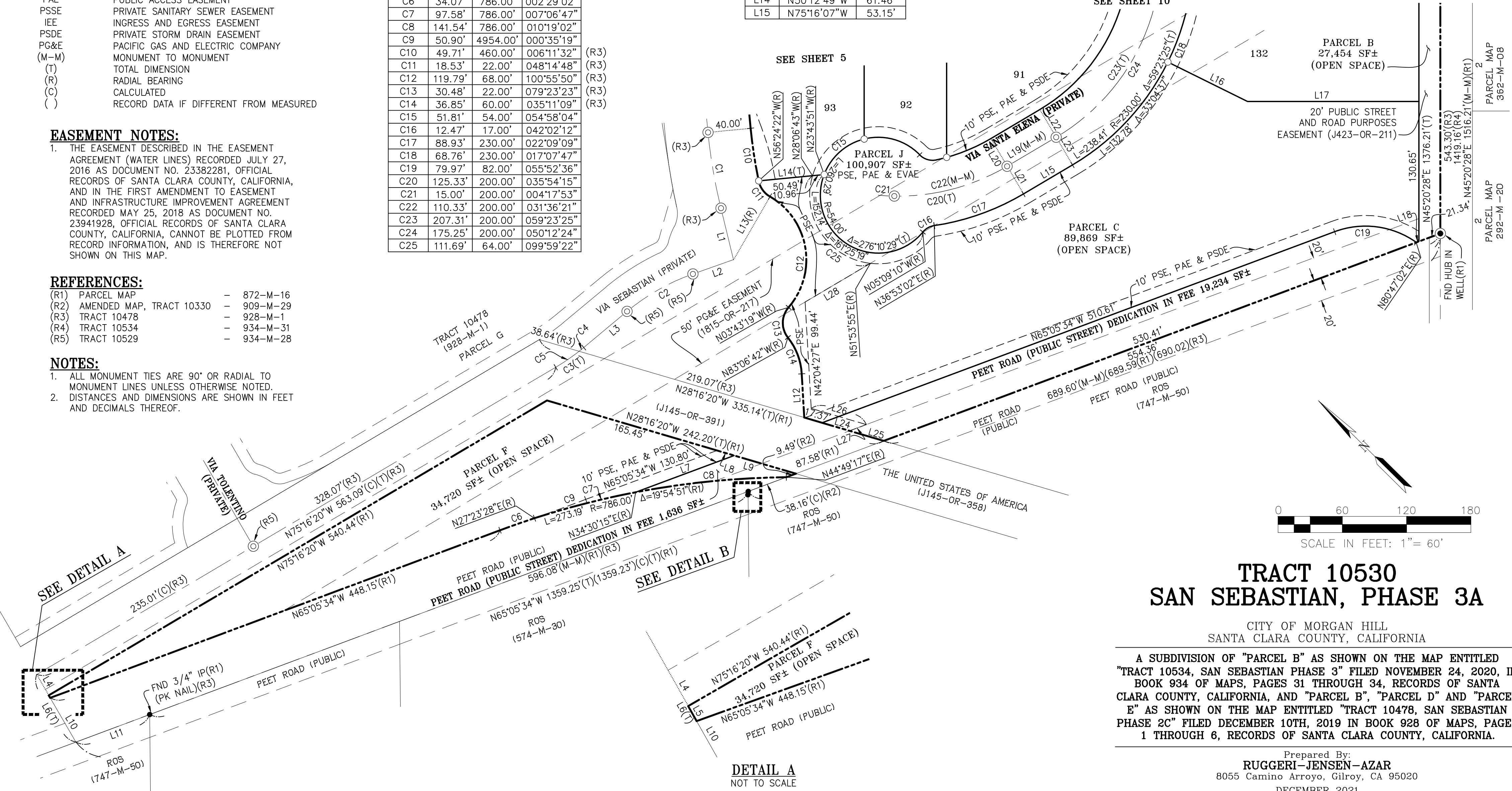
LINE	BEARING	DIST
L1	N31°33'47"E	49.45'
L2	N64°05'08"W	40.25'
L3	N84°27'00"W	52.53'
L4	N15°10'13"E	22.49'
L5	N15°10'13"E	2.68'
L6	N15°10'13"E	72.86'
L7	N65°05'34"W	98.09'
L8	N28°16'20"W	16.69'
L9	N28°16'20"W	60.07'
L10	N15°10'13"E	47.69'
L11	N65°05'34"W	73.56'
L12	N42°04'27"E	40.80'
L13	N75°20'51"E	68.00'
L14	N50°12'49"W	61.46'
L15	N75°16'07"W	53.15'

LINE	BEARING	DIST
L16	N18°20'44"W	82.92'
L17	N44°39'32"W	160.00'
L18	N65°05'34"W	2.61'
L19	N75°16'07"W	53.15'
L20	N14°43'53"E	30.00'
L21	N14°43'53"E	30.00'
L22	N14°43'53"E	30.00'
L23	N14°43'53"E	30.00'
L24	N28°16'20"W	26.70'
L25	N28°16'20"W	33.37'
L26	N28°16'20"W	53.56'
L27	N65°05'34"W	16.69'
L28	N75°16'07"W	70.77'

SEE SHEET 10

SEE SHEET 5

DETAIL B
NOT TO SCALE



TRACT 10530
SAN SEBASTIAN, PHASE 3A

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

A SUBDIVISION OF "PARCEL B" AS SHOWN ON THE MAP ENTITLED "TRACT 10534, SAN SEBASTIAN PHASE 3" FILED NOVEMBER 24, 2020, IN BOOK 934 OF MAPS, PAGES 31 THROUGH 34, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND "PARCEL B", "PARCEL D" AND "PARCEL E" AS SHOWN ON THE MAP ENTITLED "TRACT 10478, SAN SEBASTIAN PHASE 2C" FILED DECEMBER 10TH, 2019 IN BOOK 928 OF MAPS, PAGES 1 THROUGH 6, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
DECEMBER 2021

JOB #092030

SHEET 11 OF 11 SHEETS

RECORDING REQUESTED BY
WHEN RECORDED RETURN TO

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

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

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

SUBDIVISION IMPROVEMENTS AGREEMENT

TOLL CA XX, L.P.

SAN SEBASTIAN PHASE 3A – TRACT NO.10530

This Subdivision Improvements Agreement ("Agreement") between the City of Morgan Hill, a municipal corporation ("City"), and **TOLL CA XX, L.P.**, a limited partnership ("Subdivider"), is entered into this ____ day of _____, 20___. City and Subdivider hereby acknowledge the following:

1. Subdivider has filed a Tentative Subdivision Map and supporting documents for **Tract No. 10530**, the subdivision known as **San Sebastian Phase 3A** ("Map").
2. City desires, as part of the conditions of approval ("Conditions") of the Final Tract Map or Parcel Map ("Final Map"), that certain improvements be installed by Subdivider ("Improvements") as shown on the City Engineer approved and signed Subdivision Improvement Plans entitled "**Improvement Plans for San Sebastian Phase 3A, Tract No. 10530**" ("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 to the approval of City, and as provided for in the Conditions, the Improvements as shown fully executed in the Plans entitled "Improvement Plans for [ENTER SUBDIVISION NAME]".

(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.

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. Said changes, if any, shall be confined to the premises owned by Subdivider.

Section 4. Security

(a) Pursuant to California Government Code Section 66499.3(a), and the Municipal Code, Subdivider shall, concurrently with the execution hereof, furnish a surety bond in an amount equal to at

least one hundred percent (100%) of the estimated construction cost of the Improvements as security guaranteeing the faithful performance of the Improvements and this Agreement ("Performance Bond").

Improvements and the City Engineer's Estimated Costs of Improvements as of **March 2021** 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.

Section 6. Timing of Performance

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

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

Section 7. Work Performance and Warranty

(a) Subdivider shall construct, at Subdivider's own expense, all of the Improvements in a good and workmanlike manner, and furnish all required materials incident thereto, in accordance with the Plans and to the satisfaction of City, including any changes required by City which in City's opinion are necessary to complete the Improvements.

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

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

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

(e) Subdivider warrants that: (1) it has investigated the work to be performed under this agreement, (2) it has investigated the site of the work and is aware of all conditions there; and (3) it

understands the difficulties and restrictions of the work under this Agreement. Should Subdivider discover any conditions materially differing from those inherent in the Improvements or work or as represented by City, it shall immediately inform City and shall not proceed, except at Subdivider's risk, until written instructions are received from City.

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

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

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

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

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

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

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

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

Section 9. Indemnity

Subdivider hereby agrees to save harmless and indemnify, including, without limitation, City's defense costs (including reasonable attorney's fees), from and against any and all suits, actions, or claims, of any character whatever, brought for, or on account of any injuries or damages sustained by any person or property resulting or arising, or alleged to have resulted or arisen, from Subdivider or Subdivider's contractors, subcontractors, agents, or employees activities, omissions or operations pursuant to this

Agreement. Should City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, Subdivider will defend City, (at City's request and with counsel satisfactory to City) and will indemnify City for any judgment rendered against it or any sums paid out in settlement or otherwise.

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

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

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

Section 10. Insurance

Concurrent with the execution of this Agreement, Subdivider is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Subdivider and its Subcontractors relating to or arising from the performance of work associated with the Improvements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by the City. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by City. If the Subdivider will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then Subdivider may opt to have all coverages provided by Subdivider's General Contractor, provided that a written contract is executed between Subdivider and the General Contractor whereby the written contract specifically required General Contractor to fulfill all of the City insurance requirements as outlined in this Agreement, including all endorsements in favor of the City. Verification of the written contract must be provided to City upon request. If Subdivider fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement City shall issue a stop work order, or terminate the Agreement for default. Subdivider further understands that the City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Subdivider, at any time as deemed necessary to protect the interests of the City.

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

(1) Commercial General Liability Insurance ("CGL"): Subdivider shall maintain CGL and shall include coverage for liability arising from Subdivider's or its Subcontractor's acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) combined single limit each occurrence and either a general aggregate limit of ten million dollars (\$10,000,000.00) or a general aggregate limit of five million dollars (\$5,000,000) as applied on a "per project"

or “per location” basis, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater. Further, if CGL coverage is being provided by Subdivider’s General Contractor pursuant to Section 10, General Contractor may elect to insure the CGL exposures under an “Owners and Contractors Protective Liability Policy (OCP)” on which the City is included as an additional insured.

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

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

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

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

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

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

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

(1) ALL Policies:

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

(2) ALL Policies except Workers Compensation:

- a. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds.
- b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing.

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

Certificate Holder address:

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

Section 11. Permits and Requisite Fees

(a) Subdivider shall pay all current fee obligations in the total amount of **\$3,034,916** due under City Resolution No. 5592, as amended, in accordance with the Department of Public Work fee schedule, as follows:

(1) **\$ 306,600** payable at the time of recording of the Final Map, and

(2) **\$3,034,916** payable on a pro-rata basis for each individual lot in the Subdivision prior to final inspection of each and every residence.

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

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

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

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

Section 12. On-Site Supervision

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

Section 13. Waiver

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

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

a. Address of Subdivider is as follows:

Rick Nelson
Toll Brothers – Northern California Division
6800 Koll Center Parkway, Suite 320
Pleasanton, CA94566-7053

b. Address of City is as follows:

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

With a copy to:

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

Section 15. Noncompliance

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

Section 16. Notice of Breach and/or Default

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

- (a) Subdivider refuses or fails to complete the Improvements as required in Section 6 above.
- (b) Subdivider refuses or fails to perform or cure any defects in the Improvements as required in Section 7.
- (c) Subdivider is insolvent, is subject to a receivership, or files any petition in bankruptcy, either voluntary or involuntary which Subdivider fails to discharge within thirty (30) days.
- (d) The commencement of a foreclosure action against the Subdivision or any portion thereof, or any conveyance in lieu of or in avoidance of foreclosure.
- (e) Subdivider or any of Subdivider's contractors, subcontractors, agent, or employees materially violates any of the provisions of this Agreement and not cure the violation within a reasonable time.

Section 17. Performance by Surety or City

- (a) In the event of a material breach and/or default by Subdivider, Subdivider's surety shall have the duty to take over and complete the Improvements.
- (b) If the surety, within a reasonable time after receiving notice of Subdivider's default does not provide City written notice to take over the performance of this Agreement or if the surety does not commence performance thereof within the time specified in such notice to City, City may take over the construction of the Improvements and prosecute the same to completion, by contract or by any method City may deem advisable, on behalf and at the expense of Subdivider, and Subdivider's surety shall be liable to City for any excess cost or damages incurred by City thereby. In such event, City, without liability

for so doing, may take possession of and utilize such materials, appliances, and other property belonging to Subdivider as may be on the work site(s) and necessary therefore to complete the Improvements.

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

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

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

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

Section 18. Successors in Interest

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the Final Map of the Subdivision and shall constitute a covenant running with the land and an equitable servitude upon the real property within the Subdivision. It shall be the responsibility of City to cause the executed Agreement to be recorded.

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.

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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.

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"

By: _____
Christina J. Turner, City Manager

**Toll CA XX, L.P.,
a California limited partnership**

Date: _____

**BY: TOLL WEST COAST LLC,
a Delaware limited liability company
General Partner**

ATTEST:

By: _____
Michelle Wilson, City Clerk

By: 
Name: STEVE SAVAGE

Date: _____

Title: Vice President

APPROVED AS TO FORM:

Date: 11-15-21

By: _____
Donald A. Larkin, City Attorney

Date: _____

ACKNOWLEDGMENT

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

State of California
County of Alameda

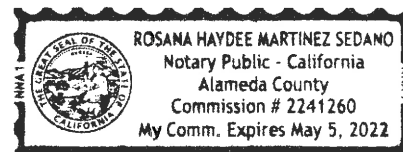
On November 15, 2021 before me, Rosana Haydee Martinez Sedano, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature *Rosana Martinez* (Seal)



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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)

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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)

EXHIBIT "A"

IMPROVEMENTS AND

ESTIMATED COSTS OF IMPROVEMENTS

AS OF 3/23/2021

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
A. PUBLIC WATER-(Domestic)					
1.	8" Water incl. valves, thrust blocks, etc.	1,195	LF	\$50.00	\$59,750
2.	10" Water incl. valves, thrust blocks, etc.	2,160	LF	\$75.00	\$162,000
3.	Fire Hydrant	11	EA	\$4,500.00	\$49,500
4.	Connect to existing	3	EA	\$5,000.00	\$15,000
5.	1.5" Service with 1" Meter	29	EA	\$1,600.00	\$46,400
6.	4" Water Service and 1" meter (2 Meter Cluster) I	1	EA	\$3,200.00	\$3,200
7.	4" Water Service and 1" meter (3 Meter Cluster) II	2	EA	\$4,800.00	\$9,600
8.	6" Water Service and 1" meter (4 Meter Cluster) III	4	EA	\$6,400.00	\$25,600
9.	6" Water Service and 1" meter (5 Meter Cluster) II	2	EA	\$8,000.00	\$16,000
Sub-Total Water:					\$387,050

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 _____ (hereinafter designated as "principal") have entered into a Subdivision Improvements Agreement:

[ENTER SUBDIVIDER NAME]
[ENTER SUBDIVISION NAME – ENTER TRACT NO.XXXX]

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20_____, and identified as project **[ENTER PROJECT NAME]**, 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 _____ dollars (\$_____) 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

Performance Bond Page 1 of 4
Version July 2017

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.)

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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)

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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)

Performance Bond Page 4 of 4
Version July 2017

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 [ENTER Subdivider NAME] (hereinafter designated as "the principal") have entered into a Subdivision Improvements Agreement:

[ENTER SUBDIVIDER NAME]
[ENTER SUBDIVISION NAME – ENTER TRACT NO.XXXX]

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20_____, and identified as project **[ENTER PROJECT NAME]**, 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 _____ dollars (\$_____), 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.)

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County of **Santa Clara**

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WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

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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 [ENTER SUBDIVIDER NAME] (hereinafter designated as "Principal") have entered into a Subdivision Improvements Agreement (hereinafter "Agreement"):

[ENTER SUBDIVIDER NAME]
[ENTER SUBDIVISION NAME – ENTER TRACT NO.XXXX]

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter "Improvements"), which said Agreement, dated _____, 20_____, and identified as project _____, 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 _____ dollars (\$____) 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:

Warranty Bond Page 2 of 4
Version July 2017

[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

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

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WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

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Warranty Bond Page 4 of 4
Version July 2017

CITY COUNCIL STAFF REPORT

MEETING DATE: March 2, 2022

PREPARED BY:

Charlie Ha, Supervising Civil Engineer

APPROVED BY: City Manager

APPROVE AN IMPROVEMENT AGREEMENT WITH MORGAN HILL MULTIFAMILY LLC FOR THE BUTTERFIELD VILLAGE PROJECT

RECOMMENDATION(S)

1. Approve an Improvement Agreement with Morgan Hill Multifamily LLC;
2. Authorize the City Manager to execute the Improvement Agreement; and
3. Authorize the recordation of the Improvement Agreement.

Estimated Time: Not applicable

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment and Preserving Open Space

2020-2021 Strategic Priorities

Affordable Housing and Homelessness

Guiding Documents

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

Butterfield Village is a residential development with 389 apartment units located on the southeast corner of Jarvis Drive and Monterey Road (see attached site map - Attachment 1). As required by the project's conditions of approval for Site Review, the developer, Morgan Hill Multifamily LLC, is required to enter into an Improvement Agreement (Attachment 2) with the City of Morgan Hill and provide a financial guarantee for the public improvements along the project's Jarvis Drive frontage and stormwater quality improvements in the City's retention pond.

The developer has furnished the City with the necessary documents to complete the processing of the Improvement Agreement by providing surety bonds and insurance for the proposed public improvements along Jarvis Drive and stormwater quality improvements in the City's retention pond. Staff recommends that the City Council approve and authorize the City Manager to execute the Improvement Agreement.

COMMUNITY ENGAGEMENT:**Inform**

A Public Notice via mailed notice and newspaper advertisement was issued to inform the public of the City's intent to approve the Design Review Permit for the project. The Public Notice was also shared via the City's 411 email publication as well as a new Development Project page on the website.

ALTERNATIVE ACTIONS:

There are no feasible alternative actions on the approval of the Improvement Agreement as the developer has furnished the necessary documents to complete the processing of the Improvement Agreement.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On October 17, 2018, the City approved a Development Agreement for a 389-unit apartment project on the project site as part of a settlement of litigation brought by the applicant under the Housing Accountability Act.

FISCAL AND RESOURCE IMPACT:

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

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

A program-level Environmental Impact Report for the Butterfield-MWest General Plan Amendment and Addendum was adopted in July 2014.

A project level Initial Study/Consistency Checklist was completed and demonstrated consistency with the Butterfield – MWest General Plan Amendment Project GPA 14-04 Environmental Impact Report and Addendum (State Clearinghouse No. 2014072009) and the Morgan Hill 2035 Environmental Impact Report (State Clearinghouse No. 2015022074).



CITY OF MORGAN HILL

**Development Services
Engineering Land Development**

G:\R-14\Proj\GIS\John\Charlie_ButterfieldVillage.mxd

SITE MAP BUTTERFIELD VILLAGE



RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

CITY OF MORGAN HILL
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

IMPROVEMENT AGREEMENT

Morgan Hill Multifamily LLC
APN: 726-25-095 and 726-25-093
Butterfield Village (Vida at Morgan Hill)

THIS AGREEMENT is made on this _____ day of _____, 2022, by the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and **Morgan Hill Multifamily LLC** a Delaware limited liability company ("PROPERTY OWNER").

RECITALS

The following Recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Morgan Hill Municipal Code Chapter 12.02.
2. PROPERTY OWNER has filed a Development Application and supporting documents on the property with the address of the APN **726-25-095 and 726-25-093** having the development name of **Butterfield Village** ("Development").
3. CITY requires as a condition of approval of the Development Permit, as described on said permit, that certain improvements be installed by PROPERTY OWNER as shown on the fully executed Development Improvement Plans entitled **Improvement Plans for Butter Village Residential** ("Improvements"), on file with CITY and incorporated herein by this reference.
4. PROPERTY OWNER has been unable to complete, prior to the issuance of the Development Permit, all of the Improvements required by CITY to the satisfaction of the City Engineer.
5. PROPERTY OWNER is required by the terms of the Morgan Hill 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.
6. To assure CITY that PROPERTY OWNER will complete all the work and Improvements required

for the Development, the parties have entered into this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This term of this Agreement shall be six (6) months from the date of issuance of the Development Permit (“Term”) unless extended by written agreement.
2. **Improvements.** PROPERTY OWNER agrees to construct the Improvements in a good and workmanlike manner in accordance with the plans and documents filed with and approved by CITY in conjunction with the Development, all of which are incorporated herein by reference. These items of the Improvements shall be completed, constructed and installed at PROPERTY OWNER's sole expense unless agreed to otherwise by CITY.
3. **Rights-of-Way.** Except as otherwise provided by this Agreement, CITY can hold without acceptance or recordation all lands, rights-of-way, and easements offered for dedication. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with the Government Code. All such offers may be accepted and recorded by CITY in its sole discretion at any later date without further notice to PROPERTY OWNER 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.
4. **Improvements: Time Limits.** PROPERTY OWNER agrees to cause all Improvements to be made and constructed to comply with all requirements of Morgan Hill Municipal Code Chapter 12.02, according to the improvement plans for the Development approved by the City Engineer and including any changes or alteration in the Improvements required by the City Engineer. The Improvements shall be completed utilizing CITY standards and specifications. PROPERTY OWNER agrees to complete the Improvements prior to the expiration of this Agreement, or the issuance of the certificate of occupancy, whichever is earlier; 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 PROPERTY OWNER stating fully the ground for the application and the facts relied upon for an extension.

It is further agreed by and between PROPERTY OWNER 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. PROPERTY OWNER further agrees to maintain the securities described in Section 6 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.

In the event that PROPERTY OWNER shall fail to complete the Improvements within the time provided by this Agreement, CITY may in its sole discretion and in addition to any other remedy provided in this Agreement or by law, enter upon the Development and complete the Improvements and recover the full cost and expense of construction from PROPERTY OWNER, PROPERTY OWNER's successors and assigns, PROPERTY OWNER's Performance/Labor & Material Bonds associated with this Development,

or from the then owner of the Development, and/or place a lien upon the Development property for the cost and expense. Any and all CITY costs shall include but not be limited to administrative and attorney costs.

5. **Acquisition and Dedication of Easements or Rights-of-Way.** If any of the Improvements is to be constructed or installed on land not within the Development or already existing public right-of-way, no construction or installation shall be commenced before the irrevocable offer of dedication or conveyance to CITY of appropriate rights-of-way, easements or other interest in real property, and appropriate authorization from PROPERTY OWNER to allow construction or installation of the Improvements or work has been obtained and paid for by PROPERTY OWNER.

6. **Bond Requirements.** To secure the performance of each Improvement required under this Agreement and to ensure full payment to all persons furnishing or supplying labor or materials for each Improvement required, PROPERTY OWNER shall provide to CITY concurrently with the execution of this Agreement, payment and performance bonds each in the amount of 100% of the total estimated cost of the Improvements as determined by the City Engineer. A performance bond to secure faithful performance of this Agreement as required by Section 12.02.160 of the Morgan Hill Municipal Code for performance shall be provided in substantially the form set forth in Exhibit B. A payment bond to secure full payment to all persons furnishing or supplying labor or materials as required by Section 12.02.160 of the Morgan Hill Municipal Code for labor and materials shall be provided in substantially the form set forth in Exhibit C. PROPERTY OWNER shall provide an additional guarantee and warranty security (in substantially the form set forth in Exhibit D) of fifty (50%) percent of the cost of construction of the Improvements to guarantee and warranty the Improvements for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, as required by Section 12.02.170 of the Morgan Hill Municipal Code.

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

Any bonds submitted under this Agreement shall be executed by a surety company authorized to write the same in the State of California, and subject to the review and approval of the City's risk manager. All required securities shall be in a form approved by the City Attorney. The bonds shall be executed on CITY forms by a surety authorized to do business in the State of California and shall be approved by the City Attorney and the City Engineer. Submittal of the Performance/Labor & Material Bonds is a requirement prior to CITY's issuance of an encroachment permit to do work in CITY's right-of-way. Submittal of the Warranty Bond is a requirement prior to the City Engineer's consideration of acceptance of the public improvements.

Note: If Cash Deposit Agreement Guaranteeing Improvements is utilized for security purposes, the Cash Deposit Agreement amount shall be two hundred (200%) percent of the aforementioned City Engineer's Estimated Costs of Improvements. In lieu of the above, CITY will accept a certificate of deposit in CITY's name with escrow instructions acceptable to the City Engineer, subject to the approval of the City Attorney.

The release of any securities shall be governed by the provisions of Section 12.02.170 of the Morgan Hill Municipal Code.

7. **Irrevocability of Security.** The securities provided under this Agreement shall be irrevocable, shall not be limited as to time, and may be released only upon the written approval of the City Engineer and City

Council, as described in Section 12.02.170 of the Morgan Hill Municipal Code.

8. **Duty to Warn.** PROPERTY OWNER shall give adequate warning to the public of each and every dangerous condition which may exist in the Improvements and will take all reasonable actions to protect the public from any dangerous condition.

9. **Warranty.** PROPERTY OWNER guarantees and warrants the Improvements required by this Agreement and agrees to remedy any defects in the Improvements arising from faulty or defective materials or construction occurring within twelve (12) months after acceptance by CITY of said Improvements. Following notice, PROPERTY OWNER shall, without delay or cost to CITY, repair, replace, or reconstruct any defective or unsatisfactory portion of Improvements. CITY may, at its sole option, perform the repair or replacement itself if PROPERTY OWNER has failed to commence repair within twenty (20) days after CITY has mailed written notice to PROPERTY OWNER. In such event, PROPERTY OWNER agrees to pay the cost of repair and replacement, plus 15%, by CITY; and CITY may recover such costs as a lien against the Development. CITY may proceed immediately to make repairs should an emergency arise without waiving its rights of recovery against PROPERTY OWNER.

10. **Failure of Performance.** In addition to the other remedies provided by this Agreement, CITY shall have recourse to the security given. In the event that CITY seeks recourse against any security, CITY shall have recourse against PROPERTY OWNER for any and all amounts necessary to complete the obligation. All administrative costs, including attorneys' fees shall be a proper charge against the security and PROPERTY OWNER pursuant to Government Code. 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 PROPERTY OWNER's default shall be measured by the cost of completing the required Improvements.

11. **Certificate of Occupancy.** PROPERTY OWNER understands that CITY will expect completion, to the satisfaction of CITY, of specific public improvements as well as private utility improvements prior to CITY Approval of a Certificate of Occupancy for any building on the Development property. The specific improvements shall include activation of all public utilities (water, sewer, storm drain); activation of all private utilities (electric, gas, phone) except for cable; street lights turn-on request filed with P G & E; and full street improvements (curb-gutter and paving with/without final lift) from existing public street to building under consideration for Certificate of Occupancy. PROPERTY OWNER, furthermore, agrees to so inform successor in lot interest should lot be transferred to another party prior to CITY acceptance of public improvements.

12. **Final Toxic Report.** Where applicable, PROPERTY OWNER hereby agrees to furnish the City Attorney with a copy of the Final Toxic Report issued by the appropriate licensed consultant on the proposed Development. This report must be received prior to final acceptance of on-site improvements and issuance of certificate of occupancy.

13. **Public Improvements Fee Schedule.** PROPERTY OWNER shall pay the following sums in cash to CITY pursuant to the provisions of Resolution 1383 and any amendments thereto. These sums shall be paid to CITY at the time of issuance of the Development Permit and shall be in accordance with the Department of Public Works Fee Schedule(s) attached hereto demonstrating a current Total Fee Obligation of \$1,251,398 and \$446,824. All Fees are estimated and may be increased by CITY subject to current

resolutions and ordinances. These fees are subject to a minimum annual revision. PROPERTY OWNER consents to increases in these fees. This Agreement shall not be construed to fix or freeze fees as of any point prior to issuance of Development Permits.

All development fees shall be those in effect at the time of the issuance of the Development Permit for this Development. This Agreement does not entitle the developer to any permit including a grading permit. A separate application for a grading permit should be made to the Building Department.

14. **Other Agreements Associated with This Improvement Agreement:** The following "checked off" Agreements are understood to be associated with this Agreement and have been fully executed prior to or concurrent with this Agreement:

☐ CITY "Streets" Reimbursement Agreement (CITY Ordinance 982)

PROPERTY OWNER acknowledges and agrees that the property is subject to a Reimbursement Agreement whereby PROPERTY OWNER must reimburse CITY for all costs associated with off-site improvements completed by the CITY and/or others or to be completed by CITY and/or others. PROPERTY OWNER agrees to pay CITY for all sums already incurred under the reimbursement agreement prior to issuance of any building permits. If the improvement has not been completed by CITY and/or others, then PROPERTY OWNER or successor-in-interest agrees to fully reimburse CITY for all costs incurred by CITY and/or others in constructing the improvements.

☐ CITY Public/Private Utility Reimbursement Agreement

☐ Landscape & Lighting Maintenance Assessment District Annexation

☐ Improvements Deferral Agreement

15. **Insurance Requirements.**

Commencement of Improvements. Before beginning construction of the improvements, PROPERTY OWNER 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 PROPERTY OWNER 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 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. Coverages may be provided by PROPERTY OWNER's General Contractor if PROPERTY OWNER is not directly insuring such exposures under an "Owners and Contractors Protective Liability Policy (OCP)" on which CITY would be an additional insured. If PROPERTY OWNER will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then PROPERTY OWNER may opt to have all coverages provided by PROPERTY OWNER's General Contractor, provided that a written contract is executed between PROPERTY OWNER 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 PROPERTY OWNER fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement, CITY may, at its sole discretion, purchase such coverage at PROPERTY OWNER's expense and deduct the cost from payments due to PROPERTY

OWNER, assess payment against Development, or terminate the Agreement for default. Any deductibles or self-insured retentions must be declared to and approved by City. PROPERTY OWNER further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to PROPERTY OWNER, at any time as deemed necessary to protect the interests of CITY.

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

(1) Commercial General Liability Insurance ("CGL"): PROPERTY OWNER shall maintain CGL and shall include coverage for liability arising from PROPERTY OWNER'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 PROPERTY OWNER under PROPERTY OWNER'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 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: PROPERTY OWNER 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 PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If PROPERTY OWNER is self-insured, PROPERTY OWNER must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

(3) Automobile Liability: PROPERTY OWNER shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if PROPERTY OWNER does not own automobiles, then PROPERTY OWNER 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 PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(4) Pollution (Environmental) Liability: The performance of PROPERTY OWNER'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. PROPERTY OWNER shall procure and maintain Pollution Liability covering PROPERTY OWNER'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 PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(b) Required Endorsements. PROPERTY OWNER shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(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 CITY and 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.

b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing.

(c) Subcontractors. PROPERTY OWNER must ensure that each subcontractor is required to maintain the same insurance coverage required under this Section 15, 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 "VII" or better.

(e) Certificates. PROPERTY OWNER 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, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to the PROPERTY OWNER's agreement 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 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

16. **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.
17. **Non-Discrimination.** PROPERTY OWNER covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.
18. **Independent Contractor.** It is agreed to that PROPERTY OWNER shall act and be an independent contractor, and not an agent or employee of CITY.
19. **Compliance with Law.** PROPERTY OWNER shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
20. **Right to Inspect and Inspection Fees.** PROPERTY OWNER shall at all times maintain proper facilities and provide safe access for inspection for CITY and its employees to all parts of the Improvements. PROPERTY OWNER 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.
21. **Conflict of Interest and Reporting.** PROPERTY OWNER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
22. **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 PROPERTY OWNER is as follows:
Morgan Hill Multifamily LLC c/o Craig Jones, President
4 Park Plaza
Irvine, CA 92614
- b. Address of CITY is as follows:
City Engineer
City of Morgan Hill
- With a copy to:
City Clerk
City of Morgan Hill

23. **PROPERTY OWNER'S Representations.** This Agreement shall include application or items submitted by PROPERTY OWNER to CITY'S Planning Department, Building Department, Planning Commission, and City Council. In the event of any inconsistency between their representations and this Agreement, this Agreement shall govern.

24. **Licenses, Permits and Fees.** PROPERTY OWNER shall obtain a CITY Business License, all permits, and licenses as may be required by this Agreement.

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

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

27. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement nor any portion shall be assigned by PROPERTY OWNER without prior written consent of CITY.

28. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

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

30. **Indemnification.** PROPERTY OWNER agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by PROPERTY OWNER, PROPERTY OWNER'S agents, officers, employees, subcontractors, or independent contractors hired by PROPERTY OWNER. The only exception to PROPERTY OWNER'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by PROPERTY OWNER.

31. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written agreement executed by CITY and PROPERTY OWNER.

32. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Santa

Clara County Superior Court.

33. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

34. **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.

35. **Agreement Runs With the Land.** 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 issuance of the Development Permit and shall constitute a covenant running with the land and an equitable servitude upon the Development real property.

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36. **Recording.** It shall be the responsibility of CITY to cause the executed Agreement to be recorded.

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.]

ATTEST:

THE CITY OF MORGAN HILL

City Clerk, Michelle Bigelow

Date: _____

City Manager, Christina Turner

Date: _____

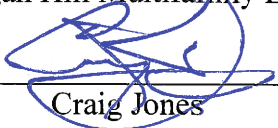
APPROVED AS TO FORM:

“PROPERTY OWNER”

Morgan Hill Multifamily LLC

City Attorney, Don Larkin

Date: _____

By:  Craig Jones

Title: President

Date: 2/2/22

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.

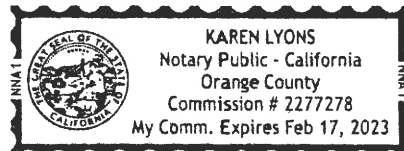
State of California
County of Orange)

On 2/2/22 before me, Karen Lyons, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.



Signature Karen Lyons (Seal)

EXHIBIT A
IMPROVEMENTS AND
ESTIMATED COSTS OF IMPROVEMENTS
AS OF JANURAY 2020

	Quantity	Unit	Cost	Total
Jarvis frontage				
4" PCC Sidewalk & Base	5085	SF	\$5.00	\$25,425.00
1" Water Meter	1	EA	\$493.00	\$493.00
8" Water Meter	2	EA	\$14,990.00	\$29,980.00
8" Water main	220	LF	\$60.00	\$13,200.00
Grading - Basin				
Excavation and Placement	7630	CY	\$8.00	\$61,040.00
Storm Drain - Basin				
4" SD (Perforated PVC)	260	LF	\$40.00	\$10,400.00
18" SD (RCP)	68	LF	\$55.00	\$3,740.00
24" SD (RCP)	60	LF	\$56.00	\$3,360.00
Basin inlet	2	EA	\$5,000.00	\$10,000.00
Basin Overflow Structure	1	EA	\$5,000.00	\$5,000.00
Basin Outlet Structure	1	EA	\$7,500.00	\$7,500.00
Miscellaneous - Basin				
Biotreatment Soil - Basin	2620	CY	\$70.00	\$183,400.00
Drain Rock - Basin	1310	CY	\$50.00	\$65,500.00
Total				\$419,038.00

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

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and _____ (hereinafter designated as "principal") have entered into an Improvement Agreement:

[ENTER PROPERTY OWNER NAME]
[ENTER APN & ADDRESS]

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20_____, and identified as project _____, 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 _____ dollars (\$_____) 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

Performance Bond

Page 1 of 3

Version: December 2017

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 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 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 ____ .

Principal

Principal

By: _____
Surety

By: _____
Attorney-in Fact

By: _____
California Resident Agent

By: _____
Non-resident Agent - Attorney-in-Fact

APPROVED:

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

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

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

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)

Performance Bond
Page 3 of 3
Version: December 2017

EXHIBIT "C"
FORM OF 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 [ENTER PROPERTY OWNER NAME] (hereinafter designated as "the principal") have entered into an Improvement Agreement:

[ENTER PROPERTY OWNER NAME]
[ENTER APN & ADDRESS]

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20_____, and identified as project _____, 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, hereinafter called "City," 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 City and all contractors, subcontractors, laborers, materialmen, 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 _____ dollars (\$_____), 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 City 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:

Labor and Material Bond

Page 1 of 3

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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 ____ .

Principal Principal

By: _____
Surety

By: _____
Attorney-in Fact

By: _____
California Resident Agent

By: _____
Non-resident Agent - Attorney-in-Fact

APPROVED:

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney
Date: _____

(Acknowledgment on following page.)

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

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

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)

Labor and Material Bond

Page 3 of 3

Version: December 2017

EXHIBIT “D”
FORM OF 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 _____ (hereinafter designated as “Principal”) have entered into an Improvement Agreement (hereinafter “Agreement”):

[ENTER PROPERTY OWNER NAME]
[ENTER APN & ADDRESS]

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter “Improvements”), which said Agreement, dated _____, 20_____, and identified as project _____, 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 _____ dollars (\$____) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

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

Warranty Bond
Page 1 of 3
Version: April 2019

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 the 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.

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

SURETY:

Principal:

Date: _____

Date: _____

s/ _____

s/ _____

Name: _____

Name: _____

Title: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____

Date: _____

Donald A. Larkin, City Attorney

Warranty Bond
Page 2 of 3
Version: April 2019

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)

Warranty Bond
Page 3 of 3
Version: April 2019



CITY OF MORGAN HILL PUBLIC WORKS DEPARTMENT

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

FEE SCHEDULE: 07.01.2018	
DATE 2/5/2022	
Butterfield Village Apartments TRACT / APN	PER RESOLUTION 5902, EFFECTIVE JULY 1, 2006 AND PER RESOLUTION 5592, INCREASED JANUARY 15, 2009 AND PER RESOLUTION 6082, EFFECTIVE FEBRUARY 5, 2007 **SEE BACK PAGE FOR ADDITIONAL FEE RESOLUTIONS
Jarvis and Sutter ADDRESS / LOT	
396 Apartments (Multi -Family Units) PROJECT DESCRIPTION	FEE SCHEDULE LOCKED BY DA FEE SCHEDULE EXPIRATION DATE
	Morgan Hill Multifamily LLC NAME
	4 Park Plaza MAILING ADDRESS
	Irvine California CITY, STATE, ZIP CODE
	PHONE NUMBER

NOTES:

ENGINEERING GRADING FEE

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

☐ THIS FEE SCHEDULE IS ESTIMATE ONLY

CHARLIE HA
CALCULATED BY

CHARLIE HA
CHECKED BY
PWPR2020-0007
GRD2021-0001
ENGR PWPR #

N/A
DATE BLD PERMIT ISSUED

SEWER IMPACT FEES WITHIN RDA BOUNDARY

CHECK APPLICABLE SCENARIO BELOW

☒ COMMERCIAL OR INDUSTRIAL WITHIN RDA BOUNDARY

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

☐ RESIDENTIAL PROJECTS WITHIN RDCS DOWNTOWN AREA

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

☐ NOT IN RDA AREA BOUNDARY

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

☐ COMMERCIAL OR INDUSTRIAL SHELL

**RDA SEWER ALLOCATION
COMPLETED BY:**
(write Initials below)

version 07.01.18 std

WATER FEES:

1. METER DEPOSIT:					650-37672	
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.18)						
1"	\$493	x	1	=	\$493	
1 1/2"	\$1,737	x	0	=	\$0	
8"	\$14,990	x	2	=	\$29,980	
*8" water meter @ \$14,805 with MXU Radio Read @ #185 = \$14,990						
METER CREDITS						
	\$0	x	0	=	\$0	
SUBTOTAL =					\$30,473	
2. BACKFLOW CONST. INSPECTION:					650-37859	
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.18)						
	\$66	x	3	Each	=	\$198
3. WATER FRONTAGE CHARGE:					650-37663	
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.18)						
1 Side	\$70	x	0	LF	=	\$0
2 Sides	\$39	x	1036	LF	=	\$40,404
Public funds used to for public improvements on Jarvis						
4. WATER IMPACT FEE:					651-37648	
(Auth: Res. #5592 approved 08.21.02, Increased 01.15.18)						
a) Residential						
\$3,770 /DU	x		DU	=	\$3,770	
(Single Family)						
\$3,401 /DU	x	0	DU	=	\$0	
(Multi Family)						
b) Commercial & Industrial						
(Includes Landscape Service)						
\$10,701 /AC	x	0	AC	=	\$0	
WATER CREDITS						
	\$0	x	0	=	\$0	
SUBTOTAL =					\$3,770	
WATER FEE TOTALS =					\$74,845	
5. ENGINEERING & INSPECTION FEE:					206-38734	
(Minimum \$500.00):						
(Authority: Res. #5902 approved 05.04.05, Updated 07.01.09)						
*ENGINEERING ESTIMATE:					\$1,086,663	
DATE ENGINEERING EST. SUBMITTED:					3/20/2020	
% APPLIES TO ENGINEER'S ESTIMATE						
13.3%	\$1	to	\$100,000	=	\$13,300	
11.8%	\$100,001	to	\$200,000	=	\$11,800	
10.3%	\$200,001	to	\$500,000	=	\$30,900	
8.8%	OVER		\$500,000	=	\$51,626	
ENGINEERING FEE					=	\$107,626
DEPOSIT PAID					=	\$10,000
ENGINEERING FEE TOTAL =					\$97,626	
*Grading cost @ \$966,738 and public improvements @ \$119,925						
5A. LONG RANGE PLANNING FEE:					207-37912	
LONG RANGE PLANNING FEE (15% of E&I) =					\$16,144	

SEWER FEES:

6. SEWER FRONTAGE CHARGE:										640-37663	
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.18)											
1 Side	\$70	/LF	x	0	LF	=		\$0			
2 Sides	\$39	/LF	x	1036	LF	=		\$40,404			
Public funds used to for public improvements on Jarvis											
7. SEWER IMPACT FEE:										641-37648	
(Auth: Res. #6082 approved 02.05.07 & Res. #5592 approved 08.21.02, Increased 01.15.18).											
a) Residential											
\$14,753	/DU		x	0	DU	=		\$0			
(Single Family)											
\$12,486	/DU		x	0	DU	=		\$0			
(Multi Family)											
b) Commercial & Industrial											
\$50.51	/GPD		x	0	GPD	=		\$0			
\$50.51	/GPD		x	0	GPD	=		\$0			
SEWER CREDITS											
\$0			x	0		=		\$0			
RDA ASSUMED SEWER OBLIGATION											
\$14,680	/DU		x	0	DU	=		\$0			
(Single Family)											
\$12,424	/DU		x	0	DU	=		\$0			
(Multi Family)											
\$50.51	/GPD		x	0	GPD	=		\$0			
(Commercial & Industrial)											
SUBTOTAL										=	\$0
SEWER FEE TOTALS										=	\$40,404
STORM DRAIN FEES:											
8. STORM DRAIN FRONTAGE CHARGE:										304-37663	
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.18)											
1 Side	\$116	/LF	x	0	LF	=		\$0			
2 Sides	\$57	/LF	x	1036	LF	=		\$59,052			
Public funds used to for public improvements on Jarvis											
9. STORM DRAIN IMPACT FEE:										303-37648	
(Auth: Res. #5592 approved 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.18)											
\$4,002	/DU		x	0	DU	=		\$0			
(Single Family)											
\$2,081	/DU		x	396	DU	=		\$824,076			
(Multi Family)											
\$43,581	/ACRE		x	0	AC	=		\$0			
(Commercial & Office)											
\$31,730	/ACRE		x	0	AC	=		\$0			
(Industrial)											
STORM CREDITS											
\$0			x	0		=		\$0			
SUBTOTAL										=	\$824,076
STORM DRAIN FEE TOTALS										=	\$883,128

10. UNDERGROUNDING UTILITIES:					350-37649
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.18)					
1 Side	\$730	x	0	LF	= \$0
2 Sides	\$368	x	0	LF	= \$0
11a. PARK IMPACT FEE:					301-37648
(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.18)					
\$5,594 /DU		x	0	DU	= \$0
(Single Family - Sub)					
\$4,067 /DU		x	0	DU	= \$0
(Single Family - No Sub)					
\$5,390 /DU		x	0	DU	= \$0
(Multi Family - Sub)					
\$3,923 /DU		x	0	DU	= \$0
(Multi Family - No Sub)					
11b. PARK MAINTENANCE DEV. FEE:					302-37649
\$0		x	0	EACH	= \$0
PARK CREDITS					
\$0		x	0		= \$0
PARK FEE TOTAL =					\$0
12. TRAFFIC IMPACT FEE:					309-37648
(Auth: Res. #15-152 approved 06.17.15 & Res. #5592 approved 08.21.02, Increased 01.15.18).					
\$1,938 /DU		x	0	DU	= \$0
(Single Family)					
\$1,202 /DU		x	0	DU	= \$0
(Multi Family)					
\$1,938 /PHT		x	0	PHT	= \$0
(Commercial)					
\$1,938 /PHT		x	0	PHT	= \$0
(Industrial)					
TRAFFIC CREDITS					
\$0		x	0		= \$0
TRAFFIC FEE TOTAL =					\$0
13. LIBRARY IMPACT FEE:					348-37648
(Auth: Res. #5837 appr'd 09.01.04, Amdd by Res. 6326 4.28.10, Increased 01.15.18)					
\$2,054 /DU		x	0	DU	= \$0
(Single Family)					
\$1,979 /DU		x	0	DU	= \$0
(Multi Family)					
LIBRARY CREDITS					
\$0		x	0		= \$0
LIBRARY FEE TOTAL =					\$0
14. BURROWING OWL MITIGATION:					232-38145
(Authority: Res. #5765 approved 01.21.04, Increased 07.01.18)					
\$214 /DU			0	DU	= \$0
(Residential)					
\$1,496 /AC			0	AC	= \$0
(Commercial/Industrial)					

15a. MAP CHECK FEE:					206-38716
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.18)					
PARCEL MAP:	\$5,146	=			\$0
TRACT MAP:	\$8,111	=			\$0
LOT LINE ADJ/MERGER:	\$2,843	=			\$0
16. POLICE IMPACT FEE:					311-37648
(Auth: Res. #5686 appr'd 06.18.03, Amdd by Res. 6326 4.28.10, Increased 01.15.18)					
\$798 /DU		x	0	DU	= \$0
(Single Family)					
\$771 /DU		x	0	DU	= \$0
(Multi Family)					
\$1,733 /ACRE		x	0	AC	= \$0
(Commercial)					
\$2,427 /ACRE		x	0	AC	= \$0
(Industrial)					
POLICE CREDITS					
\$0		x	0		= \$0
POLICE FEE TOTAL =					\$0
17. FIRE IMPACT FEE:					313-37648
(Auth: Res. #6671 approved 07.17.13, Increased 01.15.18)					
\$123 /DU		x	0	DU	= \$0
(Single Family)					
\$117 /DU		x	0	DU	= \$0
(Multi Family)					
\$1,612 /ACRE		x	0	AC	= \$0
(Commercial)					
\$1,612 /ACRE		x	0	AC	= \$0
(Industrial)					
FIRE CREDITS					
\$0		x	0		= \$0
FIRE FEE TOTAL =					\$0
18. PUBLIC FACILITIES IMPACT FEE:					347-37648
(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.18)					
\$533 /DU		x	0	DU	= \$0
(Single Family)					
\$513 /DU		x	0	DU	= \$0
(Multi Family)					
\$1,173 /ACRE		x	0	AC	= \$0
(Commercial)					
\$1,642 /ACRE		x	0	AC	= \$0
(Industrial)					
PUBLIC FACILITIES CREDITS					
\$0		x	0		= \$0
PUBLIC FACILITIES FEE TOTAL =					\$0
20. COMMNTY/REC CTRS IMPACT FEE:					360-37648
(Auth: Res. #15-152 appr'd 8.17.15, increased 01.15.18)					
\$3,810 /DU		x	0	DU	= \$0
(Single Family)					
\$3,343 /DU		x	0	DU	= \$0
(Multi Family)					
PUBLIC FACILITIES CREDITS					
\$0		x	0		= \$0
PUBLIC FACILITIES FEE TOTAL =					\$0

19. MISC FEE		
SWRMP	(206-38734) =	\$2,846
Street ROW Review	(206-38737) =	\$2,541
Public Easement Review	(206-38737) =	\$2,541
SWPPP City Inspections 6 months	(232-37688) =	\$12,695
TOTAL FEES =		\$20,623

OTHER:		
Jarvis Improvement Cost	(346-37649) =	\$119,168
	=	
	=	
TOTAL FEES DUE =		\$1,251,938

Notes & Comments: PER THE PROJECT DEVELOPMENT AGREEMENT - FEES ARE FIXED TO THIS FEE SCHDULE

Right of way Fee (Deferred for public improvements)	Fee/acre	No. of acres	***Total
Butterfield Boulevard RDA right-of-way fee at \$3,345 per acre	\$3,345	x 19.5	\$65,228
***Project may be issued credit for out Tract frontage improvements			
other street/sidewalk improvements along Butterfield Blvd or other pubic improvements TBD by City Engineer.			

Jarvis Improvements*****	cost/feet	frontage in feet	cost
Curb and Gutter with 6" AB	\$24.00	x 1,036 =	\$24,864.00
4" AC/8"AB (20 feet wide)	\$64.00	x 1,036 =	\$66,304.00
Electroliers, Curb Inlets, striping		=	\$28,000.00
***** Jarvis improvements where constructed using public funds.			\$119,168.00

**OTHER FEE RESOLUTIONS:
 RESOLUTION 5006, EFFECTIVE 07.03.1996
 RESOLUTION 5128, EFFECTIVE 01.05.1998
 RESOLUTION 5658, EFFECTIVE 03.19.2003
 RESOLUTION 5686, EFFECTIVE 08.18.2003
 RESOLUTION 5765, EFFECTIVE 01.21.2004
 RESOLUTION 5837, EFFECTIVE 10.18.2004
 RESOLUTION 6080, EFFECTIVE 01.17.2007
 RESOLUTION 6133, EFFECTIVE 12.05.2007
 RESOLUTION 6326, EFFECTIVE 04.28.2010
 RESOLUTION 6671, EFFECTIVE 09.16.2013



CITY OF MORGAN HILL PUBLIC WORKS DEPARTMENT

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

1/20/2022	FEE SCHEDULE: 07.01.2018	Morgan Hill Multifamily LLC
DATE	PER RESOLUTION 5902, EFFECTIVE JULY 1, 2006 AND PER RESOLUTION 5592, INCREASED JANUARY 15, 2009 AND PER RESOLUTION 6082, EFFECTIVE FEBRUARY 5, 2007 **SEE BACK PAGE FOR ADDITIONAL FEE RESOLUTIONS	NAME
Butterfield Village Apartments		4 Park Plaza
TRACT / APN		MAILING ADDRESS
Jarvis and Sutter		Irvine California
ADDRESS / LOT		CITY, STATE, ZIP CODE
396 Apartments (Multi -Family Units)	FEE SCHEDULE LOCKED BY DA	
PROJECT DESCRIPTION	FEE SCHEDULE EXPIRATION DATE	PHONE NUMBER

NOTES:

Estopple Certificate Fees

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

☐ THIS FEE SCHEDULE IS ESTIMATE ONLY

CHARLIE HA
CALCULATED BY

CHARLIE HA
CHECKED BY
PWPR2020-0007
GRD2021-0001
BUILDING PERMIT #

TBD
DATE BLD PERMIT ISSUED

SEWER IMPACT FEES WITHIN RDA BOUNDARY

CHECK APPLICABLE SCENARIO BELOW

☒ COMMERCIAL OR INDUSTRIAL WITHIN RDA BOUNDARY

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

☒ RESIDENTIAL PROJECTS WITHIN RDCS DOWNTOWN AREA

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

☒ NOT IN RDA AREA BOUNDARY

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

☐ COMMERCIAL OR INDUSTRIAL SHELL

**RDA SEWER ALLOCATION
COMPLETED BY:**
(write Initials below)

version 07.01.18 std

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

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.18)

1"	\$493	x	0	=	\$0
1 1/2"	\$1,737	x	0	=	\$0
2"	\$2,134	x	0	=	\$0
3" or larger-Time & Material + Meter Cost				=	\$0

METER CREDITS

\$493	x	0	=	\$0
-------	---	---	---	-----

SUBTOTAL = \$0**2. BACKFLOW CONST. INSPECTION: 650-37859**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.18)

\$66	x	0	Each	=	\$0
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3. WATER FRONTAGE CHARGE: 650-37663

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.18)

1 Side	\$70	x	0	LF	=	\$0
2 Sides	\$39	x	0	LF	=	\$0

4. WATER IMPACT FEE: 651-37648

(Auth: Res. #5592 approved 08.21.02, Increased 01.15.18)

a) Residential					
\$3,770 /DU	x	0	DU	=	\$0
(Single Family)					
\$3,401 /DU	x	0	DU	=	\$0
(Multi Family)					

b) Commercial & Industrial					
(Includes Landscape Service)					
\$10,701 /AC	x	0	AC	=	\$0

WATER CREDITS

\$0	x	0	=	\$0
-----	---	---	---	-----

SUBTOTAL = \$0**WATER FEE TOTALS = \$0****5. ENGINEERING & INSPECTION FEE: 206-38734**

(Minimum \$500.00):

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

ENGINEERING ESTIMATE: \$0

DATE ENGINEERING EST. SUBMITTED: _____

% APPLIES TO ENGINEER'S ESTIMATE _____

13.3% \$1 to \$100,000 = \$0

11.8% \$100,001 to \$200,000 = \$0

10.3% \$200,001 to \$500,000 = \$0

8.8% OVER \$500,000 = \$0

ENGINEERING FEE = \$0

DEPOSIT PAID = \$0

ENGINEERING FEE TOTAL = \$0**5A. LONG RANGE PLANNING FEE: 207-37912**

LONG RANGE PLANNING FEE (15% of E&I) = \$0

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

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.18)

1 Side	\$70	/LF	x	0	LF	=	\$0
2 Sides	\$39	/LF	x	0	LF	=	\$0

7. SEWER IMPACT FEE: 641-37648

(Auth: Res. #6082 approved 02.05.07 &

Res. #5592 approved 08.21.02, Increased 01.15.18).

a) Residential					
\$14,753 /DU	x	0	DU	=	\$0
(Single Family)					
\$12,486 /DU	x	0	DU	=	\$0
(Multi Family)					
b) Commercial & Industrial					
\$50.51 /GPD	x	0	GPD	=	\$0
\$50.51 /GPD	x	0	GPD	=	\$0

SEWER CREDITS

\$0	x	0	=	\$0
-----	---	---	---	-----

RDA ASSUMED SEWER OBLIGATION

\$14,680 /DU	x	0	DU	=	\$0
(Single Family)					
\$12,424 /DU	x	0	DU	=	\$0
(Multi Family)					
\$50.51 /GPD	x	0	GPD	=	\$0
(Commercial & Industrial)					

SUBTOTAL = \$0**SEWER FEE TOTALS = \$0****STORM DRAIN FEES:****8. STORM DRAIN FRONTAGE CHARGE: 304-37663**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.18)

1 Side	\$116	/LF	x	0	LF	=	\$0
2 Sides	\$57	/LF	x	0	LF	=	\$0

9. STORM DRAIN IMPACT FEE: 303-37648

(Auth: Res. #5592 approved 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.18)

\$4,002 /DU	x	0	DU	=	\$0
(Single Family)					
\$2,081 /DU	x	0	DU	=	\$0
(Multi Family)					
\$43,581 /ACRE	x	0	AC	=	\$0
(Commercial & Office)					
\$31,730 /ACRE	x	0	AC	=	\$0
(Industrial)					

STORM CREDITS

\$0	x	0	=	\$0
-----	---	---	---	-----

SUBTOTAL = \$0**STORM DRAIN FEE TOTALS = \$0**

10. UNDERGROUNDING UTILITIES:		350-37649	
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.18)			
1 Side	\$730	x	0 LF = \$0
2 Sides	\$368	x	0 LF = \$0
11a. PARK IMPACT FEE:		301-37648	
(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.18)			
\$5,594 /DU		x	0 DU = \$0
(Single Family - Sub)			
\$4,067 /DU		x	0 DU = \$0
(Single Family - No Sub)			
\$5,390 /DU		x	0 DU = \$0
(Multi Family - Sub)			
\$3,923 /DU		x	0 DU = \$0
(Multi Family - No Sub)			
11b. PARK MAINTENANCE DEV. FEE:		302-37649	
\$0		x	0 EACH = \$0
PARK CREDITS			
\$0		x	0 = \$0
PARK FEE TOTAL =		\$0	
12. TRAFFIC IMPACT FEE:		309-37648	
(Auth: Res. #15-152 approved 06.17.15 & Res. #5592 approved 08.21.02, Increased 01.15.18).			
\$1,938 /DU		x	0 DU = \$0
(Single Family)			
\$1,202 /DU		x	0 DU = \$0
(Multi Family)			
\$1,938 /PHT		x	0 PHT = \$0
(Commercial)			
\$1,938 /PHT		x	0 PHT = \$0
(Industrial)			
TRAFFIC CREDITS			
\$0		x	0 = \$0
TRAFFIC FEE TOTAL =		\$0	
13. LIBRARY IMPACT FEE:		348-37648	
(Auth: Res. #5837 appr'd 09.01.04, Amdd by Res. 6326 4.28.10, Increased 01.15.18)			
\$2,054 /DU		x	0 DU = \$0
(Single Family)			
\$1,979 /DU		x	0 DU = \$0
(Multi Family)			
LIBRARY CREDITS			
\$0		x	0 = \$0
LIBRARY FEE TOTAL =		\$0	
14. BURROWING OWL MITIGATION:		232-38145	
(Authority: Res. #5765 approved 01.21.04, Increased 07.01.18)			
\$214 /DU			0 DU = \$0
(Residential)			
\$1,496 /AC			0 AC = \$0
(Commercial/Industrial)			

15a. MAP CHECK FEE:		206-38716	
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.18)			
PARCEL MAP:	\$5,146	=	\$0
TRACT MAP:	\$8,111	=	\$0
LOT LINE ADJ/MERGER:	\$2,843	=	\$0
16. POLICE IMPACT FEE:		311-37648	
(Auth: Res. #5686 appr'd 06.18.03, Amdd by Res. 6326 4.28.10, Increased 01.15.18)			
\$798 /DU		x	0 DU = \$0
(Single Family)			
\$771 /DU		x	0 DU = \$0
(Multi Family)			
\$1,733 /ACRE		x	0 AC = \$0
(Commercial)			
\$2,427 /ACRE		x	0 AC = \$0
(Industrial)			
POLICE CREDITS			
\$0		x	0 = \$0
POLICE FEE TOTAL =		\$0	
17. FIRE IMPACT FEE:		313-37648	
(Auth: Res. #6671 approved 07.17.13, Increased 01.15.18)			
\$123 /DU		x	0 DU = \$0
(Single Family)			
\$117 /DU		x	0 DU = \$0
(Multi Family)			
\$1,612 /ACRE		x	0 AC = \$0
(Commercial)			
\$1,612 /ACRE		x	0 AC = \$0
(Industrial)			
FIRE CREDITS			
\$0		x	0 = \$0
FIRE FEE TOTAL =		\$0	
18. PUBLIC FACILITIES IMPACT FEE:		347-37648	
(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.18)			
\$533 /DU		x	0 DU = \$0
(Single Family)			
\$513 /DU		x	0 DU = \$0
(Multi Family)			
\$1,173 /ACRE		x	0 AC = \$0
(Commercial)			
\$1,642 /ACRE		x	0 AC = \$0
(Industrial)			
PUBLIC FACILITIES CREDITS			
\$0		x	0 = \$0
PUBLIC FACILITIES FEE TOTAL =		\$0	
20. COMMNTY/REC CTRS IMPACT FEE:		360-37648	
(Auth: Res. #15-152 appr'd 8.17.15, increased 01.15.18)			
\$3,810 /DU		x	0 DU = \$0
(Single Family)			
\$3,343 /DU		x	0 DU = \$0
(Multi Family)			
PUBLIC FACILITIES CREDITS			
\$0		x	0 = \$0
PUBLIC FACILITIES FEE TOTAL =		\$0	

19. RDCS MEASURE C FEES:			
School Pedestrian Safety	(355-37655)	=	\$64,000
Water Infrastructure	(346-37649)	=	\$127,608
WasteWater Infrastructure	(346-37649)	=	\$127,608
Stormwater Improvements	(346-37649)	=	\$127,608
TOTAL RDCS MEASURE C FEES		=	\$446,824

OTHER:			
LED Streetlight Fund	(010-37722)	=	\$0
		=	\$0
		=	\$0
TOTAL FEES DUE		=	\$446,824

Notes & Comments:

Fees due are per Estoppel Certificate – Residential Development Agreement for the lands of Butterfield Village.

See attached Estopple (non - executed).

**OTHER FEE RESOLUTIONS:

RESOLUTION 5006, EFFECTIVE 07.03.1996
RESOLUTION 5128, EFFECTIVE 01.05.1998
RESOLUTION 5658, EFFECTIVE 03.19.2003
RESOLUTION 5686, EFFECTIVE 08.18.2003
RESOLUTION 5765, EFFECTIVE 01.21.2004
RESOLUTION 5837, EFFECTIVE 10.18.2004
RESOLUTION 6080, EFFECTIVE 01.17.2007
RESOLUTION 6133, EFFECTIVE 12.05.2007
RESOLUTION 6326, EFFECTIVE 04.28.2010
RESOLUTION 6671, EFFECTIVE 09.16.2013



CITY COUNCIL STAFF REPORT

MEETING DATE: March 2, 2022

PREPARED BY:

Matthew Mahood, Economic Development Director

APPROVED BY: City Manager

APPROVE THE CONSULTANT AGREEMENT WITH CIVITAS ADVISORS IN THE AMOUNT NOT TO EXCEED \$64,500 FOR THE FORMATION OF MORGAN HILL DOWNTOWN PROPERTY BUSINESS IMPROVEMENT DISTRICT (MHDPBID) AND DIRECT THE CITY MANAGER TO SIGN THE PETITION IN SUPPORT OF THE DOWNTOWN PBID FORMATION

RECOMMENDATION(S)

1. Approve and authorize the City Manager to execute and administer a consulting agreement with Civitas Advisors not to exceed \$64,500 to form a Morgan Hill Downtown Property Business Improvement District (MHDPBID); and
2. Direct the City Manager to sign the MHDPBID petition indicating the City's support of the PBID formation.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

2020-2021 Strategic Priorities

Fiscal Sustainability

Economic Development

Guiding Documents

Morgan Hill 2035 General Plan

Economic Blueprint

Morgan Hill Downtown Specific Plan

REPORT NARRATIVE:

POLICY CONSIDERATION

Should the City Council collaborate with Downtown property owners to develop a Property Business Improvement District (PBID) to create a funding mechanism for Downtown property owners to help pay for enhanced safety, maintenance, marketing, and other beautification enhancements in Downtown?

PROJECT SUMMARY

On January 19, 2022, the City Council directed staff to bring forward a consulting contract to implement a Property Based Improvement District (PBID) for Downtown. This action is consistent with the City's Economic Blueprint work program and the Covid-19 Business Recovery Plan. In November and December 2021, City staff engaged Downtown property owners to gauge interest in a Downtown PBID formation. A survey of needs and wants has identified the top issues property owners would like to see addressed, including safety, maintenance, and beautification (Attachment A). The City of Morgan Hill is the largest property owner in Downtown, with just more than 40% of the real estate. As such, the City would also contribute to the PBID for enhanced services. The benefit of the PBID to the City is that the cost of enhanced services is shared with other property owners, instead of the City being the single entity responsible for maintenance, security, and other improvements. The City must continue to provide the current level of basic services, but it is possible that the PBID can fund certain improvements and enhancements that the City has considered on a one-time or pilot sort of basis. These activities include the twinkle lights, the MHPD Ambassador Cadet program and special events. A PBID can generate a sustainable funding source for the growing Downtown District while actively involving the property owners who benefit from the District's success to take an active role in its management and activation. Staff proposes that Council authorize the City Manager to execute and administer a consulting agreement with Civitas Advisors not to exceed \$64,500 to form a Morgan Hill Downtown Property Business Improvement District (MHDPBID). Staff requested proposals for the PBID and received two proposals, one from Civitas and one from NBS. Civita's proposal was the lowest proposal. Civitas has helped more than 150 clients develop tourism, business, and property districts. City staff have walked through the Civitas proposal in detail and have a good understanding of both the consultant roles and responsibilities and the expectations of City staff. The City of Morgan Hill recently contracted with Civitas to complete the Tourism Property Based Improvement District (TBID).

PBIDs

Property Business Improvement Districts (PBIDs) are special benefit assessment districts that provide enhanced maintenance, public safety, beautification, and economic development programs above and beyond the City's basic level of services. The enhanced services benefit the district and the properties within the district, resulting in higher property values, sales and tax revenues. These assessment districts help sustain the growing needs of a special district and spread the cost of enhanced services across the various property owners.

The City Council can establish a PBID after the owners of the district have indicated their support (or lack of opposition) for the PBID via a petition and a ballot or protest proceeding. Services and improvements are generally provided by a nonprofit organization, often called an "owners' association," which is under contract to the city. The owners' association prepares an annual report, which is used by the city as the basis for annual decision making.

The entirety of the capital cost of public improvement, the maintenance, and operation

expenses of the PBID shall be directly proportionate to the proposed annual levy and in relationship to benefits to the individual properties within the district.

BACKGROUND

In 2006, the City of Morgan Hill worked with the Downtown property owners to establish a Property Based Improvement District (PBID). In 2011, the PBID was renewed for an additional five years, after receiving approval by the Downtown commercial property owners. The PBID assessments were used to fund capital improvements, pedestrian security and safety, economic development, marketing, and to support public policy and advocacy. The PBID supported many efforts, including the installation of the Downtown speaker system, flower baskets, benches, flags, production of marketing materials, Downtown events, and provided advocacy for improving lighting, streets, promoting outdoor dining and retail, street banners, and new trash and recycle bins.

The City Council entered into an Agreement with the Morgan Hill Downtown Property Business Improvement District (MHPBID), for the operation and administration of the District, including administration of the funds generated from the annual assessments of the Downtown properties. That Agreement was renewed annually with the Council's review and approval of the PBID's Annual Assessment Report, as required by State Law, which included the proposed budget, annual assessment, and work program for the following year. The MHPBID Board was comprised of seven members, of which three positions were voting member positions. The remaining four positions included one representative from the City, one representative from the Downtown Association, and two honorary members – all feedback-driven and non-voting positions. After six years, the Council terminated the PBID management agreement in July 2013 due to a lapse in the tax-exempt corporation status.

The State of California requires that the City contract with a non-profit organization for the management of a Business Improvement District, and therefore, the City could no longer be under contract with the MHPBID for the management of the PBID. Additionally, the MHPBID had significant liability on past-due taxes as a result of their lack of tax-exempt status. The tax liability has been resolved and the non-profit was dissolved.

PBID Formation Process

To create a new Downtown PBID, the City proposes contracting with Civitas, who specializes in the formation of Business Districts, and who created the City's most recent Tourism Based Improvement District (TBID) and proved to offer the lowest bid for the PBID. The PBID formation requires the following steps:

Step One: Initiation and Structure. Civitas will work with the City to identify the respective roles of all parties in the process, review potential parameters, and clarify the desired goals of the MHPBID. This step includes identification of the Steering Committee, database, and district boundary development.

Step Two: Consensus Building & Education. Outreach efforts are undertaken in this step to connect with property owners. This step includes Budget Development that

articulates the detailed costs required to provide services desired by the PBID stakeholders. In this step, Civitas will work with the steering committee to identify the assessment formula, estimating the per parcel/property assessment amount.

Step three: Management District Plan Development. Civitas will draft the Management District Plan which governs the District. In this step, an Engineer's Report is prepared supporting the assessment required.

Step Four: Plan Review & Consensus. Civitas will submit the draft Management District Plan to the steering committee, stakeholders, and the City for review, and make changes as necessary. In addition, Civitas will plan for the property owner petition drive, balloting process, as well as the public hearing process.

Step Five: Petition Preparation & Collection. Civitas will draft the petition and prepare an electronic version of the petition, which requires signatures of property owners totaling fifty percent (50%) of the entire assessment amount weighted by assessments paid.

Step Six: City Council Hearing & Ballot. Civitas will prepare ballots, Resolution of Intention, assist in final ballot tabulation and participate in City Council hearing.

Step Seven: Corporation Formation. Civitas will assist in the forming of a new non-profit corporation to serve as the MHPBID's Owners' Association, assist with document preparation and filing, including all forms to secure nonprofit tax-exempt status.

City Role in PBID

The City of Morgan Hill plays two distinct roles in the formation and adoption of a PBID. First, they act as the governing body which adopts the resolution for the PBID to be enacted after a successful vote of the property owners, collects the assessment for distribution to the district and administers the collection of the assessment. Second, they act as a property owner/stakeholder.

As administrators of the District, the City should ensure this new effort has better checks and balances, and accountability on the non-profit administering the MHPBID. Further, the City may choose to ensure adequate City representation is included in the MHPBID managing board, similar to the City's Visit Morgan Hill Board/TBID.

As a property owner, the City has the ability to participate in the formation of the District. As the largest property owner and contributor to the District, the City may choose to ensure the services provided by the PBID are also in alignment with the City's vision for Downtown.

CONCLUSION

The City of Morgan Hill provides basic maintenance and repair in the Downtown district. The City's aging landscape infrastructure, new city parks, and new parking garage, demand more attention. Additionally, an increase in use and visitor trips will cause even greater wear. Outdoor dining requires enhanced sidewalk cleaning and more consistent litter abatement. Over the years, the City has supported Downtown with one-time or

annual additional services such as the twinkle lights, funding support for special events such as Safe Trick-or-Treat or the addition of the Morgan Hill Police Department Ambassador Cadet Program. These services are not part of the on-going, basic level of services and are offered as funding is available. The City can elect to pass on these costs to the PBID, as well as fund additional enhancements. Over the course of the two months of surveys, business visits, working group meetings, Downtown residents' night, town halls, walking tours and partner presentations, the Community has expressed a list of potential improvements to the Downtown Corridor. They include:

- Enhanced Street and Sidewalk Cleaning
- Enhanced Security (more policing)
- Enhanced Landscape Maintenance
- Managing Parking
- Improving Side Street Lighting
- Adding Roofline Lighting
- Maintaining Tree Twinkle Lighting
- De-cluttering Sidewalks
- New Directional/Wayfinding Signage
- Decluttering of sidewalks by removing damaged or decaying planters and benches
- Replacing Black Locust Trees
- Adding Holiday Decorations and Activities
- Adding Art Installations and Murals
- Increase Downtown Destination Marketing
- Create New Events or Programs
- Support Capital Improvements
- Other

The recent conversation regarding the Monterey Road Lane Reduction, Place-Branding and Beautification project, identified ways to make Downtown a destination, create opportunities for programming and activation, create gathering spaces for the community, support business recovery, add interest and create culture. Many of the programs and projects listed above go well beyond what would normally be funded by a local city or government jurisdiction. Given the City's current fiscal constraints and desire to focus its resources on essential services, these programs and projects could potentially be funded through a Property Based Improvement District (PBID).

COMMUNITY ENGAGEMENT:

The PBID was discussed at the January 19, 2022 City Council meeting as part of the staff recommendations.

City staff will be collaborating with Downtown property owners.

ALTERNATIVE ACTIONS:

The City Council could decide not to move forward with the PBID at this time.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On January 19, 2022, the City Council directed staff to bring forward a consulting contract to implement a Property Based Improvement District (PBID) for Downtown. This action is consistent with the City's Economic Blueprint work program and the Covid-19 Business Recovery Plan.

In 2006, the City of Morgan Hill, with support from the City Council, worked with the Downtown property owners to establish a Property Based Improvement District (PBID).

FISCAL AND RESOURCE IMPACT:

The Civitas Advisors contract will be paid from the General Fund. Once the MHDPBID is formed, the City will seek reimbursement from the MHDPBID for the initial start-up costs including the cost of Civitas Advisors contract.

Based on a March 2021 review, the City of Morgan Hill owns approximately 40.4% of the real estate located within the boundaries of the proposed Downtown Morgan Hill Assessment District. The City will be responsible for contributing to the MHDPBID annually for its fair share of assessment based on the property location within the assessment district and assessment rate. The assessment rate will be determined during the Engineer's Report and included in the Management District Plan that will be brought back to the City Council. While the City may need to contribute to the PBID, the City may be able to save on current one-time funding type of services with the establishment of the PBID. The City will need to help administer the collection of the PBID and should the PBID pass, the City will apply a 2% administrative fee to the PBID for the collection and distribution of the assessment.

CEQA (California Environmental Quality Act):

Not a Project - Pursuant to CEQA, organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment and are therefore exempt activities.



MORGAN HILL DOWNTOWN PROPERTY BUSINESS IMPROVEMENT DISTRICT FORMATION 2022

Matt Mahood
Economic Development Director
City of Morgan Hill

December 7, 2021





Dear Matt,

I am pleased to present to you our enclosed proposal for services to form the Morgan Hill Downtown Property Business Improvement District ("MHDPBID"). Civitas has been forming and renewing improvement districts since 1994 and will provide expert advice and guidance throughout this project.

Our process to form the MHDPBID is designed to secure significant support for the project while complying with applicable laws. In concert with the City of Morgan Hill ("CMH"), the Civitas team will guide a formation process that includes developing and manipulating data, obtaining feedback from property owners, preparing legal documents, guiding the stakeholder approval process, and attending local government hearings.

Thank you for the opportunity to submit this proposal. I look forward to working with you on this exciting project.

Best Regards,

A handwritten signature in black ink, reading "John G. Lambeth".

John Lambeth,
President & CEO

THE OPPORTUNITY

In our recent conversations about the proposed Property Business Improvement District ("PBID") formation, you described the need for additional funding for services in the Morgan Hill Downtown. During the PBID formation, we will work together to address the need for increased revenue to create new economic development & marketing programs, as well as, security & safety programs for the MHDPBID.

Services provided by a PBID typically include clean and safe programs (security, maintenance, and landscaping) marketing, and business attraction. Programs can also be developed to install physical improvements, such as bus benches, garbage cans, signage, and trees. Some even undertake large-scale capital improvements, such as building underground power lines or recreational facilities.

Civitas has successfully completed over 150 district formation and renewal projects throughout the world which has generated over \$1.7 billion in dedicated funding for the specific needs of our clients. Each day, more than 2,000 Property Business Improvement Districts are at work making downtowns and business districts cleaner, safer, attractive, and more profitable.



SCOPE OF SERVICES & SCHEDULE

Step 1

Initiation & Infrastructure

The structure needed to carry out the project will be created in this step. Civitas will work with property owners and City staff to identify their respective roles in the formation process. Civitas will also begin develop and refine database information in this step.

Step 2

Consensus Building & Education

Outreach efforts are undertaken in this step to connect with property owners and City to gain their support for the proposed District. Civitas will assist with the formation of a steering committee. In addition we will guide a process of individual property owner meetings and property owner contacts.

Step 3

Management District Plan Development

In consultation with stakeholders and City staff, Civitas will draft the Management District Plan, which will serve as the District's governing document.

Step 4

Plan Review & Consensus

Civitas will submit the draft Management District Plan to the steering committee, stakeholders, and the City for review, and make changes as necessary.

Step 5

Petition Preparation & Collection

Civitas will prepare the necessary petition and work with the City to ensure it is satisfactory. Civitas will guide the steering committee in the petition collection process and work to execute a successful petition drive.

Step 6

City Council Hearings & Ballot

Civitas will assist in the hearing and ballot process which includes attending hearings and preparing the necessary materials to complete a successful balloting process.



John Lambeth
President & CEO



Kelly Rankin
Project Manager



Madison Deschamps
Legal Assistant



Sean Pratt
GIS & Database Specialist

MEET YOUR TEAM

At Civitas, we specialize in igniting local economies, creating jobs and establishing stable funding for destination promotions and downtown improvements throughout the United States. With more than 20 years of experience, we provide expertise in all aspects of forming, modifying, and renewing improvement districts. With offices in Sacramento, Los Angeles, and New York, our team of professionals has guided over 150 districts through the formation, modification or renewal process. With its deep experience and expertise, Civitas has been commissioned by the U.S. Travel Association to conduct nationwide studies.

Civitas also provides research, consulting, and district formation services to destinations located around the world, including Canada, South America, Europe, and Asia. A representative distant high-priced destination is Japan, where Civitas clients include Nomura Research Institute, Japan Area-Based Management Organization Network, Japan Travel Bureau, and Setouchi Tourism Authority. For its groundbreaking work, Civitas has been featured in publications such as Forbes and Skift.

INVESTMENT PROVISIONS

Investment

This proposal is based on the understanding that property owners and the CMH will provide assistance and time needed to facilitate the process on the local level, including some database work, time devoted to outreach meetings, and gathering support and signed petitions from businesses. The CMH’s investment for the scope of services and timeline described herein shall be \$60,000. The CMH’s investment includes three (3) trips to Morgan Hill to meet with property owners and City officials and to attend City Council hearings. If additional trips are necessary, we would be happy to make additional trips for a professional fee of \$1,250 per trip, plus expenses.

Expenses

The CMH will be responsible for all costs and expenses in addition to the professional fees. Ordinary costs and expenses, including telephone charges, postage, and photocopying will be billed at four percent (4%) of professional fees. Other costs, such as travel, overnight shipping, bulk mailing and printing costs (over 100 pages) shall be billed at Civitas’ actual cost. Expenses are not expected to exceed \$3,500.

In our conversations, you have let me know that the City of Morgan Hill was not interested in conducting an intercept survey for this project, therefore we did not include pricing for this service.

Investment Overview

Description	Price
Professional Fees	\$50,000
Engineer's Report	\$5,000
Non-Profit Corporate Formation (filing fees included)	\$6,000
Estimated Expenses	\$3,500
Total	\$64,500

Billing

Civitas proposes a fixed monthly fee of \$6,000 per month for ten (10) months, plus expenses. A start-up fee of ten percent (10%) of project costs, \$6,350, will be due and payable upon execution of an agreement for services between Civitas and the CMH. The amount of the start-up fee will be deducted from the final invoice, which will also be adjusted to account for the total contract price. Civitas will send the CMH a monthly invoice for fees and costs incurred. Invoices will include the fixed professional fee and expenses. The basis of calculation or other method of determining expenses will be clearly identified by item and amount.

Cost Assumptions and Guidelines

We have projected a specific amount of time for the MHDPBID formation. It is assumed that the project will not exceed the budgeted amount of time. If unanticipated matters result in additional time beyond that which has been projected, we would continue billing professional fees of \$5,000 per month, plus expenses, for the project duration. Factors that could increase the scope of work and estimated costs outlined above include additional meetings not described in this proposal, analysis of additional issues above those described in this proposal, or a lack of steering committee and business owner involvement in the project.

When Civitas' services conclude, all unpaid charges will immediately become due and payable. The amount of professional fees set forth in this agreement are a fixed amount for completion of the project within a maximum of ten (10) month time frame. The total amount of professional fees has been divided over the maximum ten (10) month time frame to determine the monthly billing amount. If the project is completed prior to the ten (10) month time frame, the remaining balance of professional fees will be due and payable within thirty (30) days of project completion.

As you know, there are many unknown variables in a project of this nature. Although we would work diligently to form the MHDPBID, factors outside Civitas and the CMH's control could delay or thwart even the best-developed plans. We will work to minimize risks and complete the project at the earliest possible date.

The pricing and scope outlined in this agreement will expire upon sixty (60) days post delivery of this proposal.

Business Information

The database for this project will rely on information from local government sources. Errors can and will occur in this data. While Civitas will do its utmost to identify and correct any errors, it is acknowledged that data from local government sources may contain errors. We recommend the CMH continue to pursue data correction strategies during and after formation, including mailings and error checking by local officials.



AGREEMENT

If you would like to agree to engage our services consistent with this proposal and the following terms, please sign below.

A start-up fee of ten percent (10%) of project costs, \$6,350, will be due and payable upon execution of this Agreement. Civitas will send the CMH a monthly invoice for fees and costs incurred. Each invoice will be payable within thirty (30) days of its mailing date. Either the CMH or Civitas shall have the right to terminate this Agreement upon ten (10) days' notice. If the agreement is terminated prior to the completion of the project, the CMH shall pay only for the months worked and expenses incurred up to that date. When Civitas' services conclude, all unpaid charges will immediately become due and payable, including the balance of any professional fees if the project is completed prior to the maximum ten (10) month time frame.

Nothing in this Agreement and nothing in statements by Civitas personnel to the CMH will be construed as a promise or guarantee about the outcome of the matter. Civitas makes no such promises or guarantees.

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them or an oral agreement only to the extent that the parties carry it out.

The parties agree to accept the terms and conditions herein.

City of Morgan Hill, by



SIGNATURE

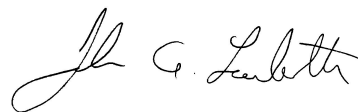
Matt Mahood

Not yet accepted

Date

Matt Mahood,
Economic Development Director

Civitas Advisors, by

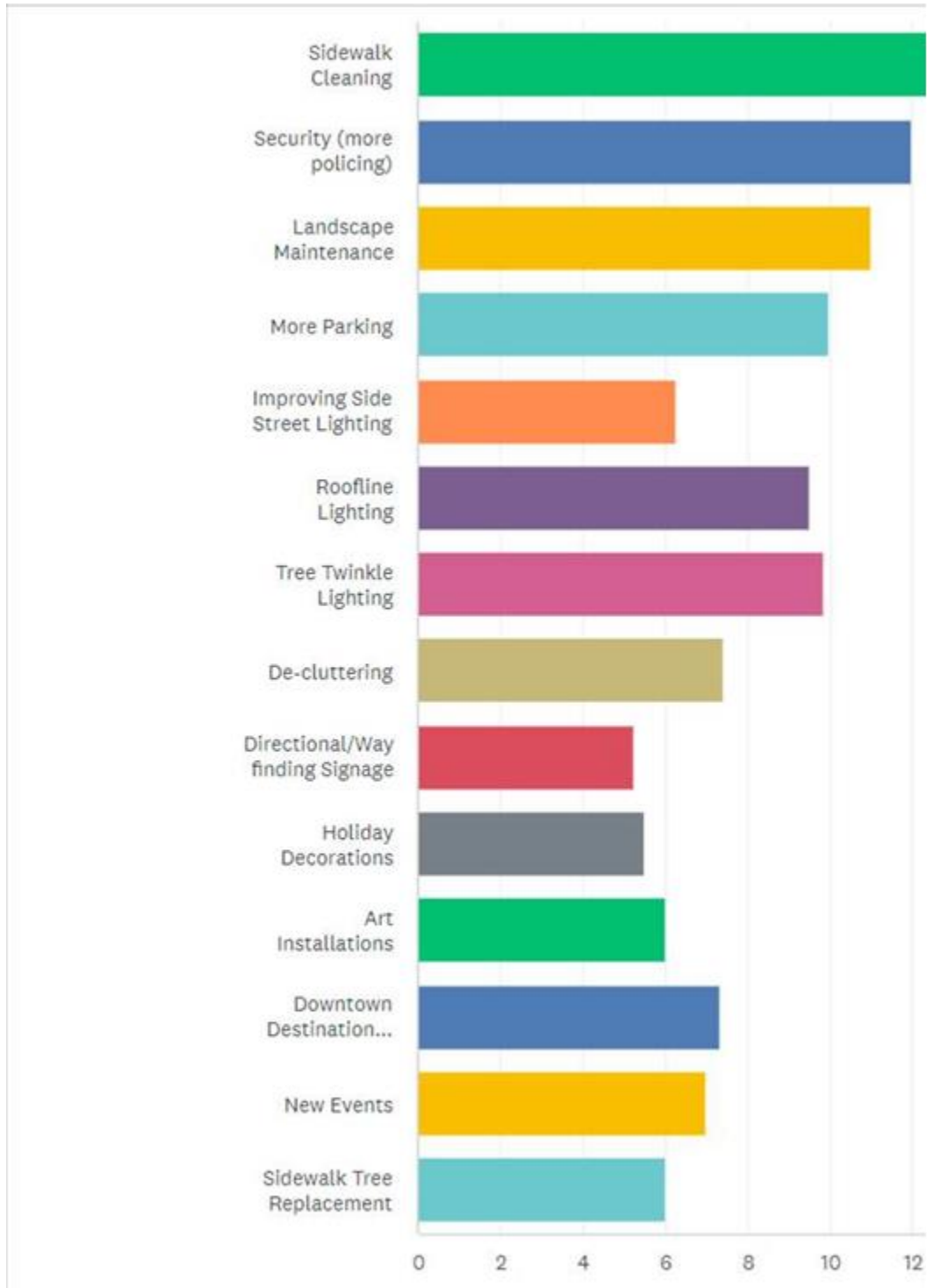
A handwritten signature in black ink, appearing to read "John G. Lambeth".

Not yet accepted

Date

John Lambeth, President & CEO

Below are the survey responses from the DT Property Owners sent in late December.



CONSULTANT AGREEMENT
Civitas Advisors, 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 Civitas Advisors 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 authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code.
2. **Term of Agreement**. This Agreement shall cover services rendered from the Effective Date of this Agreement until January 31, 2023, at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service**. The services to be performed by CONSULTANT shall be to assist the City in the formation of a Downtown Business Improvement District as further described in **Exhibit A**.
4. **Compensation**. CONSULTANT shall be compensated as follows:
 - 4.1. **Amount**. \$64,500.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Sixty-Four Thousand Five Hundred dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing**. CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so, provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination**. CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to

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

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

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

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

7.1. **Insurance Types and Amounts.**

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

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

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

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

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

7.1.5. Professional Liability.

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

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

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

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

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

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

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

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

7.2.1.3. Insurance shall be primary non-contributing.

7.2.2. **Workers Compensation**.

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

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

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

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

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

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

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

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

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

Civitas Advisor, Inc
1102 Corporate Way, Suite 140
Sacramento, CA 95831

Address of CITY is as follows:

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

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

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

16. **Maintenance of Records.**

- 16.1. **Maintenance.** CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then CONSULTANT shall retain said records until such action is resolved.
- 16.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 16.3. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

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

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

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

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

21. **Defense and Indemnification.**

21.1. **Defense and Indemnification.** CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, or pertain to, or relate to the willful misconduct, negligent acts, or willful or negligent omissions of CONSULTANT, or the failure to comply with any obligations contained in this Agreement by CONSULTANT ("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. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow

Christina J. Turner

Print Name

Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

Civitas, Advisors, Inc.

City Attorney

By:

Donald A. Larkin

Print Name

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

Date: _____

Date: _____

By:

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

Date: _____

EXHIBIT A SCOPE OF SERVICES

Seven (7) steps are anticipated over ten (10) months, resulting in successful MHDPBID formation. The seven (7) steps are outlined in detail below:

Step One: Initiation & Infrastructure

The structure needed to carry out the project will be created in this step. Civitas will work with the City to identify respective roles of all parties in the process, review potential parameters, and clarify the desired goals of the MHDPBID.

1.1 Identify Steering Committee of Property Owners

Civitas will work with the City to identify property owners to sit on a steering committee that will champion the creation of the Downtown Morgan Hill Property and Business Improvement District. Civitas will work with the City and stakeholders to clarify project parameters. Assignments for Civitas, the City, the steering committee, and stakeholders will be established. During this step, we will discuss the boundaries, discuss property owner benefits of the project, project milestones, and obtain other project-related information.

1.2 Submit Information Checklist

Civitas will submit to City staff and the MHDPBID steering committee a checklist of informational needs outlining specific data required in preparation for the formation of the PBID.

This step lays the groundwork needed to determine the feasibility of the DPPBID formation. A database, budget scenario, and assessment methodology will be developed during this step. Additionally, the method for determining the special versus general benefit will be discussed during this step, creating the foundation for the Engineer's Report in step three (3).

1.3 Database Development

The foundation of the district formation process is a thorough and accurate database. Civitas will use GIS software and data to update and manipulate a complete database of MHDPBID properties. The database will include variables like property owner name and mailing address, parcel information relevant to the calculation of the assessment, such as lot square footage. Civitas and the Engineer will continue to work on the database throughout the project.

1.4 Boundary Map

Civitas will use GIS software to create a map of the MHDPBID boundaries and any benefit zones. Customized maps will be made to display information throughout the process, which may demonstrate property type, support level, or similar characteristics.

Step Two: Consensus Building & Education

Outreach efforts are undertaken in this step to connect with property owners and the City to gain their support for the proposed District. In addition, we will guide a process of individual property owner meetings and property owner contacts.

2.1 Budget Development

Civitas will work with the steering committee to prepare budget projections and options for service category allocations. The budget will include both direct cost of services as well as staff required support to administrate the PBID and communicate with the general public and with assessed owners. This budget should include detailed costs required to provide the services desired by PBID stakeholders.

2.2 Prepare a Method of Assessment

Civitas will work with the steering committee to draft the assessment formula. This assessment information will be applied to the database to generate revenue estimates and individual parcel assessment amounts.

2.3 Property Owner Meetings

Civitas will attend a series of one-on-one and/or group property owner meetings with stakeholders. Each meeting will aim to attract stakeholders representing the many segments of properties within the MHDPBID formation. The meetings will identify priorities for specific services and identify the willingness of owners to pay for those services. The steering committee and the City will participate in the meetings.

2.4 Property Owner Survey

Owner outreach will include an online survey to gauge property owners' interest in forming a district and identify their priorities for services.

2.5 Develop Information Flyer

Develop an informational flyer, one or two pages in length, that can be used (handout, mailed) as an overview and communication tool for property owners, business owners, council members, staff, and other interested parties.

Step Three: Management District Plan Development

In consultation with stakeholders and City staff, Civitas will draft the Management District Plan, which will serve as the District's governing document.

3.1 Develop a Management Plan Outline (Service Plan)

Based on input from stakeholders, Civitas will prepare a Management Plan Outline. The draft will be used at the owner and steering committee meetings and revised throughout the outreach process based on feedback received. The service plan will include boundaries, assessment rates, budget, and services. The draft service plan will eventually become the basis of the Management District Plan.

3.2 Verify & Finalize Property Database

Civitas will confirm the parcel and area profile data including parcel use code, parcel assessed valuation, parcel acreage and building square footage, and updated parcel ownership information. This step will include finalizing the district boundaries and any benefit zones.

3.3 Confirmation of the Method of Assessment

Civitas will work with the Engineer to develop and review the assessment methodology, which will adhere to the requirements of special benefit and be used to calculate the finalized total budget. The assessment methodology will link the benefits of the MHDPBID to the assessed properties.

3.4 Special vs General Benefit Calculation

The Engineer will confirm the assessment methodology, which will adhere to the requirements of special benefit and be used to calculate the finalized total budget. The assessment methodology will link the benefits of the MHDPBID to the assessed properties.

To quantify the general benefit to parcels, the analysis will also include a review of parcels surrounding the District, which will be conducted by the Engineer.

3.5 Draft Management District Plan

Civitas will prepare a draft Management District Plan that complies with applicable laws and is a user-friendly education tool. The Management District Plan will include:

- Summary
- District rationale and objectives

- Boundaries and benefit zones
- Service plan options and budgets
- Assessment methodology
- Engineer's Report
- General benefit quantification
- Special benefit quantification
- Governance structure
- City base level of services, if applicable
- Rules, regulations, and term
- Exhibits including a map and list of parcels to be assessed

3.6 Draft Engineer's Report

Preparation of a draft Engineer's Report supporting the assessment is required. The Engineer will use the method of calculating the special versus general benefit in previous steps when drafting the report.

Step Four: Plan Review & Consensus

Civitas will submit the draft Management District Plan to the steering committee, stakeholders, and the City for review, and make changes as necessary.

4.1 Management District Plan Review

Civitas will present the draft Plan to the steering committee for their review and input. We will review and discuss the Plan with the steering committee and address any questions or concerns that arise. Based on steering committee input, Civitas will draft a final consensus Management District Plan. The Management District Plan will be submitted to the City Attorney for review and approval. Civitas will work with City staff to incorporate their comments and finalize the Management District Plan. This step will include significant correspondence with staff via email and conference calls.

4.2 Finalize Management District Plan & Engineer's Report

Edits proposed by the City may require the Engineer to review the updated Management District Plan. Civitas will coordinate with the Engineer to ensure any edits meet their approval. Civitas will prepare the final Management District Plan. The property owner petition drive and balloting process require extensive planning and organization. Civitas will plan for both processes as well as the hearing process.

Step Five: Petition Preparation & Collection

Civitas will prepare the necessary petition and work with the City to ensure it is satisfactory. Civitas will guide the steering committee in the petition collection process and work to execute a successful petition drive.

5.1 Draft Petition

Civitas will draft the petition, which requires signatures of property owners totaling fifty percent (50%) of the entire assessment amount weighted by assessments paid. Once the form and content of the petition have been approved by City Attorney, the petition will be circulated by the steering committee.

5.2 Petition Packaging & Distribution

Civitas will prepare electronic versions of the petition package for property owners, which will include a summary of the Management District Plan and the property owners' estimated assessment amount. We will provide the petitions in electronic format.

Step Six: City Council Hearings & Ballot

Civitas will assist in the hearing and ballot process which includes attending hearings and preparing the necessary materials to complete a successful balloting process.

6.1 Ballot Development

Civitas will draft the ballot for review by the City Attorney and assist the City with preparing final ballot packages. The ballot packages will include a notice and instructions for completing and returning the ballot. Civitas will provide all documents and mailing labels in electronic format; the City will be responsible for the mailing.

6.2 Resolution of Intention Hearing

Civitas will draft the Resolution of Intention and work with the City Attorney to ensure it is satisfactory. Civitas will attend the first hearing, wherein the City Council will consider adopting a Resolution of Intention to form the District. If desired, Civitas will be prepared to make a presentation and/or answer questions at the hearing.

6.3 Final Hearing

Civitas will attend the final City hearing and be prepared to answer questions or make a presentation if necessary. Civitas will also be available to observe or assist with final ballot tabulation.

Step Seven: Corporation Formation

In this step, Civitas will assist in forming a new nonprofit corporation to serve as the MHTBID's Owners' Association.

7.1 Document Preparation

Civitas will prepare draft Bylaws and Articles of Incorporation required to form a new nonprofit corporation. Draft documents will be submitted to the steering committee for review and revised by Civitas as necessary.

7.2 Document Filing

Civitas will file all necessary documents to form the nonprofit corporation with the California Secretary of State. This will include Articles of Incorporation and the initial Statement of Information.

7.3 Tax-Exempt Status

Civitas will prepare and submit all necessary forms to secure nonprofit tax-exempt status for the corporation. This will include filings with the Internal Revenue Service and California Franchise Tax Board. These filings typically take 6-18 months to process; Civitas will respond to any correspondence from either agency and track progress towards securing tax-exempt status.

7.4 Meeting

Civitas will attend one (1) meeting with the new Board of Directors to review Bylaws and answer any questions about the corporation or formation process.

7.5 Corporation Filing Fee

Current filing fees for formation of a new nonprofit corporation include the following (these fees are subject to change by the respective agencies):

Item	Fee
Secretary of State	
Articles of Incorporation filing	\$30.00
Counter filing fee	\$20.00
Statement of Information	\$20.00
Internal Revenue Service	
Tax exempt status application	\$850.00
Franchise Tax Board	
Exemption Request	\$0.00
Total	\$920.00

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Billing

CONSULTANT will be paid a start-up fee of \$6,350 upon execution of the agreement for services between Civitas and the CITY. The amount of the start-up fee will be deducted from the final invoice, which will also be adjusted to account for the total contract price.

CONSULTANT will be paid a fixed monthly fee of \$6,000 per month for ten (10) months, plus expenses.

Civitas will send the CITY a monthly invoice for fees and costs incurred. Invoices will include the fixed professional fee and expenses. The basis of calculation or other method of determining expenses will be clearly identified by item and amount.

Expenses

Ordinary costs and expenses, including telephone charges, postage, and photocopying will be billed at four percent (4%) of professional fees. Other costs, such as travel, overnight shipping, bulk mailing, and printing costs (over 100 pages) shall be billed at Civitas' actual cost.

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Project is estimated to be completed in ten (10) months.

Action	10-Month Timeline
Initiate project	March 2022
Assemble Steering Committee	March 2022
Compile District data: Mapping, Ownership Landscape Analysis, Data Acquisition, Assessment Scenarios	March 2022
Owner Outreach and Consensus Building	March 2022 – June 2022
Develop Service Plan & Budget	April 2022
Steering Committee Review of Service Plan and Assessment Scenarios; ongoing review	April 2022
Develop initial draft Management District Plan (MDP)	May, 2022
Steering Committee review of MDP	May 2022
Submit draft MDP to Engineer	May 2022
Submit draft MDP and Petition to City staff	June 2022
Final MDP and Petition approved by City staff	June 2022
Petition drive	July – September 2022
Submit draft ballot package to City	August 2022
Final resolutions and ballot package approved by City	September 2022
Submit Petitions totaling over 50% of assessment to City	October 2022
City Council – Initial Hearing Resolution of Intention to Form	November 2022
Mail -Ballot / Notice of Public Hearing - Must be mailed after ROI is adopted and 45 days before final hearing.	November 2022
City Council – Public Hearing Adopt Resolution of Formation – Must be held atleast 45 days after Notice/Ballot are mailed.	December 2022
City Council – Adopt Resolution of Formation	December 2022



Morgan Hill Downtown Property Based Improvement District (MHDPBID)



City Council Direction

January 19, 2022, the City Council directed staff to bring forward a consulting contract to implement a Property Based Improvement District (PBID) for Downtown.

This action is consistent with:

- 2017 Economic Blueprint
- 2021 Covid-19 Business Recovery Plan

What is a PBID?

- Special benefit assessment district that provides maintenance, public safety, beautification, and economic development programs above and beyond the City's basic level of services.
- City Council can establish a PBID after the owners of the district have indicated their support (or lack of opposition) for the PBID via petition, ballot or protest proceeding.
- Property assessments are determined by an Engineer's Report that is included in the Management District Plan.
- City contracts with a nonprofit organization (normally owner's association) to administer/provide services and improvements.
- Nonprofit prepares an Annual Report which is used by the City as a basis for decision making and accountability.

MHDPBID History

- A Downtown PBID was established in 2006 and ended in 2013
- PBID supported many efforts, including:

**trash and
recycle bins**

**marketing
materials**

banners

events

**speaker
system**

**flower
baskets**

flags

benches

- In 2013 the City Council terminated the PBID management agreement due to a lapse in the tax-exempt corporation status.
- \$106,000 of previous MHDPBID Funds remain available

PBID Formation Process

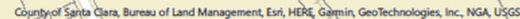
1. Initiation & Structure
2. Consensus Building & Education
3. Management District Plan Development
4. Plan Review & Consensus
5. Petition Preparation & Collection
6. City Council Hearing & Ballot
7. Nonprofit Corporation Formation

What is the City's role in PBID

City Plays two distinct roles:

1. Governing body to adopt the PBID resolution after approval/adoption by property owners, collects the assessment for distribution, and administers the assessment.
2. Act as a property owner/stakeholder.

CITY OF MORGAN HILL



Potential MHDPBID Programming

- Improving sidewalk cleaning
- Improving security
- Improving landscape maintenance
- Adding roofline lighting
- Maintaining tree twinkle lighting
- Decluttering sidewalks
- Directional/Wayfinding signage
- Holiday Decorations
- Art Installations
- Destination Marketing
- Tree Replacement
- New Events



PBID Formation Assumptions



- City will provide seed money to fund PBID formation.
- City to get reimbursed.
- As property owner of approximately 40% of land, City is largest contributor.
- PBID can help cover growing needs of Downtown — sharing cost with other property owners.
- PBID can help finance one-time City contributions (twinkle lights, cadet program, etc.)

PBID Formation Assumptions



- Cost of PBID to be determined after needs assessment.
- Cost to property owners is weighted based on size, location of property and direct benefit from services.
- New non-profit will be formed to manage PBID.
- City to indicate initial support to issue petition and then extend support to majority vote.
 - If City's weighted vote is 40%; when ballots come in, City will evaluate majority support based on 60% of vote
- New PBID group to direct spending from previous PBID assessments (\$106,000).

Vision Statement

“Strengthening Downtown as the **gathering place**, a connecting force, the social and activity **heart** of Morgan Hill, is the overriding aspiration of this Plan – a place where residents from **all** segments of the **community** can live, work, meet, shop, dine and participate in public celebrations, and share in the richness of Morgan Hill’s community life. It will be **a place like nowhere** else – a place with its own scale, character and uses.”



Morgan Hill Downtown Specific Plan
November 2009



Staff Recommendations



1. Approve and authorize the City Manager to execute and administer a consulting agreement with Civitas Advisors not to exceed \$64,500 to form a Morgan Hill Downtown Property Business Improvement District (MHDPBID).
1. Direct the City Manager to sign the MHDPBID petition indicating the City's support of the PBID formation.

Questions



CITY COUNCIL STAFF REPORT

MEETING DATE: March 2, 2022

PREPARED BY:

Kim Mancera, Municipal Services Assistant

APPROVED BY: City Manager

APPROVE THE JANUARY 28 & 29, 2022 GOAL SETTING MINUTES AND FEBRUARY 16, 2022 CITY COUNCIL MEETING MINUTES

RECOMMENDATION(S)

Approve the January 28 & 29, 2022 Goal Setting Minutes and February 16, 2022 City Council Meeting Minutes.

Estimated Time:

COUNCIL PRIORITIES, GOALS & STRATEGIES

REPORT NARRATIVE:

COMMUNITY ENGAGEMENT:

ALTERNATIVE ACTIONS:

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

FISCAL AND RESOURCE IMPACT:

CEQA (California Environmental Quality Act):



Meeting Minutes

City Council

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

Friday, January 28, 2022 1:00 PM

Virtual Meeting

Friday, January 28, 2022, 1:00 p.m.
Saturday, January 29, 2022, 9:00 a.m.

The link to join the meeting can be found below.

CALL TO ORDER

Mayor Constantine called the City Council Goal Setting Workshop to order at 1:00 p.m.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

PRESENT	Rich Constantine, Rene Spring, Gino Borgioli, John McKay, Yvonne Martinez Beltran
ABSENT	None

DECLARATION OF POSTING AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

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. (See additional noticing at the end of this agenda)

Public comment opened at 1:01 p.m. There being no requests to speak, public comment closed.

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

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

GOAL SETTING WORKSHOP - FRIDAY, JANUARY 28, 2022 1:00 P.M.

1. CITY COUNCIL GOAL SETTING WORKSHOP

Recommendation:

1. Review and discuss results of City Council's Myers-Briggs Type Indicator;
2. Review 2021 Accomplishments;
3. Review and discuss City Council Norms, Policies, and Protocols;
4. Review and discuss 2020-2021 Strategic Priorities Work Plan and Council Follow-up/Future Business Items;
5. Review and discuss 2022-2023 Sustainable Morgan Hill, including Vision, Ongoing Priorities, and Strategic Priorities; and
6. Receive updates on budget, development projects, and upcoming work plan items.

City Manager Christina Turner introduced Dr. Shawn Spano, who facilitated the workshop.

The Council went through their Myers-Briggs types.

The meeting recessed at 1:55 p.m. and reconvened at 2:05 p.m.

The leadership team introduced themselves and shared an accomplishment from their department.

Public comment opened at 2:26 p.m.

Joe Baranowski was called to speak.

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

The Council reviewed and discussed the City Council Norms.

Public comment opened at 3:40 p.m. The following people were called to speak:

Brian Sullivan

Joe Baranowski

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

The Council reviewed and discussed the City Council Policies.

Public comment opened at 4:03 p.m. There being no further requests to speak, public comment closed.

The Council reviewed and discussed the Strategic Priorities Work Plan, City Council Follow-Up/Future Business Items, and 2022-2023 Sustainable Morgan Hill.

Public comment opened at 4:15 p.m. There being no further requests to speak, public comment closed.

Public comment opened at 4:38 p.m.

Joe Baranowski was called to speak.

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

ADJOURNMENT TO SATURDAY, JANUARY 29, 2022 AT 9:00 A.M.

Day one of the workshop adjourned at 4:41 p.m.

GOAL SETTING WORKSHOP - SATURDAY, JANUARY 29, 2022, 9:00 A.M.

GOAL SETTING WORKSHOP CONTINUED

Day two of the goal setting workshop was called to order at 9:02 a.m.

City Manager Christina Turner started the morning off with an ice breaker.

Dr. Shawn Spano summarized the Council's discussion about Sustainable Morgan Hill from the previous day.

City Manager Christina Turner and Finance Director Dat Nguyen went through the Fiscal Sustainability portion of the agenda.

Public comment opened at 10:43 a.m.

Joe Baranowski was called to speak.

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

The workshop recessed at 10:45 a.m. and reconvened at 11:00 a.m.

Development Services Director Jennifer Carman provided the Significant Projects update.

Public comment opened at 11:35 a.m.

Joe Baranowski was called to speak.

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

City Manager Christina Turner led the On the Horizon conversation.

The workshop recessed for lunch at 12:03 p.m. and reconvened at 1:00 p.m.

The workshop continued with the On The Horizon conversation.

The Council wrapped up the workshop by sharing final comments and observations.

Public comment opened at 2:26 p.m. There being no requests to speak, public comment closed.

ADJOURNMENT

There being no further business, the Annual City Council Goal Setting Workshop adjourned at 2:29 p.m.

MINUTES PREPARED BY:

Michelle Bigelow, City Clerk



Meeting Minutes

City Council

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

Wednesday, February 16, 2022 5:30 PM

Virtual Meeting

Link to join the meeting can be found below

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:30 p.m. for the purpose of conducting a workshop.

SPECIAL MEETING

5:30 p.m. Workshop

CALL TO ORDER

Mayor Constantine called the meeting to order at 5:30 p.m.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

PRESENT	Rich Constantine, Rene Spring, Gino Borgioli, John McKay, Yvonne Martinez Beltran
ABSENT	None

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2- City Clerk Michelle Bigelow declared the posting of the agenda.

WORKSHOP

1. CITY COUNCIL REDISTRICTING WORKSHOP

Recommendation:

1. Review and discuss draft maps; and
2. Provide direction to staff on which maps and/or changes to bring forward at the March 2, 2022, public hearing for review and adoption.

City Clerk Michelle Bigelow and Dr. Justin Levitt of National Demographics Corporation provided the report and presentation.

Public comment opened at 5:54 p.m. The following people were called to speak:

Armando Benavides

Kathy Napoli

Roberto Aguirrez

Doug Muirhead

Yolanda

Delia Gomez

Joe Baranowski

Patricia Darling

Sally Casas

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

Council directed staff to bring maps 103, 104, 106, 108, and NDC green to the next City Council meeting for review and discussion.

The meeting recessed at 7:09 p.m. and reconvened at 7:15 p.m.

REGULAR MEETING

7:00 p.m.

The regular meeting convened at 7:15 p.m.

CITY COUNCIL REPORTS

Council Member McKay spoke about his outside community engagements. He attended the South County Youth Task Force meeting. It was focused on the Youth Diversion Program. He said that it is a really good program that involves the communities of Gilroy, Morgan Hill, and the County working to make sure our youth

have a chance to redirect from some bad habits and a bad future. He is also on the City/School Liaison Committee. Last week's meeting was focused on how we are going to unite and try to make sure that we are treated fairly with Reid Hillview airport closing in San Jose and the redirection of traffic through Morgan Hill over our schools and City. They also talk continuously about how we are all handling the COVID pandemic as far as testing and students back in person. He said that at the South County Regional Wastewater Authority (SCRWA) meeting Council Member Spring was elected as Chair and now represents us in the Chair position. They have reports on the expansion of the sewage treatment plant and we discussed the budget which they are doing quite well with. They had a Joint Water resource committee meeting and a report on a Technical working group where the Cities of Gilroy and Morgan Hill work together with the Valley Water District to make sure that we are getting the best out of our water usage. He is also on the League of California Cities Board of Directors Peninsula Divisioning the meeting they established this year's goals which are very much in line with our local community. Those are to increase the supply of affordable housing and increase the local control to get there, increase funding to help prevent homelessness, improve preparedness and resiliency for climate change, and start to work on tax increment tools, which means they may get some additional funding in the way of tax increment.

CITY MANAGER'S REPORT

City Manager Christina Turner shared that on January 28 and 29, 2022, the City Council held its annual Goal Setting Workshop virtually via Zoom. The City Council reaffirmed the current vision, ongoing priorities, and strategic priorities with a few amendments. The Council updated one of the ongoing priorities to "Maintaining and enhancing infrastructure". During the workshop, the Council also spent time reviewing, discussing, validating, and committing to the City Council Norms, Policies, Procedures, and Protocols. The Council also received updates on the budget, significant development projects, and discussed topics on the horizon.

CITY ATTORNEY'S REPORT

None.

OTHER REPORTS

None.

RECOGNITIONS

PROCLAMATIONS

Proclaiming the month of February 2022 as Black History Month.

PRESENTATIONS

YAC Presentation

Developmental Asset #26 - Caring

PUBLIC COMMENT

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. (See additional noticing at the end of this agenda)

Public comment opened at 7:36 p.m.

Jose DeCastro 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:	Council Member Spring
SECONDER:	Mayor Pro Tem Borgioli
AYES:	Mayor Constantine, Council Member Spring, Mayor Pro Tem Borgioli, Council Member McKay, Council Member Martinez
NAYS:	None
ABSTAIN:	None
ABSENT:	None

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

Public comment opened at 7:43 p.m.

Joe Baranowski was called to speak.

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

MOTION:

Approving consent calendar items 2 through 6.

RESULT:	Passed
MOVER:	Mayor Pro Tem Borgioli
SECONDER:	Council Member McKay
AYES:	Mayor Constantine, Council Member Spring, Mayor Pro Tem Borgioli, Council Member McKay, Council Member Martinez
NAYS:	None
ABSTAIN:	None
ABSENT:	None

2. RECEIVE ANNUAL REPORT ON 2021 CITY ENGINEER ACCEPTANCES OF PUBLIC IMPROVEMENTS COMPLETED BY PRIVATE DEVELOPMENT PROJECTS

Recommendation:

Accept and file Annual Report on 2021 City Engineer acceptances of public improvements completed by private development projects.

3. APPROVE CITY OF MORGAN HILL'S EMERGENCY OPERATIONS PLAN UPDATE 2022

Recommendation:

Authorize the approval, distribution, and use of the updated Emergency Operations Plan.

4. APPROVE GOVERNMENT CODE 65915 DENSITY BONUS CONCESSION FOR A MARKET RATE HOUSING DEVELOPMENT PROJECT (SR2021-0014/SD2021-0004/EA2021-0012 MONTEREY-KERLEY (DENOVA HOMES))

Recommendation:

Adopt resolution approving the request for the following density bonus concession, pursuant to Government Code: Increase in floor area ratio.

5. APPROVE THE DECEMBER 1, 2021, DECEMBER 15, 2021, AND JANUARY 19, 2022 CITY COUNCIL MEETING MINUTES

Recommendation:

Approve the December 1, 2021, December 15, 2021, and January 19, 2022 City Council Meeting Minutes.

6. ADOPT RESOLUTION DETERMINING THAT CONDUCTION OF IN-PERSON MEETINGS WOULD PRESENT A PUBLIC HEALTH RISK AND CONTINUING TELECONFERENCE MEETINGS

Recommendation:

Adopt resolution to continue holding City Council and commission meetings by teleconference.

PUBLIC HEARINGS

7. ADOPT RESOLUTION APPROVING COMMENCEMENT OF 2022 HAZARDOUS VEGETATION ABATEMENT PROGRAM

Recommendation:

1. Open/Close public hearing; and
2. Adopt resolution authorizing Santa Clara County to commence hazardous vegetation abatement activities on the attached list.

Program Administrator Anthony Eulo provided the report.

The public hearing opened at 7:56 p.m. There being no request to speak, the public hearing closed.

MOTION:

Approving the recommended action.

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

8. CONDUCT TAX AND EQUITY FISCAL RESPONSIBILITY ACT (TEFRA) HEARING APPROVING ISSUANCE OF BONDS FOR ROYAL OAK VILLAGE APARTMENTS AT 15440 MONTEREY ROAD WITHIN THE CITY OF MORGAN HILL

Recommendation:

1. Open/close public hearing consistent with the requirements of the Federal

- Tax and Equity Fiscal Responsibility Act ("TEFRA") and Section 147 (f) of the Internal Revenue Code of 1986, as amended (the "Code"); and
2. Adopt resolution approving the issuance of bonds by the California Statewide Communities Development Authority (CSCDA), for the acquisition, construction, improvement and equipping of a multifamily rental housing facility known as Royal Oak Village, located at 15440 Monterey Road (the "Project").

Housing Director Rebecca Garcia provided the report and presentation.

The public hearing opened at 8:03 p.m. There being no request to speak, the public hearing closed.

MOTION:

Approving the recommended action.

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

9. **APPROVE EDEN HOUSING'S (EHI) REQUEST TO WAIVE THE 2020 ANNUAL SURPLUS PAYMENT FOR VILLA CIOLINO AFFORDABLE APARTMENTS TO MAKE NECESSARY REPAIRS**

Recommendation:

Authorize the approval of a waiver for the receipt of the 2020 annual payment from Villa Ciolino's surplus cash in the amount of \$44,777 due to the City to support the property's more immediate urgent rehabilitation needs.

Housing Director Rebecca Garcia provided the report.

Public comment opened at 8:07 p.m. There being no requests to speak, public comment closed.

MOTION:

Approve the recommended action.

RESULT:	Passed
MOVER:	Mayor Pro Tem Borgioli
SECONDER:	Council Member McKay

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

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.

Mayor Pro Tem Borgioli requested a noise ordinance in Downtown Morgan Hill.

Council Member McKay requested an update regarding noise in the parking garage.

ADJOURNMENT

There being no further business, Mayor Constantine adjourned the meeting at 8:12 p.m.

Minutes Prepared by:

Michelle Bigelow, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: March 2, 2022

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

MONTHLY BUDGET UPDATE AND JANUARY 2022 FINANCIAL AND INVESTMENT REPORTS

RECOMMENDATION(S)

Accept and file report.

Estimated Time: 10 Minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Community 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 January 2022 financial and investment reports.

January 2022 Financial Report

The Revenue and Expense Summary through the month of January 2022 is included on the page 4 of the monthly financial report. Overall, General Fund revenues total \$22.0 million or about 43% of the budget. Expenditures, including encumbrances, amounted to \$28.8 million or 57% of the budget.

Budget Update

There has been no material change to the City's revenue since the last budget update to the Council on January 29, 2022. As previously shared with the Council and the community, Recreation Services revenues continue trending below budget. The indoor mask mandate which serves as an important tool to prevent the spread of coronavirus, regardless of vaccination status, is having a negative impact to the membership drive.

In addition, facility rental revenue for the year is expected to be minimal compared to prior years. However, staff is hopeful that the net impact won't be significant as staff expects to further implement cost containment strategies to offset the reduction in revenue.

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:

Not Applicable.

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. Beginning in FY 2020-21, budget reports are presented to the Council monthly.

FISCAL AND RESOURCE IMPACT:

The preparation of the report is a part of the Finance workplan. Staff does not recommend any budget adjustments at this time.

CEQA (California Environmental Quality Act):

Not a Project.

This report is not a project, as defined in Section 15378 of the State CEQA Guidelines. Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
January 31, 2022 - 58% of Year Complete



CITY OF MORGAN HILL

Prepared by:
FINANCE DIVISION

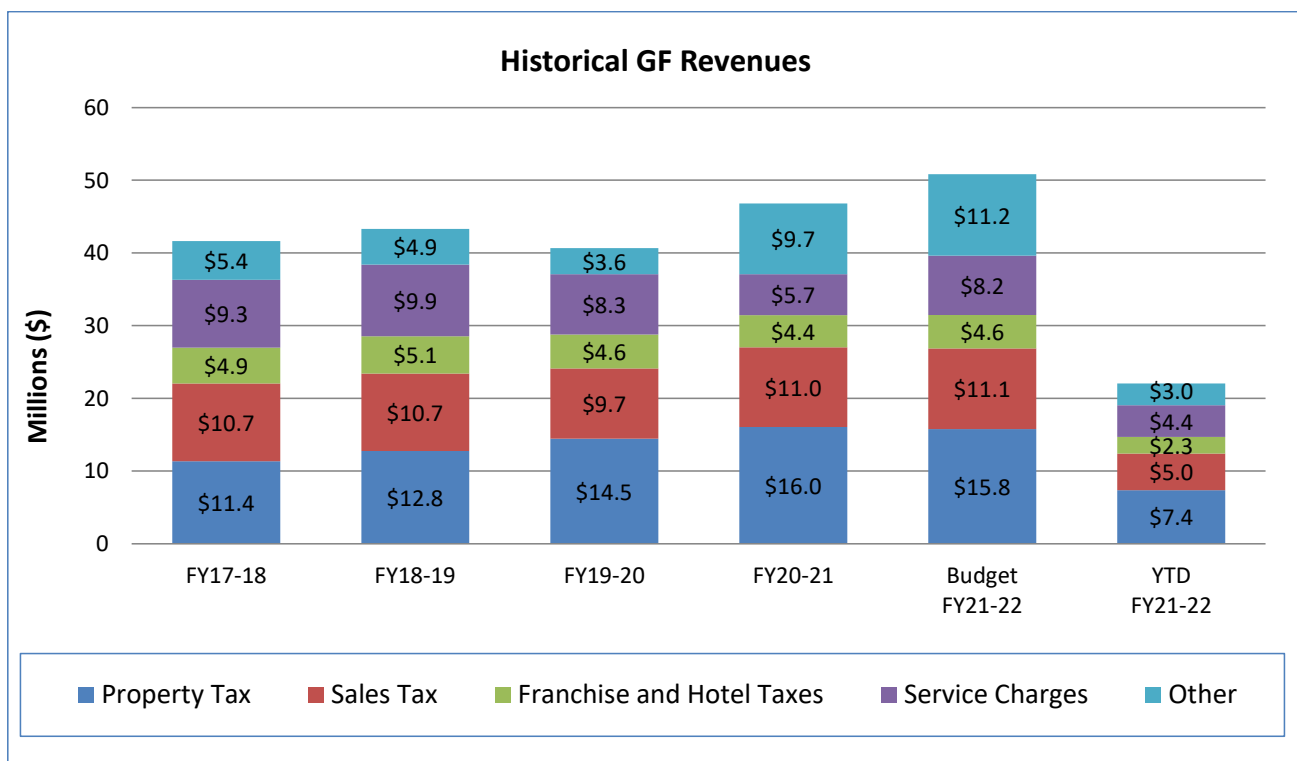


CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2021-22
FOR THE MONTH ENDED JANUARY 2022 – 58% OF YEAR COMPLETE

- **General Fund** – Revenues through January totaled \$22.0 million, or about 43% of the budgeted revenues. With respect to the property tax revenue forecast, on August 20, 2021, the Controller-Treasurer’s Department of the County of Santa Clara notified the cities and agencies within the County that the State of California Controller’s Office agreed with the County’s methodology of calculating excess Educational Revenue Augmentation Fund (ERAF), therefore, set aside provision is no longer required. The City of Morgan Hill is expecting to receive an additional \$650,000 in excess ERAF for FY2021-22. However, the County cautioned cities and agencies in planning and budgeting this source of revenue as future legislation could impact the calculation methodology. The increase in excess ERAF distribution is mainly due to the growth of property tax outpacing the growth of school funding requirement and this revenue stream is becoming a large revenue category for the City in recent years. Morgan Hill began to receive excess ERAF distribution in FY2013-14 in the amount of \$13,000 and it has grown to about \$1.9 million in FY2020-21.

As for sales tax, the latest projection from our sales tax revenue consultant estimated this year’s revenue, before sales tax rebates, to be about \$12.0 million versus about \$11.0 million budgeted. Pandemic based economic recovery contributed significantly to this upside forecast as well as the addition of a car dealership. One of the industries hit hardest across the state during the pandemic was the restaurants group which has experienced a strong rebound.

The chart below shows historical General Fund revenues by major revenue category from FY17-18 through FY20-21 Actual, FY21-22 Budget, and YTD as of January 31, 2022.

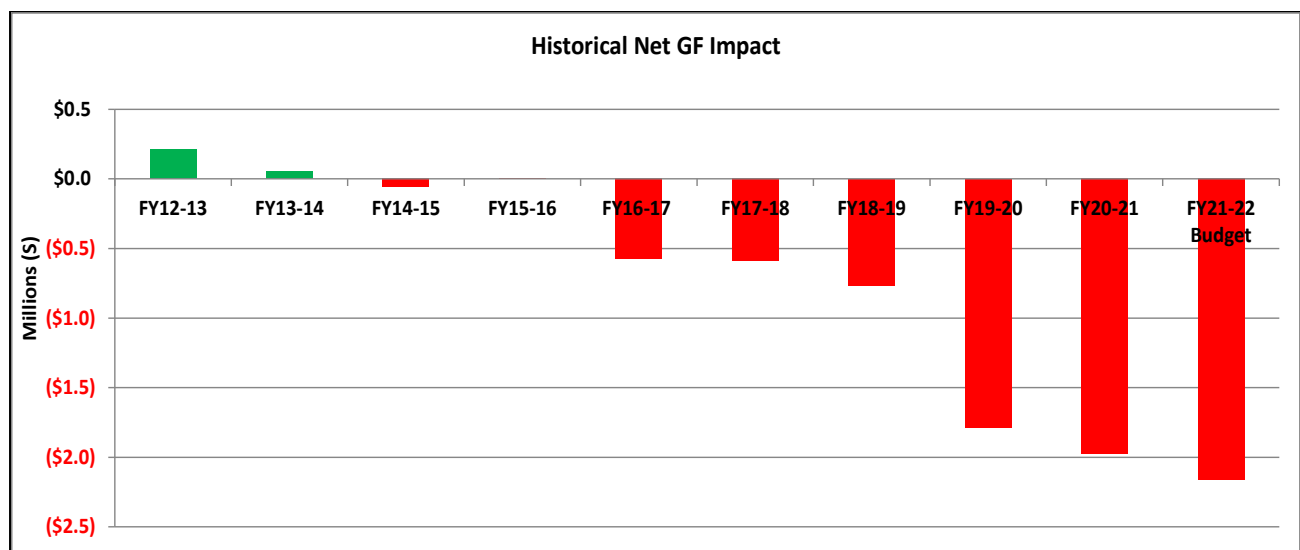




CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2021-22
FOR THE MONTH ENDED JANUARY 2022 – 58% OF YEAR COMPLETE

General Fund expenditures and encumbrances as of January 31, 2022 totaled \$28.8 million, of which approximately \$1.8 million is attributable to outstanding encumbrances.

- **Community Services** – The Community Services Department’s recreation operations, as reflected in the schedule presented on page 7 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$1.7 million as of January 31, 2022. The large budgeted operating loss for recreation operations reflects the restrictions and limited opening of recreation facilities since March 2020 due to the shelter-in-place order as a result of the coronavirus pandemic and the continued indoor mask mandate which is having a negative impact to the membership drive.



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 Community Development, 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 Federal government’s OMB Circular No. A-87, which mandates certain calculation and cost allocation practices that must be followed in order to qualify for Federal grant funding, but which also represent best practice for non-grant funded City operations like utilities and information services.

- **Development Services Fund** – Revenues through January totaled \$2.6 million. Expenditures, including encumbrances, totaled \$3.3 million. The fund is budgeted at a higher revenue at \$5.3 million compared to recent years’ actuals primarily due to the higher fees anticipated from the completion of the updated fee study.
- **Debt Service Funds** – Expenditures through January totaled \$0.5 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 2021-22
FOR THE MONTH ENDED JANUARY 2022 – 58% OF YEAR COMPLETE

- **Wastewater Operations** – Revenues from Sewer Operations through January totaled \$7.4 million. Expenditures and outstanding encumbrances totaled \$7.6 million or 54% of the budget. The table below shows historical Sewer Operations revenues and expenditures from FY17-18 through FY20-21 Actual, FY21-22 Budget, and YTD as of January 31, 2022.

(amount in millions)	FY17-18	FY18-19	FY19-20	FY20-21	Budget FY21-22	YTD FY21-22
Revenues	10.3	11.4	11.9	13.3	14.1	7.4
Expenditures	10.8	11.4	12.3	13.3	14.0	7.6
Operating Margin	(0.5)	-	(0.4)	-	0.1	(0.2)
Operating Margin without Encumbrances	(0.3)	0.4	(0.1)	-	0.1	0.0

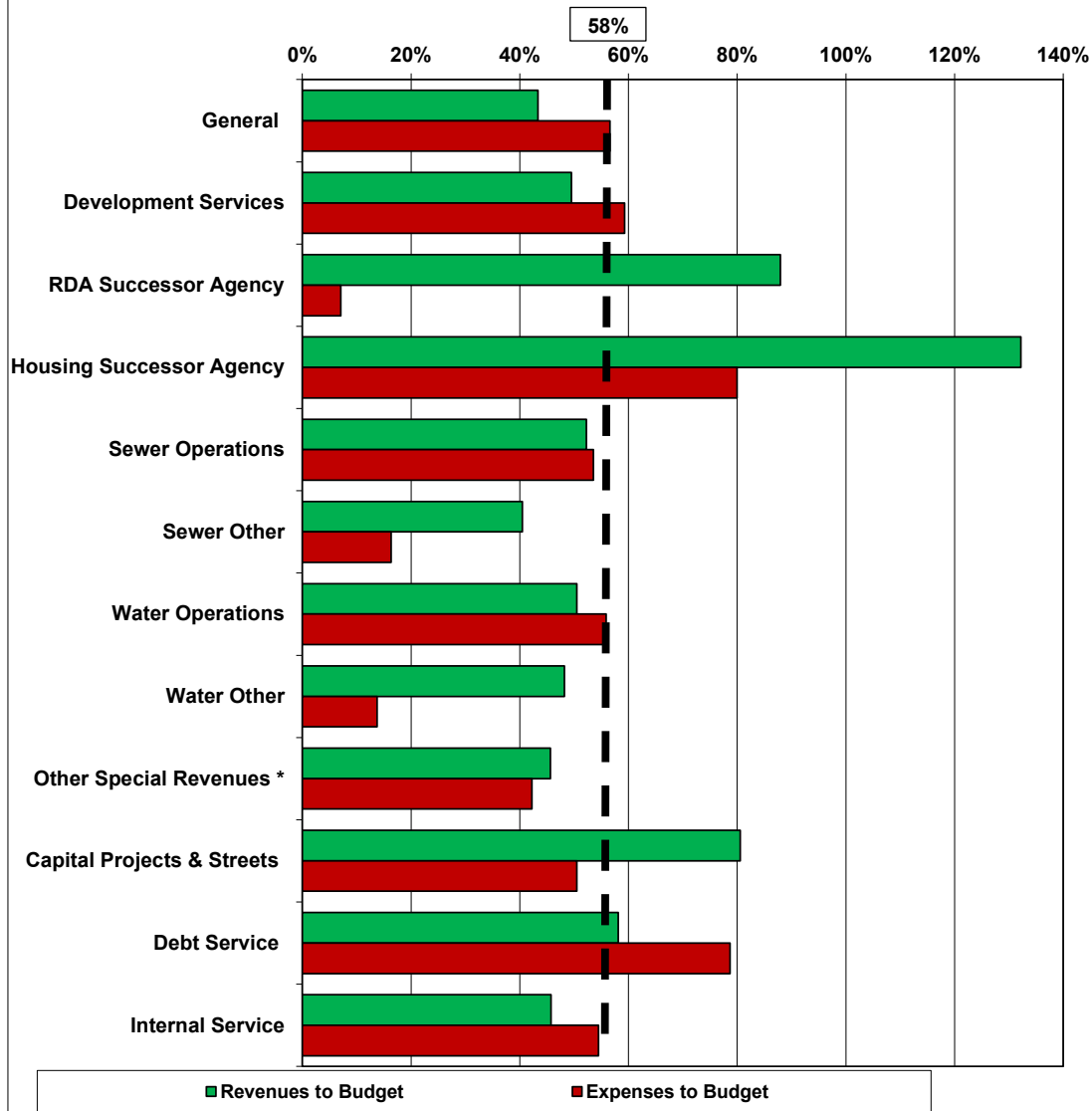
- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through January totaled \$8.3 million. Water Operations expenditures, including outstanding encumbrances, totaled \$9.2 million through January. The table below shows Water Operations revenues and expenditures from FY17-18 through FY20-21 Actual, FY21-22 Budget, and YTD as of January 31, 2022.

(amount in millions)	FY17-18	FY18-19	FY19-20	FY20-21	Budget FY21-22	YTD FY21-22
Revenues	13.0	14.2	15.3	16.5	16.3	8.3
Expenditures	12.1	14.3	16.4	16.5	16.4	9.2
Operating Margin	0.9	(0.1)	(1.1)	-	(0.1)	(0.9)
Operating Margin without Encumbrances	1.4	0.8	(0.1)	-	(0.1)	0.0

- **Investments** – Four securities were purchased. Total interest earnings received on investments were \$43,000 during the month.



Morgan Hill YTD Revenue & Expense Summary January 31, 2022 - 58% of Year Complete



FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 22,030,613	43%	\$ 28,785,477	57%
Development Services	2,620,633	50%	3,292,587	59%
RDA Successor Agency	6,246,678	88%	490,200	7%
Housing Successor Agency	284,662	132%	802,877	80%
Sewer Operations	7,380,535	52%	7,560,100	54%
Sewer Other	4,840,677	40%	7,344,808	16%
Water Operations	8,251,245	51%	9,182,182	56%
Water Other	3,390,498	48%	1,348,355	14%
Other Special Revenues *	2,470,094	46%	2,549,083	42%
Capital Projects & Streets	18,360,779	81%	33,757,397	50%
Debt Service	402,544	58%	546,437	79%
Internal Service	5,946,421	46%	7,223,504	54%
TOTAL FOR ALL FUNDS	\$ 82,225,379	53%	\$ 102,883,009	44%

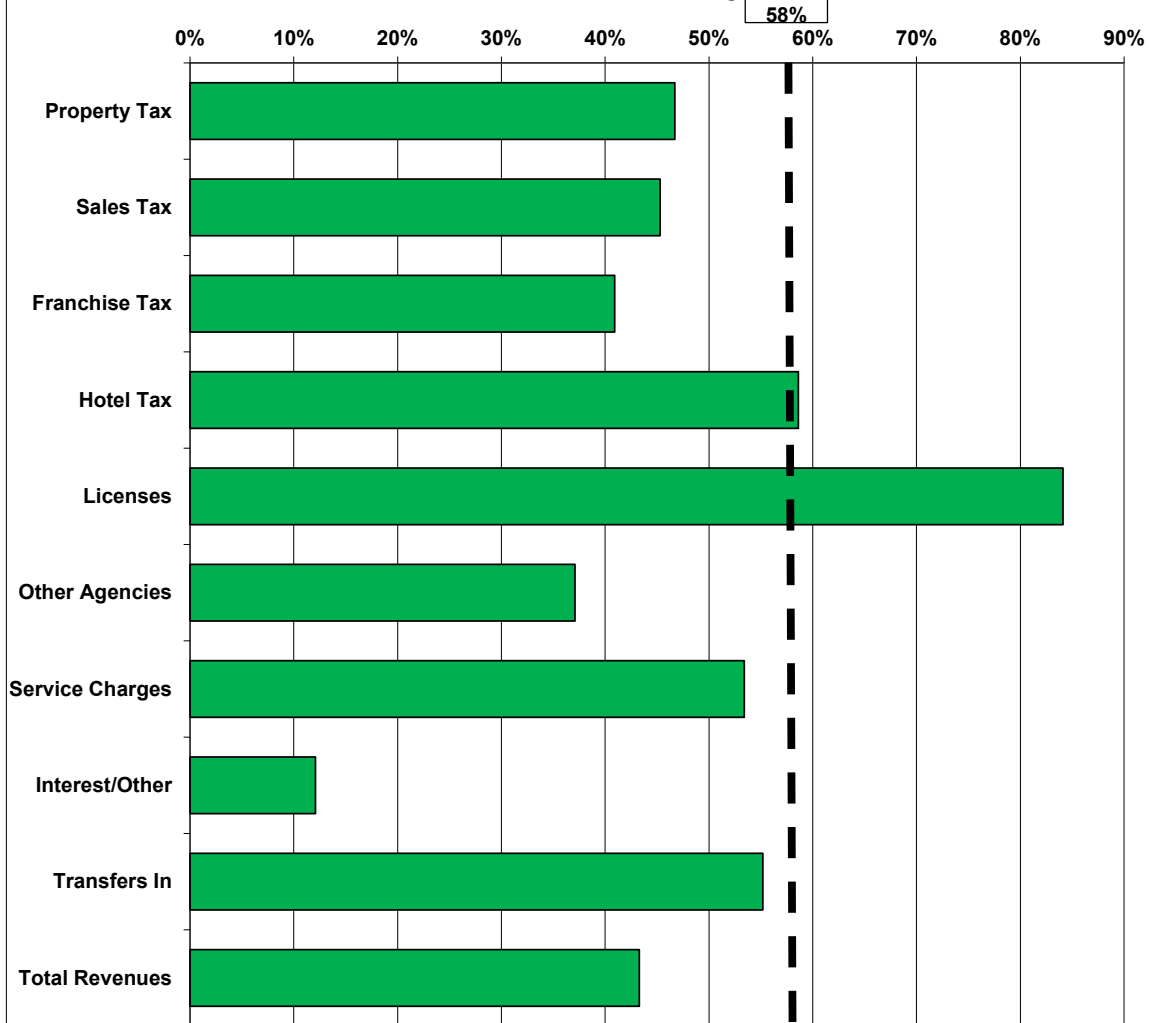
* Includes all Special Revenue Funds except Community Development, Street Funds, and RDA and Housing Successor Agencies.



Morgan Hill YTD General Fund Revenues

January 31, 2022 - 58% of Year Complete

Percent of Actual to Budget

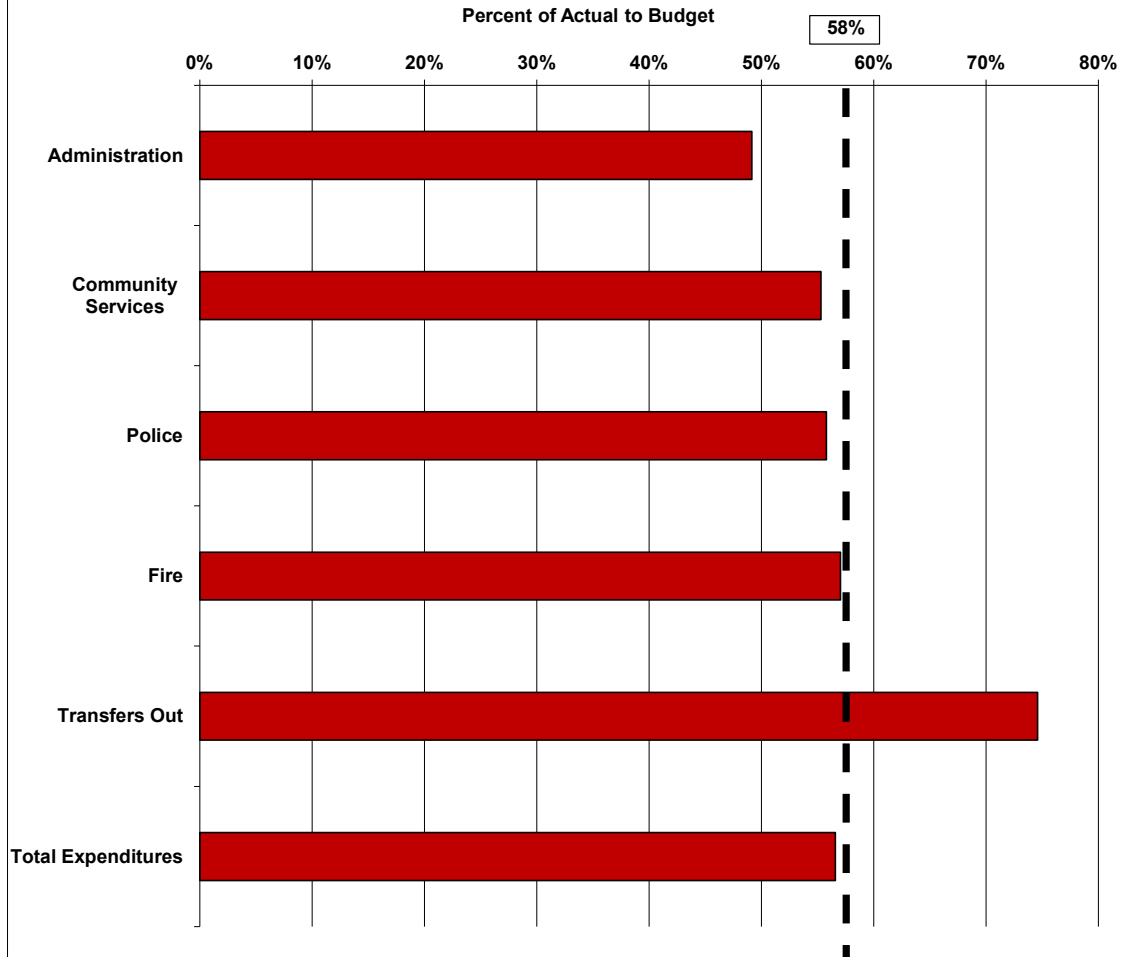


REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$ 15,771,000	\$ 7,372,660	47%	\$ 7,392,312	0%
Sales Tax	11,098,601	5,025,846	45%	3,532,485	42%
Franchise Tax	2,375,000	971,018	41%	898,869	8%
Hotel Tax	2,235,300	1,310,992	59%	736,955	78%
Licenses	198,825	167,142	84%	135,452	23%
Other Agencies	653,658	242,263	37%	239,700	1%
Service Charges	8,164,851	4,358,318	53%	3,004,549	45%
Interest/Other	7,230,495	873,932	12%	905,853	-4%
Transfers In	3,093,579	1,708,442	55%	1,522,153	12%
TOTAL REVENUES	\$ 50,821,309	\$ 22,030,613	43%	\$ 18,368,328	20%



Morgan Hill YTD General Fund Expenditures

January 31, 2022 - 58% of Year Complete



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 5,913,826	\$ 2,906,392	49%	\$ 2,592,745	12%
Community Services	13,952,469	7,717,042	55%	6,935,861	11%
Police	19,133,242	10,672,459	56%	9,755,081	9%
Fire	7,788,401	4,443,458	57%	4,079,515	9%
Transfers Out	4,083,681	3,046,125	75%	333,179	814%
TOTAL EXPENDITURES	\$ 50,871,618	\$ 28,785,477	57%	\$ 23,696,381	21%

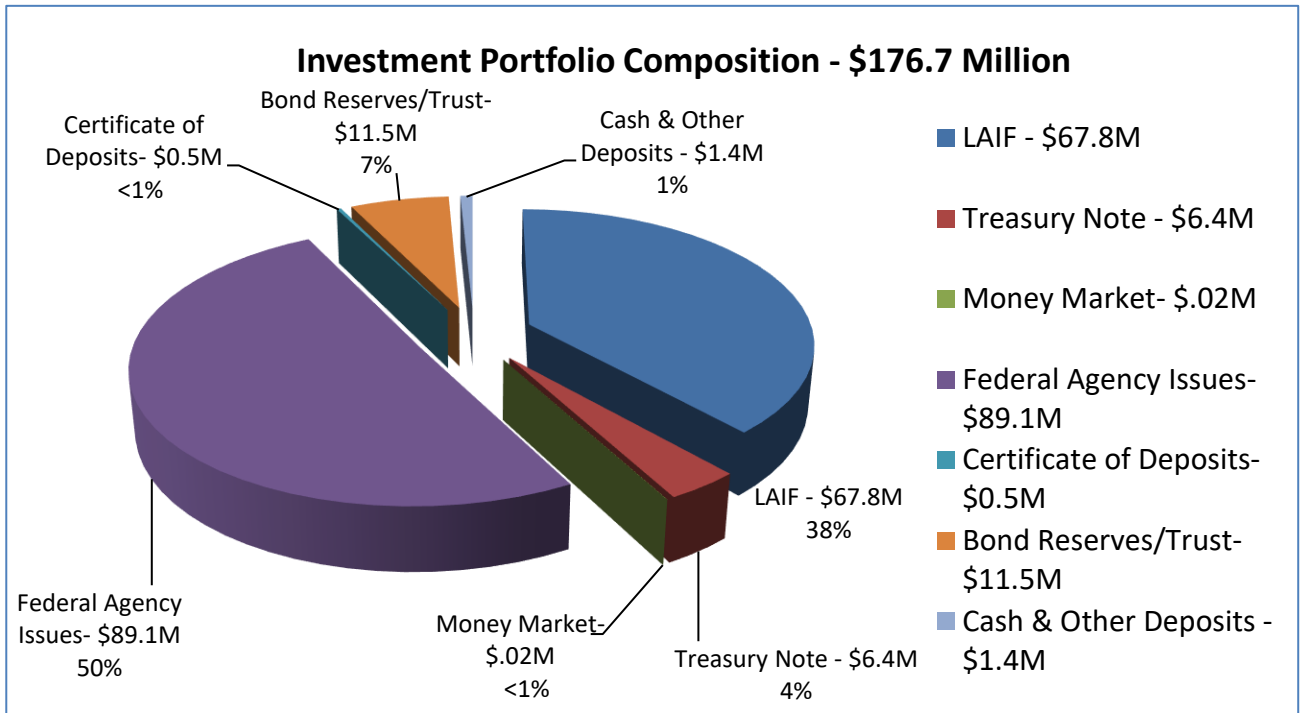


**City of Morgan Hill
Recreation Report - Fiscal Year 2021-22
For the Month and Seven Months Ended January 31, 2022
58% of Year Complete**

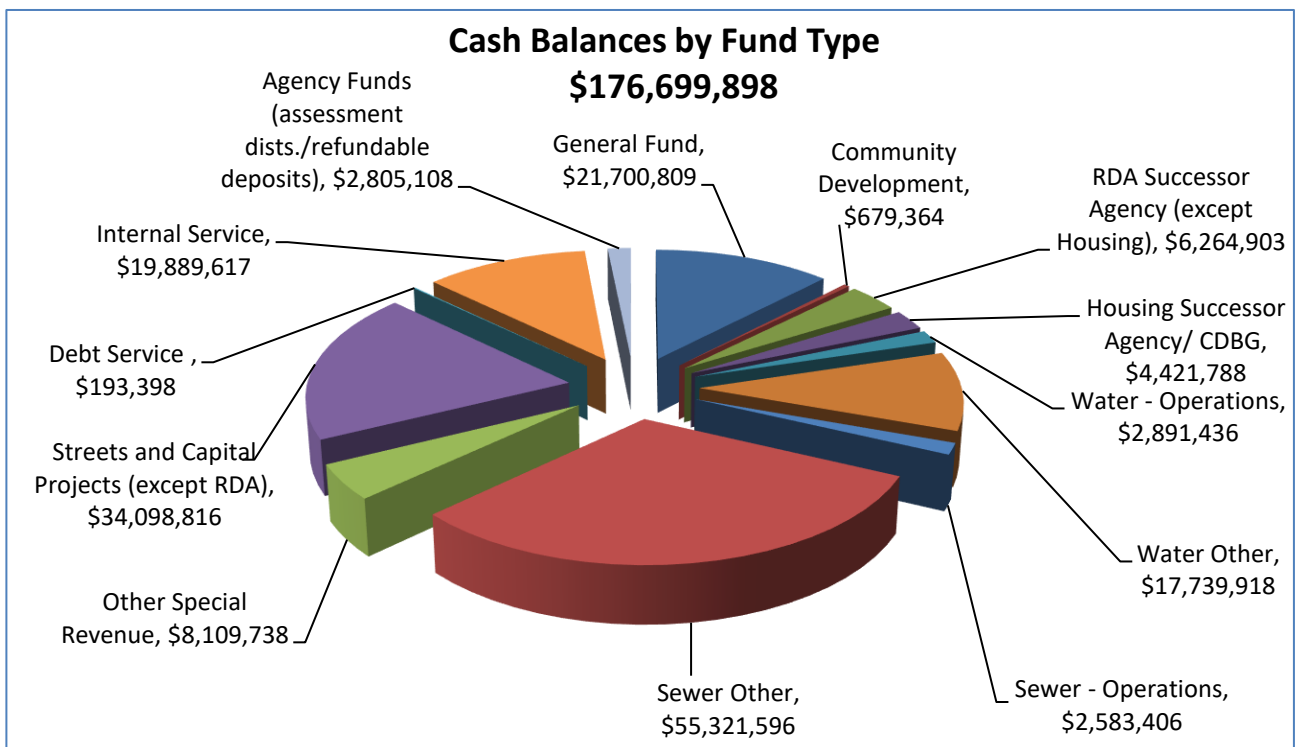
	<u>Budget</u>	<u>January 2022</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 4,713,801	\$ 307,035	\$ 2,400,054	
Facility Rentals	506,683	51,072	312,322	
Community Services	79,000	508	98,830	
Transfers in	75,000	6,250	43,750	
Total Revenues	<u>\$ 5,374,484</u>	<u>\$ 364,865</u>	<u>\$ 2,854,957</u>	53%
Less: Expenditures				
Membership & Program Services	\$ 5,648,211	\$ 294,346	\$ 2,877,255	
Facility Rentals	1,313,549	41,007	307,660	
Community Services	641,554	52,378	288,050	
Total Expenditures	<u>\$ 7,603,315</u>	<u>\$ 387,730</u>	<u>\$ 3,472,965</u>	46%
Net Impact without encumbrances	<u>\$ (2,228,831)</u>	<u>\$ (22,866)</u>	<u>\$ (618,008)</u>	
Encumbrances	-	-	1,068,465	
Net Impact with encumbrances	<u>\$ (2,228,831)</u>	<u>\$ (22,866)</u>	<u>\$ (1,686,474)</u>	

City of Morgan Hill Monthly Investment Report - January 31, 2022

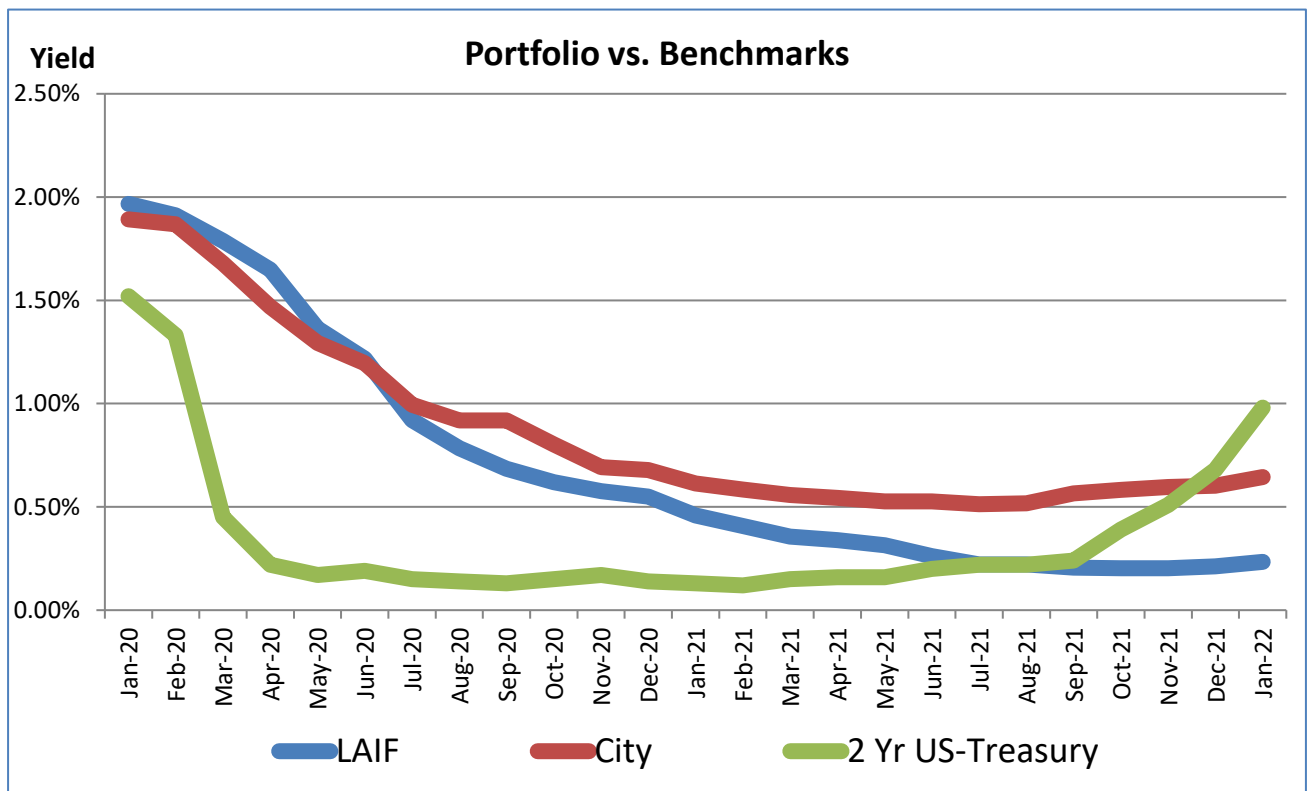
The following are the snapshots of City's investment portfolio as of January 31, 2022. The first chart shows the portfolio composition by investment type:



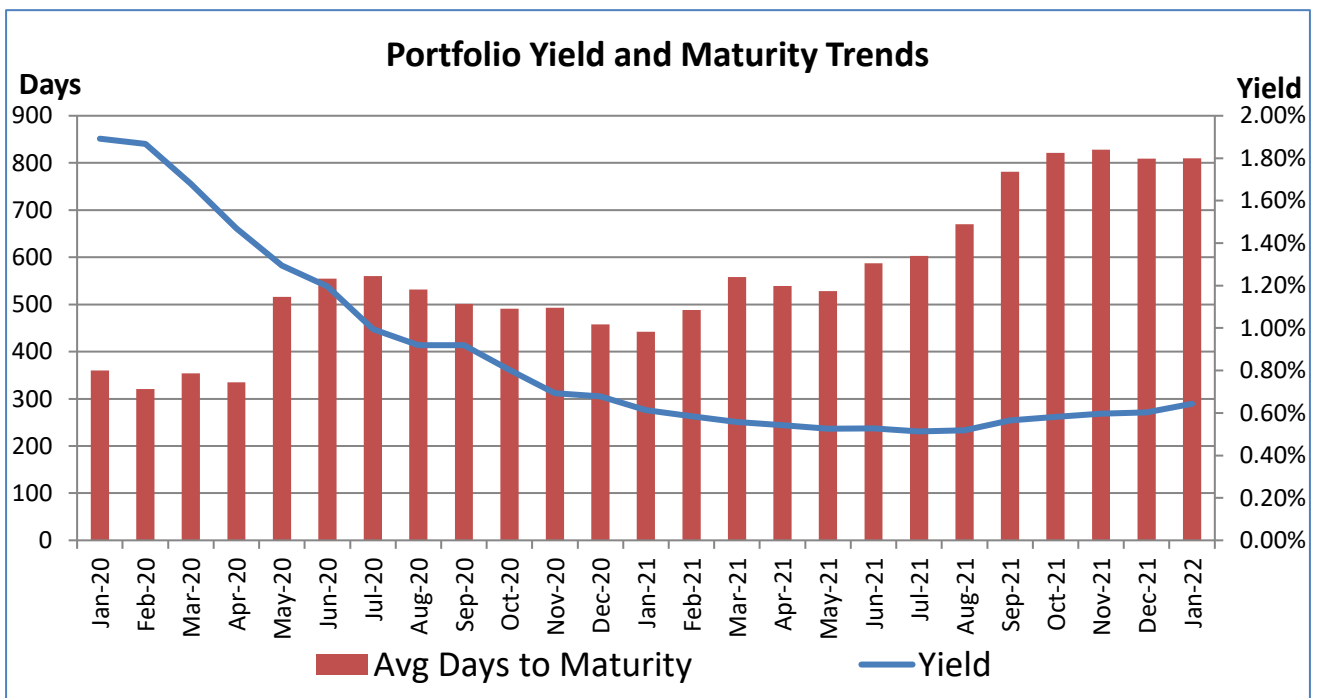
The chart below shows cash balances by fund type reconciled to City's financial system:



The following chart illustrates a yield comparison by month among the City's portfolio, LAIF and 2-Year US Treasury:



The chart below illustrates monthly average days to maturity of the City's portfolio along with the weighted average yield for the past two years:





City of Morgan Hill
Investment Portfolio Detail
As of January 31, 2022

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 67,800,048	38.37%	\$ 67,626,420	0.23%		
City Managed							
Treasury Note	4/30/2018	4,440,242	3.28%	4,532,535	2.73%	3/31/2023	3/31/2023
Treasury Note	10/8/2021	1,988,437	1.25%	1,934,760	0.88%	9/30/2026	9/30/2026
Treasury Note	1/4/2022	1,999,173	1.25%	1,984,380	0.77%	12/31/2023	12/31/2023
Treasury Note	1/19/2022	1,989,862	1.25%	1,984,380	1.02%	12/31/2023	12/31/2023
FFCB Bond	4/8/2020	2,000,000	1.13%	1,985,000	0.88%	4/8/2022	4/8/2024
FFCB Bond	5/27/2020	2,000,000	1.13%	1,945,640	0.73%	5/27/2022	5/27/2025
FHLMC Bond	6/3/2020	2,000,000	1.13%	1,956,020	0.60%	6/3/2022	12/3/2024
FHLMC Bond	10/20/2020	2,000,000	1.13%	1,934,780	0.60%	4/20/2022	10/20/2025
FHLMC Bond	10/27/2020	2,000,000	1.13%	1,936,900	0.63%	4/27/2022	10/27/2025
FHLMC Bond	11/2/2020	2,000,000	1.13%	1,971,080	0.32%	5/2/2022	11/2/2023
FFCB Bond	11/3/2020	2,000,000	1.13%	1,926,460	0.54%	5/3/2022	11/3/2025
FNMA Bond	11/18/2020	2,000,000	1.13%	1,938,700	0.65%	5/18/2022	11/18/2025
FHLMC Bond	11/24/2020	2,000,000	1.13%	1,931,600	0.64%	5/24/2022	11/24/2025
FFCB Bond	11/24/2020	1,000,000	0.57%	963,990	0.60%	5/24/2022	11/24/2025
FHLMC Bond	11/25/2020	3,000,000	1.70%	2,916,150	0.63%	5/25/2022	11/25/2025
FHLMC Bond	11/30/2020	2,000,000	1.13%	1,944,960	0.65%	5/26/2022	11/26/2025
FFCB Bond	12/22/2020	2,000,000	1.13%	1,916,720	0.47%	6/22/2022	12/22/2025
FHLB Bond	1/22/2021	2,000,000	1.13%	1,939,500	0.63%	7/22/2022	1/22/2026
FNMA Bond	1/28/2021	2,000,000	1.13%	1,933,920	0.55%	7/28/2022	1/28/2026
FHLB Bond	1/28/2021	2,000,000	1.13%	1,940,760	0.65%	7/28/2022	1/28/2026
FHLB Bond	2/24/2021	2,000,000	1.13%	1,928,540	0.75%	2/24/2022	2/24/2026
FHLB Bond	2/25/2021	2,000,000	1.13%	1,939,720	0.66%	2/25/2022	2/25/2026
FHLB Bond	2/26/2021	2,000,000	1.13%	1,924,500	0.65%	2/26/2022	2/26/2026
FHLB Bond	3/10/2021	2,000,000	1.13%	1,948,220	0.85%	3/10/2022	3/10/2026
FHLB Bond	3/16/2021	2,000,000	1.13%	1,941,280	0.70%	3/16/2022	3/16/2026
FHLB Bond	3/16/2021	2,000,000	1.13%	1,944,500	0.80%	3/16/2022	3/16/2026
FHLB Bond	6/9/2021	2,000,000	1.13%	1,963,520	1.08%	6/9/2022	6/9/2026
FHLB Bond	6/30/2021	2,000,000	1.13%	1,955,480	1.00%	6/30/2022	6/30/2026
FHLB Bond	7/15/2021	3,000,000	1.70%	2,944,200	1.13%	7/15/2022	7/15/2026
FHLB Bond	7/15/2021	2,000,000	1.13%	1,965,000	0.85%	7/15/2022	7/15/2025
FHLB Bond	8/26/2021	2,000,000	1.13%	1,946,400	0.80%	2/26/2022	8/26/2026
FHLB Bond	8/26/2021	3,000,000	1.70%	2,936,760	1.00%	2/26/2022	8/26/2026
FHLB Bond	8/26/2021	2,000,000	1.13%	1,945,700	0.90%	2/26/2022	8/26/2026
FHLB Bond	9/13/2021	2,095,408	1.19%	2,022,020	0.82%	3/11/2022	9/11/2026
FFCB Bond	9/28/2021	1,984,136	1.12%	1,929,560	0.98%	3/10/2022	9/10/2026
FHLB Bond	9/29/2021	3,000,000	1.70%	2,929,920	1.13%	3/29/2022	9/29/2026
FHLB Bond	9/30/2021	2,000,000	1.13%	1,943,620	0.88%	3/30/2022	9/30/2026
FHLB Bond	9/30/2021	3,000,000	1.70%	2,931,000	1.05%	3/30/2022	9/30/2026
FHLB Bond	9/30/2021	3,000,000	1.70%	2,927,880	1.02%	3/30/2022	9/30/2026
FHLB Bond	10/19/2021	2,000,000	1.13%	1,944,980	1.00%	4/19/2022	10/19/2026
FHLB Bond	11/18/2021	2,000,000	1.13%	1,974,800	1.30%	5/18/2022	11/18/2026
FHLB Bond	12/29/2021	2,000,000	1.13%	1,986,060	0.75%	6/29/2022	12/29/2023
FHLB Bond	1/19/2022	2,000,000	1.13%	1,984,920	1.74%	7/19/2022	1/19/2027
FHLB Bond	1/25/2022	2,000,000	1.13%	1,994,840	1.51%	7/25/2022	7/25/2025
CD - Goldman Sachs Bank USA	5/13/2020	250,000	0.14%	250,265	0.50%	5/13/2022	5/13/2022
CD - American Nat'l Bank	5/20/2020	250,000	0.14%	250,205	0.40%	5/20/2022	5/20/2022
Sub Total/Average		\$ 95,997,258	55.45%	\$ 93,872,125	0.93%		
Money Market		\$ 23,144	0.01%	\$ 23,144	0.01%		
Total City Managed/Average		\$ 163,820,450	93.83%	\$ 161,521,689	0.64%		
Bond Reserve Accounts - Held By Trustees		\$ 6,780,648	3.84%	\$ 6,780,648			
Cash/Deposits		\$ 1,411,396	0.80%	\$ 1,411,396			
PARS and CALPERS CERBT Trust		\$ 4,687,404	2.65%	\$ 5,811,342			
GRAND TOTAL/AVERAGE		\$ 176,699,898	100%	\$ 175,525,075			



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF JANUARY 31, 2022
FOR THE FISCAL YEAR OF 2021-22

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	0.23%	\$ 51,294,165	29.03%	\$ 51,162,806
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	0.23%	16,505,883	9.34%	16,463,614
Federal Issues	All Funds Pooled	0.87%	89,068,579	50.41%	88,839,120
US Treasury Notes	All Funds Pooled	1.68%	6,428,679	3.64%	4,532,535
Certificate of Deposits	All Funds Pooled	0.45%	500,000	0.28%	500,470
Dreyfus Treas Cash Management Acct	All Funds Pooled	0.01%	23,144	0.01%	23,144
	SUBTOTAL		\$ 163,820,450	92.71%	\$ 161,521,689
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility					
Blackrock Liq Fund	Debt Service	0.01%	3	0.00%	3
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	0.01%	4	0.00%	4
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	0.01%	6,262,932	3.54%	6,262,932
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	0.01%	255,218	0.14%	255,218
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	0.01%	262,492	0.15%	262,492
	SUBTOTAL		6,780,648	3.84%	6,780,648
Other Cash/Deposits					
General Checking	All Funds		1,374,284	0.78%	1,374,284
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		7,112	0.00%	7,112
CALPERS CERBT - OPEB Trust			3,487,404	1.97%	4,249,175
PARS - PENSION Trust			1,200,000	0.68%	1,562,168 **
	SUBTOTAL		6,098,800	3.45%	7,222,738
Total Cash and Investments			\$ 176,699,898	100.00%	\$ 175,525,075

** As of 12/31/21

CASH ACTIVITY SUMMARY
FY 2021-22

Fund Type	07/1/21 Balance	Change in Cash Balance	1/31/2022 Balance
General Fund	\$ 19,007,873	\$ 2,692,935	\$ 21,700,809
Community Development	1,077,499	(398,135)	679,364
RDA Successor Agency (except Housing)	508,427	5,756,475	6,264,903
Housing Successor Agency/ CDBG	4,307,419	114,369	4,421,788
Water - Operations	2,573,349	318,088	2,891,436
Water Other	15,405,786	2,334,132	17,739,918
Sewer - Operations	1,593,140	990,266	2,583,406
Sewer Other	57,221,072	(1,899,475)	55,321,596
Other Special Revenue	7,425,644	684,093	8,109,738
Streets and Capital Projects (except RDA)	37,931,830	(3,833,015)	34,098,816
Debt Service	337,123	(143,725)	193,398
Internal Service	19,378,242	511,375	19,889,617
Agency Funds (assessment dists./refundable deposits)	3,356,940	(551,832)	2,805,108
Total	\$ 170,124,346	\$ 6,575,552	\$ 176,699,898

Note: See Investment Portfolio Detail for maturities of "Investments." Market values are obtained from the City's investment brokers' monthly reports.

I certify the information on the investment reports on pages has been reconciled to the general ledger and bank statements and that there are sufficient funds to meet the expenditure requirements of the City for the next six months. The portfolio is in compliance with the City of Morgan Hill investment policy and all State laws and regulations.

Prepared by:

Gina Nazareno, Senior Accountant

Approved by:

Caitlin Jachimowicz, Treasurer

Reviewed by:

Dat Nguyen, Finance Director



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2021-22
For The Seven Months Ended January 31, 2022
58% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
<u>TAXES</u>							
Property Tax - Secured/Unsecured	\$ 13,485,000	13,485,000	\$ 6,492,699	48%	\$ 6,036,360	\$ 456,339	8%
Property Tax - RPTTF Residual Distribution	2,144,000	2,144,000	808,731	38%	1,123,570	(314,839)	-28%
Property Tax - Supplemental Roll	142,000	142,000	71,230	50%	232,383	(161,152)	-69%
Sales Tax	10,699,601	10,699,601	4,834,237	45%	3,407,731	1,426,507	42%
Public Safety Sales Tax	399,000	399,000	191,608	48%	124,755	66,854	54%
Transient Occupancy Taxes	2,235,300	2,235,300	1,310,992	59%	736,955	574,037	78%
Franchise (Refuse ,Cable ,PG&E)	2,375,000	2,375,000	971,018	41%	898,869	72,149	8%
<u>Property Transfer Tax</u>	541,000	541,000	388,040	72%	346,656	41,384	12%
TOTAL TAXES	32,020,901	32,020,901	15,068,556	47%	12,907,277	2,161,278	17%
<u>LICENSES/PERMITS</u>							
Business License	159,135	159,135	163,512	103%	132,833	30,679	23%
<u>Other Permits</u>	39,690	39,690	3,630	9%	2,619	1,011	39%
TOTAL LICENSES/PERMITS	198,825	198,825	167,142	84%	135,452	31,690	23%
<u>FINES AND PENALTIES</u>							
Parking Enforcement	8,240	8,240	1,977	24%	1,868	109	6%
Bails & Fines	75,854	75,854	21,340	28%	21,406	(66)	0%
Administrative Citations	10,331	10,331	-	n/a	12,703	(12,703)	-100%
TOTAL FINES AND PENALTIES	94,425	94,425	23,318	25%	35,977	(12,660)	-35%
<u>OTHER AGENCIES</u>							
Motor Vehicle in-Lieu	26,026	26,026	-	n/a	6,286	(6,286)	-100%
<u>Other Revenue - Other Agencies</u>	437,794	653,658	242,263	37%	239,700	2,563	1%
TOTAL OTHER AGENCIES	463,820	679,684	242,263	36%	245,986	(3,723)	-2%
<u>CHARGES CURRENT SERVICES</u>							
Police False Alarm Charge	31,340	31,340	16,879	54%	29,719	(12,840)	-43%
Business License Application Review	38,007	38,007	24,377	64%	25,903	(1,526)	-6%
Membership Services & Rec Programs	4,238,989	4,713,801	2,400,054	51%	1,554,929	845,126	54%
Facility Rentals	945,931	506,683	312,322	62%	84,996	227,327	267%
Community Services	126,449	79,000	98,830	125%	4,082	94,748	2321%
General Administration Overhead	1,825,440	1,825,440	1,068,844	59%	1,038,842	30,002	3%
<u>Other Charges Current Services</u>	970,580	970,580	437,011	45%	266,079	170,932	64%
TOTAL CURRENT SERVICES	8,176,736	8,164,851	4,358,318	53%	3,004,549	1,353,768	45%
<u>OTHER REVENUE</u>							
Use of money/property	823,436	823,436	301,834	37%	224,954	76,880	34%
<u>Other Revenues</u>	5,961,472	5,745,608	160,740	3%	291,979	(131,239)	-45%
TOTAL OTHER REVENUE	6,784,908	6,569,044	462,574	7%	516,933	(54,359)	-11%
<u>TRANSFERS IN</u>							
One Time Transfer	180,000	180,000	61,250	34%	119,574	(58,324)	-49%
Public Safety Facilities Fund	25,000	25,000	58,324	233%	100,000	(41,676)	-42%
Supplemental Law Enforcement Fund	100,000	100,000	100,000	100%	58,000	42,000	72%
Countywide Solid Waste	324,763	649,526	325,000	50%	-	325,000	n/a
Streets	699,735	699,735	324,267	46%	408,156	(83,889)	-21%
Park Maintenance	650,000	650,000	379,169	58%	379,169	-	n/a
Sewer Operations	357,159	357,159	208,341	58%	206,752	1,589	1%
Water Operations	357,159	357,159	208,341	58%	206,752	1,589	1%
Park Development	75,000	75,000	43,750	58%	43,750	-	n/a
TOTAL TRANSFERS IN	2,768,816	3,093,579	1,708,442	55%	1,522,153	186,289	12%
TOTAL GENERAL FUND	50,508,431	50,821,309	22,030,613	43%	18,368,328	3,662,285	20%
SPECIAL REVENUE FUNDS							
<u>202 STREET MAINTENANCE</u>							
Gas Tax 2105 - 2107.5	699,735	699,735	319,937	46%	379,547	(59,610)	-16%
<u>Interest / Other Revenue/Other Charges</u>	-	-	394	n/a	775	(381)	-49%
202 STREET MAINTENANCE	699,735	699,735	320,331	46%	380,322	(59,990)	-16%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2021-22
For The Seven Months Ended January 31, 2022
58% of Year Complete

FUND REVENUE SOURCE	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	858	858	589	69%	741	(151)	-20%
Police Grant/SLEF/JAG	100,000	100,000	94,618	95%	90,060	4,558	5%
205 SUPPLEMENTAL LAW ENFORCEMENT FUND	100,858	100,858	95,207	94%	90,801	4,407	5%
206 DEVELOPMENT SERVICES							
Building Fees	3,195,787	3,195,787	1,648,906	52%	1,341,007	307,899	23%
Planning Fees	766,776	766,776	497,986	65%	740,848	(242,862)	-33%
Engineering Fees	999,810	999,810	361,430	36%	268,951	92,478	34%
Other Revenue/Current Charges	330,747	330,747	112,311	34%	75,055	37,256	50%
206 DEVELOPMENT SERVICES	5,293,120	5,293,120	2,620,633	50%	2,425,862	194,771	8%
207 LONG RANGE PLANNING	869,266	869,266	406,411	47%	376,653	29,758	8%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	3,173	3,173	167	5%	278	(111)	-40%
215 and 216 HCD BLOCK GRANT	3,173	3,173	167	5%	278	(111)	-40%
225 ASSET SEIZURE	1,931	1,931	361	19%	611	(250)	-41%
229 LIGHTING AND LANDSCAPE	2,573	2,573	104,867	4076%	104,175	692	1%
230 COMMUNITY FACILITIES DISTRICT	1,240	1,240	11,766	949%	20,282	(8,516)	-42%
232 ENVIRONMENTAL PROGRAMS	481,008	481,008	307,233	64%	283,425	23,808	8%
234 MOBILE HOME PARK RENT STAB.	757	757	7,982	1054%	3,690	4,292	116%
235 SENIOR HOUSING	3,869	3,869	600	16%	1,000	(400)	-40%
236 HOUSING MITIGATION	2,446,028	2,596,028	772,692	30%	1,289,159	(516,467)	-40%
237 BEGIN	-	-	54,180	n/a	718	53,461	7445%
238 CAL HOMES	-	-	208	n/a	81,037	(80,829)	-100%
240 EMPLOYEE ASSISTANCE	29,089	29,089	6,984	24%	8,683	(1,699)	-20%
246 COUNTYWIDE SOLID WASTE	-	1,324,763	699,112	53%	-	699,112	n/a
247 ENVIRONMENT REMEDIATION	2,448	2,448	1,225	50%	1,095	130	12%
250 COMH-SUCCESSOR AGENCY-MHRDA	7,100,496	7,100,496	6,246,678	88%	889,017	5,357,660	603%
255 HOUSING SUCCESSOR AGENCY	215,318	215,318	284,662	132%	298,696	(14,034)	-5%
260 PUBLIC ART	-	-	1,100	n/a	-	1,100	n/a
TOTAL SPECIAL REVENUE FUNDS	17,250,910	18,725,673	11,942,398	64%	6,255,503	5,686,895	91%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	1,748,480	7,131,498	5,934,606	83%	1,439,407	4,495,199	312%
302 PARK MAINTENANCE	360,613	360,613	458,182	127%	53,699	404,483	753%
303 LOCAL DRAINAGE	1,675,036	1,675,036	585,911	35%	787,472	(201,561)	-26%
304 LOCAL DRAINAGE/NON AB1600	80,692	80,692	86,905	108%	6,947	79,958	1151%
306 AGRICULTURE & OPEN SPACE PRESERVATION	180,385	180,385	120,474	67%	123,468	(2,994)	-2%
308 STREET CIP	4,050,523	4,050,523	3,110,049	77%	979,420	2,130,629	218%
309 TRAFFIC IMPACT	1,468,388	1,468,388	6,726,984	458%	853,873	5,873,112	688%
315 PUBLIC SAFETY FACILITIES IMPACT	864,417	864,417	148,515	17%	247,232	(98,718)	-40%
346 PUBLIC FACILITIES NON-AB1600	611,488	911,488	35,760	4%	884,407	(848,647)	-96%
347 PUBLIC FACILITIES IMPACT	265,536	265,536	35,706	13%	106,125	(70,419)	-66%
348 LIBRARY	1,077,617	1,077,617	161,665	15%	455,779	(294,115)	-65%
350 UNDERGROUNDING	86,073	86,073	403,828	469%	4,147	399,681	9637%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	591,967	591,967	29,720	5%	299,402	(269,682)	-90%
360 COMMUNITY/REC IMPACT FUND	1,730,018	1,730,018	202,144	12%	695,714	(493,569)	-71%
375 QUIMBY FEE	1,623,552	1,623,552	-	n/a	-	-	n/a
TOTAL CAPITAL PROJECTS FUNDS	16,414,785	22,097,803	18,040,448	82%	6,937,092	11,103,356	160%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	307,385	307,385	178,367	58%	181,102	(2,736)	-2%
441 POLICE FACILITY BOND	385,639	385,639	224,177	58%	324,289	(100,112)	-31%
TOTAL DEBT SERVICE FUNDS	693,024	693,024	402,544	58%	505,391	(102,847)	-20%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2021-22
For The Seven Months Ended January 31, 2022
58% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 SEWER OPERATION							
Sewer Service Fees	13,812,501	13,812,501	7,176,755	52%	6,515,062	661,692	10%
Interest Income/Transfers	37,425	37,425	5,723	15%	14,872	(9,149)	-62%
Other Revenue/Current Charges	268,241	268,241	198,057	74%	128,279	69,779	54%
640 SEWER OPERATION	14,118,167	14,118,167	7,380,535	52%	6,658,213	722,322	11%
641 SEWER EXPANSION							
Interest Income	220,194	220,194	60,975	28%	97,141	(36,166)	-37%
Development Impact Fee	6,845,919	6,845,919	1,930,692	28%	2,245,100	(314,408)	-14%
641 SEWER EXPANSION	7,066,113	7,066,113	1,991,667	28%	2,342,241	(350,573)	-15%
642 SEWER RATE STABILIZATION	195,311	195,311	94,487	48%	11,482	83,005	723%
643 SEWER-CAPITAL PROJECT	4,707,648	4,707,648	2,754,522	59%	2,605,463	149,059	6%
TOTAL SEWER FUNDS	26,087,239	26,087,239	12,221,212	47%	11,617,399	603,813	5%
650 WATER OPERATION							
Water Sales	15,179,148	15,179,148	7,422,512	49%	8,064,148	(641,636)	-8%
Meter Install & Service	25,215	25,215	36,611	145%	52,054	(15,443)	-30%
Transfers-In / Interest Income	546,952	546,952	284,872	52%	270,508	14,364	5%
Other Revenue/Current Charges	585,381	585,381	507,250	87%	478,277	28,973	6%
650 WATER OPERATION	16,336,696	16,336,696	8,251,245	51%	8,864,987	(613,742)	-7%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	64,003	64,003	8,764	14%	13,862	(5,098)	-37%
Development Impact Fee	1,782,143	1,782,143	341,051	19%	783,540	(442,489)	-56%
651 WATER EXPANSION	1,846,146	1,846,146	349,815	19%	797,402	(447,587)	-56%
652 Water Rate Stabilization	141,222	141,222	81,093	57%	38,144	42,950	113%
653 Water Capital Project	5,047,350	5,047,350	2,959,590	59%	2,848,568	111,022	4%
TOTAL WATER FUNDS	23,371,414	23,371,414	11,641,743	50%	12,549,100	(907,357)	-7%
TOTAL ENTERPRISE FUNDS	49,458,653	49,458,653	23,862,955	48%	24,166,499	(303,544)	-1%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,952,577	2,247,577	1,312,657	58%	1,099,523	213,134	19%
740 BUILDING MAINTENANCE	3,409,334	3,409,334	659,621	19%	1,999,732	(1,340,111)	-67%
741 BUILDING REPLACEMENT	745,508	755,508	410,063	54%	397,716	12,347	3%
745 CIP ADMINISTRATION	1,798,889	1,798,889	1,106,214	61%	801,451	304,763	38%
760 UNEMPLOYMENT INSURANCE	2,513	2,513	840	33%	58,750	(57,910)	-99%
770 WORKERS COMPENSATION	913,504	913,504	444,608	49%	420,211	24,397	6%
790 EQUIPMENT REPLACEMENT	1,086,223	1,086,223	654,094	60%	782,053	(127,959)	-16%
791 EMPLOYEE BENEFITS	1,043,858	1,043,858	355,179	34%	349,443	5,736	2%
795 GENERAL LIABILITY INSURANCE	1,504,188	1,737,188	1,003,144	58%	503,857	499,287	99%
TOTAL INTERNAL SERVICE FUNDS	12,456,594	12,994,594	5,946,421	46%	6,412,737	(466,316)	-7%
TOTAL FOR ALL FUNDS	\$ 146,782,397	\$ 154,791,056	\$ 82,225,379	53%	\$ 62,645,550	\$ 19,579,829	31%



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2021-22
For the Month and Seven Months Ended January 31, 2022
58% 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	\$ 42,092	\$ 468,850	\$ 224,067	\$ 75,664	\$ 299,731	64%	\$ 175,763
	CITY ATTORNEY	53,700	802,889	401,870	90,451	492,321	61%	376,100
	CITY MANAGER	48,353	638,262	362,885	16,250	379,135	59%	289,030
	HUMAN RESOURCES	61,430	830,904	404,758	-	404,758	49%	370,623
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	41,568	672,320	351,760	3,200	354,960	53%	327,844
	Elections	2,037	28,180	13,941	-	13,941	49%	101,438
	COUNCIL SVCS & RECORDS MGMT	43,605	700,500	365,700	3,200	368,900	53%	429,282
	FINANCE	123,427	2,472,421	907,710	53,836	961,546	39%	815,934
	TOTAL ADMINISTRATION	372,608	5,913,826	2,666,991	239,401	2,906,392	49%	2,456,733
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	294,346	5,648,211	2,877,255	985,539	3,862,794	68%	2,598,361
	Recreation Facility Rentals	41,007	1,313,549	307,660	18,753	326,413	25%	555,339
	Community Services	52,378	641,554	288,050	64,174	352,224	55%	249,332
	Park Maintenance	70,495	1,179,250	598,513	48,121	646,633	55%	595,441
	Environmental Services	15,879	349,129	120,516	2,240	122,756	35%	113,344
	Countywide Solid Waste Program	16,312	303,550	95,925	-	95,925	32%	
	Street Maintenance	172,883	2,662,248	1,235,007	130,038	1,365,046	51%	1,194,132
	Downtown Maintenance	15,980	318,869	155,309	35,649	190,958	60%	125,285
	Cable Television	2,737	34,272	19,173	-	19,173	56%	12,651
	COMMUNITY SERVICES	682,017	12,450,632	5,697,408	1,284,513	6,981,921	56%	5,443,885
	CODE COMPLIANCE	14,679	174,873	101,686	-	101,686	58%	91,119
	INFRASTRUCTURE PLANNING & CONGESTION MGMT	25,000	356,583	172,923	-	172,923	48%	203,759
	ECONOMIC DEVELOPMENT PROGRAMS	40,920	970,380	411,432	49,079	460,512	47%	362,212
	TOTAL COMMUNITY SERVICES	762,616	13,952,469	6,383,450	1,333,592	7,717,042	55%	6,100,975
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	137,351	1,421,383	981,936	32,921	1,014,857	71%	930,945
	Field Operations	805,860	9,314,988	5,300,715	139,909	5,440,624	58%	4,655,201
	Support Services	202,181	2,596,110	1,498,329	-	1,498,329	58%	1,284,845
	Emergency Services/Haz Mat	15,139	202,072	111,419	-	111,419	55%	102,084
	Special Operations	194,934	3,700,816	1,560,573	15,671	1,576,244	43%	1,692,855
	Dispatch Services	149,029	1,897,873	1,030,987	-	1,030,987	54%	928,548
	POLICE	1,504,494	19,133,242	10,483,958	188,502	10,672,459	56%	9,594,477
	FIRE	702,407	7,788,401	4,441,733	1,725	4,443,458	57%	4,058,581
	TOTAL PUBLIC SAFETY	2,206,900	26,921,643	14,925,691	190,227	15,115,918	56%	13,653,058
IV. TRANSFERS								
	Other	910,559	4,083,681	3,046,125	-	3,046,125	75%	333,179
	TOTAL TRANSFERS	910,559	4,083,681	3,046,125	-	3,046,125	75%	333,179
	TOTAL GENERAL FUND	4,252,683	50,871,618	27,022,256	1,763,220	28,785,477	57%	22,543,945



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2021-22
For the Month and Seven Months Ended January 31, 2022
58% 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	324,628	704,068	326,794	-	326,794	46%	410,620
205	PUBLIC SAFETY/SUPP.LAW	100,604	107,245	104,228	-	104,228	97%	104,123
206	DEVELOPMENT SERVICES FUND							
	Planning	162,761	1,956,314	1,161,783	27,668	1,189,451	61%	886,390
	Building	176,358	2,233,914	1,230,970	1,726	1,232,696	55%	1,138,080
	Engineering	121,168	1,366,129	863,597	6,843	870,440	64%	716,846
206	DEVELOPMENT SERVICES FUND	460,288	5,556,357	3,256,350	36,237	3,292,587	59%	2,741,315
207	LONG RANGE PLANNING	44,022	861,202	349,241	61,183	410,424	48%	583,031
215/216	CDBG	458	5,499	3,206	-	3,206	58%	3,129
225	ASSET SEIZURE	-	54,232	14,232	-	14,232	26%	-
229	LIGHTING AND LANDSCAPE	18,692	168,130	93,356	15,404	108,760	65%	101,918
230	COMMUNITY FACILITIES DISTRICT	3,172	42,093	15,236	-	15,236	36%	14,398
232	ENVIRONMENT PROGRAMS	35,042	508,715	231,632	4,123	235,755	46%	225,988
234	MOBILE HOME PARK	37	449	259	-	259	58%	259
236	HOUSING MITIGATION	57,790	1,495,875	396,427	83,325	479,753	32%	251,627
240	EMPLOYEE ASSISTANCE	1,597	28,531	9,613	-	9,613	34%	8,132
246	COUNTYWIDE SOLID WASTE PROGRAM	105,285	1,324,763	615,036	548,587	1,163,624	88%	-
250	COMH-SUCCESSOR AGENCY-MHRDA	587	6,939,408	490,200	-	490,200	7%	4,161,712
255	HOUSING SUCCESSOR AGENCY	85,445	1,003,785	644,544	158,333	802,877	80%	702,211
260	PUBLIC ART	-	23,500	3,993	-	3,993	17%	-
TOTAL SPECIAL REVENUE FUNDS		1,237,649	18,823,852	6,554,350	907,193	7,461,543	40%	9,308,463
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	355,443	9,738,856	4,149,377	2,479,259	6,628,635	68%	2,780,342
302	PARK MAINTENANCE	55,245	745,776	394,165	-	394,165	53%	379,169
303	LOCAL DRAINAGE	6,990	6,997,265	37,090	42,558	79,648	1%	270,633
304	LOCAL DRAIN. NON-AB1600	645	833,046	2,085	48,585	50,670	6%	173,027
306	AGRICULTURE & OPEN SPACE PRESERVATI	2,249	5,480,009	5,400,261	-	5,400,261	99%	15,596
308	STREET CIP	41,944	6,587,142	2,894,890	131,769	3,026,659	46%	2,792,326
309	TRAFFIC IMPACT	426,037	30,480,782	6,634,065	9,088,932	15,722,997	52%	1,264,453
315	PUBLIC SAFETY FACILITIES IMPACT	19,734	565,180	138,922	-	138,922	25%	136,675
346	PUBLIC FAC.NON AB1600	2,466	1,127,968	88,029	44,322	132,351	12%	143,766
347	PUBLIC FACILITIES IMPACT	2,277	27,331	15,939	-	15,939	58%	34,340
348	LIBRARY IMPACT	18,187	216,704	128,041	-	128,041	59%	613,232
350	UNDERGROUNDING	95	139,398	665	-	665	0%	644
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	31,630	1,160,466	1,149,060	31,456	1,180,516	102%	1,033,980
360	COMM/REC CENTER IMPACT	25,884	1,454,834	218,671	312,349	531,020	37%	1,443,807
375	QUIMBY FEE	9	600,000	114	-	114	0%	-
TOTAL CAPITAL PROJECTS FUNDS		988,836	66,154,756	21,251,373	12,179,229	33,430,603	51%	11,081,991
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	886	304,947	233,828	-	233,828	77%	231,304
441	POLICE FACILITY BOND DEBT	338	389,497	312,609	-	312,609	80%	304,854
TOTAL DEBT SERVICE FUNDS		1,224	694,444	546,437	-	546,437	79%	536,158



City of Morgan Hill
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For the Month and Seven Months Ended January 31, 2022
58% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
ENTERPRISE FUNDS								
SEWER								
640	SEWER OPERATIONS	864,037	14,126,884	7,365,690	194,410	7,560,100	54%	6,344,487
641	SEWER CAPITAL EXPANSION	40,505	22,987,165	297,983	524,140	822,123	4%	324,264
642	SEWER RATE STABILIZATION	95	1,138	665	-	665	58%	558
643	SEWER-CAPITAL PROJECTS	515,860	22,004,075	5,251,172	1,270,848	6,522,020	30%	2,109,414
TOTAL SEWER FUND(S)		1,420,497	59,119,262	12,915,510	1,989,399	14,904,908	25%	8,778,723
WATER								
	Water Operations	1,074,466	15,292,037	7,766,859	764,070	8,530,929	56%	6,689,516
	Utility Billing	66,613	985,735	505,300	34,180	539,480	55%	408,705
	Water Conservation	6,808	157,768	62,719	49,054	111,773	71%	32,703
650	WATER OPERATIONS	1,147,887	16,435,540	8,334,878	847,304	9,182,182	56%	7,130,924
651	WATER CAPITAL EXPANSION	77,751	2,281,063	480,220	3,029	483,250	21%	310,545
652	WATER RATE STABILIZATION	31	371	217	-	217	58%	180
653	WATER-CAPITAL PROJECTS	23,566	7,534,033	543,193	321,695	864,889	11%	121,998
TOTAL WATER FUND(S)		1,249,235	26,251,006	9,358,509	1,172,029	10,530,537	40%	7,563,647
TOTAL ENTERPRISE FUNDS		2,669,732	85,370,268	22,274,018	3,161,427	25,435,446	30%	16,342,370
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	122,125	2,612,628	1,004,905	928,829	1,933,734	74%	888,320
740	BUILDING MAINTENANCE	85,954	3,507,595	603,732	86,241	689,972	20%	1,146,870
741	BUILDING REPLACEMENT	125,113	610,000	181,156	53,217	234,373	38%	45,239
745	CIP ADMINISTRATION	140,290	1,735,361	981,273	6,764	988,037	57%	788,644
760	UNEMPLOYMENT	-	20,000	3,846	-	3,846	19%	-
770	WORKERS COMPENSATION	35,184	876,877	707,534	-	707,534	81%	482,358
790	EQUIPMENT REPLACEMENT	263,620	1,546,014	423,735	212,867	636,602	41%	682,663
791	EMPLOYEE BENEFITS FUND	177,834	625,000	536,268	-	536,268	86%	295,244
795	GEN. LIABILITY INSURANCE	10,067	1,724,061	1,493,139	-	1,493,139	87%	1,192,755
TOTAL INTERNAL SERVICE FUNDS		960,188	13,257,537	5,935,587	1,287,918	7,223,504	54%	5,522,093
REPORT TOTAL		\$ 10,110,311	\$ 235,172,476	\$ 83,584,022	\$ 19,298,987	\$ 102,883,009	44%	\$ 65,335,020



City of Morgan Hill
Fund Activity Summary - Fiscal Year 2021-22
For The Seven Months Ended January 31, 2022
58% of Year Complete

Fund No.	Fund	Fund Balance 06-30-21	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved
010	GENERAL FUND	\$ 24,896,179	\$ 22,030,613	43%	\$ 27,022,256	53%	\$ (4,991,643)	\$ 1,763,220	\$ 18,141,315
TOTAL GENERAL FUND		\$ 24,896,179	\$ 22,030,613	43%	\$ 27,022,256	53%	\$ (4,991,643)	\$ 1,763,220	\$ 18,141,315
202	STREET MAINTENANCE	6,241	\$ 320,331	46%	\$ 326,794	55%	\$ (6,463)	\$ -	\$ (222)
205	PUBLIC SAFETY/SUPPL. LAW	195,819	95,207	94%	104,228	63%	(9,021)	-	186,798
206	DEVELOPMENT SERVICES	(484,553)	2,620,633	50%	3,256,350	59%	(635,717)	36,237	(1,156,508)
207	LONG RANGE PLANNING	1,250,193	406,411	47%	349,241	41%	57,169	61,183	1,246,180
215 / 216	CDBG	34,893	167	5%	3,206	58%	(3,039)	-	31,854
225	ASSET SEIZURE	143,259	361	19%	14,232	n/a	(13,872)	-	129,387
229	LIGHTING AND LANDSCAPE	172,706	104,867	4076%	93,356	56%	11,511	15,404	168,813
230	COMMUNITY FACILITIES DISTRICT	137,840	11,766	949%	15,236	36%	(3,470)	-	134,370
232	ENVIRONMENTAL PROGRAMS	213,442	307,233	64%	231,632	46%	75,601	4,123	284,920
234	MOBILE HOME PK RENT STAB.	58,766	7,982	1054%	259	58%	7,723	-	66,489
235	SENIOR HOUSING	234,588	600	16%	-	n/a	600	-	235,188
236	HOUSING MITIGATION	5,407,291	772,692	30%	396,427	27%	376,264	83,325	5,700,230
237	BEGIN	320,727	54,180	n/a	-	n/a	54,180	-	374,907
238	CAL HOMES	276	208	n/a	-	n/a	208	-	484
240	EMPLOYEE ASSISTANCE	62,190	6,984	24%	9,613	34%	(2,630)	-	59,560
246	COUNTYWIDE SOLID WASTE	-	699,112	50%	615,036	46%	84,075	548,587	(464,512)
247	ENVIRONMENT REMEDIATION	135,927	1,225	50%	-	n/a	1,225	-	137,152
250	COMH-SUCCESSOR AGENCY-MHRDA	(493,066)	6,246,678	88%	490,200	7%	5,756,478	6,262,932	(999,520)
255	HOUSING SUCCESSOR AGENCY	4,287,939	284,662	132%	644,544	64%	(359,882)	158,333	3,769,724
260	PUBLIC ART	70,772	1,100	n/a	3,993	-	(2,893)	-	67,879
TOTAL SPECIAL REVENUE FUNDS		\$ 11,755,250	\$ 11,942,398	64%	\$ 6,554,350	35%	\$ 5,388,048	\$ 7,170,124	\$ 9,973,174
301	PARK DEV. IMPACT FUND	\$ 270,918	\$ 5,934,606	83%	\$ 4,149,377	43%	\$ 1,785,229	\$ 2,479,259	\$ (423,112)
302	PARK MAINTENANCE	2,815,081	458,182	127%	394,165	53%	64,017	-	2,879,098
303	LOCAL DRAINAGE	10,947,520	585,911	35%	37,090	1%	548,821	42,558	11,453,783
304	LOCAL DRAINAGE/NON-AB1600	1,268,597	86,905	108%	2,085	0%	84,820	48,585	1,304,832
306	AGRICULTURE AND OPEN SPACE PRESERV	6,011,689	120,474	67%	5,400,261	99%	(5,279,787)	-	731,902
308	STREET CIP	3,538,596	3,110,049	77%	2,894,890	44%	215,159	131,769	3,621,986
309	TRAFFIC IMPACT FUND	2,217,293	6,726,984	458%	6,634,065	22%	92,919	9,088,932	(6,778,720)
315	PUBLIC SAFETY FACILITIES IMPACT	3,650,943	148,515	17%	138,922	25%	9,593	-	3,660,536
346	PUBLIC FACILITIES NON-AB1600	1,100,016	35,760	4%	88,029	8%	(52,270)	44,322	1,003,424
347	PUBLIC FACILITIES IMPACT FUND	1,034,272	35,706	13%	15,939	58%	19,767	-	1,054,039
348	LIBRARY IMPACT FUND	1,487,275	161,665	15%	128,041	59%	33,624	-	1,520,899
350	UNDERGROUNDING	1,073,838	403,828	469%	665	0%	403,163	-	1,477,001
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	181,922	29,720	5%	1,149,060	99%	(1,119,340)	31,456	(968,874)
360	COMM/REC CTR IMPACT FUND	1,353,501	202,144	12%	218,671	15%	(16,527)	312,349	1,024,625
375	QUIMBY FEE	-	-	n/a	114	0%	(114)	-	(114)
TOTAL CAPITAL PROJECT FUNDS		\$ 36,951,461	\$ 18,040,448	82%	\$ 21,251,373	32%	\$ (3,210,926)	\$ 12,179,229	\$ 21,561,306
420	CIVIC CENTER DEBT	\$ 165,528	\$ 178,367	58%	\$ 233,828	77%	\$ (55,461)	\$ 3	\$ 110,064
441	POLICE FACILITY BOND DEBT	171,762	224,177	58%	312,609	80%	(88,432)	4	83,327
TOTAL DEBT SERVICE FUNDS		\$ 337,290	\$ 402,544	58%	\$ 546,437	79%	\$ (143,893)	\$ 6	\$ 193,391



City of Morgan Hill
Fund Activity Summary - Fiscal Year 2021-22
For The Seven Months Ended January 31, 2022
58% of Year Complete

Fund No.	Fund	Fund Balance 06-30-21	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved
640	SEWER OPERATIONS	\$ 3,602,581	\$ 7,380,535	52%	\$ 7,365,690	52%	\$ 14,845	194,410	3,423,016
641	SEWER IMPACT FUND*	22,121,700	1,991,667	28%	297,983	1%	1,693,685	524,140	23,291,244
642	SEWER RATE STABILIZATION	2,692,314	94,487	48%	665	58%	93,822	-	2,786,136
643	SEWER-CAPITAL PROJECTS	29,354,687	2,754,522	59%	5,251,172	24%	(2,496,650)	1,270,848	25,587,189
650	WATER OPERATIONS	3,580,575	8,251,245	51%	8,334,878	51%	(83,633)	847,304	2,649,638
651	WATER IMPACT FUND*	2,979,950	349,815	19%	480,220	21%	(130,406)	3,029	2,846,515
652	WATER RATE STABILIZATION	3,162,416	81,093	57%	217	58%	80,876	-	3,243,292
653	WATER -CAPITAL PROJECT	8,134,534	2,959,590	59%	543,193	7%	2,416,397	321,695	10,229,235
TOTAL ENTERPRISE FUNDS		\$ 75,628,757	\$ 23,862,955	48%	\$ 22,274,018	26%	\$ 1,588,937	\$ 3,161,427	\$ 74,056,266
730	INFORMATION SERVICES	\$ 849,651	\$ 1,312,657	58%	\$ 1,004,905	38%	\$ 307,753	\$ 928,829	\$ 228,575
740	BUILDING MAINTENANCE	6,945	659,621	19%	603,732	17%	55,889	86,241	(23,407)
741	BUILDING REPLACEMENT	3,561,339	410,063	54%	181,156	30%	228,908	53,217	3,737,030
745	CIP ENGINEERING	55,476	1,106,214	61%	981,273	57%	124,941	6,764	173,653
760	UNEMPLOYMENT	328,958	840	33%	3,846	19%	(3,006)	-	325,952
770	WORKERS COMPENSATION	2,115,661	444,608	49%	707,534	81%	(262,926)	30,000	1,822,735
790	EQUIPMENT REPLACEMENT	5,996,455	654,094	60%	423,735	27%	230,359	212,867	6,013,947
791	EMPLOYEE BENEFITS FUNDS	(28,785)	355,179	34%	536,268	86%	(181,089)	4,187,404	(4,397,278)
795	GEN. LIABILITY INSURANCE	1,236,516	1,003,144	58%	1,493,139	87%	(489,995)	-	746,521
TOTAL INTERNAL SERVICE FUNDS		\$ 14,122,216	\$ 5,946,421	46%	\$ 5,935,587	45%	\$ 10,834	\$ 5,505,322	\$ 8,627,729
SUMMARY BY FUND TYPE									
GENERAL FUND GROUP		\$ 24,896,179	\$ 22,030,613	43%	\$ 27,022,256	53%	\$ (4,991,643)	\$ 1,763,220	\$ 18,141,315
SPECIAL REVENUE GROUP		11,755,250	11,942,398	64%	6,554,350	35%	5,388,048	7,170,124	9,973,174
DEBT SERVICE GROUP		337,290	402,544	58%	546,437	79%	(143,893)	6	193,391
CAPITAL PROJECTS GROUP		36,951,461	18,040,448	82%	21,251,373	32%	(3,210,926)	12,179,229	21,561,306
ENTERPRISE GROUP		75,628,757	23,862,955	48%	22,274,018	26%	1,588,937	3,161,427	74,056,266
INTERNAL SERVICE GROUP		14,122,216	5,946,421	46%	5,935,587	45%	10,834	5,505,322	8,627,729
TOTAL ALL GROUPS		\$ 163,691,153	\$ 82,225,379	53%	\$ 83,584,022	36%	\$ (1,358,643)	\$ 29,779,329	\$ 132,553,181

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.

² Amount restricted for debt service payments and AB1600 capital expansion projects as detailed in the City's five year CIP Plan and bond agreements.

CITY COUNCIL STAFF REPORT

MEETING DATE: March 2, 2022

PREPARED BY:

Michelle Bigelow, Deputy City Clerk

APPROVED BY: City Manager

ADOPT RESOLUTION CERTIFYING THE INITIATIVE PETITION TITLED: CITIZENS' INITIATIVE AMENDING THE GENERAL PLAN TO REQUIRE VOTER APPROVAL OF ANY FUTURE MONTEREY ROAD LANE REDUCTION AND DIRECT STAFF TO PREPARE AN IMPACT REPORT

RECOMMENDATION(S)

1. Adopt resolution accepting the City Clerk's Certificate of Sufficiency for the Initiative Petition Titled: Citizens' initiative amending the General Plan to require voter approval of any future Monterey Road lane reduction; and
2. Direct staff to prepare an impact report under Elections Code section 9212 within 30 days and no later than April 1, 2022, for City Council consideration at the April 6, 2022 City Council meeting.

Estimated Time: 15 Minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

Certification:

On June 9, 2021, proponents submitted a Notice of Intention, written text of initiative, and the reasons for the proposed initiative.

On December 22, 2021, the City of Morgan Hill (City) requested that the Santa Clara County Registrar of Voters Office (ROV) conduct a random sampling of the signatures on the referendum petitions (Attachment 1).

On January 20, 2022, the City was notified by the ROV that the random sampling results fell between 95% and 110%, necessitating a full count. On February 23, 2022, the City was notified by the ROV that 2,814 signatures were found to be sufficient

(Attachment 2).

Pursuant to state law, to qualify for further action, an initiative petition must contain the signatures of at least 10% of the registered voters of the City of Morgan Hill. The ROV indicated that as of February 17, 2021, there were 27,956 registered voters in the City of Morgan Hill, such that at least 2,796 valid signatures would be required on the initiative petition. The ROV reviewed and examined the signatures contained on the initiative petition and the signature verification resulted in the verification of a total of 3,379 signatures, of the 3,528 signatures submitted, with 2,814 signatures found valid. Therefore, the City Clerk has prepared and issued a Certificate of Sufficiency of Initiative Petition (Attachment 3) for City Council consideration and acceptance.

Impact Report:

Upon City Council adoption of the resolution (Attachment 4) accepting the City Clerk's Certificate of Sufficiency of Initiative Petition, California Elections Code sections 9211, 9212, and 9114 provide that the City Council may refer the proposed initiative measure to any City agency or agencies for a report on its effect on municipal operations. Staff recommends that the Council refer the initiative measure for a report on the following in accordance with Elections Code section 9212:

1. The fiscal impact of the measure;
2. The effect of the measure on consistency with the City's general and specific plans;
3. Its impact on funding for infrastructure;
4. Its impact on the community's ability to attract and retain business and employment;
5. Its impact on vacant parcels of land;
6. Its impact on traffic congestion, existing business districts, and developed areas designated for revitalization; and
7. Any other matters the City Council would like to be in the report.

If requested, the report will be submitted to the Council no later than April 1, 2022 for consideration at the April 6, 2022 City Council meeting. At the April 6, 2022 City Council meeting, the Council would be required to either 1) adopt the ordinance contained in the initiative measure without alteration; or) place the initiative measure on the ballot at the next regular municipal election, November 8, 2022.

COMMUNITY ENGAGEMENT:

Involve

As a General Law City, Morgan Hill is governed by Government and Election Codes for the purpose of electing municipal officers (e.g., Mayor, Council Members, and City Treasurer), ballot measures and the initiative and referendum processes.

By City Council adoption of the attached resolution, it will be accepting the City Clerk's

Certificate of Sufficiency of the Initiative Petition Titled: Citizens' initiative amending the General Plan to require voter approval of any future Monterey Road lane reduction.

ALTERNATIVE ACTIONS:

The Council could choose not to request an impact analysis for the initiative and could instead adopt the ordinance without alteration or place the measure on the ballot for the November 8, 2022, general municipal election.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council previously acted on the Monterey Road Complete Streets/Lane Reduction Program on [August 5, 2015](#). The City Council directed the re-establishment of two travel lanes in each direction following the trial of the Program. The Council did request the item be revisited at a later date, should circumstances change. Prior to August 2015, the Council made several actions leading to the Pilot.

On [June 3, 2020](#), the City Council provided direction on the Monterey Road Complete Streets/Lane Reduction Program and business use of Downtown spaces. The Council did not elect to move forward with the Complete Streets/Lane Reduction Program.

Due to the COVID-19 pandemic and requests from local business owners, on [May 19, 2021](#), the City Council provided direction for staff to return with the design of an Improved Lane Reduction Program and associated Place Branding Design for the Downtown.

On [August 18, 2021](#), the City Council authorized staff to apply for and negotiate Transportation Development Act Grant Funds for bicycle lane improvements.

On [January 19, 2022](#), the City Council approved all seven recommendations outlined in the staff report approving the Traffic Mitigation Implementation Schedule, approving the re-design of the traffic lanes Downtown, directing staff to install pedestrian safety bollards at specific locations Downtown, directing staff to bring forward a review of the Parklet Program and to develop a Parklet Fee Financing Assistance Program, directing staff to explore the creation of a community parklet, directing staff to bring forward a contract for the implementation of Property-Based Improvement District, and amending the FY 2021-2022 budget and appropriating \$210,530 from the General Fund.

FISCAL AND RESOURCE IMPACT:

The City of Morgan Hill has not yet been invoiced to perform the count of the initiative petitions. Depending on the action(s) taken by the Council, additional costs will vary:

Impact Report: Due to the nature and breadth of the analysis, staff recommends engaging the services of Strategic Economics and Keyser Marsten & Associates to develop, review and confirm impact analysis. Given the time limitations, staff will work with consultants to complete as much analysis as possible in the next three weeks. No budget amendment or scorecard is necessary as the anticipated cost of this work will be absorbed within the budget and will be done within the City Manager's signature

authority.

Election Cost: If the Council elects to place the initiative on the ballot, it will be placed on the ballot for the next regular municipal election scheduled for November 8, 2022. The estimated cost to place a measure on the ballot for the November 8, 2022 election is \$61,502. Ballot measure costs are in addition to the regularly scheduled election costs of two Council district seats, and one Mayoral seat, which is estimated to be \$197,081.

Resource Impact: Thus far, staff has been able to accommodate the additional work due to the initiative petition within its existing workplan. Staff will add the facilitation of the impact analysis to its current workplan.

CEQA (California Environmental Quality Act):

Not a Project

Certification of an initiative petition is not a project under CEQA.



City Clerk's Office

17575 Peak Avenue
Morgan Hill, CA 95037-4128
(408)776-7380 (Phone)
(408)779-3117 (Fax)
irma.torrez@morganhill.ca.gov

December 22, 2021

Shannon Bushey
Registrar of Voters
County of Santa Clara
1555 Berger Drive, Building 2
San Jose, CA 95112

Subject: Submittal of Initiative Petition Titled: Citizens' initiative amending the General Plan to require voter approval of any future Monterey Road lane reduction.

Dear Ms. Bushey:

On June 8, 2021, Armando Benavides on behalf of Sally Casas a citizen of Morgan Hill submitted a Notice of Intention, written text of initiative, and the reasons for the proposed initiative.

The last report from the Santa Clara County Registrar of Voters to the Secretary of State dated February 17, 2021 states that there were 27,956 registered voters in Morgan Hill. To find the Initiative Petition to be sufficient, 10% of the 27,956 qualified registered voters in Morgan Hill would need to sign the petition (2,796 signatures).

On December 21, 2021, I was presented with 76 Sections of the Initiative Petition. My prima facie review resulted in the Petitions containing 3,467 signatures; exceeding the 2,796 signatures required to qualify.

The City of Morgan Hill is requesting that the Santa Clara County – Registrar of Voters conduct a **Random Sampling of 500 signatures** on the Referendum Petition. Should the random selections result in 95% to 110% valid signatures, and necessitate a 100% signature verification, the City of Morgan Hill requests that the Registrar of Voters Office **verify up to the 2,796** signatures required to declare the Referendum Petition sufficient.

Ms. Shannon Bushey
December 22, 2021
Page – 2 –

The City of Morgan Hill will reimburse the Registrar of Voters Office for the services rendered to certify the results of the Referendum Petition.

Please contact me for any questions you may have at (408) 310-4678 or e-mail: michelle.bigelow@morganhill.ca.gov.

Sincerely yours,



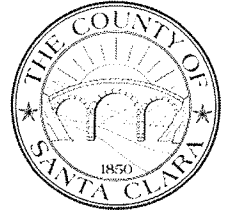
Michelle Bigelow
City Clerk

Enclosures: 1) Referendum Petitions
 2) Petition Worksheet Breakdown
 3) Two (2) blank copies of the Referendum Petition

County of Santa Clara

Registrar of Voters

1555 Berger Drive, Bldg. 2
San Jose, CA 95112
Mailing Address: P.O. Box 611360, San Jose, CA 95161-1360
(408) 299-VOTE (8683) (866) 430-VOTE (8683) FAX: (408) 998-7314
www.sccvote.org



February 23, 2022

Ms. Michelle Bigelow, City Clerk
City of Morgan Hill
110 E. Main St.
Los Gatos, CA 95030

RE: Citizen's Initiative Amending the General Plan to Require Voter Approval of any Future Monterey Rd Lane Reduction

Dear City Clerk Bigelow:

The petition named above was submitted to our office on December 22, 2021 and contained a raw count of 3,528 signatures. Pursuant to your request, 10% of the number of registered voters for the City of Morgan Hill, per the February 17, 2021 Report of Registration would equal 2,796 valid signatures to pass.

Your jurisdiction requested that the Registrar of Voters' Office conduct a random sampling of 500 signatures. A full check would be conducted should the random results fall within 95% to 110% valid signatures.

The random sampling of 500 signatures resulted in a statistical sampling showing the number of valid signatures was within 95% to 110%, therefore we continued with the full check of signatures. Pursuant to Elections Code Section 9115 (b) the ROV verified up to the number of signatures required for the petition to qualify.

The signature verification resulted in the verification of a total of 3,379 signatures of the 3,528 signatures submitted, with 2,814 signatures found valid.

Please contact our office to arrange to pick up your completed petition. If you have any questions concerning this matter, please feel free to contact our office at (408) 282-3009.

Sincerely,

Voter Registration Division
County of Santa Clara

Enc: Certificate of Results
Petition Result Breakdown



CERTIFICATE TO INITIATIVE PETITION

I, SHANNON BUSHEY, Registrar of Voters of the County of Santa Clara, State of California, hereby certify:

That the "**Citizen's Initiative Amending the General Plan to Require Voter Approval of any future Monterey Rd Lane Reduction**" was submitted for signature verification on December 22, 2021.

That said petition consists of 76 sections;

That attached to this petition at the time it was filed was an affidavit purporting to be the affidavit of the person who solicited the signatures, and containing the dates between which the purported qualified electors signed this petition;

That the affiant stated his or her own qualification, that he or she had solicited the signatures upon that section, that all of the signatures were made in his or her presence, and that to the best of his or her knowledge and belief each signature to that section was the genuine signature of the person whose name it purports to be;

That after the proponent filed this petition, I verified the required number of signatures by examining the records of registration in this county, current and in effect at the respective purported dates of such signing, to determine what number of qualified electors signed the petition, and from that examination I have determined the following facts regarding this petition:

1.	Number of signatures on petition (raw count):	<u>3,528</u>
2.	Number of signatures verified:	<u>3,379</u>
a.	Number of signatures found SUFFICIENT	<u>2,814</u>
b.	Number of signatures found NOT SUFFICIENT	<u>565</u>
1.	NOT SUFFICIENT because DUPLICATE	<u>59</u>
3.	Number of unverified signatures:	<u>149</u>

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 23rd day of February 2022.

Shannon Bushey
Registrar of Voters

By: _____
Deputy



Petition Result Breakdown

JobE40 City of Morgan Hill -Citizen's Initiative Amending the General Plan

JobE40 City of Morgan Hill -Citizen's Initiative Amending the General Plan to Require Voter Approval of any Future Monterey Rd Lane F

Signatures Required	2796		
Raw Count	3,528		
Sample Size	3,528	Percent of Sigs Checked	Percent of Sample Size
Sigs Checked	3,379		
Sigs Not Checked	149		4.2 %
Sigs Valid	2,814	83.3 %	79.8 %
Sigs Invalid	565	16.7 %	16.0 %
Duplicated	59	1.7 %	1.7 %
Non-duplicate Invalids	506	15.0 %	14.3 %

RESULT ABBR	RESULT DESCRIPTION		
Approved	Approved	2,814	83.3 %
NotReg	Not Registered	176	5.2 %
OutOfDist	Out of District	69	2.0 %
Duplicate	Signed more than once	59	1.7 %
RegLate	Registered Late	8	0.2 %
RegDiffAdd	Registered at a Different Address	159	4.7 %
CantIdentfy	Cannot Identify	1	0.0 %
NoResAdd	No Residence Address Given	14	0.4 %
NoSig	No Signature	2	0.1 %
PrintedSig	Printed Signature	2	0.1 %
SigNoMatch	Signatures Don't Match	41	1.2 %
NotCompBySignr	Not Completed by Signer	33	1.0 %
Inv	Invalid-See Doc	1	0.0 %

STATISTICS SUMMARY	Value	% Raw	% Req		
Pages Processed	76	100.0 %			
Total Checked	3379	95.8 %	120.9 %		
Uncorrected Valid	2814	79.8 %	100.6 %	Min Required (95%):	2656.2
Duplicate Adjustment	0			Min Required to pass	
Estimated Valid	2814	79.8 %	100.6 %	Based on Sample (110%):	3075.6



CERTIFICATE OF SUFFICIENCY OF PETITION

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, County of Santa Clara, State of California, hereby certify that:

The petition entitled "Citizens' initiative amending the General Plan to require voter approval of any future Monterey Road lane reduction" was filed with the City Clerk Department on December 21, 2021.

That said petition consists of 76 sections;

That each section contains signatures purporting to be signatures of qualified electors of the City of Morgan Hill, California;

That attached to this petition at the time it was filed, was an affidavit purporting to be the affidavit of the person who solicited the signatures, and containing the dates between which the purported qualified electors signed this petition;

That the affiant stated his or her own qualification, that he or she had solicited the signatures upon that Section, that all of the signatures were made in his or her presence, and that to the best of his or her own information and belief, each signature to that section was the genuine signature of the person whose name it purports to be;

That after the proponents filed this petition and based on the County of Santa Clara Registrar of Voters' Signature Verification Certificate, I have determined the following facts regarding this petition:

1. Total number of signatures filed by proponent raw count:	<u>3,528</u>
2. Total number of signatures verified:	<u>3,379</u>
3. Number of signatures found sufficient:	<u>2,814</u>
4. Number of signatures found insufficient:	<u>565</u>
5. Number of signatures insufficient because duplicate:	<u>59</u>
6. Number of unverified signatures:	<u>149</u>

Based on the above, the petition is deemed to be sufficient.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Morgan Hill, this 2nd day of March 2022.

Michelle Bigelow, City Clerk
City of Morgan Hill

RESOLUTION NO. 22-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ACCEPTING THE CITY CLERK'S CERTIFICATE OF SUFFICIENCY FOR THE INITIATIVE PETITION TITLED: CITIZENS' INITIATIVE AMENDING THE GENERAL PLAN TO REQUIRE VOTER APPROVAL OF ANY FUTURE MONTEREY ROAD LANE REDUCTION SIGNATURE COUNT AND VERIFICATION

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California ("City"), is authorized to take those actions required of or authorized by legislative bodies of cities as the legislative body of the City of Morgan Hill;

WHEREAS, the reasons supporting the adoption of this Resolution are set forth in more detail in that certain City Council Staff Report entitled "Adopt resolution certifying the initiative petition titled: Citizens' initiative amending the General Plan to require voter approval of any future Monterey Road lane reduction Signature Count and Verification" (Initiative) submitted for City Council consideration at its meeting of March 2, 2022, submitted to the City Council by the City Clerk (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

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

WHEREAS, the activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970 as such activities result in no change in the physical environment; and

WHEREAS, on December 21, 2021, the City Clerk (also referred to herein as the Elections Official) received the Initiative; and

WHEREAS, after a prima facie review by the City Clerk, the Initiative was deemed filed on December 21, 2021; and

WHEREAS, pursuant to California Elections Code section 9215, an initiative petition must be signed by at least 10% of the registered voters of the City based upon the county election official's last official report of registrations to the Secretary of State; and

WHEREAS, on February 23, 2022 the Santa Clara County Registrar of Voters concluded and determined that the Referendum petition contained at least 2,796 sufficient signatures of registered voters in the City of Morgan Hill based on a full count, and notified the City Clerk of this information pursuant to that certain correspondence attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS, the Santa Clara County Registrar of Voters last official report of registration of voters to the Secretary of State for the City of Morgan Hill was 27,956 registered voters, such that 10% of said registration of voters would equal 2,976 as the number of valid signatures required to qualify the Referendum for further action; and

WHEREAS, the City Clerk has prepared and submitted a Certificate of Sufficiency of Initiative Petition for consideration by City Council in accordance with California Elections Code section 9114, which Certificate is attached hereto as Exhibit B and incorporated herein by this reference.

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

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

Section 2. Acceptance. The City Council further resolves that the Council hereby accepts the Certificate of Sufficiency for the Initiative Petition prepared by the City Clerk for the Initiative Petition titled: Citizens' initiative amending the General Plan to require voter approval of any future Monterey Road lane reduction Signature Count and Verification, which Certificate is attached hereto as Exhibit B.

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

PASSED, APPROVED, AND ADOPTED by the City Council of the of the City of Morgan Hill at a Regular Meeting held on the 2nd day of March 2022 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATION ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 22-XXX, adopted by the City Council at a regular meeting held on March 2, 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

EXHIBIT A

County of Santa Clara

Registrar of Voters

1555 Berger Drive, Bldg 2
San Jose, CA 95112
Mailing Address: P.O. Box 611360, San Jose, CA 95161-360
(408) 299-VOTE (8683) (866) 430-VOTE (8683) FAX: (408) 998-7314
www.sccvote.org



February 23, 2022

Ms. Michelle Bigelow, City Clerk
City of Morgan Hill
110 E. Main St.
Los Gatos, CA 95030

RE: Citizen's Initiative Amending the General Plan to Require Voter Approval of any Future Monterey Rd Lane Reduction

Dear City Clerk Bigelow:

The petition named above was submitted to our office on December 22, 2021 and contained a raw count of 3,528 signatures. Pursuant to your request, 10% of the number of registered voters for the City of Morgan Hill, per the February 17, 2021 Report of Registration would equal 2,796 valid signatures to pass.

Your jurisdiction requested that the Registrar of Voters' Office conduct a random sampling of 500 signatures. A full check would be conducted should the random results fall within 95% to 110% valid signatures.

The random sampling of 500 signatures resulted in a statistical sampling showing the number of valid signatures was within 95% to 110%, therefore we continued with the full check of signatures. Pursuant to Elections Code Section 9115 (b) the ROV verified up to the number of signatures required for the petition to qualify.

The signature verification resulted in the verification of a total of 3,379 signatures of the 3,528 signatures submitted, with 2,814 signatures found valid.

Please contact our office to arrange to pick up your completed petition. If you have any questions concerning this matter, please feel free to contact our office at (408) 282-3009.

Sincerely,

Voter Registration Division
County of Santa Clara

Enc: Certificate of Results
Petition Result Breakdown

County of Santa Clara
Registrar of Voters



CERTIFICATE TO INITIATIVE PETITION

I, SHANNON BUSHEY, Registrar of Voters of the County of Santa Clara, State of California, hereby certify:

That the "Citizen's Initiative Amending the General Plan to Require Voter Approval of any future Monterey Rd Lane Reduction" was submitted for signature verification on December 22, 2021.

That said petition consists of 76 sections;

That attached to this petition at the time it was filed was an affidavit purporting to be the affidavit of the person who solicited the signatures, and containing the dates between which the purported qualified electors signed this petition;

That the affiant stated his or her own qualification, that he or she had solicited the signatures upon that section, that all of the signatures were made in his or her presence, and that to the best of his or her knowledge and belief each signature to that section was the genuine signature of the person whose name it purports to be;

That after the proponent filed this petition, I verified the required number of signatures by examining the records of registration in this county, current and in effect at the respective purported dates of such signing, to determine what number of qualified electors signed the petition, and from that examination I have determined the following facts regarding this petition:

- | | | |
|----|---|--------------|
| 1. | Number of signatures on petition (raw count): | <u>3,528</u> |
| 2. | Number of signatures verified: | <u>3,379</u> |
| | a. Number of signatures found SUFFICIENT | <u>2,814</u> |
| | b. Number of signatures found NOT SUFFICIENT | <u>565</u> |
| | 1. NOT SUFFICIENT because DUPLICATE | <u>59</u> |
| 3. | Number of unverified signatures: | <u>149</u> |

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 23rd day of February 2022.

Shannon Bushey
Registrar of Voters

By: _____
Deputy

JobE40



Petition Result Breakdown

JobE40 City of Morgan Hill -Citizen's Initiative Amending the General Plan

JobE40 City of Morgan Hill -Citizen's Initiative Amending the General Plan to Require Voter Approval of any Future Monterey Rd Lane F

Signatures Required	2796		
Raw Count	3,528		
Sample Size	3,528	Percent of Sigs Checked	Percent of Sample Size
Sigs Checked	3,379		
Sigs Not Checked	149		4.2 %
Sigs Valid	2,814	83.3 %	79.8 %
Sigs Invalid	565	16.7 %	16.0 %
Duplicated	50	1.7 %	1.7 %
Non-duplicate Invalids	506	15.0 %	14.3 %

RESULT ABBR	RESULT DESCRIPTION		
Approved	Approved	2,814	83.3 %
NotReg	Not Registered	176	5.2 %
OutOfDist	Out of District	69	2.0 %
Duplicate	Signed more than once	50	1.7 %
RegLate	Registered Late	8	0.2 %
RegDiffAdd	Registered at a Different Address	159	4.7 %
CanIdentfy	Cannot Identify	1	0.0 %
NoResAdd	No Residence Address Given	14	0.4 %
NoSig	No Signature	2	0.1 %
PrintedSig	Printed Signature	2	0.1 %
SigNoMatch	Signatures Don't Match	41	1.2 %
NotCompBySignr	Not Completed by Signer	33	1.0 %
Inv	Invalid-See Doc	1	0.0 %

STATISTICS SUMMARY	Value	% Raw	% Req		
Pages Processed	76	100.0 %			
Total Checked	3379	95.8 %	120.9 %		
Uncorrected Valid	2814	79.8 %	100.6 %		
Duplicate Adjustment	0			Min Required (95%):	2656.2
Estimated Valid	2814	79.8 %	100.6 %	Min Required to pass Based on Sample (110%):	3075.6

EXHIBIT B



CERTIFICATE OF SUFFICIENCY OF PETITION

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, County of Santa Clara, State of California, hereby certify that:

The petition entitled "Citizens' initiative amending the General Plan to require voter approval of any future Monterey Road lane reduction" was filed with the City Clerk Department on December 21, 2021.

That said petition consists of 76 sections;

That each section contains signatures purporting to be signatures of qualified electors of the City of Morgan Hill, California;

That attached to this petition at the time it was filed, was an affidavit purporting to be the affidavit of the person who solicited the signatures, and containing the dates between which the purported qualified electors signed this petition;

That the affiant stated his or her own qualification, that he or she had solicited the signatures upon that Section, that all of the signatures were made in his or her presence, and that to the best of his or her own information and belief, each signature to that section was the genuine signature of the person whose name it purports to be;

That after the proponents filed this petition and based on the County of Santa Clara Registrar of Voters' Signature Verification Certificate, I have determined the following facts regarding this petition:

1. Total number of signatures filed by proponent raw count:	<u>3,528</u>
2. Total number of signatures verified:	<u>3,379</u>
3. Number of signatures found sufficient:	<u>2,814</u>
4. Number of signatures found insufficient:	<u>565</u>
5. Number of signatures insufficient because duplicate:	<u>59</u>
6. Number of unverified signatures:	<u>149</u>

Based on the above, the petition is deemed to be sufficient.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Morgan Hill, this 2nd day of March 2022.

Michelle Bigelow, City Clerk
City of Morgan Hill

CITY COUNCIL STAFF REPORT

MEETING DATE: March 2, 2022

PREPARED BY:

Michelle Bigelow, Deputy City Clerk

APPROVED BY: City Manager

REVIEW AND ADOPT NEW CITY COUNCIL DISTRICT MAP

RECOMMENDATION(S)

1. Review and discuss draft maps 103, 104, 105, 106, 108, and NDC Green, including what about the maps work and does not work and what communities of interest would be protected or potentially divided; and
2. Adopt resolution adopting a City Council District map.

Estimated Time: 60 Minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

Preserving and Cultivating Public Trust

Preserving our Community History

Enhancing Diversity and Inclusiveness

2020-2021 Strategic Priorities

Fiscal Sustainability

Community Engagement and Messaging

REPORT NARRATIVE:

At the February 16, 2022 City Council Redistricting Workshop, the Council reviewed and discussed the draft maps. At the workshop, Council directed staff to bring maps 103, 104, 106, 108, and NDC Green to the public hearing for further review, discussion, and possible adoption of one. In reviewing the maps, staff has also included draft map 105 for review, discussion, and possible adoption. Since map 105 is the only map submitted that was drafted and submitted by an established civil rights organization, the Mexican American Legal Defense and Educational Fund (MALDEF), and the only map that specifically identified a community of interest, staff felt it was important to include it in the discussion.

Every ten years, cities with by-district election systems must use new census data to review and, if needed, redraw district lines to reflect how local populations have

changed. This process, called redistricting, ensures all districts have a nearly equal population. The redistricting process for the City of Morgan Hill must be completed by April 15, 2022.

The City adopted its current district boundaries on September 6, 2017, based on 2010 census data as required by law. The districts must now be redrawn using the 2020 census data and in compliance with the FAIR MAPS Act, adopted by the California legislature as AB 849, which took effect January 1, 2020.

Under the Act, the City Council shall draw and adopt boundaries using the following criteria in the listed order of priority (Elections Code 21601(c)):

1. Comply with the US Constitution, the California Constitution, and the federal Voting Rights Act of 1965, including the federal requirement that districts maintain equal populations.
2. Geographically contiguous
3. Undivided neighborhoods and “communities of interest” (socio-economic geographic areas that should be kept together)
4. Easily identifiable boundaries
5. Compact (do not bypass one group of people to get to a more distant group of people)
6. Shall not favor or discriminate against a political party

Once the prioritized criteria are met, other traditional districting principles can be considered, such as:

1. Minimize the number of voters delayed from voting in 2022 to 2024
2. Respect voters’ choices/continuity in office
3. Future population growth

Elections Code Section 21607.1 directs that the City must conduct at least four (4) public hearings throughout the redistricting process; one (1) Public Hearing before maps are drawn, at least two (2) Public Hearings after draft maps are drawn, and one (1) public hearing scheduled on an evening or weekend, at which time the public is invited to provide input regarding the composition of the districts.

The purpose of this public hearing is to consider and discuss draft Council District Maps 103, 104, 105, 106, 108, and NDC Green (see attached maps) and to receive public input on the composition of Council District boundaries and draft maps, and adopt a resolution adopting a City Council District Map.

COMMUNITY ENGAGEMENT:

Consult.

The City Clerk’s Office and Communications Team have implemented the following

community outreach plan:

Public Messaging via Social Media, City's Website, Press Releases, newsletters, and other public communications, in English and Spanish, including:

- At least four City Council Public Hearings
- Social media engagement on Facebook, Instagram, Twitter, and NextDoor
- Updated webpage on City's website for redistricting updates and information
- Information provided via website newsflashes, eblasts, "Morgan Hill Weekly 411," and print
- Press releases sent to various outlets and groups, including individuals and churches who have connections to our Spanish-speaking community
- Public notices posted at City facilities
- Display advertisements on local public access network by using Channel 17
- Informational tables at the Farmer's Market, Friday Night Music Series, local coffee shops, St Catherine's Church following the English and Spanish mass, and other public spaces
- Virtual Town Halls
- Online Interactive Tools:
 - Updated online interactive mapping tools were available to allow residents to draw their district boundary lines. The City's consulting demographer provided training for the public on how to use the new online mapping tools.

ALTERNATIVE ACTIONS:

The Council could not adopt a map and direct staff to bring specific draft maps to the March 16, 2022 City Council meeting for additional review and discussion.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- January 29, 2021, Annual Goal Setting Workshop - City Council received a presentation outlining the requirements and process for redistricting.
- [May 5, 2021](#), City Council Meeting - the City Council voted to move forward with a staff-led redistricting process.
- August 6, 2021, Mid-Year Goal Review Workshop - City Council received an update on the redistricting process.
- [August 18, 2021](#), City Council Meeting- The City Council held the first of four required public hearings in the redistricting process to receive an update on the process and request feedback on Communities of Interest.
- [October 20, 2021](#), City Council Meeting- The City Council held the second of four required public hearings in the redistricting process to receive an update on the state-adjusted Census data, and receive a demonstration on available mapping tools.
- [December 15, 2021](#), City Council Meeting - The City Council held the third of four

required public hearings in the redistricting process to review the draft maps submitted to date.

- [February 16, 2022](#), City Council Redistricting Workshop - The City Council and community reviewed and discussed the draft maps and Council directed staff to bring maps 103, 104, 106, 108, and NDC green to the March 2, 2022 Public Hearing for discussion and possible adoption.

FISCAL AND RESOURCE IMPACT:

For the FY 2021-2022 redistricting process, staff estimates that the currently budgeted funds will be sufficient.

CEQA (California Environmental Quality Act):

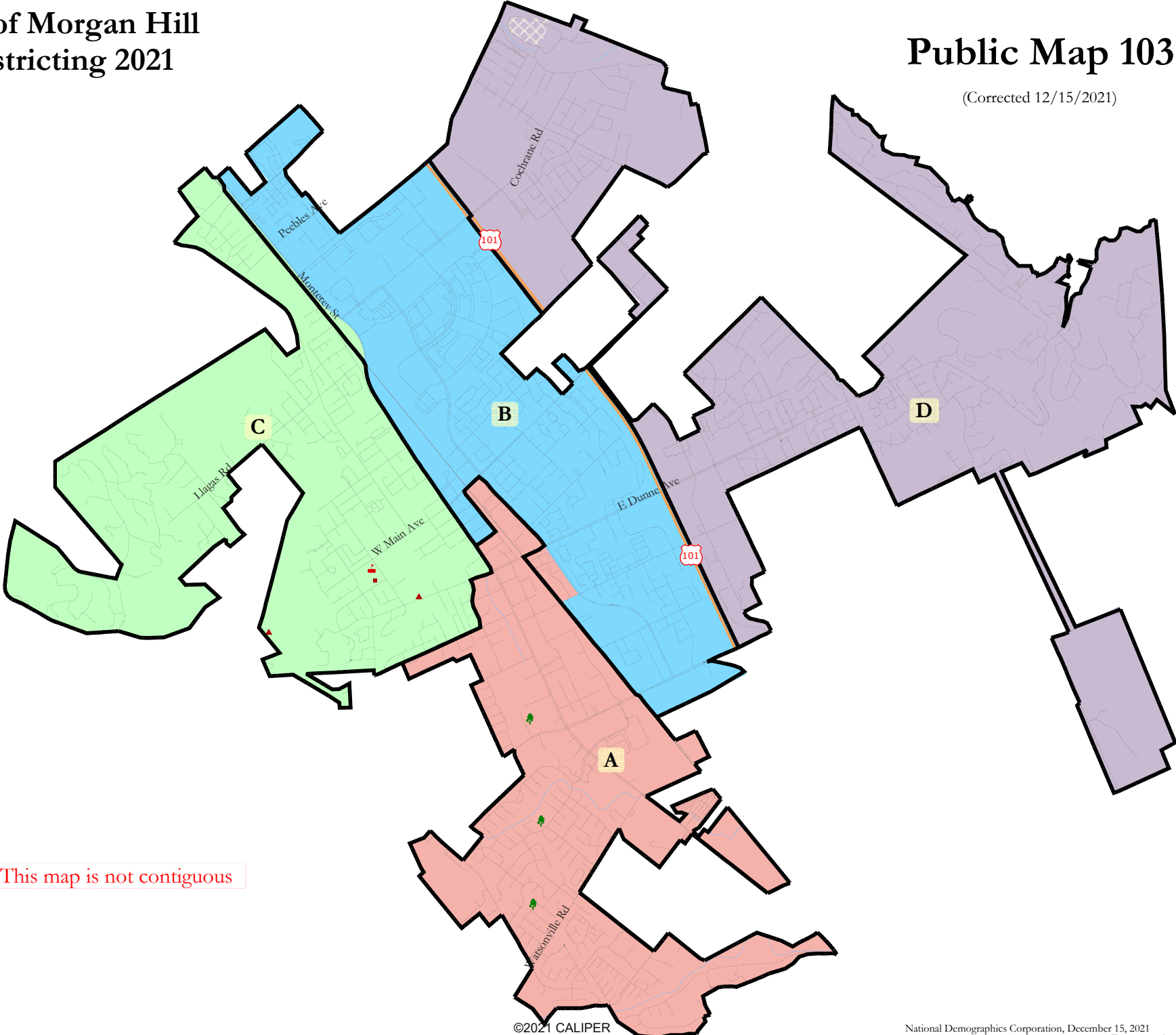
Not a Project

The reformatting of electoral districts is not a project as defined in Section 15060(c) of the State CEQA Guidelines.

City of Morgan Hill
Redistricting 2021

Public Map 103

(Corrected 12/15/2021)

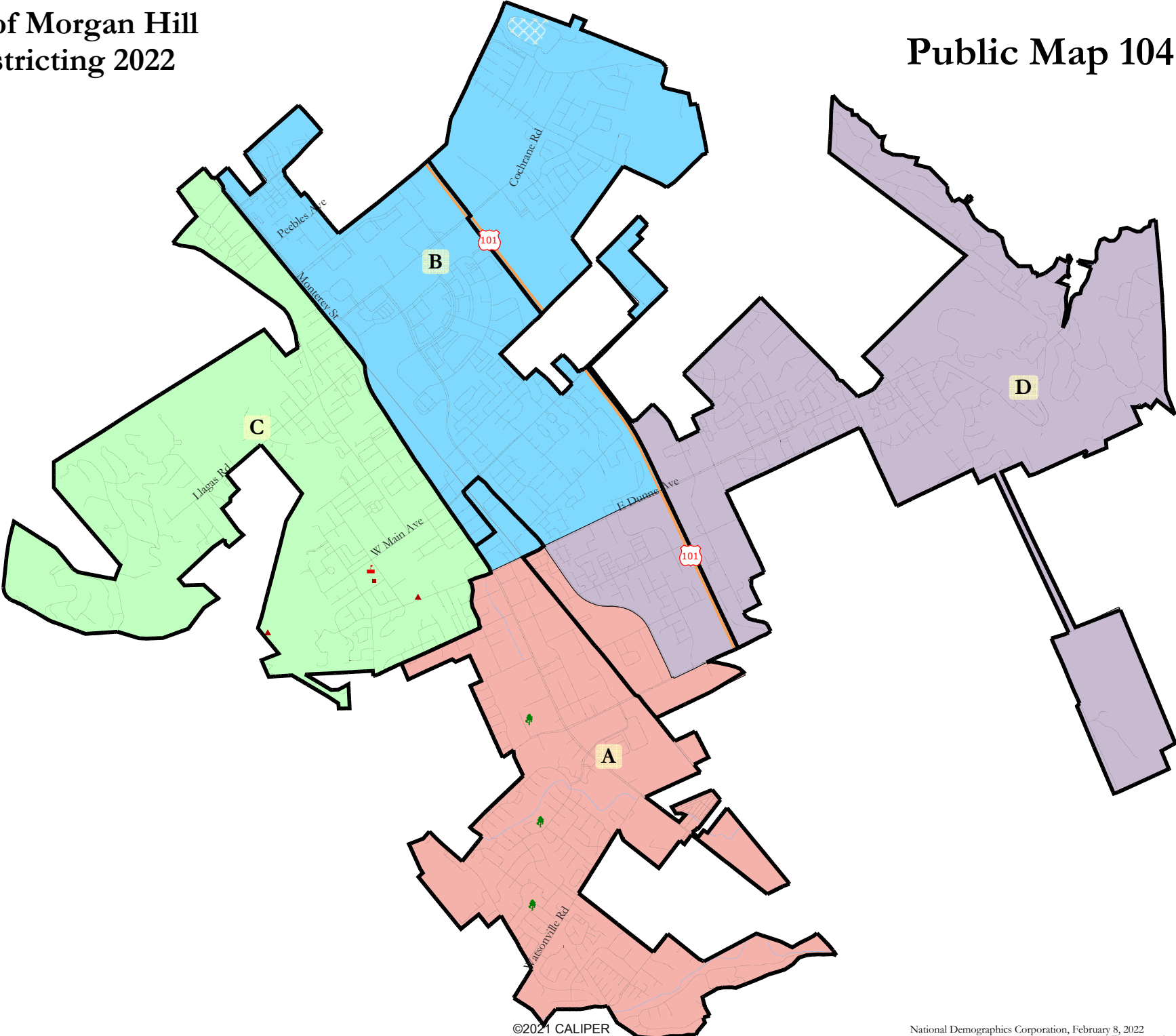


This map is not contiguous

<i>City of Morgan Hill - Public Map 103</i>						
District		A	B	C	D	Total
2020	2020 Census (Raw)	11,509	11,174	11,117	11,766	45,566
	Deviation from ideal	118	-218	-275	375	649
	% Deviation	1.03%	-1.91%	-2.41%	3.29%	5.70%
2020 Total Pop	% Hisp	39%	35%	39%	21%	33%
	% NH White	43%	40%	40%	52%	44%
	% NH Black	3%	3%	2%	3%	3%
	% Asian-American	12%	19%	16%	21%	17%
Citizen Voting Age Pop	Total	7,020	7,628	7,083	8,175	29,905
	% Hisp	25%	26%	28%	18%	24%
	% NH White	56%	52%	53%	62%	56%
	% NH Black	3%	3%	2%	2%	2%
	% Asian/Pac.Isl.	14%	18%	16%	16%	16%
Voter Registration (Nov 2020)	Total	6,807	6,829	6,468	8,015	28,119
	% Latino est.	25%	27%	27%	17%	24%
	% Spanish-Surnamed	23%	25%	24%	16%	22%
	% Asian-Surnamed	5%	10%	9%	11%	9%
	% Filipino-Surnamed	1%	2%	2%	1%	2%
	% NH White est.	66%	59%	62%	69%	64%
	% NH Black	3%	2%	2%	2%	2%
Voter Turnout (Nov 2018)	Total	4,151	3,784	3,900	5,184	17,019
	% Latino est.	20%	23%	22%	15%	20%
	% Spanish-Surnamed	19%	21%	21%	14%	18%
	% Asian-Surnamed	4%	8%	7%	8%	7%
	% Filipino-Surnamed	1%	2%	1%	1%	1%
	% NH White est.	72%	65%	68%	74%	70%
	% NH Black	3%	2%	2%	2%	2%
Voter Turnout (Nov 2020)	Total	5,806	5,770	5,428	7,114	24,118
	% Latino est.	24%	26%	25%	16%	22%
	% Spanish-Surnamed	22%	24%	23%	15%	21%
	% Asian-Surnamed	6%	10%	9%	11%	9%
	% Filipino-Surnamed	1%	2%	2%	1%	2%
	% NH White est.	67%	60%	64%	70%	66%
	% NH Black est.	3%	2%	2%	2%	2%
ACS Pop. Est.	Total	10,604	11,285	11,219	11,412	44,520
Age	age0-19	29%	28%	27%	27%	28%
	age20-60	50%	54%	53%	52%	52%
	age60plus	22%	18%	20%	21%	20%
Immigration	immigrants	17%	21%	22%	14%	18%
	naturalized	54%	63%	52%	71%	59%
Language spoken at home	english	74%	65%	66%	77%	70%
	spanish	18%	22%	20%	8%	17%
	asian-lang	6%	8%	8%	9%	8%
	other lang	2%	5%	6%	6%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	8%	12%	16%	6%	11%
Education (among those age 25+)	hs-grad	36%	42%	43%	35%	39%
	bachelor	34%	25%	21%	32%	28%
	graduatedegree	12%	12%	14%	20%	15%
Child in Household	child-under18	35%	40%	36%	43%	39%
Pct of Pop. Age 16+	employed	65%	68%	67%	67%	67%
Household Income	income 0-25k	8%	12%	6%	4%	7%
	income 25-50k	12%	16%	15%	6%	12%
	income 50-75k	11%	10%	15%	7%	11%
	income 75-200k	44%	41%	45%	43%	43%
	income 200k-plus	25%	21%	19%	40%	26%
Housing Stats	single family	82%	81%	79%	98%	85%
	multi-family	18%	19%	21%	2%	15%
	rented	28%	31%	36%	11%	27%
	owned	72%	69%	64%	89%	73%
Total population data from the California adjustment to the 2020 Decennial Census. Surname-based Voter Registration and Turnout data from the California Statewide Database. Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2015-2019 American Community Survey and Special Tabulation 5-year data.						

City of Morgan Hill
Redistricting 2022

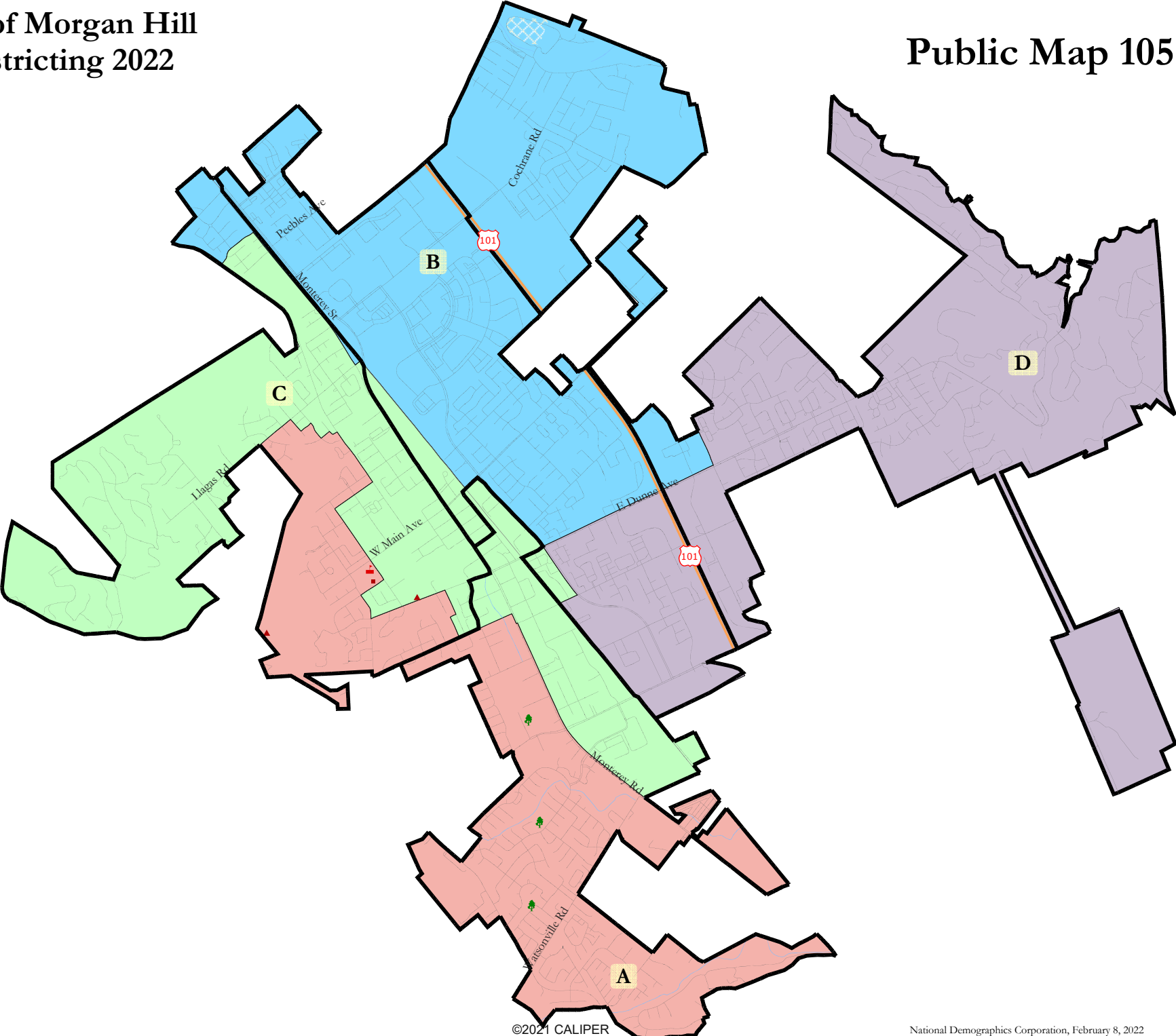
Public Map 104



Public Map 104						
District		A	B	C	D	Total
	Total Pop	11,174	11,801	11,117	11,474	45,566
	Deviation from ideal	-218	409	-275	82	684
	% Deviation	-1.91%	3.59%	-2.41%	0.72%	6.00%
Total Pop	% Hisp	38.8%	30%	39%	26%	33%
	% NH White	43%	42%	40%	50%	44%
	% NH Black	3%	3%	2%	3%	3%
	% Asian-American	11%	21%	16%	18%	17%
Citizen Voting Age Pop	Total	6,992	7,187	7,083	8,643	29,905
	% Hisp	25%	25%	28%	19%	24%
	% NH White	57%	53%	53%	60%	56%
	% NH Black	4%	2%	2%	2%	2%
	% Asian/Pac.Isl.	14%	17%	16%	17%	16%
Voter Registration (Nov 2020)	Total	6,657	7,376	6,468	7,618	28,119
	% Latino est.	25%	24%	27%	20%	24%
	% Spanish-Surnamed	23%	22%	24%	18%	22%
	% Asian-Surnamed	5%	12%	9%	10%	9%
	% Filipino-Surnamed	1%	2%	2%	2%	2%
	% NH White est.	66%	61%	62%	68%	64%
	% NH Black	3%	2%	2%	2%	2%
Voter Turnout (Nov 2020)	Total	5,663	6,333	5,428	6,694	24,118
	% Latino est.	24%	23%	25%	19%	22%
	% Spanish-Surnamed	22%	21%	23%	17%	21%
	% Asian-Surnamed	5%	12%	9%	9%	9%
	% Filipino-Surnamed	1%	2%	2%	2%	2%
	% NH White est.	68%	62%	64%	69%	66%
	% NH Black	3%	2%	2%	2%	2%
Voter Turnout (Nov 2018)	Total	4,058	4,044	3,900	5,017	17,019
	% Latino est.	19%	20%	22%	18%	20%
	% Spanish-Surnamed	18%	18%	21%	16%	18%
	% Asian-Surnamed	4%	9%	7%	8%	7%
	% Filipino-Surnamed	1%	2%	1%	1%	1%
	% NH White est.	73%	67%	68%	72%	70%
	% NH Black est.	3%	2%	2%	2%	2%
ACS Pop. Est.	Total	10,413	10,715	11,219	12,172	44,520
Age	age0-19	29%	28%	27%	27%	28%
	age20-60	50%	54%	53%	53%	52%
	age60plus	21%	18%	20%	21%	20%
Immigration	immigrants	18%	20%	21%	16%	18%
	naturalized	55%	61%	52%	71%	59%
Language spoken at home	english	73%	68%	66%	74%	70%
	spanish	19%	18%	20%	12%	17%
	asian-lang	6%	9%	8%	8%	8%
	other lang	2%	4%	6%	6%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	9%	10%	16%	8%	11%
Education (among those age 25+)	hs-grad	37%	38%	43%	39%	39%
	bachelor	35%	26%	21%	31%	28%
	graduatedegree	12%	17%	14%	16%	15%
Child in Household	child-under18	36%	44%	36%	39%	39%
Pct of Pop. Age 16+	employed	65%	65%	67%	69%	67%
Household Income	income 0-25k	8%	10%	6%	7%	7%
	income 25-50k	13%	9%	15%	11%	12%
	income 50-75k	12%	9%	15%	8%	11%
	income 75-200k	43%	39%	45%	46%	43%
	income 200k-plus	24%	33%	19%	29%	26%
Housing Stats	single family	81%	89%	79%	90%	85%
	multi-family	19%	11%	21%	10%	15%
	rented	30%	17%	36%	23%	27%
	owned	70%	83%	64%	77%	73%
Total population data from the 2020 Decennial Census.						
Surname-based Voter Registration and Turnout data from the California Statewide Database.						
Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2015-2019 American Community Survey and Special Tabulation 5-year data.						

City of Morgan Hill
Redistricting 2022

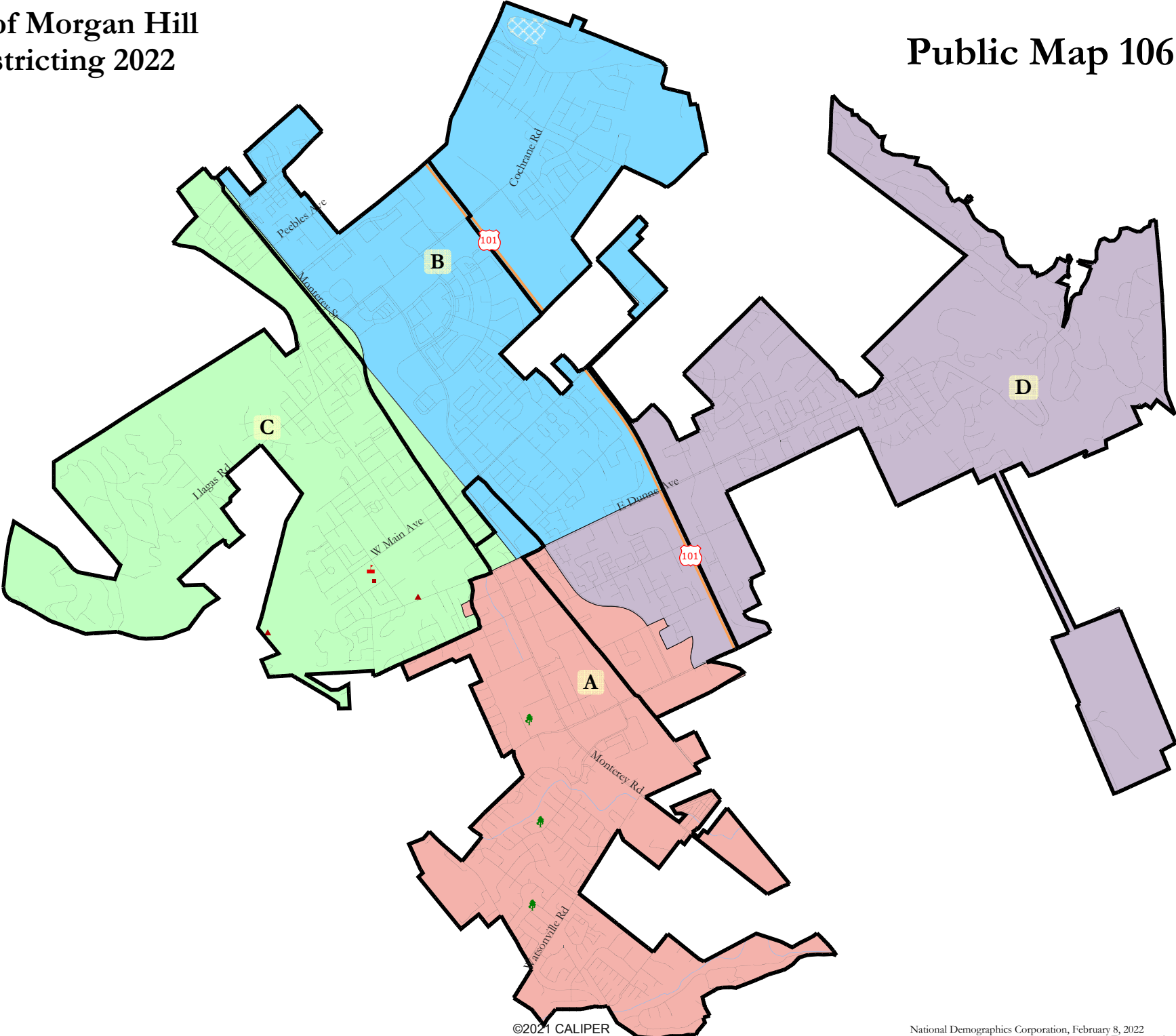
Public Map 105



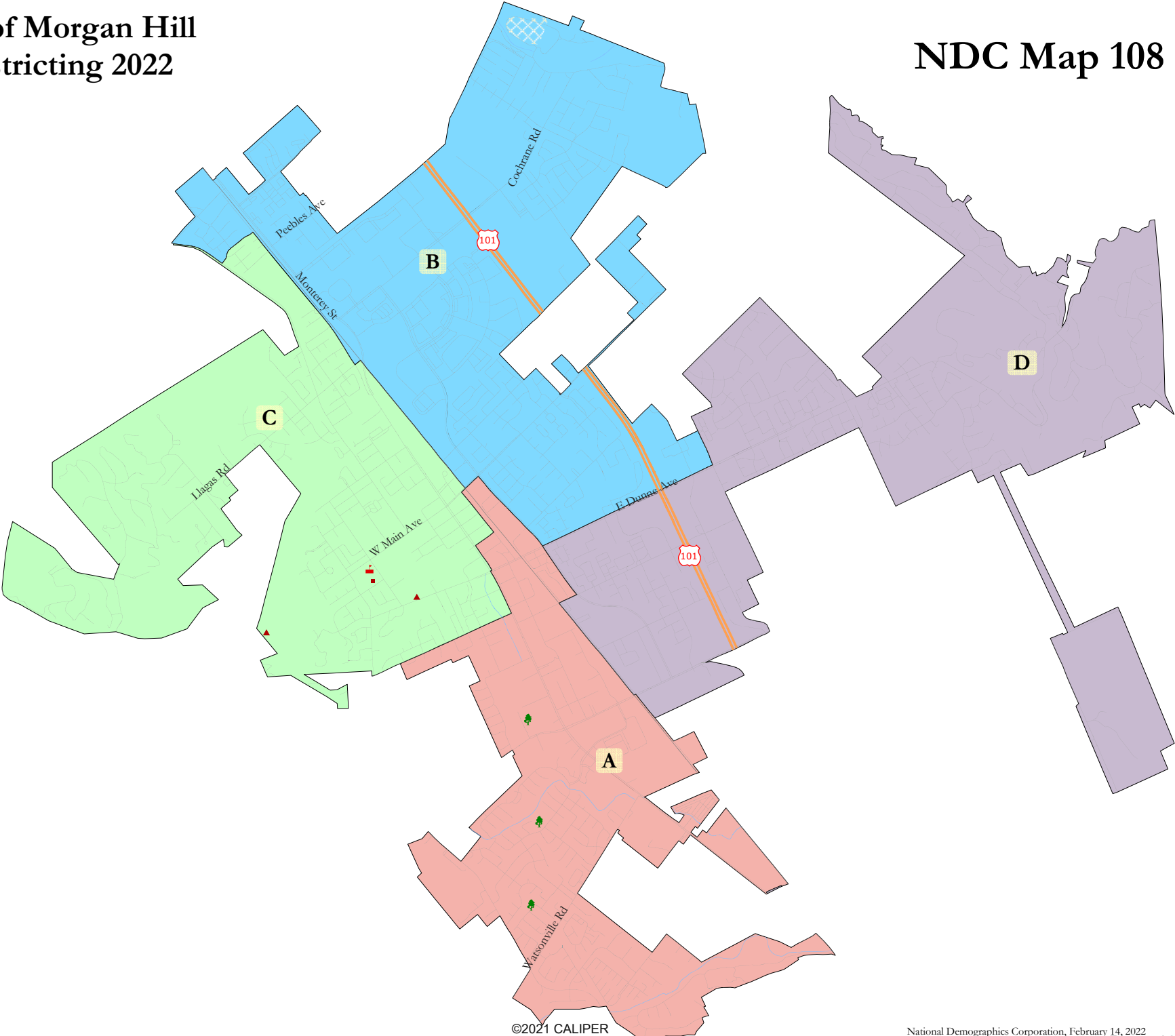
Public Map 105						
District		A	B	C	D	Total
	Total Pop	11,213	11,445	11,337	11,571	45,566
	Deviation from ideal	-179	53	-55	179	358
	% Deviation	-1.57%	0.47%	-0.48%	1.57%	3.14%
Total Pop	% Hisp	31.7%	29%	46%	26%	33%
	% NH White	50%	42%	34%	50%	44%
	% NH Black	2%	2%	3%	3%	3%
	% Asian-American	12%	24%	14%	18%	17%
Citizen Voting Age Pop	Total	7,443	7,088	6,538	8,836	29,905
	% Hisp	21%	26%	33%	19%	24%
	% NH White	63%	50%	48%	61%	56%
	% NH Black	2%	2%	3%	3%	2%
	% Asian/Pac.Isl.	13%	20%	14%	16%	16%
Voter Registration (Nov 2020)	Total	7,190	7,172	6,033	7,724	28,119
	% Latino est.	21%	23%	33%	20%	24%
	% Spanish-Surnamed	19%	21%	31%	18%	22%
	% Asian-Surnamed	5%	13%	8%	9%	9%
	% Filipino-Surnamed	1%	2%	2%	1%	2%
	% NH White est.	71%	60%	56%	68%	64%
	% NH Black	2%	2%	3%	2%	2%
Voter Turnout (Nov 2020)	Total	6,283	6,194	4,882	6,759	24,118
	% Latino est.	19%	22%	31%	19%	22%
	% Spanish-Surnamed	18%	20%	29%	17%	21%
	% Asian-Surnamed	6%	13%	8%	9%	9%
	% Filipino-Surnamed	1%	2%	2%	2%	2%
	% NH White est.	73%	62%	57%	69%	66%
	% NH Black	2%	2%	3%	2%	2%
Voter Turnout (Nov 2018)	Total	4,696	3,996	3,244	5,083	17,019
	% Latino est.	16%	19%	28%	17%	20%
	% Spanish-Surnamed	15%	18%	26%	16%	18%
	% Asian-Surnamed	4%	10%	6%	7%	7%
	% Filipino-Surnamed	1%	2%	1%	1%	1%
	% NH White est.	76%	67%	62%	72%	70%
	% NH Black est.	2%	2%	2%	2%	2%
ACS Pop. Est.	Total	11,079	10,617	10,537	12,286	44,520
Age	age0-19	29%	28%	27%	27%	28%
	age20-60	48%	53%	55%	53%	52%
	age60plus	23%	18%	18%	21%	20%
Immigration	immigrants	16%	20%	23%	16%	18%
	naturalized	50%	64%	53%	71%	59%
Language spoken at home	english	76%	68%	63%	74%	70%
	spanish	17%	17%	23%	12%	17%
	asian-lang	4%	10%	9%	8%	8%
	other lang	3%	5%	4%	6%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	7%	10%	17%	8%	11%
Education (among those age 25+)	hs-grad	37%	38%	42%	39%	39%
	bachelor	33%	27%	22%	31%	28%
	graduatedegree	14%	17%	12%	15%	15%
Child in Household	child-under18	35%	45%	36%	39%	39%
Pct of Pop. Age 16+	employed	63%	64%	70%	69%	67%
Household Income	income 0-25k	8%	9%	6%	7%	7%
	income 25-50k	10%	8%	19%	12%	12%
	income 50-75k	12%	8%	15%	9%	11%
	income 75-200k	46%	39%	43%	45%	43%
	income 200k-plus	25%	36%	18%	28%	26%
Housing Stats	single family	85%	92%	74%	88%	85%
	multi-family	15%	8%	26%	12%	15%
	rented	26%	14%	41%	25%	27%
	owned	74%	86%	59%	75%	73%
Total population data from the 2020 Decennial Census.						
Surname-based Voter Registration and Turnout data from the California Statewide Database.						
Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2015-2019 American Community Survey and Special Tabulation 5-year data.						

City of Morgan Hill
Redistricting 2022

Public Map 106



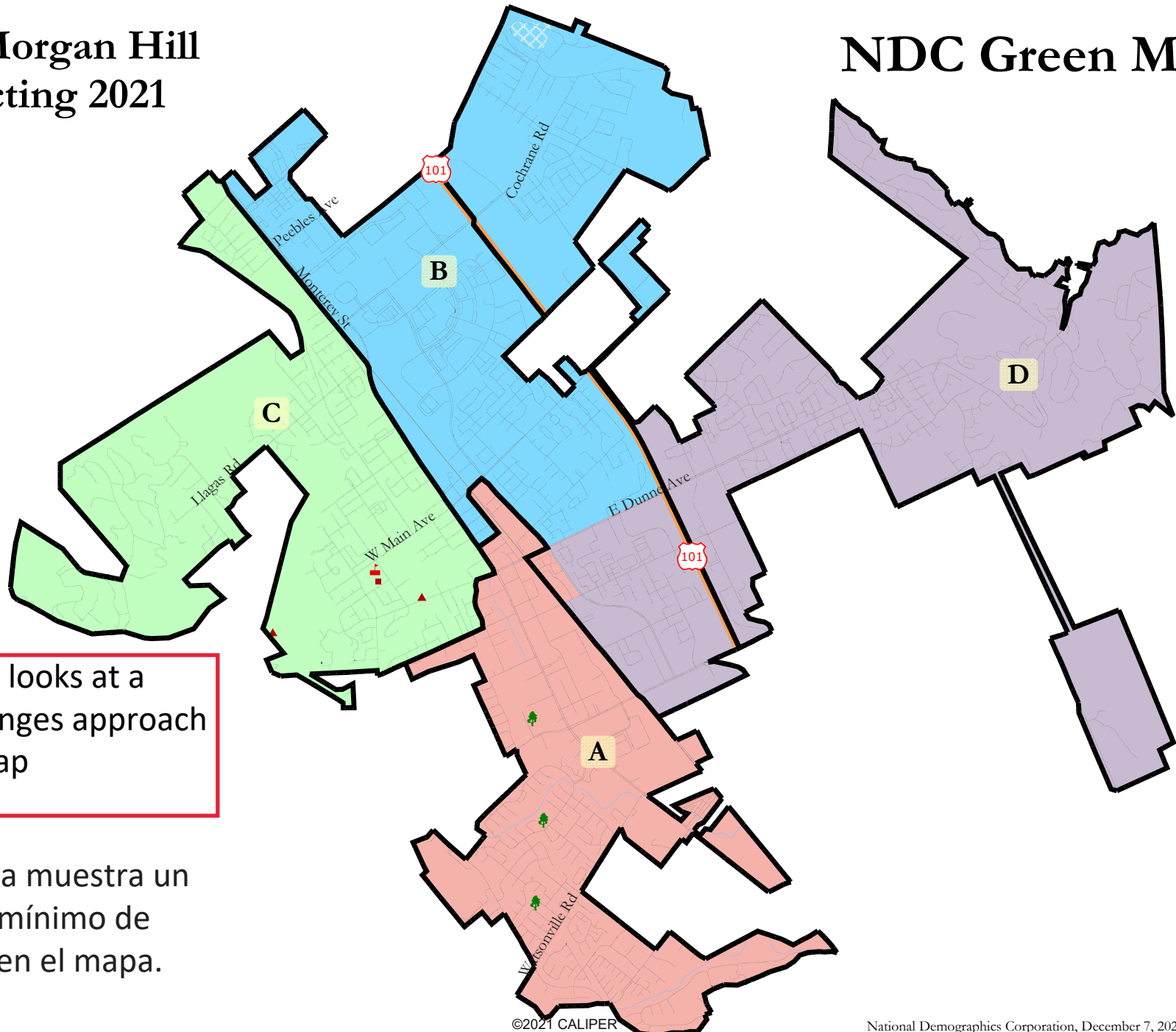
Public Map 106						
District		A	B	C	D	Total
	Total Pop	11,340	11,030	11,761	11,435	45,566
	Deviation from ideal	-52	-362	369	43	731
	% Deviation	-0.46%	-3.18%	3.24%	0.38%	6.42%
Total Pop	% Hisp	38.8%	29%	39%	26%	33%
	% NH White	43%	43%	40%	50%	44%
	% NH Black	3%	3%	2%	3%	3%
	% Asian-American	11%	22%	16%	18%	17%
Citizen Voting Age Pop	Total	7,084	6,769	7,416	8,637	29,905
	% Hisp	25%	26%	28%	19%	24%
	% NH White	57%	52%	54%	60%	56%
	% NH Black	4%	2%	2%	2%	2%
	% Asian/Pac.Isl.	14%	17%	15%	17%	16%
Voter Registration (Nov 2020)	Total	6,739	6,928	6,861	7,591	28,119
	% Latino est.	26%	23%	27%	20%	24%
	% Spanish-Surnamed	23%	21%	25%	18%	22%
	% Asian-Surnamed	5%	12%	9%	9%	9%
	% Filipino-Surnamed	1%	2%	2%	2%	2%
	% NH White est.	66%	61%	62%	68%	64%
	% NH Black	3%	2%	2%	2%	2%
Voter Turnout (Nov 2020)	Total	5,722	5,983	5,743	6,670	24,118
	% Latino est.	24%	22%	25%	19%	22%
	% Spanish-Surnamed	22%	20%	23%	17%	21%
	% Asian-Surnamed	5%	12%	9%	9%	9%
	% Filipino-Surnamed	1%	2%	2%	2%	2%
	% NH White est.	67%	63%	63%	69%	66%
	% NH Black	3%	2%	2%	2%	2%
Voter Turnout (Nov 2018)	Total	4,094	3,896	4,026	5,003	17,019
	% Latino est.	20%	19%	22%	17%	20%
	% Spanish-Surnamed	18%	18%	21%	16%	18%
	% Asian-Surnamed	4%	9%	7%	8%	7%
	% Filipino-Surnamed	1%	2%	1%	1%	1%
	% NH White est.	72%	68%	68%	72%	70%
	% NH Black est.	3%	2%	2%	2%	2%
ACS Pop. Est.	Total	10,586	10,114	11,673	12,147	44,520
Age	age0-19	29%	29%	27%	27%	28%
	age20-60	50%	53%	53%	53%	52%
	age60plus	21%	18%	20%	21%	20%
Immigration	immigrants	18%	20%	21%	15%	18%
	naturalized	55%	62%	52%	71%	59%
Language spoken at home	english	73%	69%	65%	74%	70%
	spanish	19%	17%	21%	12%	17%
	asian-lang	6%	9%	8%	8%	8%
	other lang	2%	5%	5%	6%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	9%	9%	16%	8%	11%
Education (among those age 25+)	hs-grad	37%	38%	43%	39%	39%
	bachelor	34%	27%	21%	31%	28%
	graduatedegree	12%	17%	14%	16%	15%
Child in Household	child-under18	36%	45%	36%	39%	39%
Pct of Pop. Age 16+	employed	65%	64%	68%	69%	67%
Household Income	income 0-25k	8%	10%	6%	7%	7%
	income 25-50k	13%	8%	16%	11%	12%
	income 50-75k	12%	8%	15%	8%	11%
	income 75-200k	43%	39%	44%	46%	43%
	income 200k-plus	24%	35%	19%	29%	26%
Housing Stats	single family	80%	91%	79%	90%	85%
	multi-family	20%	9%	21%	10%	15%
	rented	31%	14%	36%	23%	27%
	owned	69%	86%	64%	77%	73%
Total population data from the 2020 Decennial Census.						
Surname-based Voter Registration and Turnout data from the California Statewide Database.						
Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2015-2019 American Community Survey and Special Tabulation 5-year data.						



NDC 108						
District		A	B	C	D	Total
	Total Pop	11,167	11,445	11,383	11,571	45,566
	Deviation from ideal	-225	53	-9	179	404
	% Deviation	-1.98%	0.47%	-0.08%	1.57%	3.55%
Total Pop	% Hisp	38.0%	29%	40%	26%	33%
	% NH White	43%	42%	41%	50%	44%
	% NH Black	3%	2%	2%	3%	3%
	% Asian-American	12%	24%	14%	18%	17%
Citizen Voting Age Pop	Total	6,804	7,088	7,177	8,836	29,905
	% Hisp	24%	26%	29%	19%	24%
	% NH White	57%	50%	55%	61%	56%
	% NH Black	3%	2%	2%	3%	2%
	% Asian/Pac.Isl.	14%	20%	13%	16%	16%
Voter Registration (Nov 2020)	Total	6,669	7,172	6,554	7,724	28,119
	% Latino est.	25%	23%	28%	20%	24%
	% Spanish-Surnamed	23%	21%	26%	18%	22%
	% Asian-Surnamed	5%	13%	8%	9%	9%
	% Filipino-Surnamed	1%	2%	2%	1%	2%
	% NH White est.	66%	60%	62%	68%	64%
	% NH Black	3%	2%	2%	2%	2%
Voter Turnout (Nov 2020)	Total	5,695	6,194	5,470	6,759	24,118
	% Latino est.	23%	22%	26%	19%	22%
	% Spanish-Surnamed	22%	20%	24%	17%	21%
	% Asian-Surnamed	6%	13%	8%	9%	9%
	% Filipino-Surnamed	1%	2%	2%	2%	2%
	% NH White est.	68%	62%	64%	69%	66%
	% NH Black	3%	2%	2%	2%	2%
Voter Turnout (Nov 2018)	Total	4,092	3,996	3,848	5,083	17,019
	% Latino est.	19%	19%	23%	17%	20%
	% Spanish-Surnamed	18%	18%	21%	16%	18%
	% Asian-Surnamed	4%	10%	6%	7%	7%
	% Filipino-Surnamed	1%	2%	1%	1%	1%
	% NH White est.	73%	67%	69%	72%	70%
	% NH Black est.	3%	2%	2%	2%	2%
ACS Pop. Est.	Total	10,206	10,617	11,411	12,286	44,520
Age	age0-19	29%	28%	27%	27%	28%
	age20-60	50%	53%	53%	53%	52%
	age60plus	22%	18%	19%	21%	20%
Immigration	immigrants	18%	20%	21%	16%	18%
	naturalized	55%	64%	50%	71%	59%
Language spoken at home	english	75%	68%	65%	74%	70%
	spanish	18%	17%	22%	12%	17%
	asian-lang	6%	10%	8%	8%	8%
	other lang	2%	5%	5%	6%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	8%	10%	16%	8%	11%
Education (among those age 25+)	hs-grad	36%	38%	43%	39%	39%
	bachelor	35%	27%	21%	31%	28%
	graduatedegree	13%	17%	13%	15%	15%
Child in Household	child-under18	35%	45%	36%	39%	39%
Pct of Pop. Age 16+	employed	65%	64%	68%	69%	67%
Household Income	income 0-25k	8%	9%	6%	7%	7%
	income 25-50k	11%	8%	16%	12%	12%
	income 50-75k	11%	8%	15%	9%	11%
	income 75-200k	44%	39%	44%	45%	43%
	income 200k-plus	25%	36%	18%	28%	26%
Housing Stats	single family	83%	92%	76%	88%	85%
	multi-family	17%	8%	24%	12%	15%
	rented	27%	14%	39%	25%	27%
	owned	73%	86%	61%	75%	73%
Total population data from the 2020 Decennial Census.						
Surname-based Voter Registration and Turnout data from the California Statewide Database.						
Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2015-2019 American Community Survey and Special Tabulation 5-year data.						

City of Morgan Hill Redistricting 2021

NDC Green Map



<i>City of Morgan Hill - NDC Green Map</i>						
District		A	B	C	D	Total
2020	2020 Census (Raw)	11,509	11,093	11,117	11,847	45,566
	Deviation from ideal	118	-299	-275	456	754
	% Deviation	1.03%	-2.62%	-2.41%	4.00%	6.62%
2020 Total Pop	% Hisp	39%	30%	39%	26%	33%
	% NH White	43%	43%	40%	50%	44%
	% NH Black	3%	3%	2%	3%	3%
	% Asian-American	12%	22%	16%	18%	17%
	Total	7,020	6,784	7,083	9,019	29,905
Citizen Voting Age Pop	% Hisp	25%	26%	28%	19%	24%
	% NH White	56%	54%	53%	60%	56%
	% NH Black	3%	2%	2%	3%	2%
	% Asian/Pac.Isl.	14%	17%	16%	17%	16%
	Total	6,807	6,989	6,468	7,855	28,119
Voter Registration (Nov 2020)	% Latino est.	25%	24%	27%	20%	24%
	% Spanish-Surnamed	23%	22%	24%	18%	22%
	% Asian-Surnamed	5%	12%	9%	9%	9%
	% Filipino-Surnamed	1%	2%	2%	2%	2%
	% NH White est.	66%	61%	62%	67%	64%
	% NH Black	3%	2%	2%	2%	2%
	Total	4,151	3,840	3,900	5,128	17,019
Voter Turnout (Nov 2018)	% Latino est.	20%	20%	22%	17%	20%
	% Spanish-Surnamed	19%	18%	21%	16%	18%
	% Asian-Surnamed	4%	9%	7%	8%	7%
	% Filipino-Surnamed	1%	2%	1%	1%	1%
	% NH White est.	72%	68%	68%	72%	70%
	% NH Black	3%	1%	2%	2%	2%
	Total	5,806	6,004	5,428	6,880	24,118
Voter Turnout (Nov 2020)	% Latino est.	24%	23%	25%	19%	22%
	% Spanish-Surnamed	22%	21%	23%	17%	21%
	% Asian-Surnamed	6%	12%	9%	9%	9%
	% Filipino-Surnamed	1%	2%	2%	2%	2%
	% NH White est.	67%	62%	64%	68%	66%
	% NH Black est.	3%	2%	2%	2%	2%
	Total	10,604	10,116	11,219	12,581	44,520
ACS Pop. Est.	age0-19	29%	29%	27%	27%	28%
Age	age20-60	50%	53%	53%	53%	52%
	age60plus	22%	18%	20%	21%	20%
Immigration	immigrants	17%	18%	22%	17%	18%
	naturalized	54%	62%	52%	71%	59%
Language spoken at home	english	74%	68%	66%	74%	70%
	spanish	18%	18%	20%	12%	17%
	asian-lang	6%	9%	8%	8%	8%
	other lang	2%	4%	6%	6%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	8%	10%	16%	8%	11%
Education (among those age 25+)	hs-grad	36%	38%	43%	39%	39%
	bachelor	34%	26%	21%	31%	28%
	graduatedegree	12%	17%	14%	15%	15%
Child in Household	child-under18	35%	45%	36%	39%	39%
Pct of Pop. Age 16+	employed	65%	65%	67%	69%	67%
Household Income	income 0-25k	8%	9%	6%	7%	7%
	income 25-50k	12%	9%	15%	12%	12%
	income 50-75k	11%	9%	15%	9%	11%
	income 75-200k	44%	39%	45%	45%	43%
	income 200k-plus	25%	34%	19%	28%	26%
Housing Stats	single family	82%	90%	79%	89%	85%
	multi-family	18%	10%	21%	11%	15%
	rented	28%	17%	36%	25%	27%
	owned	72%	83%	64%	75%	73%
Total population data from the California adjustment to the 2020 Decennial Census. Surname-based Voter Registration and Turnout data from the California Statewide Database. Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2015-2019 American Community Survey and Special Tabulation 5-year data.						

RESOLUTION NO. 22-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADOPTING A REVISED ELECTORAL DISTRICT MAP FOLLOWING THE 2020 FEDERAL CENSUS

WHEREAS, the City Council must review and if needed adjust city council district boundaries every ten years using decennial census data so that the districts remain substantially equal in population as required by federal law—a process commonly known as redistricting; and

WHEREAS, the 2020 Census data shows that Morgan Hill's current districts are population balanced, with a deviation between District A (the least populated district) and District D (the most populated district) of nearly 6%. However, District D as drawn does not meet the FAIR MAPS Act requirement of contiguity and as such, the City must adjust its district boundary lines by adopting a final district map before the statutory deadline of April 17, 2022; and

WHEREAS, between August 18, 2021, and February 16, 2022, the City Council held three public hearings, and a workshop to review 11 map submissions from members of the public. The City Council considered input from workshops, town halls, public comments, and communities of interest submission on the draft map; and

WHEREAS, on February 16, 2022, the City Council held a workshop to review eleven maps. After considering public input, they recommended five maps be brought to the March 2, 2022 public hearing for consideration; and

WHEREAS, on February 23, 2022, the City published the maps recommended by the Council on its redistricting website and made the maps available to the public; and

WHEREAS, on March 2, 2022, the City Council held a public hearing Pursuant to Elections Code Section 10010(a)(2) to receive public comment on the recommended maps; and

WHEREAS, after considering the draft maps and public input, the City Council desires to adopt updated city council electoral district maps to ensure that the City's districts comply with the law.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL THAT:

1. The City Council electoral district map attached as Exhibit A is hereby approved and adopted.

2. The City Council districts specified in Exhibit A shall remain in effect until modified.
3. This Resolution and its Exhibit shall be published and available on the City website for as long as the City Council districts approved by this resolution are in effect.
4. The City Clerk or designee, in conjunction with the Demographer, is hereby authorized and directed to provide a copy of this resolution to and work with the Santa Clara County Registrar of Voters to conduct any additional acts necessary to complete the redistricting process in a timely fashion to permit implementation of this district map in connection with the election to be held on November 8, 2022, including, without limitation, minor adjustments to the adopted map as may be necessary for its implementation.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the March 2, 2022.

AYES: **COUNCIL MEMBERS:**

NOES: **COUNCIL MEMBERS:**

ABSTAIN: **COUNCIL MEMBERS:**

ABSENT: **COUNCIL MEMBERS:**

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATION ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 22-XX, adopted by the City Council at a regular meeting held on March 2, 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

ARMANDO BENAVIDES

Attorney at Law

2/24/2022

Mayor Constantine
City Council
City Manager and Attorney
17575 Peak Avenue
Morgan Hill, CA 95037

RE: REDISTRICTING-Request for the Council to Exercise the Authority Granted by
The Legislature Under Elections Code 21601.

Mayor Constantine and CC Members,

In 2019, the Legislature amended the redistricting provisions of the Elections code for governmental bodies- Election Code 21500 (Counties), Election Code 21534 (LA County), Election Code 21552 (San Diego County), Election Code 21601 (Cities), Election code 21621(Charter cities), and Election Code 22000 (Special Districts).

An examination of the words, clauses, and sentences the Legislature used in the 2019 amendments clearly evidences that the Legislature granted Morgan Hill the authority to select Map 103. It can certainly deem District D "contiguous", (The Legislature provides examples in the continuum where it declared perfectly contiguous borders "not contiguous" and impossible to close boundaries as "contiguous").

One can fairly assume the Legislators carefully selected the level of discretion it granted each governmental entity on how to apply the 4 important redistricting factors. It prefaced all clauses and sentences with "In order of priority".

RANKING AMENDMENT WORDING THAT SHOWS LEVEL OF DISCRETIONARY
AUTHORITY GRANTED TO GOVERNMENTAL ENTITIES.

1. **"Shall be"** commands full compliance regardless of the consequences. (Election Codes 21354, 21552)
2. **"To the extent possible, where this does not conflict with paragraphs"**, Still robust compliance. Requires searching for possibilities but the city has some limitations on the possibilities that it may use if they conflict with other important criteria. (Amended Election Code 21354, 21552)
3. **"To the extent practicable"**, No need to search for possibilities. Grants discretion to cities to determine how to allocate the 3 important factors. (Amended Elections Code 21500, 21601).
4. **"To the extent practicable, where it does not conflict with the preceding criteria,"**. No need to search for possibilities. There is some restraint in application if there is conflict with specific listed factors. (Amended Elections Code 21500, 21552, 21534, 21601, 21621)
5. **"May Give Consideration"**, Entity is free to choose how to apply but the decision cannot be arbitrary, capricious, or lacking in evidence. (Amended Elections Code 22000)

That the Legislature amended the Election provisions at the same time is strong evidence that the clause it used for cities "to the extent practicable" grants Morgan Hill the authority to deal with the unique geographical features that make it impossible to close District D's borders (jurisdictional barriers) while at the same time allowing it to put into effect the other three equally important factors.

Even in ranking 2, which does require a chasing of possibilities, the Legislature imposed a restriction that the government body cannot use possibilities that impede the application of the other important factors, including respecting communities of interests.

Mr. Levitt's comments that "to the extent practicable" means "Unless it is impossible to keep districts contiguous ... we do need to follow contiguity" solely because it is listed first in the order of priority are not legally sound.

Mr. Levitt is just using boiler plate language that applies to most cities. He fails to account for the unique jurisdictional barriers that exists in District D. Moreover, the meaning he attributes to the word clause requires a search for *possibilities* which appears to apply more with the ranking 2 above "To the extent possible". His interpretation also sends a message to Morgan Hill and Santa Clara County residents that our Legislature cares more about protecting contiguous borders over protecting communities of interest and minority communities. That is the wrong message to send.

The City Attorney's comments that "To the extent practicable" means "[T]o the extent practicable as used in law codes for centuries, it means if it can be done, it shall be done. For example, in environmental statutes, to the extent practicable we are required to prevent water run-off, when we talk about impracticable what the courts have said if we can prevent water runoff, we must prevent the water runoff. It does not mean that we have to prevent the flood, all floods".

The attributed meaning the attorney provides, not based on the plain meaning of the words, is at best ambiguous. There is no doubt that under the ranking #2 "to the extent possible" and #3 "to the extent practicable" above if contiguous boundaries can be achieved, they shall be achieved. However, to the extent that his definition includes a mandatory chasing of possibilities, then his intended meaning would fall more into ranking #2 above "To the extent possible". I am confident, based on the plain meaning of the words, that "to the extent practicable" does not require a chasing of possibilities and instead is a grant of authority to the city council to be practicable and balance out the three equally important factors.

The City Attorney's attributed meaning also sends a message that our CA Legislature got it wrong. His comments underscore that fact: "Sacramento does

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not always react in a way that is beneficial to our community. When they are trying to solve a problem, it created a new problem for us. You as a council got it right in 2017 but it does not conform with what the Legislature ordered in 2019. That is out dilemma”.

It appears more logical that if the Legislature wanted the City to be chasing possibilities regardless of the effects on the other three equally important priorities, when jurisdictional barriers exist, the legislature would have used the words “Districts shall be contiguous” OR “To the extent possible, Districts shall be contiguous”.

That the Legislature used the wording “To the extent practicable, districts shall be contiguous”, is a legislative declaration that it considers factors 21601 ©(1-3) equally important and granted Morgan Hill the right to make practical decisions to select the district map that is in the best interest of Morgan Hill.

At this time, I seriously now believe that the city would be exposing itself to a lawsuit if it continues to attribute the meaning of the words “to the extent practicable” to be a mandate that forces a chasing of possibilities regardless of the consequences to the other equally important priorities and that leads to the conclusion that the Legislature created a problem for Morgan Hill.

The City Attorney understand that it is the duty of California Courts to independently render the meaning of a statute based on the plain meaning of the words and in the context of the legislative intent. I believe that the City will be in a better position to avoid a lawsuit if it exercises the right granted by the Legislature under Elections Coder 21601 and consider Public Map 103 as legally qualified to be considered for selection.

Regards,



Armando Benavides, Attorney at Law

Cc: Wide Distribution

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State of California

ELECTIONS CODE Section 21500 21500. (a) Following a county's decision to elect its board using district-based elections, or following each federal decennial census for a county whose board is already elected using district-based elections, the board shall, by ordinance or resolution, adopt boundaries for all of the supervisorial districts of the county so that the supervisorial districts shall be substantially equal in population as required by the United States Constitution.

(1) Population equality shall be based on the total population of residents of the county as determined by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are available.

(2) Notwithstanding paragraph (1), an incarcerated person, as that term is used in Section 21003, shall not be counted towards a county's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the county, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(b) The board shall adopt supervisorial district boundaries that comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(c) The board shall adopt supervisorial district boundaries using the following criteria as set forth in the following order of priority: (1) To the extent practicable, supervisorial districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous. (2) To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A "community of interest" is a population that shares common social or economic interests that should be included within a single supervisorial district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates. (3) To the extent practicable, the geographic integrity of a city or census designated place shall be respected in a manner that minimizes its division. (4) Supervisorial district boundaries should be easily identifiable and understandable by residents. To the extent practicable, supervisorial districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the county. (5) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, supervisorial districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

(d) The board shall not adopt supervisorial district boundaries for the purpose of favoring or discriminating against a political party. (e) For purposes of this chapter, "adopt" or "adoption"

in regard to supervisorial district boundaries means the passage of an ordinance or resolution specifying those boundaries. (Amended by Stats. 2021, Ch. 320, Sec. 2. (SB 594) Effective September 27, 2021.)

State of California

ELECTIONS CODE Section 21552. (a) The commission shall establish single-member supervisorial districts for the board pursuant to a mapping process using the following criteria **as set forth in the following order of priority:**

(1) (A) Districts shall comply with the United States Constitution and each district shall have a reasonably equal population with other districts for the board, except where deviation is required to comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) or is allowable by law.

(B) Population equality shall be based on the total population of residents of the county as determined by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are available.

(C) Notwithstanding subparagraph (B), an incarcerated person, as that term is used in Section 21003, shall not be counted towards the county's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the county, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(2) Districts shall comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(3) Districts **shall be** geographically contiguous.

(4) The geographic integrity of any city, local neighborhood, or local community of interest **shall be** respected in a manner that minimizes its division **to the extent possible** without violating the requirements of paragraphs (1) to (3), inclusive. A community of interest is a contiguous population that shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(5) **To the extent practicable**, and **where it does not conflict with paragraphs** (1) to (4), inclusive, districts shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant areas of population. (b) The place of residence of any incumbent or political candidate shall not be considered in the creation of a map. Districts shall not be drawn for purposes of favoring or discriminating against an incumbent, political candidate, or political party. (c) (1) The commission shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(Amended by Stats. 2020, Ch. 90, Sec. 8. (AB 1276) Effective January 1, 2021.)

State of California

ELECTIONS CODE Section 21534. (a) The commission shall establish single-member supervisorial districts for the board pursuant to a mapping process using the following criteria **as set forth in the following order of priority:**

(1) (A) Districts shall comply with the United States Constitution and each district shall have a reasonably equal population with other districts for the board, except where deviation is required to comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) or allowable by law.

(B) Population equality shall be based on the total population of residents of the county as determined by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are available.

(C) Notwithstanding subparagraph (B), an incarcerated person, as that term is used in Section 21003, shall not be counted towards the county's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the county, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(2) Districts shall comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(3) Districts **shall be** geographically contiguous.

(4) The geographic integrity of any city, local neighborhood, or local community of interest **shall be** respected in a manner that minimizes its division **to the extent possible** without violating the requirements of paragraphs (1) to (3), inclusive. A community of interest is a contiguous population that shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(5) **To the extent practicable, and where this does not conflict with paragraphs** (1) to (4), inclusive, districts **shall be** drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant areas of population.

(b) The place of residence of any incumbent or political candidate shall not be considered in the creation of a map. Districts shall not be drawn for purposes of favoring or discriminating against an incumbent, political candidate, or political party.

Other parts not included because it is irrelevant.

(Amended by Stats. 2020, Ch. 90, Sec. 7. (AB 1276) Effective January 1, 2021.)

State of California

ELECTIONS CODE Section 21601. (a) Following a city's decision to elect its council using district-based elections, or following each federal decennial census for a city whose council is already elected using district-based elections, the council shall, by ordinance or resolution, adopt boundaries for all of the council districts of the city so that the council districts shall be substantially equal in population as required by the United States Constitution.

(1) Population equality shall be based on the total population of residents of the city as determined by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are available.

(2) Notwithstanding paragraph (1), an incarcerated person as that term is used in Section 21003, shall not be counted towards a city's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the city, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(b) The council shall adopt council district boundaries that comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(c) The council shall adopt district boundaries using the following criteria **as set forth in the following order of priority:**

(1) **To the extent practicable**, council districts **shall be** geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

(2) **To the extent practicable**, the geographic integrity of any local neighborhood or local community of interest **shall be** respected in a manner that minimizes its division. A "community of interest" is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(3) Council district boundaries should be easily identifiable and understandable by residents. **To the extent practicable**, council districts **shall be** bounded by natural and artificial barriers, by streets, or by the boundaries of the city.

(4) **To the extent practicable**, and **where it does not conflict with the preceding** criteria in this subdivision, council districts **shall be** drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

(d) The council shall not adopt council district boundaries for the purpose of favoring or discriminating against a political party. (e) For purposes of this article, "adopt" or "adoption" in regard to council district boundaries means the passage of an ordinance or resolution specifying those boundaries.

(Amended by Stats. 2021, Ch. 320, Sec. 3. (SB 594) Effective September 27, 2021.)

State of California

ELECTIONS CODE Section 21621. (a) Following a city's decision to elect its council using district-based elections, or following each federal decennial census for a city whose council is already elected using district-based elections, the council shall, by ordinance or resolution, adopt boundaries for all of the council districts of the city so that the council districts shall be substantially equal in population as required by the United States Constitution.

(1) Population equality shall be based on the total population of residents of the city as determined by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are available.

(2) Notwithstanding paragraph (1), an incarcerated person, as that term is used in Section 21003, shall not be counted towards a city's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the city, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision

(b) of Section 8253 of the Government Code, and that database is made publicly available.

(b) The council shall adopt council district boundaries that comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(c) The council shall adopt district boundaries using the following criteria as set forth in the following order of priority:

(1) To the extent practicable, council districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

(2) To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A "community of interest" is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(3) Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.

(4) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, council districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

(d) The council shall not adopt council district boundaries for the purpose of favoring or discriminating against a political party.

(e) Subdivision (c) does not apply to a charter city that has adopted comprehensive or exclusive redistricting criteria in its city charter. For purposes of this subdivision, "comprehensive or exclusive" means either that the city's charter excludes consideration of redistricting criteria other than those that are identified in the city charter or that the city's charter provides two or more traditional criteria for redistricting other than the requirement that districts be equal in population.

(f) For purposes of this article, "adopt" or "adoption" in regard to council district boundaries means the passage of an ordinance or resolution specifying those boundaries.

(Amended by Stats. 2021, Ch. 320, Sec. 4. (SB 594) Effective September 27, 2021.)

State of California

ELECTIONS CODE Section 22000 . (a) Each district required by its authorizing act to adjust division boundaries pursuant to this section shall, by resolution, after each federal decennial census, and using that census as a basis, adjust the boundaries of any divisions so that the divisions are, as far as practicable, equal in population and in compliance with Section 10301 of Title 52 of the United States Code, as amended, to the extent those provisions apply. In adjusting the boundaries of the divisions, the board may give consideration to the following factors: (1) topography, (2) geography, (3) cohesiveness, contiguity, integrity, and compactness of territory, and (4) community of interests of the division. This section does not apply to divisions in which only landowners vote for directors or whose directors are all elected at large or appointed.

(b) The resolution specified in subdivision (a) shall be adopted by a vote of not less than a majority of the directors.

(c) At the time of, or after, any annexation of territory to the district, the board of directors shall designate, by resolution, the division of which the annexed territory shall be a part.

(d) No change in division boundaries may be made within 180 days preceding the election of any director.

(e) (1) A change in division boundaries shall not affect the term of office of any director. (2) If division boundaries are adjusted, the director of the division whose boundaries have been adjusted shall continue to be the director of the division bearing the number of his or her division as formerly comprised until the office becomes vacant by means of term expiration or otherwise, whether or not the director is a resident within the boundaries of the division as adjusted.

(f) The successor to the office in a division whose boundaries have been adjusted shall be a resident and voter of that division.

(g) A district is not required to adjust the boundaries of any divisions pursuant to this section until after the 2000 federal decennial census.

(h) Nothing in this section shall be construed to prohibit or restrict a district from adjusting the boundaries of any divisions whenever the governing body of the district determines by a two-thirds vote of the governing body that a sufficient change in population has occurred that makes it desirable in the opinion of the governing body to adjust the boundaries of any divisions, or whenever any territory is added by or excluded from the district.

(Amended by Stats. 2015, Ch. 732, Sec. 40. (AB 1536) Effective January 1, 2016.)

CITY COUNCIL STAFF REPORT

MEETING DATE: March 2, 2022

PREPARED BY:

Matthew Mahood, Economic Development Director

APPROVED BY: City Manager

ADOPT INDUSTRIAL PRESERVATION AND OPTIMIZATION POLICY

RECOMMENDATION(S)

Adopt an Industrial Land Preservation and Optimization Policy

Estimated Time: 30 Minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

2020-2021 Strategic Priorities

Fiscal Sustainability

Economic Development

Guiding Documents

Morgan Hill 2035 General Plan

Economic Blueprint

REPORT NARRATIVE:

POLICY CONSIDERATION:

The City is proposing an Industrial Land Preservation and Optimization Policy that would be implemented through amendments to the zoning code.

BACKGROUND:

In April 2017, the City Council unanimously adopted the 2017 Morgan Hill Economic Blueprint; an economic development strategy intended to foster economic growth by attracting investment, development, and jobs that will ensure fiscal sustainability and vitality for the community. The Economic Blueprint identifies four industries that are key to Morgan Hill's future growth and further fiscal sustainability. The four key industries are:

1. Innovation and Advanced Manufacturing -- Grow existing companies, attract new industry and grow professional jobs.
2. Retail -- Grow retail offerings and strengthen commercial nodes.
3. Tourism -- Grow leisure, agriculture, wine country & recreational tourism.
4. Health Care -- Grow and foster the medical service and diagnostics industry by

attracting services and facilities.

The Economic Blueprint identified four core industries, 13 strategies and 35 action items. Amongst these items, the Economic Blueprint recommended adopting an employment (Industrial) land preservation policy (Action #1), and strengthening General Plan language to prevent the conversion of Industrial lands (Action #2).

To support the work outlined in the Economic Blueprint, in July 2020, the Economic Development Team, in partnership with the Urban Land Institute (ULI) and the Silicon Valley Economic Development Alliance (SVEDA), hosted four independent seminars with industry experts, and planning and economic development professionals to better understand today's market at a national, regional and local level. The seminars examined the future of the industrial and retail sectors, especially post-Covid-19, and identified tactical strategies for Morgan Hill to consider that would support our industrial preservation and retail concentration goals. In addition, Strategic Economics performed an analysis of the City's remaining industrial and commercial vacant properties. The findings and results from these presentations were shared at the [September 22, 2020 Planning Commission Meeting](#).

On [March 9, 2021, the Planning Commission](#) conducted an Industrial Preservation Policy Workshop to review proposed changes to the Zoning Code to support goals associated with industrial preservation. The proposed policy takes into consideration the Planning Commission's feedback and community feedback over the last year in regard to the Industrial Ordinance and rules and regulations for distribution facilities.

On February 8, 2022, the Planning Commission heard and adopted the proposed Industrial Preservation & Optimization Policy with one minor change. The original text of Goal E read, "Encourage conversion of Commercial Lands to Industrial Lands where appropriate." The Planning Commission expressed concern with the word "encourage" and requested to replace it with "consider" or "explore." Staff has made the amendment to Goal E to now read, "Explore conversion of Commercial Lands to Industrial Lands where appropriate."

PROJECT DESCRIPTION: The City's 2017 Morgan Hill Economic Blueprint identifies Innovation and Advanced Manufacturing as one of the four core industries key to Morgan Hill's future growth and fiscal sustainability. One of the key strategies is to preserve Industrial Lands. Specifically, Action #1 calls for the adoption of an employment (Industrial) land preservation Policy, and Action #2 calls to strengthen the General Plan language to prevent conversion of Industrial lands. This Industrial Land Preservation and Optimization Policy, in conjunction with the City's General Plan, Zoning Ordinance, and Economic Blueprint, aims to preserve the City's limited supply of industrial land that is critical to the City's economic vitality. The Industrial Land Preservation and Optimization Policy identifies five key goals (see below) that provide direction and guidance when developing, implementing, and managing policies, programs, and projects; including implementation of the Zoning Code and General Plan as it relates to industrial uses and industrial business parks.

FINDINGS:

The Importance of Jobs

Morgan Hill is a predominantly residential suburb and job exporter, with only 25.1 percent of Morgan Hill residents working within the City Limits. With 21,775 employed residents and 18,428 jobs in Morgan Hill, the ratio of jobs to resident workers is 0.85. This seems to indicate that there is not the “right” balance between the types of jobs, and the skills of residents. Moreover, nearly 75 percent of commuting residents drive alone despite High-Occupancy Vehicle (HOV) lanes existing most of the distance between San Jose and Morgan Hill. A majority of commuting residents drive longer than 30 minutes to and from work. This pattern negatively impacts quality of life, stresses the City's and region's transportation infrastructure, and is environmentally unsustainable.

There are several industry categories where the makeup of Morgan Hill business does not mirror the rest of Silicon Valley. Information, professional, scientific, education, and healthcare service careers are under-represented in Morgan Hill. Expanding job opportunities in these sectors, as well as continuing to attract advanced manufacturers, can help improve the match between resident skill sets and the jobs offered in Morgan Hill. To address the housing to jobs ratio, the City needs to continue to protect employment lands while growing high-quality jobs.

Loss of Employment Lands

Factors that can impact the City's future job inventory, are the conversion of industrial land to commercial or residential uses and the granting of conditional use permits (CUP) to non-traditional industrial uses. Over the past 15 years, a significant amount of the City's industrial land has been lost to conversion. In 2013, there were 294 acres of vacant industrial land available. Today, Morgan Hill has approximately 120 acres of industrial land available for development and virtually no existing product available for lease or sale with vacancy rates in office and research and development (R&D) at a historic low of 2.9 percent. In less than eight years, the total number of available industrial acreage within the City has declined 59.1 percent, reducing any future supply to a 19–95-year window depending upon market absorption. It is possible that within the current time horizon of the newly adopted Morgan Hill 2035 General Plan, all available industrial land will be exhausted.

In addition, over the last 15 years, the City has issued 25 CUP's which have repurposed a total of 68 acres of property in industrial areas to low intensity or non-industrial uses, predominately mini-storage, recreation uses, community assembly, and medical offices. Lastly, considering the existing housing crisis and increasing challenges to meet the growing housing demand, pressure to convert industrial land to residential will only intensify. Currently, the California State Legislature is considering various legislation that could potentially allow the conversion of unused or under-utilized commercial lands to residential lands. Senate Bill 6 (SB6) is just one example of this type of pending and proposed legislation.

In 2020, the City Council approved Zoning Code Amendments that prohibit stand-alone large fulfillment centers and parcel sorting centers. This action endorses the focus on high-value employers in advanced manufacturing, R&D, innovation, and office uses.

When City staff engaged with industry subject-matter-experts and the Planning Commission to identify strategies and tactics to help protect employment lands and the City's economic sustainability, the following recommendations were shared:

1. Use it. The best way to preserve industrial/employment lands is to use them for their industrial purposes.
2. Revisit Policy CNF-17.1 language within the General Plan and replace 'discourage' with "prohibit" the conversion of industrial lands.
3. Limit discretion of CUP uses in employment generating uses.
4. Hold the line. Prioritize wanted uses such as OEM (original equipment manufacturer).
5. Brand, market, and promote industrial parks.
6. Incentivize Industrial Uses. Explore how fee structures and taxes align with land use outcomes. Explore ways to incentivize industrial development.
7. Activate the ground floor of industrial with a mix of uses. Allow for mixed uses within industrial. Consider office or other uses.
8. Consider post-COVID-19 uses. The pandemic may create new products and uses that are not currently articulated in city codes. Be flexible to allow for industries and new operations.

CONCLUSION:

The proposed Industrial Land Preservation and Optimization Policy further clarifies the City's goals as it relates to Industrial Lands. This policy, once adopted, in conjunction with the City's General Plan, Zoning Ordinance and Economic Blueprint, will support the preservation and optimization of the City's limited supply of industrial land that is critical to the City's economic vitality. The proposed Industrial Land Preservation and Optimization Policy identifies five key goals that provide direction and guidance when developing, implementing, and managing policies, programs, and projects; including implementation of the Zoning Code and General Plan as it relates to industrial uses and industrial business parks.

The five key goals are:

- A. Encourage the attraction and expansion of Research and Development, Office and Advanced Manufacturing uses.
- B. Prohibit stand-alone e-commerce Warehouse and Distribution uses.
- C. Prohibit General Plan conversions of Industrial lands that cause a net loss of industrial employment lands.
- D. Protect existing Industrial lands and business parks by prohibiting non-compatible uses such as community assembly and recreational uses.
- E. Explore conversion of Commercial Lands to Industrial Lands where appropriate.

The Industrial Land Preservation and Optimization Policy supports amending the current zoning code to minimize and reduce incompatible uses within the industrial lands, while expanding compatible uses in the medical, healthcare, and medical office and clinic industries that meets current market demand, creates quality jobs and improves the quality of life for residents.

The team seeks the City Council's adoption of the Industrial Land Preservation and

Optimization Policy as amended by the Planning Commission.

COMMUNITY ENGAGEMENT:

Community engagement on this topic has taken place since July 2020 with the ULI and SVEDA seminars on Industrial Lands Utilization and Policy. The Planning Commission held meetings on this topic on September 22, 2020 and March 9, 2021. Staff presented the proposed policy at the Morgan Hill Chamber of Commerce Economic Development Committee meeting on January 13, 2022 and via a virtual City of Morgan Hill Townhall meeting on January 27, 2022. Information has been shared through the City's Citywide 411 Newsletter, the Choose Morgan Hill Economic Development eNewsletter and emails have been sent to stakeholders including industrial property owners, businesses, and commercial real estate brokers. In addition, this item was heard and the policy was adopted with one minor edit at the February 8, 2022 Planning Commission meeting.

ALTERNATIVE ACTIONS:

The City Council may choose to amend the proposed policy language or to not adopt the policy.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

See above for Planning Commission actions.

FISCAL AND RESOURCE IMPACT:

No request of funds or negative impact to general fund.

CEQA (California Environmental Quality Act):

This policy is categorically exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, as a City Policy is not a project with potential for causing a significant effect on the environment requiring California Environmental Quality Act (CEQA) analysis. Additionally, on July 27, 2016, the City Council certified an environmental impact report (EIR) for the Morgan Hill 2035 General Plan. This policy is consistent with, and implements, the General Plan and therefore was analyzed in the EIR for the 2035 General Plan. Pursuant to Section 15162 and Section 15183 of the State CEQA Guidelines, no additional review under the California Environmental Quality Act is required.

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-22-__

SUBJECT: INDUSTRIAL LAND PRESERVATION & OPTIMIZATION POLICY

EFFECTIVE DATE:

ORIGINATING DEPARTMENT: ECONOMIC DEVELOPMENT DEPARTMENT

The City of Morgan Hill seeks to support a diverse local economy and an expanded tax base by preserving existing job-generating land. The City's General Plan identifies strategies to diversify the economy, increase quality and quantity of job opportunities to support the community's well-being. Industrial lands are critically important to the economic health of the city and the community, by providing local jobs and supporting industry that contribute to the local economy.

The city seeks to have a job/housing balance, at a 1:1 ratio, that offers a job for every resident able to work in the city. Today, there are 21,775 employed residents, and 18,428 jobs in Morgan Hill - the ratio of jobs to resident workers is 0.85.

Industrial land supply has reduced over the years with conversions of industrial land to housing or allowance of non-industrial uses within the industrial parks. In eight years, available industrial land has declined by 59.1%. Today, Morgan Hill has approximately 120 acres of industrial land available for development and a historically low 2.6% vacancy rate. Additionally, non-industrial uses such as schools, recreational facilities, community assembly further threaten the ability to attract and retain industrial users due to conflicts with sensitive receptors.

The City's 2035 General Plan's Economic Development Element provides guidance on the type of jobs, uses, and activities that support the City's economic vitality and long-term sustainability. The Economic Blueprint identifies Innovation and Advanced Manufacturing as a key industry for Morgan Hill's future growth and further fiscal health.

This Industrial Land Preservation & Optimization Policy, in conjunction with the City's General Plan, Zoning Ordinance, and Economic Blueprint, aims to preserve the City's limited supply of industrial land that is critical to the City's economic vitality. The Industrial Land Preservation & Optimization Policy identifies five key goals that provide direction and guidance when developing, implementing, and managing policies, programs, and projects; including implementation of the Zoning Code and General Plan as it relates to industrial uses and industrial business parks. To preserve and optimize the City's limited industrial land inventory, the City should:

A. Encourage the attraction and expansion of Research and Development, Office, and Advanced Manufacturing uses

Given the limited availability of industrial lands and to maximize job and revenue-generating potential, the City through its Zoning Code, policies, and programs, should encourage and support innovation, advanced manufacturing, R&D, and office uses. To support the goals of the Economic Blueprint and to grow medical and healthcare amenities, medical office and clinics should be considered within the light industrial zoning.

Supporting General Plan Policy & Goal:

ED-3.1 Business Retention, Expansion, and Attraction Efforts. Encourage retention and expansion of existing businesses, and attract new businesses, that:

- generate revenue to the City General Fund (such as retail and point-of-sale manufacturing)
- help provide greater financial strength and stability to the City
- add industry diversity to the local economy
- stimulate other businesses to develop in the city

ED-8.1 Office and Industrial Development: Support the development of office and industrial facilities to meet local demand, compete for regional growth opportunities, and create high-quality jobs that match with local housing opportunities.

Goal, ED-1. High quality jobs for residents that support household incomes in line with local housing costs and higher-education institutions that enhance skills and increase access to high-quality education.

B. Prohibit stand-alone e-commerce Warehouse and Distribution uses

Logistics, warehouse, and distribution uses are one of the fastest growing sectors. While these uses are part of the eco-system that support retail, manufacturing, R&D and other desired uses in Morgan Hill; stand-alone distribution and warehouse uses are not desired uses. The limited inventory of available industrial land should maximize the job and revenue potential of these sites. Additionally, warehouse and distribution uses generate traffic, have impact to the City's infrastructure and have limited benefit to the economic health of the city or quality of life of the community. Finally, large distribution and warehouse uses do not fit the small-town aesthetic that Morgan Hill seeks to retain.

C. Prohibit General Plan conversions of Industrial lands that cause a net loss of industrial employment lands

As vacant land becomes more constrained, pressure to convert industrial land to residential will intensify to meet the growing housing demand. To protect the City's future economic sustainability, the City should update the General Plan language to prohibit the conversion of industrial lands to non-industrial uses unless there is a concurrent conversion of property ensuring there is a no net loss of industrial designated land.

Supporting General Plan Policy:

Policy CNF-17.1 Industrial Land Conversion. Discourage the conversion of property designated for industrial to non-industrial uses.

Policy, Ed-3.2 Employment Land Supply. Preserve the city's supply of industrial and commercial lands to support the City's goals and policies related to economic development and jobs-housing balance.

D. Protect existing Industrial lands and business parks by prohibiting non-compatible uses such as community assembly and recreational uses.

To protect the health of the longevity of the industrial parks and ensure current and future industrial users can locate in these parks, the City should minimize conflicts with sensitive receptors that may

adversely impact industrial activity. To prevent future non-compatible uses, the Zoning Code should prohibit specific non-compatible uses, including community assembly and commercial recreation uses by eliminating conditional use permits in these zones.

Supporting General Plan Policy:

Policy CNF-17.2 Industrial Land Use Conflicts. Ensure proposed new uses adjacent to industrial uses do not introduce land use conflicts that would adversely impact industrial activities.

Policy ED-3.7 Flexible Business District Zoning. Maintain flexibility within industrial, business park, and office zoning districts that support modern industry uses and that are integrated appropriately with other land uses and attract a broad range of users.

E. Explore conversion of Commercial Lands to Industrial Lands where appropriate

To grow our available industrial lands inventory, when appropriate, the City should work with property owners to identify possible property sites that can be converted from commercial to industrial and facilitate the conversion.

Supporting General Plan Policy:

General Plan, Policy ED-1.2, Jobs/Housing Balance. Balance jobs and housing supplies to minimize traffic congestion, and commute times, and to optimize economic diversity and capacity to provide services.

General Plan, Policy ED-3.2 – Employment Land Supply: Preserve the City's supply of industrial and commercial lands to support the City's goals and policies related to economic development and job-housing balance.

CITY COUNCIL STAFF REPORT

MEETING DATE: March 2, 2022

PREPARED BY:

Rich Buikema, Contract Planner

APPROVED BY: City Manager

ADOPT ZONING CODE AMENDMENT TO SECTION 18.26.020 (LAND USE REGULATIONS) OF CHAPTER 18.26 (INDUSTRIAL ZONING DISTRICTS) OF TITLE 18 (ZONING) TO MODIFY THE LAND USES PERMITTED IN THE INDUSTRIAL ZONING DISTRICTS

RECOMMENDATION(S)

1. Open/close the public hearing.
2. Waive first and second reading of the Ordinance Amendment; and
3. Introduce Ordinance Amendment as recommended by staff and amended by the Planning Commission.

Estimated Time: 30 Minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

2020-2021 Strategic Priorities

Fiscal Sustainability

Economic Development

Guiding Documents

Economic Blueprint

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

An Industrial Land Preservation and Optimization Policy has been developed for City Council consideration and supports amending the current zoning code to minimize and reduce incompatible uses within the industrial lands, while expanding opportunities for compatible uses in the medical, healthcare, and medical office and clinic industries that meet current market demand, creates quality jobs, and improves the quality of life for residents. A draft ordinance is being proposed that would amend the Industrial Land Use Regulations. The proposed amendments would implement the Morgan Hill General Plan, 2017 Morgan Hill Economic Blueprint and the pending Industrial Land Preservation and Optimization City Council Policy.

The proposed staff recommended amendments to Section 18.26.020 (Land Use Regulations) of the Municipal Code are described as follows:

- a. Prohibit the following non-industrial uses in both the IG (General Industrial) and IL (Light Industrial) zoning districts.
 - i. Community Assembly
 - ii. Commercial Recreation, Indoor
 - iii. Home Improvement Centers
- b. Prohibit the following non-industrial uses in the IG (General Industrial) zoning district.
 - i. Colleges/Trade Schools
 - ii. Parks and Recreational Facilities
 - iii. Adult Businesses
 - iv. Public Safety Facilities
 - v. Mini-Storage
 - vi. Large Commodity Retail
 - vii. Professional Offices
- c. Allow Medical Offices and Clinics of less than 20,000 square feet as a Permitted use in the LI (Light Industrial), CI (Commercial Industrial), IO (Light Office Industrial) and IC (Campus Industrial) zoning districts.
- d. Allow Medical Offices and Clinics of 20,000 square feet or more as a Conditional use in the IL(Light Industrial) zoning district and as a permitted use in the CI (Commercial Industrial), IO (Light Office Industrial) and IC (Campus Industrial) zoning districts.

Planning Commission Action

The Planning Commission reviewed the proposed amendments on February 8, 2022. Following discussion, the Planning Commission unanimously approved Resolution No. 22-03 recommending the City Council approve the proposed Amendments as presented by Staff with the following exceptions;

1. Maintain the requirement that Home Improvement Centers obtain a Conditional Use Permit in the IL-Light Industrial Zoning District

- Staff had recommended that Home Improvement Centers be prohibited. The Commission indicated that given the potential economic benefit of a home improvement center, those uses should continue to be allowed in the IL-Light Industrial zone, subject to a Conditional Use Permit by the Planning Commission.

2. Require an Administrative Use Permit for Medical Office and Clinics of less than 20,000 square feet.

- Staff had recommended allowing Medical Offices and Clinics as a permitted use

at 20,000 square feet. When the idea of requiring an Administrative Use Permit was raised, staff suggested consideration of the following:

- 5,000 square feet or less - Permitted by right
- 5,001-20,000 square feet - Administrative Use Permit
- 20,000 square feet or more - Conditional Use Permit
- After further discussion, the Commission indicated that discretionary review was needed to address the potential for a Medical Office or Clinic being proposed next to an incompatible use or a concentration of those uses. The Commission recommended that an Administrative Use Permit, issued by the Community Development Director provided the appropriate level of review to address their concern. Administrative Use Permits can also be elevated to the Planning Commission.

COMMUNITY ENGAGEMENT:

Community engagement on this topic has taken place since July 2020 with the ULI and SVEDA seminars on industrial lands utilization & policy. The Planning Commission held meetings on this topic on September 22, 2020 and March 9, 2021. Information has been shared through the City's Citywide 411 Newsletter, the Choose Morgan Hill Economic Development eNewsletter, and emails have been sent to stakeholders including industrial property owners, businesses, and commercial real estate brokers.

A 10-day public hearing notice was published in the Friday, February 18, 2022 edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notice was also provided on the website and social media. On February 8, 2022, the Planning Commission held a public hearing regarding the proposed ordinance amendments in which a 10-day public hearing notice was published in the Friday, January 28, 2022 edition of the Morgan Hill Times.

On February 8, 2022, the Morgan Hill Planning Commission heard and adopted the proposed zoning amendments with two exceptions noted above.

ALTERNATIVE ACTIONS:

If the City Council does not take action on the proposed ordinance amendments, the Municipal Code will remain as-is, including the allowed uses within the industrial zoning districts. The Council may also adopt staff's original recommendation, make modifications to the proposed amendments, or not approve certain amendments that the Council deems appropriate.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 6, 2018, the City Council adopted Ordinance No. 2277 N.S., a comprehensive update of Title 18 – Zoning of the City of Morgan Hill Municipal Code. The update included an amendment to the City's official zoning map consistent with the Morgan Hill 2035 General Plan.

FISCAL AND RESOURCE IMPACT:

Staff regularly brings forward bundles of minor amendments as necessary to enhance, correct and/or refine the Code; and therefore, the cost is borne, and work is accommodated, within the respective division's annual workplan and budget.

CEQA (California Environmental Quality Act):

This ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, as the proposed text amendments to the Morgan Hill Zoning Code is not a project with potential for causing a significant effect on the environment requiring California Environmental Quality Act (CEQA) analysis. Additionally, on July 27, 2016, the City Council certified an environmental impact report (EIR) for the Morgan Hill 2035 General Plan. This ordinance is consistent with, and implements, the General Plan and therefore was analyzed in the EIR for the 2035 General Plan. Pursuant to Section 15162 and Section 15183 of the State CEQA Guidelines, no additional review under the California Environmental Quality Act is required.

PLANNING COMMISSION STAFF REPORT

MEETING DATE: February 8, 2022

PREPARED BY:

Rich Buikema, Contract Planner

APPROVED BY: Jennifer Carmen

ZA2021-0008: MUNICIPAL CODE AMENDMENT AMENDING SECTION 18.26.020 (LAND USE REGULATIONS) OF CHAPTER 18.26 (INDUSTRIAL ZONING DISTRICTS) OF TITLE 18 (ZONING) TO MODIFY THE LAND USES PERMITTED IN THE INDUSTRIAL ZONING DISTRICTS

RECOMMENDATION(S)

1. Open/close public hearing; and,
2. Adopt Resolution recommending City Council approval of the Municipal Code Amendment.

PROJECT INFORMATION:

A draft ordinance is being proposed that would amend the Industrial Land Use Regulations. The proposed amendments would implement the Morgan Hill General Plan, 2017 Morgan Hill Economic Blueprint and the pending Industrial Land Preservation and Optimization City Council Policy.

BACKGROUND:

In April 2017, the City Council unanimously adopted the 2017 Morgan Hill Economic Blueprint that identified industrial preservation as a key strategy for long-term economic sustainability. A component of this strategy is to restrict non-industrial uses that have the potential to inhibit the operation of industrial uses and discourage new industrial users from locating in Morgan Hill.

In July 2020, the City's Economic Development Team, in partnership with the Urban Land Institute (ULI) and the Silicon Valley Economic Development Alliance (SVEDA), hosted four independent seminars with industry experts, and planning and economic development professionals to better understand today's market at a national, regional, and local level. The seminars took a deep dive into the future of industrial and retail sectors, especially post-Covid-19, and identified tactical strategies for Morgan Hill to consider that support the City's industrial preservation and retail concentration goals.

On September 22, 2020, the Planning Commission conducted the first Industrial Preservation Policy Workshop. The findings of the July 2020 ULI and SVEDA seminars were shared during this meeting. The Planning Commission accepted the report and provided feedback on the industrial preservation concentration policies.

On March 9, 2021, the Planning Commission conducted a second Industrial Preservation Policy Workshop to review proposed changes to the Zoning Code to support an industrial preservation strategy. The Planning Commission reviewed, discussed, and provided feedback on the proposed changes to Section 18.26.020 (Land Use Regulations) of the Industrial Zoning Districts Chapter for alignment with industrial preservation goals. The Planning Commission was generally supportive of the proposed Zoning Code amendments. However, concerns were expressed by the Commission regarding higher rents due to locating commercial recreation uses, such as a gymnastics facility, outside of industrial areas. Staff responded that the need to preserve industrial land was of greater concern.

An Industrial Land Preservation and Optimization Policy has been developed for City Council consideration and supports amending the current zoning code to minimize and reduce incompatible uses within the industrial lands, while expanding compatible uses in the medical, healthcare, and medical office and clinic industries that meet current market demand, creates quality jobs, and improves the quality of life for residents. The policy document will be considered as a separate item.

PROJECT DESCRIPTION:

The City proposes the following amendments to Section 18.26.020 (Land Use Regulations) of the Industrial Zoning Districts Chapter to preserve the City's limited supply of industrial land, prevent incompatible uses, and to accommodate additional medical services:

- a. Prohibit the following non-industrial uses in both the IG (General Industrial) and IL (Light Industrial) zoning districts.
 - i. Community Assembly
 - ii. Commercial Recreation, Indoor
 - iii. Home Improvement Centers
- b. Prohibit the following non-industrial uses in the IG (General Industrial) zoning district.
 - i. Colleges/Trade Schools
 - ii. Parks and Recreational Facilities
 - iii. Adult Businesses
 - iv. Public Safety Facilities
 - v. Mini-Storage
 - vi. Large Commodity Retail
 - vii. Professional Offices
- c. Allow Medical Offices and Clinics less than 20,000 square feet as a permitted use in the LI (Light Industrial), CI (Commercial Industrial), IO (Light Office Industrial) and IC (Campus Industrial) zoning districts.
- d. Allow Medical Offices and Clinics of 20,000 square feet or more as a conditional use in the IL (Light Industrial) zoning district and as a permitted use in the CI (Commercial Industrial), IO (Light Office Industrial) and IC (Campus Industrial) zoning districts.

ANALYSIS:

The proposed ordinance implements the General Plan, 2017 Morgan Hill Economic Blueprint and the pending Industrial Land Preservation and Optimization City Council Policy. A chart displaying an overall summary of the proposed zoning amendments is attached (Attachment 3).

Prohibiting Nonindustrial Uses in Industrial Zones

The draft ordinance proposes to amend the Industrial Land Use Regulations to prohibit certain non-industrial uses that are either currently permitted or that would be allowed with a Conditional Use Permit (CUP). Allowing non-industrial uses within industrial areas depletes the supply of industrial land, inhibits the operation of existing industrial uses, and potentially discourages new industrial businesses from locating or expanding in Morgan Hill. The proposed zoning amendment will avoid the establishment of "sensitive receptors" within the industrial zoned land that could be adversely affected from noise, dust, odor, and emissions typical of heavy industrial uses.

With no foreseeable expansion to the supply of industrial lands, prohibiting non-industrial uses will help extend the lifespan of the industrial land supply. While certain non-industrial uses are currently allowed only with a CUP, eliminating the CUP option will send a clear message of the importance of preserving industrial areas for primarily industrial uses.

Most of the changes are within the permitted use category in IG (General Industrial) zoning district (approximately 70 acres, of which six (6) acres are vacant) and IL (Light Industrial) zoning district (approximately 590 acres, of which 115 acres are vacant). The use limitations are proposed because of the nature of heavy industrial operations and the potential for conflict non-industrial uses.

Land Use	IG - General Industrial		IL - Light Industrial	
	Existing	Proposed	Existing	Proposed
Community Assembly	CUP	Not Permitted	CUP	Not Permitted
Commercial Rec. Indoor				
< 15,000 sq. ft.	CUP	Not Permitted	CUP	Not Permitted
>15,000 sq. ft.	CUP	Not Permitted	CUP	Not Permitted
Colleges/Trade Schools	CUP	Not Permitted	CUP	CUP
Parks & Rec.	CUP	Not Permitted	CUP	CUP
Adult Businesses	Permitted	Not Permitted	Permitted	Permitted
Public Safety Facilities	CUP	Not Permitted	CUP	CUP
Mini-Storage	CUP	Not Permitted	CUP	CUP
Home Improvement Ctr.	CUP	Not Permitted	CUP	Not Permitted
Large Commodity Retail	CUP	Not Permitted	CUP	Not Permitted
Professional Offices	Permitted	Not Permitted	Permitted	Permitted

Below are the definitions of the non-industrial uses that are proposed to be prohibited in the IG (General Industrial) and/or IL (Light Industrial) zoning districts, as defined in the Zoning Code:

Community Assembly. Facilities that provide space for public or private meetings or gatherings. Includes places of worship, community centers, meeting space for clubs and other membership organizations, social halls, union halls, banquet centers, and other similar facilities.

Commercial Recreation, Indoor. A commercial recreation facility primarily located indoors. Includes gymnasiums, health clubs, bowling alleys, indoor tennis and racquet courts, indoor swimming pools, laser tag and other similar games. Excludes "instructional services."

Colleges and Trade Schools. Institutions of higher education provide curricula of a general, religious or professional nature, typically granting recognized degrees. Includes junior colleges, business and computer schools, management training, vocational education, and technical and trade schools.

Home Improvement Centers. A retail establishment which carries a full line of building materials, appurtenances, and decorator items primarily for homeowners (not contractors) to improve and maintain individual dwellings.

Colleges and Trade Schools. Institutions of higher education providing curricula of a general, religious, or professional nature, typically granting recognized degrees. Includes junior colleges, business and computer schools, management training, vocational education, and technical and trade schools.

Parks and Recreational Facilities. Non-commercial facilities that provide open space and/or recreational opportunities to the public. Includes parks, community gardens, community centers, passive and active open space, wildlife preserves, playing fields, tennis courts, swimming pools, gymnasiums, and other similar facilities.

"Adult businesses" include but are not limited to adult bookstores, adult video stores, adult novelty stores, adult arcades, adult motels, adult theaters, adult entertainment enterprises, adult cabarets, escort agencies, massage parlors, nude modeling studios; or places which engage in or allow couch dancing, topless dancing, nude or semi-nude mud wrestling or similar businesses.

Large Commodity Retail. A retail use where more than seventy-five percent of the gross floor area is used for display, sales, and related storage of bulky commodities, and which typically generate a demand for fewer parking spaces than do other types of retail uses. Includes retail sale of carpeting

and floor covering; catalog and mail order sales; construction equipment and machinery; garden and farm equipment; heating, ventilating, air conditioning, and other mechanical equipment and supplies; kitchen, bathroom and plumbing appliances, equipment, and supplies; lumber and building materials; office furniture, equipment, and machinery, including computers; and household furniture.

Professional Offices. A place of employment occupied by businesses providing professional, executive, management, or administrative services. Includes offices for accountants, architects, advertising agencies, insurance agents, attorneys, commercial art and design services, non-retail financial institutions, real estate agents, news services, photographers, engineers, employment agencies, real-estate agents, and other similar professions. Excludes "medical offices and clinics."

Allowing Medical Offices and Clinics in Industrial Zones

The draft ordinance proposes to amend the Industrial Land Use Regulations to:

- Allow Medical Offices and Clinics less than 20,000 square feet as a permitted use in the IL (Light Industrial), CI (Commercial Industrial), IO (Light Office Industrial) and IC (Campus Industrial) zoning districts.
- Allow Medical Offices and Clinics of 20,000 square feet or more as a conditional use in the IL (Light Industrial) zoning district and as a permitted use in the IC (Commercial Industrial), IO (Light Office Industrial) and IC (Campus Industrial) zoning districts.

The proposed allowance of Medical Offices and Clinics in the industrial districts will be in addition to their present allowance in the commercial zoning districts (Administrative Use Permit required in CH (Highway Commercial)).

The ordinance is proposed because the existing prohibition of medical offices and clinics within light industrially zoned areas is not aligned or consistent with City Council and community priorities to attract and grow medical services in Morgan Hill. Specifically, General Plan Policy SSI-11.3 encourages the provision of a full range of medical services in the City, including an acute care hospital. Additionally, over the past several months, there have been several inquiries for medical uses looking to locate in Morgan Hill. Nearly all the inquires have been on land, or within buildings, designated as Light Industrial which does not currently allow for this use. The proposed ordinance will further facilitate new investments in Morgan Hill for specialized medical practices, rehabilitative care, imaging, and urgent care.

The proposed requirement for a CUP for medical offices and clinics more than 20,000 square feet is to provide the Planning Commission the opportunity to address the potential over-concentration of medical uses in the IL (Light Industrial) zoning district. Based on a sampling of medical office spaces currently on the market, the average medical office unit space is approximately 2,500 square feet, within a 20,000 square foot building.

Legal Nonconforming Uses

Upon adoption of the proposed ordinance amendments, previously allowed and conditional uses that are no longer allowed will become "legal non-conforming" uses. Section 18.68.060 (Nonconforming Use of Structures) of the Zoning Code will apply to any uses that are nonconforming upon adoption of the proposed ordinance.

18.68.060 Nonconforming use of structures.

- A. Change in Ownership, Tenancy, or Management. A change in ownership, tenancy, or management of a nonconforming use shall not affect its legal nonconforming status.
- B. Resuming a Nonconforming Use. A nonconforming use changed to a conforming

use shall not return to a nonconforming use.

- C. Replacement of a Nonconforming Use. A nonconforming use may not be replaced by another nonconforming use.
- D. Intensification of Use.
 - 1. The enlargement of a structure or site occupied by a nonconforming use, or the intensification in any way of the operation of a nonconforming use, shall require the approval of an administrative use permit.
 - 2. To approve a proposed intensification to a nonconforming use, the Community Development Director shall make all administrative use permit findings (Section 18.108.020) in addition to the findings in Section 18.68.080 (Findings).
- E. Discontinuation of Use. A nonconforming use discontinued for six consecutive months or for twelve months during any two-year period shall not be reestablished and may be replaced only by a conforming use.
- F. Uses Without Required Permits. A legally established use which is allowed in a zoning district, but which lacks a required permit (e.g., administrative use permit, conditional use permit) shall be considered a nonconforming use until the use receives the permit as required by the zoning code.

FINDINGS:

The proposed Zoning Amendment has been analyzed with respect to consistency with the: 1) General Plan; 2) Zoning Ordinance; and 3) California Environmental Quality Act.

1. General Plan

The proposed amendments are consistent with the General Plan as the amendments implement the following Goals and Policies:

GOAL CNF-17 Adequate land for maintaining and focusing industrial development in economically and geographically strategic locations.

Policy CNF-17.1 Industrial Land Conversion. Discourage the conversion of property designated for industrial to non-industrial uses.

Policy CNF-17.2 Industrial Land Use Conflicts. Ensure proposed new uses adjacent to industrial uses do not introduce land use conflicts that would adversely impact industrial activities.

GOAL HC-7 Access for all residents to health care facilities and other important community health amenities.

Policy ED-3.1 Business Retention, Expansion, and Attraction Efforts. Encourage retention and expansion of existing businesses, and attract new businesses, that:

- Generate revenue to the City General Fund (such as retail and point-of-sale manufacturing).
- Help provide greater fiscal strength and stability to the City;
- Add industry diversity to the local economy.

- Stimulate other businesses to develop in the city.
- Augment or provide a service/amenity presently needed or lacking in the community, including higher education and medical services opportunities; and
- Offer higher-paying, quality jobs for local residents.

Policy SSI-11.3 Medical Services. Encourage provision of a full range of medical services in the city, including an acute care hospital.

The proposed text amendments will implement many General Plan Goals and Policies and protect public health through the further restriction of potentially incompatible uses within industrial areas and increase access to health services for Morgan Hill residents.

2. Zoning Ordinance

The purpose of the Zoning Code is to implement the General Plan and to protect the public health, safety, and welfare. The City may approve a Zoning Amendment only if the following findings are made:

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

Consistent

The proposed text amendments will implement many General Plan Goals and Policies, including those aimed at preserving industrial land and encouraging medical services as described above.

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

Consistent

The proposed text amendments will protect public health through the further restriction of potentially incompatible uses within industrial areas and increase the access to health services for Morgan Hill residents.

- The proposed amendment is internally consistent with other applicable provisions of the zoning code.

Consistent

The proposed text amendments will not create any internal inconsistencies with any other zoning code provisions, including the permitted uses in the Industrial and Commercial zoning districts.

CONCLUSION:

The proposed Zoning Code amendments will further support Morgan Hill's Industrial Preservation and Optimization Policy to protect and maximize the City's limited supply of industrial (employment) land that is critical to the City's future economic vitality and sustainability and provide greater opportunity for medical uses to locate in Morgan Hill.

CEQA (California Environmental Quality Act):

This ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, as the proposed text amendments to the Morgan Hill Zoning Code is not a project with potential for causing a significant effect on the environment requiring California Environmental Quality Act (CEQA) analysis. Additionally, on July 27, 2016, the City Council certified an environmental impact report (EIR) for the Morgan Hill 2035 General Plan. This ordinance is consistent with, and implements, the General Plan and therefore was analyzed in the EIR for the 2035 General Plan. Pursuant to Section 15162 and Section 15183 of the State CEQA Guidelines, no additional review under the California Environmental Quality Act is required.;

COMMUNITY ENGAGEMENT:

Proposed changes to the allowed uses in the Industrial zoning districts were discussed with the Planning Commission on September 22, 2020, and March 9, 2021. A 10-Day public hearing notice was published in the January 28, 2022 edition of the Morgan Hill Times pursuant to Government Code sections 65090-65096. Notices were also provided on the City's 411, City's website, and via social media. Staff also shared the proposed Zoning Code changes at the Morgan Hill Chamber of Commerce Economic Development Committee on January 13, 2022 and via a virtual City of Morgan Hill Townhall meeting on January 27, 2022.

RESOLUTION NO. 22-03

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF MUNICIPAL CODE AMENDMENT (ZA2021-0008) TO TITLE 18, DIVISION I, ZONING CODE AMENDING SECTION 18.26.020 (LAND USE REGULATIONS) OF CHAPTER 18.26 (INDUSTRIAL ZONING DISTRICTS) TO MODIFY THE LAND USES PERMITTED IN THE INDUSTRIAL ZONING DISTRICTS.

WHEREAS, this proposed Ordinance (Zoning Amendment ZA2021-0008) was considered by the Planning Commission of the City of Morgan Hill at its regular meeting of February 8, 2022;

WHEREAS, the Planning Commission has reviewed recommendations contained in the February 8, 2022, staff report on this item;

WHEREAS, the amendments proposed by this Ordinance are necessary to aid in preserving the City's limited supply of Industrial Land and;

WHEREAS, this ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, as the proposed text amendments to the Morgan Hill Zoning Code is not a project with potential for causing a significant effect on the environment requiring California Environmental Quality Act (CEQA) analysis. Additionally, on July 27, 2016, the City Council certified an environmental impact report (EIR) for the Morgan Hill 2035 General Plan. This ordinance is consistent with, and implements, the General Plan and therefore was analyzed in the EIR for the 2035 General Plan. Pursuant to Section 15162 and Section 15183 of the State CEQA Guidelines, no additional review under the California Environmental Quality Act is required.; and

WHEREAS, testimony received at a duly noticed public hearing, along with exhibits and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

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

The proposed text amendments will implement many General Plan Goals and Policies including those aimed at preserving industrial land and encouraging medical services.

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

The proposed text amendments will protect public health through the further restriction of potentially incompatible uses within industrial areas and increase the access to health services for Morgan Hill residents.

SECTION 3. The proposed amendment is internally consistent with other applicable provisions of the zoning code.

The proposed text amendments will not create any internal inconsistencies with any other zoning code provisions including the permitted uses in the Industrial and Commercial zoning districts.

SECTION 4. The Planning Commission hereby recommends approval of changes to the text of the Morgan Hill Municipal Code amending section 18.26.020 (land use regulations) of chapter 18.26 (Industrial Zoning Districts) to modify the land uses permitted in the industrial zoning districts which are shown by strike-out text for deletions and underline text for additions. All text amendments recommended to be made as shown in the draft ordinance (Attachment 2 of the staff report).

PASSED AND ADOPTED THIS 8th DAY OF FEBRUARY 2022, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: **COMMISSIONERS:**

NOES: **COMMISSIONERS:**

ABSTAIN: **COMMISSIONERS:**

ABSENT: **COMMISSIONERS:**

ATTEST:

JENNA LUNA, Deputy City Clerk

APPROVED:

MALISHA KUMAR, Chair

Date: _____

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING TITLE 18, DIVISION I, ZONING CODE SECTION 18.26.020 (LAND USE REGULATIONS) OF CHAPTER 18.26 (INDUSTRIAL ZONING DISTRICTS) TO MODIFY THE LAND USES PERMITTED IN THE INDUSTRIAL ZONING DISTRICTS.

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

Section 1. Section 18.26.020 (Land Use Regulations) of Chapter 18.26 (Industrial Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

18.26.020 Land use regulations.

A. Permitted Land Uses. Table 18.26-1 identifies land uses permitted in the industrial zoning districts.

Table 18.26-1 Permitted Land Uses in the Industrial Zoning Districts

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed	Zoning District					Additional Regulations
	CI	IO	IC	IL	IG	
Residential Uses						
Caretaker Quarters	—	—	—	C	C	
Public and Quasi-Public Uses						
Colleges and Trade Schools	C	C	C	C	C —	
Community Assembly	C	—	—	C —	C —	
Instructional Services	A	—	—	—	—	
Medical Offices and Clinics						

<u>≤ 20,000 sq. ft.</u>	<u>AP</u>	<u>—P</u>	<u>—P</u>	<u>P</u>	—	
<u>> 20,000 sq. ft.</u>	<u>AP</u>	<u>—P</u>	<u>—P</u>	<u>C</u>	—	
Parks and Recreational Facilities	C	—	—	C	C —	
Public Safety Facilities	C	—	—	C	C —	
Commercial Uses						
Adult Businesses	—	—	P	P	C —	18.92.020
Animal-Related Commercial Uses						
Animal Boarding	C	—	—	C	C	
Veterinarian Clinics and Hospitals	A	A	A	C	C	
Banks and Financial Institutions	C [4]	—	—	—	—	
Business Support Services	P	C	P	P	P	
Cinemas and Theaters	A	—	—	—	—	
Commercial Recreation, Indoor						
≤ 15,000 sq. ft.	P	C	C	C —	C —	
> 15,000 sq. ft.	C	C	C	C —	C —	
Eating and Drinking Uses						
Restaurants, Fast Food	C [4]	— [5]	— [5]	— [5]	— [5]	
Restaurants, Sit-Down	C [4]	— [5]	— [5]	— [5]	— [5]	
Tasting Rooms	P [6]	—	—	A [6]	A [6]	
Lodging Facilities						
Hotels and Motels	P	—	—	—	—	
Mini-Storage	—	—	—	C	C —	18.92.100
Personal Service	C [4]	—	—	—	—	

		[5]	[5]	[5]	[5]	
Plant Nurseries	C	—	—	P	P	
Professional Offices	P	P	P	P	P —	
Retail						
Building Materials	C	—	—	P	P	
Convenience Markets	C [4]	— [5]	— [5]	— [5]	— [5]	
General Retail	C [4]	— [5]	— [5]	— [5]	— [5]	
Home Improvement Centers	C	—	—	C —	C —	
Large Commodity Retail	C	—	—	C —	C —	
Vehicle-Related Uses						
Salvage and Wrecking	—	—	—	—	C	
Towing and Impound	—	—	—	C	P	
Vehicle Repair and Maintenance, Major	—	—	—	C	P	
Vehicle Repair and Maintenance, Minor	—	—	—	P	P [1]	
Vehicle Storage, Outdoor	—	—	—	C	C	18.52.080.C
Wholesaling	P	—	—	P	P	
Industrial Uses						
Construction and Material Yards	C	C	C	P	P	18.26.030.C
Food and Beverage Production						
< 5,000 sq. ft. [7]	A [2]	A [2]	A [2]	P [2]	P [2]	
5,000 sq. ft. to 10,000 sq. ft. [7]	C [2]	C [2]	C [2]	P [2]	P [2]	
> 10,000 sq. ft.	C	C	C	P	P	

				[2,8]	[2,8]	
Manufacturing, Light	P	C [3]	C	P	P	
Manufacturing, General	—	—	—	—	C	
Research and Development	P	P	P	P	P	
Warehousing and Distribution						
Warehousing and Distribution, Large	C	C [3]	C [3]	C	P	
Warehousing and Distribution, Small	C	C [3]	C [3]	P	P	
Warehousing and Distribution with Outdoor Storage	C	—	—	C	C	
Heavy Distribution	—	—	—	—	—	
Parcel Sorting Facilities	—	—	—	—	—	
Parcel Hub Small < 75,000 sq. ft.	—	—	—	—	—	
Parcel Hub Large > 75,000 sq. ft.	—	—	—	—	—	
Recycling Facilities						
Reverse Vending Machine	P	C	C	P	P	
Recycling Collection Facility	C	—	—	C	C	
Recycling Processing Facility	—	—	—	—	C	
Utilities, Major	—	—	—	C	C	
Wireless Communications Facilities	See Chapter 18.96					
Agriculture and Natural Resource Uses						
Crop Cultivation	—		—			
Other Uses						
Accessory Uses	See Chapter 18.44					

Temporary Uses	See Section 18.92.150	
----------------	-----------------------	--

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

Section 3. Effective Date; Posting. This Ordinance shall take effect on _____, 20___. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

This ordinance was introduced at a meeting of the City Council held on the _____ day of _____, 20__, and adopted at a meeting held on the _____ day of _____, 20__, 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:

ATTEST:

APPROVED:

MICHELLE BIGELOW, City Clerk

RICHARD CONSTANTINE, Mayor

CERTIFICATE OF THE CITY CLERK

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the _____ day of _____, 2021.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

Proposed Industrial Zoning Changes

Land Use	IG - General Industrial		IL - Light Industrial		CI - Commercial Industrial		IO - Industrial Office		IC - Campus Industrial	
	Existing	Proposed	Existing	Proposed	Existing	Proposed	Existing	Proposed	Existing	Proposed
Community Assembly	CUP	Not Permitted	CUP	Not Permitted	CUP	CUP	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Commercial Rec. Indoor										
< 15,000 sq. ft.	CUP	Not Permitted	CUP	Not Permitted	Permitted	Permitted	CUP	CUP	CUP	CUP
>15,000 sq. ft.	CUP	Not Permitted	CUP	Not Permitted	CUP	CUP	CUP	CUP	CUP	CUP
Colleges/Trade Schools	CUP	Not Permitted	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP
Parks & Rec.	CUP	Not Permitted	CUP	CUP	CUP	CUP	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Adult Businesses	Permitted	Not Permitted	Permitted	Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Permitted	Permitted
Public Safety Facilities	CUP	Not Permitted	CUP	CUP	CUP	CUP	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Mini-Storage	CUP	Not Permitted	CUP	CUP	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not permitted	Not Permitted
Home Improvement Ctr.	CUP	Not Permitted	CUP	Not Permitted	CUP	CUP	Not Permitted	Not Permitted	Not permitted	Not Permitted
Large Commodity Retail	CUP	Not Permitted	CUP	CUP	CUP	CUP	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Professional Offices	Permitted	Not Permitted	Permitted	Permitted	Permitted	Permitted	Permitted	Permitted	Permitted	Permitted
Medical Office & Clinics										
<20,000 sq. ft.	Not Permitted	Not Permitted	Not Permitted	Permitted	AUP	Permitted	AUP	Permitted	AUP	Permitted
≥ 20,000 sq. ft.		Not Permitted		CUP		Permitted		Permitted		Permitted

Permitted - Use allowed by right in Zoning.

CUP - Conditional Use Permit Required

AUP - Administrative Use Permit Required

Proposed Change

INDUSTRIAL ZONING DISTRICTS

General Industrial (IG). The purpose of the IG zoning district is to provide areas for general industrial, manufacturing, wholesale and service uses needed by the city and region subject to regulations necessary to protect other nearby uses from hazards and noise and other disturbances.

Light Industrial (IL). The purpose of the IL zoning district is to provide areas for research, administrative, lighter manufacturing, wholesale and heavy service commercial uses not suitable in commercial districts.

Commercial Industrial (CI). The purpose of the CI zoning district is to promote job-generating development of lands by allowing flexibility in the mix of industrial, office, and commercial uses that are compatible with existing development. Lodging uses (e.g., hotels) that support primary job generating uses within business districts are allowed.

Light Office Industrial (IO). The purpose of the IO zoning district is to provide areas for mixed administrative and executive office uses in appropriate areas within the community.

Campus Industrial (IC). The purpose of the IC zoning district is to provide an environment exclusively for and conducive to the development and protection of modern administrative facilities, research institutions and specialized manufacturing operations..

USE DEFINITIONS

Community Assembly. Facilities that provides space for public or private meetings or gatherings. Includes places of worship, community centers, meeting space for clubs and other membership organizations, social halls, union halls, banquet centers, and other similar facilities.

Commercial Recreation, Indoor. A commercial recreation facility primarily located indoors. Includes gymnasiums, health clubs, bowling alleys, indoor tennis and racquet courts, indoor swimming pools, laser tag and other similar games. Excludes "instructional services."

Manufacturing, General. Manufacturing of products from extracted or raw materials or recycled or secondary materials, or bulk storage and handling of such products and materials. Includes operations such as agriculture processing, apparel manufacturing; photographic processing plants; wood product manufacturing; paper manufacturing; chemical manufacturing.

"**Adult businesses**" include but are not limited to: adult bookstores, adult video stores, adult novelty stores, adult arcades, adult motels, adult theaters, adult entertainment enterprises, adult cabarets, escort agencies, massage parlors, nude modeling studios; or places which engage in or allow couch dancing, topless dancing, nude or semi-nude mud wrestling or similar businesses.

Large Commodity Retail. A retail use where more than seventy-five percent of the gross floor area is used for display, sales, and related storage of bulky commodities, and which typically generate a demand for fewer parking spaces than do other types of retail uses. Includes retail sale of carpeting and floor covering; catalog and mail order sales; construction equipment and machinery; garden and farm equipment; heating, ventilating, air conditioning, and other mechanical equipment and supplies; kitchen, bathroom and plumbing appliances, equipment, and supplies; lumber and building materials; office furniture, equipment, and machinery, including computers; and household furniture.

Home Improvement Centers. A retail establishment which carries a full line of building materials, appurtenances, and decorator items primarily for homeowners (not contractors) to improve and maintain individual dwellings. Excludes building supply yards and lumberyards for contractors and home builders.

Medical Offices and Clinics. Facilities where medical, mental, dental, or other personal health services are provided on an outpatient basis using specialized equipment. Includes offices for physicians, dentists, and optometrists, diagnostic centers, blood banks and plasma centers, and emergency medical clinics offered exclusively on an out-patient basis. May include educational aspects such as medical instruction and/or training as well as house a laboratory, radiology/imaging, pharmacy, rehabilitation and other similar services as accessory uses. Excludes "hospitals."

From: [Craig Erb](#)
To: [PC Public Comment](#)
Subject: [EXTERNAL] Planning Commission 2/8/22
Date: Thursday, February 3, 2022 2:25:29 PM

Some people who received this message don't often get email from craig_erb@ymail.com. [Learn why this is important](#)

It appears Warehousing and Distribution, Large C C [3] C [3] C P is permitted or conditionally permitted according to proposed amendment to Section 18.26.020 (Land Use Regulations) and contrary to the "2020

City Council approved Zoning Code Amendments that prohibit stand-alone large fulfillment centers and parcel sorting centers".

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

Industrial Preservation Workplan Planning Commission February 8, 2022



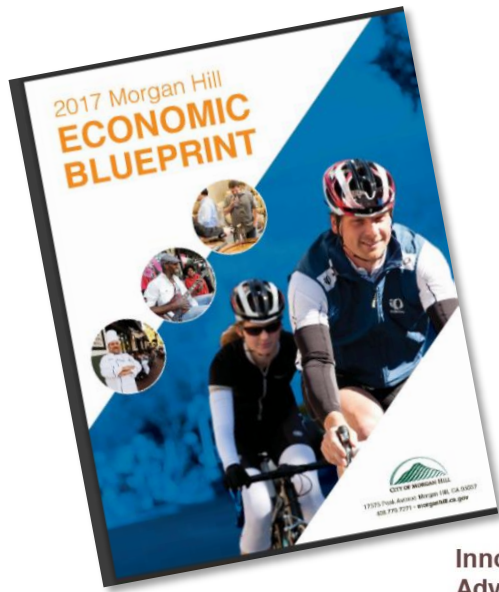
2035 General Plan



Economic Development's Role

The Economic Development Element establishes policy guidance to support the community's economic well-being. Its strategies include diversifying the local economy, increasing the quality and quantity of available job opportunities, decreasing the need for commuting, creating a thriving Downtown, and enhancing Morgan Hill's appeal as a tourist destination.

- Develop & maintain high-quality public infrastructure & services
- Position Morgan Hill as a compelling choice for companies by providing flexibility
- Retain and attract businesses by providing a business-friendly climate
- Create fiscal sustainability by cultivating a diversified tax base
- Increase economic opportunity through a robust and diverse range of business activity



**Innovation and
Advanced Manufacturing**
Grow existing companies,
attract new industry and grow
professional jobs.

Retail
Grow retail offerings
and strengthen
commercial nodes.

Four Industry Areas

Healthcare
Grow and foster the
medical service and
diagnostics industry
by attracting services
and facilities.

Tourism
Grow leisure, agriculture,
wine country and
recreational tourism.

2017 Economic Blueprint

The Economic Blueprint identified 4 core industries, 13 strategies and 35 specific action items.

- Action #1: Adopting an employment (Industrial) land preservation policy, and
- Action #2: To strengthening General Plan language to prevent the conversion of Industrial lands.

Industrial Preservation

- Economically Sustainable
- Jobs & Revenue
- Maintain Industrial Lands for Job-generating Uses
- Prevent incompatible uses

Industrial Preservation Meetings & Action History



Strategic Economics Study

Industrial Findings

- Morgan Hill continues to be an attractive destination for industrial users, including manufacturers, machine shops, and assembly businesses.
- Morgan Hill Ranch and Madrone Business Parks continue to be the strongest location for future industrial, R&D, and warehouse uses.
- Demand for industrial buildings has outpaced building supply for manufacturing, machining, and assembly businesses.
- Morgan Hill firms have left to expand elsewhere, due to lack of industrial space availability.
- New construction is expensive and takes approximately 2 years to complete (plan, permit, construct).

Strategic Economics Study

Industrial Findings

- Vacant industrial (employment) land supply can accommodate 25 to 165 years of projected demand
- When currently entitled projects are considered, excluding Redwood Tech 101, the available land horizon drops to 19 to 95 years
- Today, there are only 120 acres of industrial (employment) land remaining (vacant)
 - 86.5 acres Light Industrial (IL)
 - 6 acres General Industrial (IG)
 - *27.5 acres Redwood Tech 101- planned and permitted*

Industrial Land Preservation Strategies

- **Use it.** The best way to preserve industrial/employment lands is to use them for their industrial purpose.
- Revisit Policy CNF-17.1 language within the General Plan and replace 'discourage' with "**prohibit**" the conversion of industrial lands.
- **Limit discretion of CUP uses** in employment generating uses.
- Hold the line. **Prioritize** wanted uses such as OEM (original equipment manufacturer).
- **Brand**, market, and promote industrial parks.
- **Incentivize** industrial development. Explore how fee structures and taxes align with land use.
- Allow for mixed uses within industrial. Consider **office** or other uses.
- Consider post COVID-19 uses. The pandemic may create new products and uses that are not currently articulated in city codes. Be flexible to **allow for industries and new operations.**

What actions has City taken?



In November 2020, the City Council City Council adopts Ordinance 2317 amending the City's Industrial Zoning Code prohibiting fulfillment centers, defining Large Scale Projects and moving review and approval authority from City staff to Planning Commission.

Addressed via Zoning Code

- ✓ Fulfillment Centers Prohibited
- ✓ Sorting Centers Prohibited
- ✓ Last-mile (local) distribution Prohibited
- ✓ Large projects defined as ≥ 100 units or $\geq 75,000$ sq ft
- ✓ Large projects now require public hearing
- ✓ Review & Approval authority for large projects moved to Planning Commission

What actions has City taken?



In April 2021, City Council passed Urgency Ordinance 2320.

Addressed via Building Type

- ✓ Changed/created definitions for:
 - Dock-High-Door
 - Dock-High-Door to Square Foot Ratio
 - Ceiling Height
 - Light Manufacturing
- ✓ Added Section 18.76.140 – Maximum Dock High Door Ratio for a facility that has a floor area of 75,000 square feet or greater and a ceiling height of more than thirty-four (34) feet over more than twenty-five (25) percent of the floor area is 1 Dock-High-Door:25,000 square feet

Industrial Preservation Workplan



Industrial Preservation & Optimization Policy

- In conjunction with the 2035 General Plan, Zoning Ordinance ZA2020-0003, and the Economic Blueprint, the policy will protect the City's limited supply of industrial/employment land to support long term economic vitality.
- Identifies five key goals that provide direction and guidance when developing, implementing, and managing policies, programs, and projects, including implementation of the Zoning Code and General Plan, as they relate to industrial uses and industrial business parks.
- Supports amending the current zoning code to minimize and reduce incompatible uses within the industrial lands.

Industrial Preservation & Optimization Policy

1. Encourage the attraction and expansion of R&D, Office, and Advanced Manufacturing uses.
2. Prohibit stand-alone e-commerce Warehouse and Distribution uses.
3. Prohibit General Plan conversions of Industrial lands that cause a net loss of industrial employment lands.
4. Protect existing Industrial lands and business parks by prohibiting non-compatible uses such as community assembly and recreational uses, while expanding compatible uses.
5. Encourage conversion of Commercial Lands to Industrial Lands where appropriate.

Industrial Preservation & Optimization Policy

STRATEGY	ACTIONS
Encourage the attraction and expansion of R&D, Office, and Advanced Manufacturing uses.	Marketing, Messaging & Outreach Development of Incentive Programs
Prohibit stand-alone e-commerce Warehouse and Distribution uses.	Industrial Ordinance Zoning Code
Prohibit General Plan conversions of Industrial lands that cause a net loss of industrial employment lands.	General Plan
Protect existing Industrial lands and business parks by prohibiting non-compatible uses such as community assembly and recreational uses, while expanding compatible uses.	Zoning Code
Explore conversion of Commercial Lands to Industrial Lands where appropriate.	Marketing, Messaging & Outreach City-initiated GP Conversions



Updating Zoning Code

- Minimize and reduce incompatible uses
- Minimize CUPs in industrial zoned areas
- Expand opportunity for medical office and healthcare

Proposed Zoning Code Changes

Land Use	IG - General Industrial		IL - Light Industrial	
	<u>Existing</u>	<u>Proposed</u>	<u>Existing</u>	<u>Proposed</u>
Community Assembly	CUP	Not Permitted	CUP	Not Permitted
Commercial Rec. Indoor				
< 15,000 sq. ft.	CUP	Not Permitted	CUP	Not Permitted
>15,000 sq. ft.	CUP	Not Permitted	CUP	Not Permitted
Colleges/Trade Schools	CUP	Not Permitted	CUP	CUP
Parks & Rec.	CUP	Not Permitted	CUP	CUP
Adult Businesses	Permitted	Not Permitted	Permitted	Permitted
Public Safety Facilities	CUP	Not Permitted	CUP	CUP
Mini-Storage	CUP	Not Permitted	CUP	CUP
Home Improvement Ctr.	CUP	Not Permitted	CUP	CUP
Large Commodity Retail	CUP	Not Permitted	CUP	CUP
Professional Offices	Permitted	Not Permitted	Permitted	Permitted
Manufacturing, General	CUP	CUP	Not Permitted	Not Permitted
Medical Office & Clinics				
< 20,000 sq. ft.	Not Permitted	Not Permitted	Not Permitted	AUP
> 20,000 sq. ft.		Not Permitted		CUP

Proposed Zoning Code Changes

	CI - Commercial Industrial		IO - Industrial Office		IC - Campus Industrial	
Land Use	<u>Existing</u>	<u>Proposed</u>	<u>Existing</u>	<u>Proposed</u>	<u>Existing</u>	<u>Proposed</u>
Community Assembly	CUP	CUP	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Commercial Rec. Indoor						
< 15,000 sq. ft.	Permitted	Permitted	CUP	CUP	CUP	CUP
>15,000 sq. ft.	CUP	CUP	CUP	CUP	CUP	CUP
Colleges/Trade Schools	CUP	CUP	CUP	CUP	CUP	CUP
Parks & Rec.	CUP	CUP	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Adult Businesses	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Permitted	Permitted
Public Safety Facilities	CUP	CUP	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Mini-Storage	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not permitted	Not Permitted
Home Improvement Ctr.	CUP	CUP	Not Permitted	Not Permitted	Not permitted	Not Permitted
Large Commodity Retail	CUP	CUP	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Professional Offices	Permitted	Permitted	Permitted	Permitted	Permitted	Permitted
Manufacturing, General	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Medical Office & Clinics						
< 20,000 sq. ft.	AUP	Permitted	AUP	Permitted	AUP	Permitted
> 20,000 sq. ft.		Permitted		Permitted		Permitted



No Changes

(effective November 2020)

USE	IL	IG
Warehousing & Distribution		
Warehousing and Distribution, Large	C	P
Warehousing and Distribution, Small	P	P
Warehousing and Distribution with Outdoor Storage	C	C
Heavy Distribution	Not Allowed	Not Allowed
Parcel Sorting Facilities	Not Allowed	Not Allowed
Parcel Hub Small	Not Allowed	Not Allowed
Parcel Hubs Large	Not Allowed	Not Allowed

April 7, 2021 City Council Action

1. Placed RG4MH Initiative on the ballot;
2. Adopted the collaborative ordinance as an “urgency ordinance”;
and
3. Directed Planning Commission to review collaborative ordinance as a permanent ordinance and consider placement on ballot.

Same as Urgency Ordinance

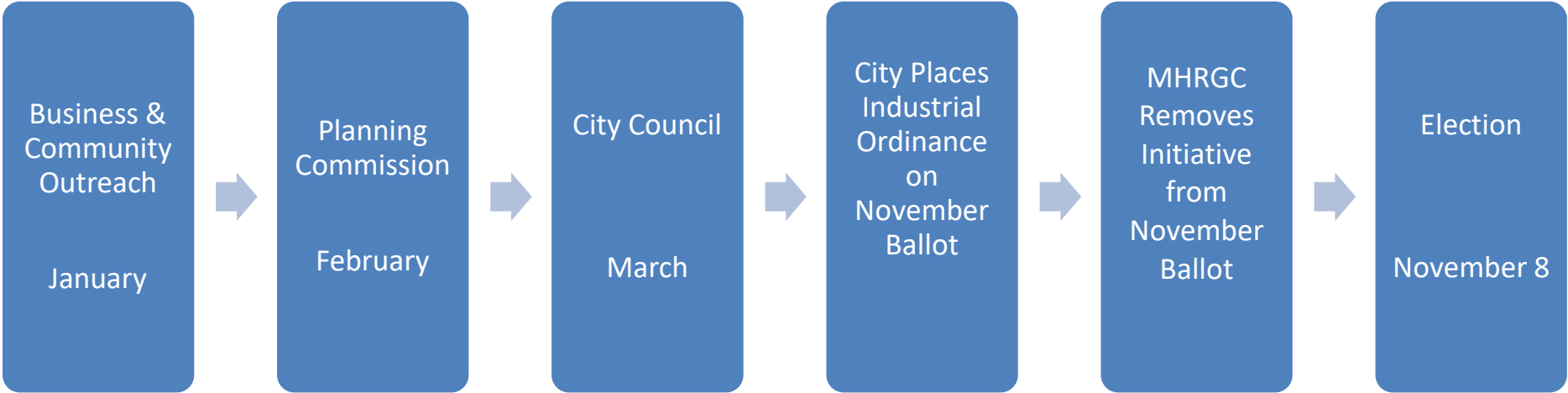
Adds Section 18.76.140 – Maximum Dock High Door Ratio for a facility that has a floor area of seventy-five thousand (75,000) square feet or greater and a ceiling height of more than thirty-four (34) feet over more than twenty-five (25) percent of the floor area is 1 Dock-High-Door:25,000 square feet



Change/create definitions for:

- » Dock-High-Door
- » Dock-High-Door to Square Foot Ratio
- » Ceiling Height
- » Light Manufacturing

2022 Schedule



Questions



RESOLUTION NO. 22-03

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF MUNICIPAL CODE AMENDMENT (ZA2021-0008) TO TITLE 18, DIVISION I, ZONING CODE AMENDING SECTION 18.26.020 (LAND USE REGULATIONS) OF CHAPTER 18.26 (INDUSTRIAL ZONING DISTRICTS) TO MODIFY THE LAND USES PERMITTED IN THE INDUSTRIAL ZONING DISTRICTS.

WHEREAS, this proposed Ordinance (Zoning Amendment ZA2021-0008) was considered by the Planning Commission of the City of Morgan Hill at its regular meeting of February 8, 2022;

WHEREAS, the Planning Commission has reviewed recommendations contained in the February 8, 2022, staff report on this item and recommended the following revisions;

- 1) Maintain the requirement that Home Improvement Centers obtain a Conditional Use Permit in the IL-Light Industrial Zoning District.
- 2) Require an Administrative Use Permit for Medical Office and Clinics of less than 20,000 square feet in the IL -Light Industrial zoning district.

WHEREAS, the amendments proposed by this Ordinance are necessary to aid in preserving the City's limited supply of Industrial Land and;

WHEREAS, this ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, as the proposed text amendments to the Morgan Hill Zoning Code is not a project with potential for causing a significant effect on the environment requiring California Environmental Quality Act (CEQA) analysis. Additionally, on July 27, 2016, the City Council certified an environmental impact report (EIR) for the Morgan Hill 2035 General Plan. This ordinance is consistent with, and implements, the General Plan and therefore was analyzed in the EIR for the 2035 General Plan. Pursuant to Section 15162 and Section 15183 of the State CEQA Guidelines, no additional review under the California Environmental Quality Act is required.; and

WHEREAS, testimony received at a duly noticed public hearing, along with exhibits and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

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

The proposed text amendments will implement many General Plan Goals and Policies including those aimed at preserving industrial land and encouraging medical services.

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

The proposed text amendments will protect public health through the further restriction of potentially incompatible uses within industrial areas and increase the access to health services for Morgan Hill residents.

SECTION 3. The proposed amendment is internally consistent with other applicable provisions of the zoning code.

The proposed text amendments will not create any internal inconsistencies with any other zoning code provisions including the permitted uses in the Industrial and Commercial zoning districts.

SECTION 4. The Planning Commission hereby recommends approval of changes to the text of the Morgan Hill Municipal Code amending section 18.26.020 (land use regulations) of chapter 18.26 (Industrial Zoning Districts) to modify the land uses permitted in the industrial zoning districts which are shown by strike-out text for deletions and underline text for additions. All text amendments recommended to be made as shown in the draft ordinance (Attachment 2 of the staff report).

PASSED AND ADOPTED THIS 8th DAY OF FEBRUARY 2022, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

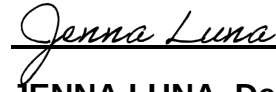
AYES:	COMMISSIONERS:	KUMAR, GONZALEZ-ESCOTO, MUELLER, TANDA, DOWNEY, HABIB
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NOES:	COMMISSIONERS:	NONE
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ABSTAIN:	COMMISSIONERS:	NONE
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ABSENT:	COMMISSIONERS:	NONE
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ATTEST:



JENNA LUNA, Deputy City Clerk

APPROVED:



Malisha Kumar (Feb 11, 2022 19:39 PST)

MALISHA KUMAR, Chair

Date: Feb 11, 2022

Resolution No. 22-03 (Final)

Final Audit Report

2022-02-11

Created:	2022-02-11
By:	Jenna Luna (jenna.luna@morganhill.ca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAO62byXbKJi3PcNRmLb9urb1dxS8KVOxX

"Resolution No. 22-03 (Final)" History

-  Document created by Jenna Luna (jenna.luna@morganhill.ca.gov)
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-  Document emailed to Malisha Kumar (malisha.kumar@morganhill.ca.gov) for signature
2022-02-11 - 3:16:45 PM GMT
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-  Document e-signed by Malisha Kumar (malisha.kumar@morganhill.ca.gov)
Signature Date: 2022-02-11 - 5:39:27 PM GMT - Time Source: server- IP address: 71.95.130.164
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ORDINANCE NO. , NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL AMENDING TITLE 18, DIVISION I,
ZONING CODE SECTION 18.26.020 (LAND USE
REGULATIONS) OF CHAPTER 18.26 (INDUSTRIAL
ZONING DISTRICTS) TO MODIFY THE LAND USES
PERMITTED IN THE INDUSTRIAL ZONING DISTRICTS.**

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

Section 1. Section 18.26.020 (Land Use Regulations) of Chapter 18.26 (Industrial Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

18.26.020 Land use regulations.

A. Permitted Land Uses. Table 18.26-1 identifies land uses permitted in the industrial zoning districts.

Table 18.26-1 Permitted Land Uses in the Industrial Zoning Districts

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed	Zoning District					Additional Regulations
	CI	IO	IC	IL	IG	
Residential Uses						
Caretaker Quarters	—	—	—	C	C	
Public and Quasi-Public Uses						
Colleges and Trade Schools	C	C	C	C	C —	
Community Assembly	C	—	—	C —	C —	
Instructional Services	A	—	—	—	—	
Medical Offices and Clinics						

<u>≤ 20,000 sq. ft.</u>	<u>AP</u>	<u>—P</u>	<u>—P</u>	<u>A</u>	—	
<u>> 20,000 sq. ft.</u>	<u>AP</u>	<u>—P</u>	<u>—P</u>	<u>C</u>	—	
Parks and Recreational Facilities	C	—	—	C	€—	
Public Safety Facilities	C	—	—	C	€—	
Commercial Uses						
Adult Businesses	—	—	P	P	€—	18.92.020
Animal-Related Commercial Uses						
Animal Boarding	C	—	—	C	C	
Veterinarian Clinics and Hospitals	A	A	A	C	C	
Banks and Financial Institutions	C [4]	—	—	—	—	
Business Support Services	P	C	P	P	P	
Cinemas and Theaters	A	—	—	—	—	
Commercial Recreation, Indoor						
≤ 15,000 sq. ft.	P	C	C	€—	€—	
> 15,000 sq. ft.	C	C	C	€—	€—	
Eating and Drinking Uses						
Restaurants, Fast Food	C [4]	— [5]	— [5]	— [5]	— [5]	
Restaurants, Sit-Down	C [4]	— [5]	— [5]	— [5]	— [5]	
Tasting Rooms	P [6]	—	—	A [6]	A [6]	
Lodging Facilities						
Hotels and Motels	P	—	—	—	—	
Mini-Storage	—	—	—	C	€—	18.92.100
Personal Service	C [4]	—	—	—	—	

		[5]	[5]	[5]	[5]	
Plant Nurseries	C	—	—	P	P	
Professional Offices	P	P	P	P	P —	
Retail						
Building Materials	C	—	—	P	P	
Convenience Markets	C [4]	— [5]	— [5]	— [5]	— [5]	
General Retail	C [4]	— [5]	— [5]	— [5]	— [5]	
Home Improvement Centers	C	—	—	C —	C —	
Large Commodity Retail	C	—	—	C —	C —	
Vehicle-Related Uses						
Salvage and Wrecking	—	—	—	—	C	
Towing and Impound	—	—	—	C	P	
Vehicle Repair and Maintenance, Major	—	—	—	C	P	
Vehicle Repair and Maintenance, Minor	—	—	—	P	P [1]	
Vehicle Storage, Outdoor	—	—	—	C	C	18.52.080.C
Wholesaling	P	—	—	P	P	
Industrial Uses						
Construction and Material Yards	C	C	C	P	P	18.26.030.C
Food and Beverage Production						
< 5,000 sq. ft. [7]	A [2]	A [2]	A [2]	P [2]	P [2]	
5,000 sq. ft. to 10,000 sq. ft. [7]	C [2]	C [2]	C [2]	P [2]	P [2]	
> 10,000 sq. ft.	C	C	C	P	P	

				[2,8]	[2,8]	
Manufacturing, Light	P	C [3]	C	P	P	
Manufacturing, General	—	—	—	—	C	
Research and Development	P	P	P	P	P	
Warehousing and Distribution						
Warehousing and Distribution, Large	C	C [3]	C [3]	C	P	
Warehousing and Distribution, Small	C	C [3]	C [3]	P	P	
Warehousing and Distribution with Outdoor Storage	C	—	—	C	C	
Heavy Distribution	—	—	—	—	—	
Parcel Sorting Facilities	—	—	—	—	—	
Parcel Hub Small < 75,000 sq. ft.	—	—	—	—	—	
Parcel Hub Large > 75,000 sq. ft.	—	—	—	—	—	
Recycling Facilities						
Reverse Vending Machine	P	C	C	P	P	
Recycling Collection Facility	C	—	—	C	C	
Recycling Processing Facility	—	—	—	—	C	
Utilities, Major	—	—	—	C	C	
Wireless Communications Facilities	See Chapter 18.96					
Agriculture and Natural Resource Uses						
Crop Cultivation	—		—			
Other Uses						
Accessory Uses	See Chapter 18.44					

Temporary Uses	See Section 18.92.150	
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Section 2. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 3. Effective Date; Posting. This Ordinance shall take effect on _____, 20___. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

This ordinance was introduced at a meeting of the City Council held on the _____ day of _____, 20__, and adopted at a meeting held on the _____ day of _____, 20__, 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:

ATTEST:

APPROVED:

MICHELLE BIGELOW, City Clerk

RICHARD CONSTANTINE, Mayor

CERTIFICATE OF THE CITY CLERK

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the _____ day of _____, 2021.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: March 2, 2022

PREPARED BY:

Jennifer Carman, Development Services Director

APPROVED BY: City Manager

ADOPTION AND RATIFICATION OF ORDINANCE NO. 2320 PREVIOUSLY ADOPTED AS AN URGENCY ORDINANCE

RECOMMENDATION(S)

1. Open/close the public hearing;
2. Waive first and second reading of the Ordinance;
3. Introduce Ordinance; and
4. Adopt resolution placing Ordinance on the November 2022 ballot.

Estimated Time: 15 Minutes

COUNCIL PRIORITIES, GOALS & STRATEGIES

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

Since 2020, the City of Morgan Hill has taken steps to amend industrial sections of the Zoning Code to prevent standalone e-commerce uses. In November, 2020, the City Council adopted Ordinance 2317 amending the City's industrial sections of the Zoning Code prohibiting fulfillment centers, defining large-scale projects and moved review authority from City staff to the Planning Commission for projects of a certain size.

On March 3, 2021, the City Council certified the sufficiency of the Morgan Hill Responsible Growth Coalition's (RG4MH) Initiative Petition. The City Council also directed staff to work with the Morgan Hill Responsible Growth Coalition (MHRGC) to clarify language and develop an ordinance that meets the Initiative's intent while reducing impacts to existing businesses. Since the March 3rd meeting, City staff and the MHRGC collaborated and developed an ordinance that further protects Morgan Hill from potential large truck/high traffic uses.

The collaborative Ordinance was passed on April 7, 2021 as Urgency Ordinance 2320, prohibiting certain types of buildings that meet three cumulative characteristics of dock-high-doors, dock-high-door to square foot ratio and ceiling height. The urgency ordinance also amended the definition of Light Manufacturing. Section 18.76.140 was

added limiting buildings to a maximum Dock-High-Door Ratio for a facility that has a floor area of 75,000 square feet or greater and a ceiling height of more than thirty-four (34) feet over more than twenty-five (25) percent of the floor area to one (1) Dock-High-Door for every 25,000 square feet. These building-type restrictions aim to limit the possibility of distribution/e-commerce type of uses. The Urgency Ordinance sunsets in April 2022 and this proposed Ordinance replaces the Urgency Ordinance with a permanent Zoning Amendment. The City Council has the ability to place the ordinance on the ballot as part of their consideration. A resolution that places the Ordinance on the ballot is included as an attachment.

The ratification ordinance brings forward the original language used in Ordinance 2320. It creates a new Section under Chapter 18.76 "Performance Standards" to create a maximum dock-high door ratio that reads as follows: 18.76.140 - Maximum Dock High Door Ratio The maximum Dock High Door to Square Foot Ratio for a facility that has a floor area of seventy-five thousand (75,000) square feet or greater and a ceiling height of more than thirty-four (34) feet over more than twenty-five (25) percent of the floor area is 1:25,000. The addition of this prevents any building that would encompass all three elements - size, ceiling height and more dock doors than 1 per 25,000 square feet from being built in the City.

The following definitions were also added to Section 18.128.020 of the Zoning Ordinance with the Urgency Ordinance:

- Ceiling Height. The clear vertical distance from the finished floor to the finished ceiling. If the ceiling is unfinished, the ceiling height is the distance from the floor to the lowest projecting beams, joists, or truss work.
- Dock-High-Door. An opening to the outside of a building used to interface with trucks for the loading and/or unloading of goods, products, merchandise or wares of any type and where the bottom of the opening is not at ground level but rather elevated by twenty-four (24) inches or more.
- Dock-High-Door-to-Square-Foot Ratio. The ratio of the total number of Dock-High-Doors that a building has to the total square feet of building floor area.

The Urgency Ordinance also updated the definition of Light Manufacturing in Section 18.124.050 to clarify the meaning of Assembly as follows:

D. Manufacturing, Light. The manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, and packaging of such products, and incidental storage, sales and distribution of such products, but excluding basic industrial processing and custom manufacturing. Includes manufacture of electric and electronic instruments and devices. Excludes saw and planing mill sand manufacturing uses involving primary production of wood, metal or chemical products from raw materials. For purpose of this definition, the term "Assembly" includes creation of a component or end item made from a number of parts and subassemblies. Assembly does not include the putting together of kits, gift baskets, or packaging items produced elsewhere for purposes of e-commerce or of

wholesale trading.

COMMUNITY ENGAGEMENT:

A 10-Day public hearing notice was published in the February 18, 2022 edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notices were also provided on the City's 411, City's website, and via social media. Staff also shared the information at the Morgan Hill Chamber of Commerce Economic Development Committee on January 13, 2022 and via a virtual City of Morgan Hill Townhall meeting on January 27, 2022.

ALTERNATIVE ACTIONS:

City Council could choose not to ratify Ordinance 2320 into a permanent Ordinance.

The Urgency Ordinance expires on April 7, 2022. Without adoption of the permanent Ordinance, the Ordinance cannot be placed on the ballot. The original Ordinance created by the MHRGC via the initiative process would then move on to the voters for consideration in November 2022.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On September 22, 2020, the Planning Commission recommended changes to the Zoning Ordinance that included language implementing provisions of the Initiative related to the review of large projects. The September 22 recommendation also prohibited all large-scale e-commerce distribution uses but would have allowed some local delivery.

On October 28, 2020, the City Council introduced a Zoning Ordinance amendment adopting the Planning Commission's recommendations and prohibiting local e-commerce delivery uses. This ordinance was adopted on November 18, 2020.

On March 3, 2021, the City Council certified the sufficiency of the Morgan Hill Responsible Growth Coalition's (RG4MH) Initiative Petition.

On April 7, 2021, the City Council passed Urgency Ordinance 2320, prohibiting certain types of buildings that meet three cumulative characteristics of dock-high-doors, dock-high-door to square foot ratio and ceiling height and adopted a resolution placing the Morgan Hill Responsible Growth Coalition Initiative petition on the November 2022 ballot.

On February 8, 2022, Planning Commission unanimously approved Resolution 22-04 recommending approval of the ratification Ordinance.

FISCAL AND RESOURCE IMPACT:

Election Cost: If Council elects to place the Initiative on the ballot, it will be placed on the next regular municipal election scheduled for November 2022. The cost for the November 2022 ballot measure is unknown at this time. In November 2020, the estimated cost for placing a ballot measure was approximately \$60,000. It is safe to assume the additional ballot measure cost in November 2022 would likely be more, if not similar. Ballot measure costs are in addition to the regularly scheduled election

costs of two Council members and one Mayor, estimated to be \$150,000 or more. Costs will be added in the next budget cycle.

Resource Impact: Thus far, staff has been able to accommodate the additional work due to the urgency ordinance within its existing workplan.

Ordinance Impact: At Council's direction, staff focused efforts on collaborating with the Morgan Hill Responsible Growth Coalition.

CEQA (California Environmental Quality Act):

This ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, as the proposed text amendments to the Morgan Hill Zoning Code is not a project with potential for causing a significant effect on the environment requiring California Environmental Quality Act (CEQA) analysis. Additionally, on July 27, 2016, the City Council certified an environmental impact report (EIR) for the Morgan Hill 2035 General Plan. This ordinance is consistent with, and implements, the General Plan and therefore was analyzed in the EIR for the 2035 General Plan. Pursuant to Section 15162 and Section 15183 of the State CEQA Guidelines, no additional review under the California Environmental Quality Act is required.

RESOLUTION NO. 22-04

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF AN ORDINANCE PERMANENTLY ADOPTING AND RATIFYING ORDINANCE NUMBER 2320 PREVIOUSLY ADOPTED AS AN URGENCY ORDINANCE ADDING SECTION 18.76.140 (" MAXIMUM DOCK HIGH DOOR RATIO") TO CHAPTER 18.76 PERFORMANCE STANDARDS") AND AMENDING SECTIONS 18. 124.050 ("INDUSTRIAL USES") OF CHAPTER 18.124 (" LAND USE DEFINITIONS") AND 18.128.020 ("DEFINITIONS") OF CHAPTER 18.128 ("GENERAL TERMS") OF TITLE 18 ("ZONING") OF THE MORGAN HILL MUNICIPAL CODE TO CREATE A MAXIMUM DOCK - HIGH -DOOR RATIO FOR CERTAIN STRUCTURES AND TO ADD DEFINITIONS.

WHEREAS, this proposed Ordinance (Zoning Amendment ZA2021-0008) was considered by the Planning Commission of the City of Morgan Hill at its regular meeting of February 8, 2022;

WHEREAS, the Planning Commission has reviewed recommendations contained in the February 8, 2022, staff report on this item;

WHEREAS, this ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, as the proposed text amendments to the Morgan Hill Zoning Code is not a project with potential for causing a significant effect on the environment requiring California Environmental Quality Act (CEQA) analysis. Additionally, on July 27, 2016, the City Council certified an environmental impact report (EIR) for the Morgan Hill 2035 General Plan. This ordinance is consistent with, and implements, the General Plan and therefore was analyzed in the EIR for the 2035 General Plan. Pursuant to Section 15162 and Section 15183 of the State CEQA Guidelines, no additional review under the California Environmental Quality Act is required.; and

WHEREAS, testimony received at a duly noticed public hearing, along with exhibits and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

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

The proposed text amendments will implement many General Plan Goals and Policies including those aimed at orderly development and a balanced community.

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

The proposed text amendments will prevent land uses that may create conflicts within the industrial areas of the City.

SECTION 3. The proposed amendment is internally consistent with other applicable provisions of the zoning code.

The proposed text amendments will not create any internal inconsistencies with any other zoning code provisions including the permitted uses in the Industrial and Commercial zoning districts.

SECTION 4. The Planning Commission hereby recommends approval and ratification of Urgency Ordinance 2320 (Attachment 1).

PASSED AND ADOPTED THIS 8th DAY OF FEBRUARY 2022, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

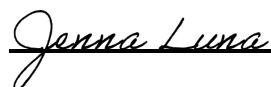
AYES:	COMMISSIONERS:	KUMAR, GONZALEZ-ESCOTO, MUELLER, TANDA, DOWNEY, HABIB
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NOES:	COMMISSIONERS:	NONE
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ABSTAIN:	COMMISSIONERS:	NONE
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ABSENT:	COMMISSIONERS:	NONE
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ATTEST:



JENNA LUNA, Deputy City Clerk

APPROVED:



MALISHA KUMAR, Chair

Date: _____

PLANNING COMMISSION STAFF REPORT

MEETING DATE: February 8, 2022

PREPARED BY:

Jennifer Carman, Development Services Director

APPROVED BY: Jennifer Carmen

ZA2022-0001 - ADOPTION AND RATIFICATION OF ORDINANCE NO. 2320 PREVIOUSLY ADOPTED AS AN URGENCY ORDINANCE

RECOMMENDATION(S)

1. Open/close public hearing; and,
2. Adopt Resolution recommending City Council approval and ratification of the proposed Ordinance.

PROJECT INFORMATION:

A draft ordinance is being proposed that would amend the Industrial Land Use Regulations. The proposed amendments would implement the Morgan Hill General Plan, 2017 Morgan Hill Economic Blueprint and the pending Industrial Land Preservation and Optimization City Council Policy.

BACKGROUND:

Since 2020, the City of Morgan Hill has taken steps to amend industrial sections of the Zoning Code to prevent stand-alone e-commerce uses. In November, 2020, the City Council adopted Ordinance 2317 amending the City's industrial sections of the Zoning Code prohibiting fulfillment centers, defining large-scale projects and moved review authority from City staff to the Planning Commission for projects of a certain size. On April 7, 2021, the City Council passed Urgency Ordinance 2320, prohibiting certain types of buildings that meet three cumulative characteristics of dock-high-doors, dock-high-door to square foot ratio and ceiling height. The urgency ordinance also amended the definition of Light Manufacturing.

Section 18.76.140 was added limiting buildings to a maximum Dock-High-Door Ratio for a facility that has a floor area of 75,000 square feet or greater and a ceiling height of more than thirty-four (34) feet over more than twenty-five (25) percent of the floor area to one (1) Dock-High-Door for every 25,000 square feet. These building-type restrictions aim to limit the possibility of distribution/e-commerce type of uses.

The Urgency Ordinance sunsets in April 2022 and this proposed Ordinance replaces the Urgency Ordinance with a permanent Zoning Amendment. The City Council has the ability to place the ordinance on the ballot as part of their consideration.

PROJECT DESCRIPTION:

The Urgency Ordinance creates a new Section under Chapter 18.76 "Performance Standards" to create a maximum dock-high door ratio that reads as follows:

18.76.140 - Maximum Dock High Door Ratio

The maximum Dock High Door to Square Foot Ratio for a facility that has a floor area of seventy-five thousand (75,000) square feet or greater and a ceiling height of more than thirty-four (34) feet over more than twenty-five (25) percent of the floor area is 1:25,000

The addition of this prevents any building that would encompass all three elements - size, ceiling height and more dock doors than 1 per 25,000 square feet from being built in the City.

The following definitions were also added to Section 18.128.020 of the Zoning Ordinance with the Urgency Ordinance:

- **Ceiling Height.** The clear vertical distance from the finished floor to the finished ceiling. If the ceiling is unfinished, the ceiling height is the distance from the floor to the lowest projecting beams, joists, or truss work.
- **Dock-High-Door.** An opening to the outside of a building used to interface with trucks for the loading and/or unloading of goods, products, merchandise or wares of any type and where the bottom of the opening is not at ground level but rather elevated by twenty-four (24) inches or more.
- **Dock-High-Door-to-Square-Foot Ratio.** The ratio of the total number of Dock-High-Doors that a building has to the total square feet of building floor area.

The Urgency Ordinance also updated the definition of Light Manufacturing in Section 18.124.050 to clarify the meaning of Assembly as follows:

D. Manufacturing, Light. The manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, and packaging of such products, and incidental storage, sales and distribution of such products, but excluding basic industrial processing and custom manufacturing. Includes manufacture of electric and electronic instruments and devices. Excludes saw and planing mill and manufacturing uses involving primary production of wood, metal or chemical products from raw materials. For purpose of this definition, the term "Assembly" includes creation of a component or end item made from a number of parts and subassemblies. Assembly does not include the putting together of kits, gift baskets, or packaging items produced elsewhere for purposes of e-commerce or of wholesale trading.

FINDINGS:

The proposed Zoning Amendment has been analyzed with respect to consistency with the: 1) General Plan and 2) Zoning Ordinance.

1. General Plan

The proposed amendments are consistent with the General Plan as the amendments implement the following Policies:

Policy CNF-2.1 Orderly Development. Promote the orderly development of the City, with concentric growth and infill of existing developed areas.

Policy CNF-2.2 A Balanced Community. Plan for the needs of all socioeconomic segments of the community, encouraging a balance and match in jobs and housing within the City.

The proposed ordinance will implement General Plan Goals and Policies and would prevent uses that create potential land use conflicts within the City.

2. Zoning Ordinance

The purpose of the Zoning Code is to implement the General Plan and to protect the public health, safety, and welfare. The City may approve a Zoning Amendment only if the following findings are made:

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

Consistent

The proposed text amendments will implement many General Plan Goals and Policies including those aimed at orderly development and a balanced community.

- b. The proposed amendment will not be detrimental to the public interest, health, safety,

convenience, or welfare of the City.

Consistent

The proposed text amendments will prevent land uses that may create conflicts within the industrial areas of the City.

c. The proposed amendment is internally consistent with other applicable provisions of the zoning code.

Consistent

The proposed text amendments will not create any internal inconsistencies with any other zoning code provision including the permitted uses in the Industrial and Commercial zoning districts.

CONCLUSION:

The proposed Ordinance will further support Morgan Hill's Industrial development and prevents future developments from being constructed with all the physical characteristics of a Distribution Center. This is directly in line with the goals to protect and maximize the City's limited supply of industrial (employment) land that is critical to the City's future economic vitality and sustainability.

CEQA (California Environmental Quality Act):

This ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, as the proposed text amendments to the Morgan Hill Zoning Code is not a project with potential for causing a significant effect on the environment requiring California Environmental Quality Act (CEQA) analysis. Additionally, on July 27, 2016, the City Council certified an environmental impact report (EIR) for the Morgan Hill 2035 General Plan. This ordinance is consistent with, and implements, the General Plan and therefore was analyzed in the EIR for the 2035 General Plan. Pursuant to Section 15162 and Section 15183 of the State CEQA Guidelines, no additional review under the California Environmental Quality Act is required.

COMMUNITY ENGAGEMENT:

A 10-Day public hearing notice was published in the January 28, 2022 edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notices were also provided on the City's 411, City's website, and via social media. Staff also shared the proposed Zoning Code changes at the Morgan Hill Chamber of Commerce Economic Development Committee on January 13, 2022 and via a virtual City of Morgan Hill Townhall meeting on January 27, 2022.

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL PERMANENTLY ADOPTING AND RATIFYING ORDINANCE NUMBER 2320 PREVIOUSLY ADOPTED AS AN URGENCY ORDINANCE ADDING SECTION 18.76.140 (" MAXIMUM DOCK HIGH DOOR RATIO") TO CHAPTER 18.76 PERFORMANCE STANDARDS") AND AMENDING SECTIONS 18. 124.050 ("INDUSTRIAL USES") OF CHAPTER 18.124 (" LAND USE DEFINITIONS") AND 18.128.020 ("DEFINITIONS") OF CHAPTER 18.128 ("GENERAL TERMS") OF TITLE 18 ("ZONING") OF THE MORGAN HILL MUNICIPAL CODE TO CREATE A MAXIMUM DOCK - HIGH - DOOR RATIO FOR CERTAIN STRUCTURES AND TO ADD DEFINITIONS.

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

Section 1. Section 18.76.140 ("Maximum Dock High Door Ratio") of Chapter 18.76 ("Performance Standard") of Title 18 ("Zoning") is hereby added to read as follows (additions in underline, deletions in strikeout):

18.76.140 - Maximum Dock High Door Ratio

The maximum Dock High Door to Square Foot Ratio for a facility that has a floor area of seventy-five thousand (75,000) square feet or greater and a ceiling height of more than thirty-four (34) feet over more than twenty-five (25) percent of the floor area is 1:25,000

Section 2. Subsection (D) ("Manufacturing, Light") of Section 18.124.050 ("Industrial Uses") of Chapter 18.124 ("Land Use Definitions") of Title 18 ("Zoning") is hereby amended to read as follows:

D. Manufacturing, Light. The manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, and packaging of such products, and incidental storage, sales and distribution of such products, but excluding basic industrial processing and custom manufacturing. Includes manufacture of electric and electronic instruments and devices. Excludes saw and planing mill sand manufacturing uses involving primary production of wood, metal or chemical products from raw materials. For purpose of this definition, the term "Assembly" includes creation of a component or end item made from a number of parts and subassemblies. Assembly does not include the putting together of kits, gift baskets, or packaging items produced elsewhere for purposes of e-commerce or of wholesale trading.

Section 3. Subsection (C) ("C' Terms") of Section 18.128.020 ("Definitions") of Chapter 18.128 ("General Terms") of Title 18 ("Zoning") is hereby amended to read as follows:

C. "C" Terms.

1. California Room. A room or space in a building where one or more sides is open and exposed (without a wall or windows) to adjacent outdoor space.
2. Ceiling Height. The clear vertical distance from the finished floor to the finished ceiling. If the ceiling is unfinished, the ceiling height is the distance from the floor to the lowest projecting beams, joists, or truss work.
3. Cessation of Use. The discontinuation of a use, either temporarily or permanently, whether with the intent to abandon such use or not.
4. City Geologist. A registered professional geologist certified by the state of California in the specialty of engineering geology (C.E.G.) who is either a city staff member or a consultant retained by the city.
5. Clear Triangle. A triangular area bounded by the street right-of-way lines of a corner lot and a line joining points along said street lines 20 feet from the point of intersection.
6. Commercial. Any activity on or use of land which involves the buying, selling, processing or improving of things not produced on the land, and having financial gain as the primary aim of the activity or use, whether or not such activity or use is for hire or on account of the buyer, seller, processor or improver.
7. Conditional Use. A use that requires approval of a conditional use permit or an administrative use permit.
8. Condominium. Individual ownership of a dwelling unit within a multiple-unit structure exclusive of the land underlying such structure.
9. Condominium Development. A structure and appurtenant premises divided in ownership by the existence of the condominiums as defined in Section 783 of the California Civil Code. Includes instances where ownership is divided following prior single ownership of the entire structure and premises, as well as new structures divided in ownership.

Section 4. Subsection (D) ("D' Terms") of Section 18.128.020 ("Definitions") of Chapter 18.128 ("General Terms") of Title 18 ("Zoning") is hereby amended to read as follows:

D. "D" Terms.

1. Deck. A platform, either freestanding or attached to a building, that is supported by piers, pillars or posts.
2. Dock-High-Door. An opening to the outside of a building used to interface with trucks for the loading and/or unloading of goods, products, merchandise or wares of any type and where the bottom of the opening is not at ground level but rather elevated by twenty-four (24) inches or more.
3. Dock-High-Door-to-Square-Foot Ratio. The ratio of the total number of Dock-High-Doors that a building has to the total square feet of building floor area.
4. Driveway. A permanently surfaced area on a lot designed and required to provide direct access for vehicles between a street and a private garage, carport or other parking space, parking area, or loading area.
5. Driveway Aisle, Major. A driveway providing principal access to the parking area or the driveway providing principal circulation throughout the parking areas or premises.
6. Driveway Apron. A paved area providing principal access from a drive aisle or street right-of-way to a garage or other covered parking space.
7. Dwelling. A building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons. Excludes tents, cabins, trailers and trailer coaches.
8. Dwelling Unit. A room or group of rooms including living, sleeping, eating, cooking and sanitation facilities, constituting a separate and independent housekeeping unit, occupied or intended for occupancy by one family on a non-transient (less than thirty-day stay) basis and having not more than one kitchen.
9. Density. The number of dwelling units permitted per net lot area.

Section 5. **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 6. **Effective Date; Posting.** This Ordinance shall take effect on ____ ____, 2022. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

This ordinance was introduced at a meeting of the City Council held on the ____ day of ____, 2022__, and adopted at a meeting held on the ____ day of ____, 2022__, and said

ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

MICHELLE BIGELOW, City Clerk

RICHARD CONSTANTINE, Mayor

CERTIFICATE OF THE CITY CLERK

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

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

DATE: _____

MICHELLE BIGELOW, City Clerk

RESOLUTION NO. 22-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA SUBMITTING TO THE VOTERS OF THE CITY AN ORDINANCE CHANGING ZONING REGULATIONS THROUGHOUT THE CITY OF MORGAN HILL TO PROHIBIT BUILDINGS WITH CHARACTERISTICS THAT COULD BE USED FOR NEW STORAGE AND DISTRIBUTION USES IN ALL AREAS OF THE CITY

WHEREAS, pursuant to authority provided by Division 9, Chapter 3, Article 1 (commencing at S 9200) of the Elections Code of the State of California, a petition was filed with the City Council of the City of Morgan Hill signed by more than ten percent (10%) of the registered voters of the City, according to the Santa Clara County Registrar of Voters last official report of registration to the Secretary of State, to submit a proposed ordinance to the voters changing zoning regulations throughout the city of Morgan Hill to prohibit certain new storage and distribution uses in all areas of the City and amending the review process for large-scale development projects; and

WHEREAS, the qualified initiative was placed on the November 22, 2022 ballot on April 7, 2021

WHEREAS, a collaborative discussion of the goals of the initiative was held between the City and the Morgan Hill Responsible Growth Coalition to examine the potential for non-conforming designations on existing buildings and a revised ordinance was developed and adopted as Urgency Ordinance 2320 on April 7, 2021; and

WHEREAS, Urgency Ordinance 2320 was adopted and ratified as a permanent ordinance on March 2, 2022; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL AS FOLLOWS:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Election. The City Council hereby calls a General Municipal Election for Tuesday, November 8, 2022 (the “Election”) and orders, pursuant to Section 9222 of the Elections Code, that Ordinance XX changing zoning regulations throughout the city of Morgan Hill to prohibit building with characteristics that could be used for new storage and distribution uses in all areas of the City.

Section 3. Ballot Question. The question submitted under Section 3 of this Resolution shall appear on the ballot as follows:

Shall the ordinance, changing zoning regulations throughout the city of Morgan Hill to prohibit buildings with characteristics that could be used for new storage and distribution uses in all areas of the City be adopted?	YES	
	NO	

Section 4. Approval. Pursuant to Article XIII C of the Constitution, this measure requires approval by a majority (50% plus 1) of those casting ballots on the measure.

Section 5. Consolidation. Pursuant Section 10400 et seq. of the Elections Code, the Board of Supervisors of Santa Clara County (Board of Supervisors) is requested to consolidate the Election with other elections held on the same day in the same territory or in the territory that is in part the same.

Section 6. Canvass. The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.

Section 7. Conduct of Election. Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the Santa Clara County Registrar of Voter's Office to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.

Section 8. Filing with County. The City Clerk shall file a certified copy of this Resolution with the Board of Supervisors.

Section 9. Analysis and Argument. The City Council authorizes all members of the City Council to file written argument(s) In Favor of, or Against the measure described in Section 3 above, not exceeding 300 words, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk after which no arguments for or against the ballot measure may be submitted to the City Clerk.

The City Attorney shall prepare an impartial analysis of the measure. Any person or persons may file an argument either for or against the ballot measure. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. Rebuttal arguments shall be permitted pursuant to applicable law.

Section 10. In accordance with Elections Code section 9280, the entire text of the measure referenced in Section 3 above, shall not be placed in the voter information sample ballot and instead there shall be printed immediately below the impartial analysis, in no less than 10- point type, the following: "The above statement is an impartial analysis of the Ordinance of The City of Morgan Hill, California changing zoning regulations throughout the city of Morgan Hill to prohibit building with characteristics that could be used for new storage and distribution uses in all areas of the City. If you desire a copy of the measure, please visit <http://www.morgan-hill.ca.gov>, email the City Clerk at clerk@morganhill.ca.gov, or call the City Clerk at (408)779-7271 and a copy will be mailed or e-mailed at no cost to you."

Section 11. The primary arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 16, 2022 to meet the deadline established by the Santa Clara County Registrar of Voters for primary arguments. The arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument. The arguments shall be accompanied by the Form of Statement to Be Filed by Author(s) of Argument to be provided by the City Clerk.

Section 12. In accordance with Elections Code section 9285(b), the City of Morgan Hill hereby authorizes the filing of rebuttal arguments as set forth below and in accordance with state law.

The elections official shall send a copy of an argument in favor of the proposition to the authors of any argument against the measure and a copy of an argument against the measure to the authors in any argument in favor of the measure immediately upon receiving the arguments.

The author, or a majority of the authors, of any argument relating to the measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument.

A rebuttal argument may not be signed by more than five authors.

The rebuttal arguments shall be filed with the City Clerk, signed with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers, not more than 10 days after the final date for filing direct arguments. The rebuttal arguments shall be accompanied by the Form of Statement to be provided by the City Clerk and to be filed by the author(s) of the argument.

Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

Rebuttal arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 23, 2022 to meet the deadline established by the Santa Clara County Registrar of Voters for rebuttals.

Section 13. Effective Date. This Resolution shall be effective immediately upon adoption.

Section 14. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law.

PASSED AND ADOPTED by the City Council of Morgan Hill at the meeting held on this 2nd day of March 2022 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ **CERTIFICATION** ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 22-0xx, adopted by the City Council at the meeting held on March 2, 2022.

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

DATE: _____

MICHELLE BIGELOW, City Clerk