



City Council

Special/Regular Meeting Agenda

<i>Mark Turner</i>	-	<i>Mayor</i>
<i>Marilyn Librers</i>	-	<i>Mayor Pro Tem</i>
<i>Soraida Iwanaga</i>	-	<i>Council Member</i>
<i>Yvonne Martínez Beltrán</i>	-	<i>Council Member</i>
<i>Miriam Vega</i>	-	<i>Council Member</i>

Wednesday, January 28, 2026

Closed Session 5:00 p.m.
Regular Session 6:00 p.m.

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

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

MEETING PARTICIPATION

Morgan Hill City Council meetings are held in person. The community may attend in person or via Zoom (video/teleconference). The meetings are also live-streamed on the City's website and Facebook page.

As a courtesy, and technology permitting, members of the public may attend online. However, the City cannot guarantee that the public's access to online technology will be uninterrupted, and technical difficulties may occur from time to time. Unless required by the Ralph M. Brown Act, the meeting will continue despite technical difficulties for participants using the online option.

Those wishing to participate in the meetings remotely must register in advance at <https://bit.ly/CityCouncilZoomRegistration>. Additionally, Zoom participants must be running the latest version or will be required to update to it before joining the meeting remotely.

Remote participation is also available by calling (669) 900-9128 and entering webinar ID: 873 3200 8380#. Dial *9 to raise your hand, and be called upon to speak for up to 3

minutes. Dial *6 to unmute.

PUBLIC COMMENT

Public comment may be offered verbally at the meeting or in writing before the meeting. Public comment is limited to three minutes, but the Mayor may adjust time limits for individual or total comments while ensuring all viewpoints are heard, encouraging speakers to avoid repetition, and allowing a designated spokesperson for organized support or opposition to present longer if needed.

Those attending remotely may only offer public comment for items on the agenda in one of four categories:

- Consent Calendar
- Other Business
- Public Hearings
- Closed Session

Public comment will be heard first from those attending in person, with the submission of a speaker card. Once that is complete, we will move to those on Zoom who have their hand raised. Following public comment from Zoom, we will close the public comment period for that item.

Remote public comment for items not on the agenda will not be accepted.

Written public comment may be submitted to the City Clerk:

- In person at the City Council Meeting;
- Via email to ccpubliccomment@morganhill.ca.gov; or
- Hand-delivered or mailed to the City Clerk at 17575 Peak Avenue, Morgan Hill, CA 95037

Please email your comments to the City Clerk no later than 3:00 p.m. on Tuesday (the day before the City Council meeting) so that your comments can be submitted to the members of the City Council with sufficient time to review them. You may continue to provide written comments up to noon on Wednesday (the day of the meeting), although Council Members may not have sufficient time to review them before the meeting. Public comments submitted to the City Clerk after noon (12:00 p.m.) the day of the meeting will be provided to the City Council as time allows.

Written comments WILL NOT be read aloud during the City Council Meeting. Please note that written comments are posted on the City's website. It is recommended that you do not include any personal information that you do not want to be posted on the web. Please be advised that communications directed to the City Council are public records and are subject to disclosure pursuant to the California Public Records Act and Brown Act unless exempt from disclosure under the applicable law. Communications

will NOT be edited for redactions and will be printed/posted as submitted.

AMERICANS WITH DISABILITIES ACT (ADA)

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

SPECIAL/REGULAR MEETING

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

SPECIAL MEETING

5:00 p.m. Closed Session

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

CLOSED SESSION

Public Employee Appointment (§ 54957)

Title: (City Attorney)

OPPORTUNITY FOR PUBLIC COMMENT ON CLOSED SESSION

ADJOURN TO CLOSED SESSION

REGULAR MEETING

6:00 p.m.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PRESENTATIONS

YAC Presentation

RECOGNITIONS

El Toro Tours

CITY COUNCIL REPORTS

Council Member Librers

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

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

ADOPTION OF AGENDA

CONSENT CALENDAR

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

1. **ACCEPTANCE OF PLANNING COMMISSIONER RESIGNATION, REAPPOINTMENT OF TWO COMMISSIONERS ON THE LIBRARY, CULTURE, AND ARTS COMMISSION (LCAC), TWO COMMISSIONERS ON THE PARKS AND RECREATION COMMISSION (PRC), APPOINTING AN LCAC COMMISSIONER TO THE PRC, AND RECRUITMENT TO FILL VACANCIES ON TWO COMMISSIONS**

Recommendation:

1. Accept Planning Commissioner Wayne Tanda's resignation;
2. Reappointment of Commissioners Patrice Lyn and Cindy Blanton to the Library, Culture, and Arts Commission with terms ending April 1, 2030;
3. Reappointment of Commissioners Craig van Keulen and Harpreet Vittal to the Parks and Recreation Commission with terms ending April 1, 2030;
4. Appointment of LCAC Commissioner Julie Lucido to the Library, Culture, and Arts Commission with a term ending April 1, 2030; and
5. Direct staff to continue recruitment efforts to fill the one vacancy on the Planning Commission and the two vacancies on the Parks and Recreation Commission.

2. **ADOPT RESOLUTION ADDING SECTION 20516 COST SHARE TO THE MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES RESOLUTION NO. 25-039**

Recommendation:

Adopt resolution adding Section 20516 Cost Share to the Management, Professional, and Confidential Employees Resolution No. 25-039.

3. **APPROVE THE DECEMBER 15, 2025, DECEMBER 17, 2025, AND JANUARY 16, 2026 CITY COUNCIL MEETING MINUTES**

Recommendation:

Approve the December 15, 2025, December 17, 2025, and January 16, 2026, City Council Meeting Minutes.

4. **APPROVE THE AMENDED AND RESTATED SUBDIVISION IMPROVEMENTS AGREEMENT FOR WALNUT GROVE ESTATES – TRACT NO. 10422 LOCATED ON THE SOUTHEAST CORNER OF THE WALNUT GROVE DRIVE AND DIANA AVENUE INTERSECTION (APN: 726-07-090 - 726-07-098)**

Recommendation:

1. Approve the Amended and Restated Subdivision Improvements Agreement for Walnut Grove Estates – Tract No. 10422;
2. Authorize the City Manager to execute the Amended and Restated Subdivision Improvements Agreement with Morgan Hill Mansions LLC (Subdivider); and
3. Authorize the recordation of the Amended and Restated Subdivision Improvements Agreement.

5. **APPROVE FIRST AMENDMENT TO MAINTENANCE SERVICE AGREEMENT WITH MJR ELECTRIC, INC. TO INCREASE THE NOT TO EXCEED AMOUNT BY \$160,000 FOR A TOTAL AGREEMENT AMOUNT OF \$260,000 FOR ON-CALL ELECTRICAL MAINTENANCE AND REPAIRS AT CITY FACILITIES**

Recommendation:

1. Approve the First Amendment to the Maintenance Service Agreement with MJR Electric, Inc. for \$160,000 for a total agreement amount of \$260,000; and
2. Authorize the City Manager to execute and administer the First Amendment to the Maintenance Service Agreement with MJR Electric, Inc.

6. **AUTHORIZE THE CITY MANAGER TO EXECUTE A PURCHASE AGREEMENT FOR COMPUTER EQUIPMENT WITH SAVANT SOLUTIONS**

Recommendation:

Authorize the City Manager to execute a purchase agreement for computer equipment with Savant Solutions with an amount not to exceed \$150,000.

7. **AWARD CENTENNIAL RECREATION CENTER POOL REPLASTERING PROJECT**

Recommendation:

1. Award contract to Earl Adams Tile-Coping & Plastering, Inc., dba Adams Pool Solutions in the amount of \$112,976 and authorize the expenditure of up to 20% contingency funds not to exceed \$22,595; and
2. Authorize the City Manager to execute and administer that certain construction contract with Earl Adams Tile-Coping & Plastering, Inc., dba Adams Pool Solutions.

OTHER BUSINESS

8. **ACCEPT MORGAN HILL PROPERTY AND BUSINESS IMPROVEMENT DISTRICT (MHPBID) OWNERS' ASSOCIATION ANNUAL REPORT (DBA DOWNTOWN MORGAN HILL IMPROVEMENT DISTRICT)**

Recommendation:

Accept and file the Downtown Morgan Hill Improvement District Annual Report.

9. **REPEAL CHAPTER 15.63 (PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MORGAN HILL MUNICIPAL CODE**

Recommendation:

Waive the reading and introduce an Ordinance repealing Chapter 15.63 of the Morgan Hill Municipal Code regarding the prohibition of natural gas infrastructure in new buildings.

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

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

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

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

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

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

SUSTAINABLE MORGAN HILL



Vision

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

Choose Morgan Hill

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

Strategic Priorities 2024-2025

- Fiscal Sustainability
- Affordable Housing and Homelessness
- Community Engagement
- Economic Development and Tourism
- Transportation
- Healthy Community

City Council Ongoing Priorities

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



CITY COUNCIL STAFF REPORT

MEETING DATE: January 28, 2026

PREPARED BY:

Michelle Bigelow, City Clerk

APPROVED BY: City Manager

ACCEPTANCE OF PLANNING COMMISSIONER RESIGNATION, REAPPOINTMENT OF TWO COMMISSIONERS ON THE LIBRARY, CULTURE, AND ARTS COMMISSION (LCAC), TWO COMMISSIONERS ON THE PARKS AND RECREATION COMMISSION (PRC), APPOINTING AN LCAC COMMISSIONER TO THE PRC, AND RECRUITMENT TO FILL VACANCIES ON TWO COMMISSIONS

RECOMMENDATION(S)

1. Accept Planning Commissioner Wayne Tanda's resignation;
2. Reappointment of Commissioners Patrice Lyn and Cindy Blanton to the Library, Culture, and Arts Commission with terms ending April 1, 2030;
3. Reappointment of Commissioners Craig van Keulen and Harpreet Vittal to the Parks and Recreation Commission with terms ending April 1, 2030;
4. Appointment of LCAC Commissioner Julie Lucido to the Library, Culture, and Arts Commission with a term ending April 1, 2030; and
5. Direct staff to continue recruitment efforts to fill the one vacancy on the Planning Commission and the two vacancies on the Parks and Recreation Commission.

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

Enhancing Diversity and Inclusiveness

2024-2025 Strategic Priorities

Community Engagement and Messaging

REPORT NARRATIVE:

Planning Commissioner Wayne Tanda recently submitted his resignation from the Planning Commission (PC), leaving a vacant seat with a term ending June 1, 2027. Additionally, the Library, Culture, and Arts Commission (LCAC) has three seats with terms ending on April 1, 2026, and the Parks and Recreation Commission (PRC) has

four seats, with terms ending on April 1, 2026. Current LCAC commissioners Patrice Lyn and Cindy Blanton, and PRC commissioners Harpreet Vittal and Craig van Keulen, have expressed interest in reappointment. PRC Commissioner Julie Lucido has expressed interest in serving on the LCAC.

Staff recommends accepting Planning Commissioner Tanda's resignation, the reappointment of Commissioners Lyn and Blanton to the LCAC, and Commissioners Vittal and van Keulen to the PRC, and the appointment of PRC Commissioner Lucido to the LCAC at the end of her current term, April 1, 2026, all with terms ending April 1, 2030.

LCAC Commissioner Mark Fiorenzo and PRC Commissioner Shweta Maniar do not wish to be reappointed to their seats following the end of their current term on April 1, 2026. Staff have begun the recruitment process to fill three commission vacancies: one on the PC, with a term ending June 1, 2027, and two on the PRC, with terms ending April 1, 2030. Interviews are scheduled for Wednesday, March 4, 2026, at 5:00 p.m., with a deadline to apply of Monday, February 23, 2026, at 5:00 p.m.

COMMUNITY ENGAGEMENT:

Involve

Recruitment efforts will be undertaken to encourage citizens to apply for consideration for City Council appointment to the PRC and the PC 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 reappoint Commissioners Lyn and Blanton to the LCAC; Commissioners van Keulen and Vittal to the PRC; and PRC Commissioner Lucido to the LCAC, and instead direct staff to conduct recruitment and interviews for all available seats with terms ending April 1, 2026.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Every year, recruitment efforts are conducted to maintain the commission seats.

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 Council Services and Records Management 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 2.68

LIBRARY, CULTURE AND ARTS COMMISSION

Sections:

- 2.68.010** Created.
2.68.020 Membership—Terms of office.
2.68.030 Powers and duties.

2.68.010 Created.

There is established a new commission which is entitled the “library, culture and arts commission” to serve in an advisory capacity to the city council. (Ord. 1778 N.S. § 9 (part), 2006; Ord. 1374 N.S. § 1 (part), 1998)

2.68.020 Membership—Terms of office.

The commission shall consist of seven members. Members shall not be officials or employees of the city, county library employees nor paid members of any organization receiving financial support from the city for library and art services. (Ord. 1778 N.S. § 9 (part), 2006; Ord. 1559 N.S. § 1, 2002; Ord. 1407 N.S. § 5, 1998; Ord. 1382 N.S. § 1, 1998; Ord. 1374 N.S. § 1 (part), 1998)

2.68.030 Powers and duties.

The powers and functions of the commission shall be as follows:

- A. To act in an advisory capacity to the city council in all matters pertaining to library, culture and arts in the community;
- B. To serve as a liaison between the city and the Santa Clara County library;
- C. To consult with private community groups supportive of library, culture and art programs and serve as a liaison between such groups and the city;
- D. To provide advice and recommendations regarding the adequacy of existing library facilities and operations;
- E. To look for opportunities for participation of artists and performers in city-sponsored activities, and ways to encourage community involvement in the arts;

F. To work cooperatively with city boards and commissions and other public and private organizations in creating and promoting art and cultural programs and activities within the city;

G. To coordinate and strengthen existing organizations in the arts and develop cooperation with regional organizations;

H. To make recommendations to the city council regarding the funding of community art projects, including the search for private and public grants, and regarding the disbursement of revenues consistent with the needs of the community;

I. To review and make recommendations to the city council upon all works of art to be acquired by the city, either by purchase, gift or otherwise, and exterior works of art installed in the city on public property;

J. To recommend to the city council the adoption of such ordinances or policies as it may deem necessary for the administration and preservation of the arts and cultural development of the city;

K. To perform such other tasks as may be expressly requested of it by the city council;

L. To conduct such other hearings as are necessary and in accordance with its own rules and regulations for the transaction of its business, or rules for conduct; and

M. To report its decisions and recommendations relating to the above matters, in writing to the city council. (Ord. 1778 N.S. § 9 (part), 2006; Ord. 1374 N.S. § 1 (part), 1998)

Chapter 2.32**PARKS AND RECREATION COMMISSION*****Sections:****2.32.010 Created.****2.32.020 Membership—Terms of office.****2.32.030 Powers and duties.**

* Prior ordinance history: Ord. 1368 N.S.

2.32.010 Created.

There is established a new commission which is entitled the "Morgan Hill parks and recreation commission" to serve in an advisory capacity to the city council. (Ord. 1778 N.S. § 4 (part), 2006)

2.32.020 Membership—Terms of office.

The commission shall consist of seven members. Members shall not be officials or employees of the city nor be paid members of any organization receiving financial support from the city. Notwithstanding any language to the contrary, the mayor and city council may appoint a Morgan Hill Unified School District official as a member of the commission.

For the first seven members appointed, the terms of three of the members shall expire on May 1, 1999, and the terms of four of the members shall expire on May 1, 2000. All new full term appointments after April 1, 2006 shall be for a period of four years. (Ord. 1778 N.S. § 4 (part), 2006)

2.32.030 Powers and duties.

The powers and functions of the commission shall be as follows, provided that nothing in this Chapter 2.32 shall be construed to give the commission power or duty to supervise or administer any public buildings, public parks, streets or other public property or programs:

A. To hold hearings on matters pertaining to planning and development of parks, trails, recreation programs for all segments of the population,

bicycle facilities, and capital expenditures related to parks, trails, recreational facilities, and bicycle facilities;

B. To facilitate coordination of the efficient and effective use of recreation facilities by other public, private, and non-profit groups and organizations to city residents;

C. To consider, formulate and propose fiscally prudent programs, activities, resources, plans and development designed to provide for, regulate, and direct the future growth and development of the parks facilities and recreation programming for the people of the city;

D. To make investigations and reports for future acquisition of park sites;

E. To review opportunities for joint use of recreation/parks, and storm retention/detention;

F. To act on behalf of the city and function as the City of Morgan Hill Bicycle and Trails Advisory Committee;

G. To conduct such other hearings as are necessary and in accordance with its own rules and regulations for the transaction of its business, or rules for conduct; and

H. To report its decisions and recommendations relating to the above matters, in writing to the city council. (Ord. 1778 N.S. § 4 (part), 2006) (Ord. No. 1930 N.S., § 4, 4-22-2009)

Chapter 2.36 PLANNING COMMISSION*

Sections:

[2.36.010 Created--Statutory authority.](#)

[2.36.020 Membership--Terms of office--Vacancies.](#)

[2.36.030 Meetings.](#)

[2.36.040 Powers and duties.](#)

* Prior ordinance history: Ords. 470 N.S. and 483 N.S.

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)



CITY COUNCIL STAFF REPORT

MEETING DATE: January 28, 2026

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. 25-039

RECOMMENDATION(S)

Adopt resolution adding Section 20516 Cost Share to the Management, Professional, and Confidential Employees Resolution No. 25-039.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2024-2025 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

On December 17, 2025, the City Council adopted resolution number 25-039 adjusting the salary schedule for Management, Professional, and Confidential Employees (Resolution No. 25-039). The resolution also includes the phasing out of the employees sharing of employer's CalPERS rate.

Resolution No. 25-039 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. 25-039. This is one of the steps in the procedures to amend the City's CalPERS contract in order to ensure the accurate accounting of employees sharing of employer's CalPERS rate.

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. 25-039.

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On December 17, 2025, the City Council adopted Resolution Number 25-039, 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 GOVERNMENT CODE SECTION 20516 COST SHARE (EMPLOYEES SHARING ADDITIONAL COST) TO THE UNREPRESENTED MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES RESOLUTION NO. 25-039

WHEREAS, the City Council of the City of Morgan Hill adopted a Resolution No. 25-039 adjusting the salary schedule for unrepresented Management, Professional, and Confidential employees on December 17, 2025; 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 December 21, 2025 (or as soon as administratively possible with CalPERS after December 21, 2025), all Miscellaneous members (Classic and PEPRAs) and Safety Classic members in the unrepresented Management, Professional, and Confidential Employees Resolution shall share the employer's CalPERS contribution rate at 4.12%.

Effective pay period beginning December 21, 2025 (or as soon as administratively possible with CalPERS after December 21, 2025), Safety PEPRAs members in the unrepresented Management, Professional, and Confidential Employees Resolution shall share the employer's CalPERS contribution rate at 0%.

Effective pay period beginning December 20, 2026 (or as soon as administratively possible with CalPERS after December 20, 2026), all Miscellaneous members (Classic and PEPRAs) and Safety Classic members in the unrepresented Management, Professional, and Confidential Employees Resolution shall share the employer's CalPERS contribution rate at 1.12%.

Effective pay period beginning December 19, 2027 (or as soon as administratively possible with CalPERS after December 19, 2027), all Miscellaneous members (Classic and PEPRAs) and Safety Classic members in the unrepresented Management, Professional, and Confidential Employees Resolution shall share the employer's CalPERS contribution rate at 0%.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morgan Hill does hereby add Section 20516 Cost Share to the unrepresented Management, Professional, and Confidential Employees Resolution No. 25-039.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 28th day of January 2026 by the following vote:

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

APPROVED:

ATTEST:

MARK TURNER, Mayor

Michelle Bigelow, City Clerk

∞ CERTIFICATION ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at the meeting held on January 28, 2026.

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

DATE: _____

Michelle Bigelow, City Clerk

RESOLUTION NO. 25-039

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. 24-041)

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 21, 2025, base salaries for Groups 1-A, 1-B, 1-C, and 1-D, increase by 3%. See Salary Schedule attached as **Exhibit A**.
- B. Effective December 20, 2026, base salaries for Groups 1-A, 1-B, 1-C, and 1-D, increase by 2%, See Salary Schedule attached as **Exhibit B**.
- C. Effective December 19, 2027, base salaries for Groups 1-A, 1-B, 1-C, and 1-D, increase by 1%. See Salary Schedule attached as **Exhibit C**.
- D. 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.

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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 classifications of the Group 1-A:

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

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 per pay period at the time of hire, an additional one percent (1%) after 5 years of service and an additional one percent (1%) after 10 years of service. Effective December 19, 2027, all employees shall receive an additional one percent (1%) city contribution.
- 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

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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 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."

Non-Safety (Miscellaneous)

- 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.

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- H. Effective pay period beginning June 26, 2022 (or as soon as administratively possible with CalPERS after June 26, 2022), all miscellaneous members (Classic and PEPRA) in the Management, Professional, and Confidential Employees Resolution shall share the employer's CalPERS contribution rate at 6.12%.
- I. Effective December 21, 2025, the employee's contribution towards employer's share of pension cost will be reduced to 4.12%.
- J. Effective December 20, 2026, the employee's contribution towards employer's share of pension cost will be reduced to 1.12%.
- K. Effective December 19, 2027, the employee's contribution towards employer's share of pension cost will be eliminated.

Safety (Sworn)

- L. Safety (sworn) PEPRA employees: Beginning with CalPERS rates effective July 1, 2013, at which time the City's employer contribution PEPRA rate was 11.5%, the City and Association agreed that, beginning with CalPERS PEPRA rates effective July 1, 2013, safety (sworn) PEPRA employees would not pay less than 11.50% and would split future increases to the City's employer PEPRA 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 PEPRA obligation was 12.114% in FY 16-17 with the PEPRA employees' obligation was at 11.50%. Therefore, City paid half of the 0.614% increase over the base year City's employer PEPRA 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). Effective July 1, 2023, Safety (sworn) PEPRA employees will share the employer's CalPERS contribution rate at 1.02%. Effective July 1, 2024, Safety (sworn) PEPRA employees will share the employer's CalPERS contribution rate at 1.607%.
- M. Safety (sworn) PEPRA employees: Effective December 21, 2025, the employee's contribution towards employer's share of pension cost will be eliminated.
- N. Safety (sworn) Classic employees: Beginning December 30, 2018, the City and Safety (sworn) Management, Professional, and Confidential employees agreed, Safety (sworn) Classic employees shall share the employer's CalPERS contribution rate at 6.12%.
- O. Effective December 21, 2025, the employee's contribution towards employer's share of pension cost will be reduced to 4.12%.

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- P. Effective December 20, 2026, the employee's contribution towards employer's share of pension cost will be reduced to 1.12%.
- Q. Effective December 19, 2027, the employee's contribution towards employer's share of pension cost will be eliminated.

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 \$2,947.97/month in 2026 and up to 6% matching the Kaiser medical premium increase in 2027 and 2028.
 2. For employees with employee plus one coverage, up to \$2,249.59/month in 2026 and up to 6% matching the Kaiser medical premium increase in 2027 and 2028.
 3. For employees with employee only coverage, up to \$1,124.80/month in 2026 and up to 6% matching the Kaiser medical premium increase in 2027 and 2028.
 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.

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

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- Cesar Chavez Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Eve
- Christmas Day

One (1) 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.
4. Those employees in Group 1-D working on a 9/80 schedule will be entitled to the number of hours regularly worked as paid time off in observance of the holidays listed. All other employees will receive additional hours equivalent to the additional vacation hours received by those working on a 9/80 schedule as floating holiday time based on the number of holidays that fall in each specific year.

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 annual accrual effective within the pay period that includes July 1st in any given year..
3. Additional vacation accrual will not be provided until the employee's vacation balance drops below the maximum accrual limit as of July 1st 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.

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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.

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, grandparents, and grandchildren. Employees are granted up to five (5) days of bereavement leave. Up to three (3) days of bereavement leave shall be paid when the death and service are within the State of California and the other two (2) days would need to be supplemented with other leave time. Up to five (5) days are paid when the death or service is outside the State. City paid 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.

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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:

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 66²/₃% 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 66²/₃% 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).

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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 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 17, 2025. 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. 24-041 shall be superseded and rescinded.

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PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 17th day of December 2025 by the following vote:

AYES:	COUNCIL MEMBERS:	Mark Turner, Marilyn Librers, Miriam Vega Soraida Iwanaga, Yvonne Martinez Beltran
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:

ATTEST:

Signed by:

Mark Turner

MARK TURNER, Mayor

Signed by:

Michelle Bigelow

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. 25-039, adopted by the City Council at the meeting held on December 17, 2025.

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

DATE: 1/12/2026

Signed by:

Michelle Bigelow

MICHELLE BIGELOW, City Clerk

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

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Effective: December 21, 2025

* Currently Unfunded Positions

Job Classification	Bottom of Range Monthly	Top of Range Monthly
Group 1-A: Executive Management		
Assistant City Manager for Administrative Services	\$19,479	\$25,595
Assistant City Manager for Development Services	\$19,479	\$25,595
Assistant City Manager/Public Services Director	\$19,479	\$25,595
Chief of Police	\$19,479	\$25,595
<i>Community Services Director *</i>	\$17,180	\$22,623
Development Services Director	\$17,180	\$22,623
Economic Development Director	\$17,180	\$22,623
<i>Engineering and Utilities Director *</i>	\$17,180	\$22,623
Finance Director	\$17,180	\$22,623
Housing and Economic Mobility Director	\$17,180	\$22,623
Human Resources Director	\$17,180	\$22,623
<i>Communications and Engagement Director*</i>	\$14,825	\$19,481
Information Technology Director	\$14,825	\$19,481
Group 1-B: Middle Management	Bottom	Top
Police Captain	\$15,874	\$20,857
Assistant City Attorney	\$14,825	\$19,481
<i>Assistant Finance Director*</i>	\$14,825	\$19,481
Building Official	\$14,825	\$19,481
City Clerk/Public Information Officer	\$14,825	\$19,481
Deputy Director for Engineering	\$14,825	\$19,481
Deputy Director for Utilities Services	\$14,825	\$19,481
<i>Housing Manager*</i>	\$14,825	\$19,481
<i>Planning Manager *</i>	\$14,825	\$19,481
<i>Program Administrator*</i>	\$14,825	\$19,481
<i>Assistant to the City Manager *</i>	\$13,890	\$18,221
Building Manager	\$13,106	\$17,190
<i>Economic Development Manager*</i>	\$13,106	\$17,190
Environmental Services Administrator	\$13,106	\$17,190
Maintenance Manager	\$13,106	\$17,190
Principal Planner	\$13,106	\$17,190
Recreation Manager	\$13,106	\$17,190
Senior Civil Engineer	\$13,106	\$17,190
Senior Project Manager	\$13,106	\$17,190
Budget Manager	\$12,119	\$15,939
<i>Communications and Engagement Manager *</i>	\$12,119	\$15,939
<i>Community Services Manager *</i>	\$12,119	\$15,939
Environmental Services Manager	\$12,119	\$15,939
<i>Information Services Manager *</i>	\$12,119	\$15,939
Network Architect	\$12,119	\$15,939
Police Support Services Manager	\$12,119	\$15,939
Public Services Administrative Manager	\$12,119	\$15,939
Supervising Civil Engineer	\$12,119	\$15,939
Utility Systems Manager	\$12,119	\$15,939
<i>Accounting Manager *</i>	\$11,281	\$14,827
<i>Financial and Policy Analyst *</i>	\$11,281	\$14,827
<i>Police Administrative Manager*</i>	\$11,281	\$14,827
Senior Planner	\$11,281	\$14,827
Senior Recreation Supervisor	\$10,730	\$13,692
Community Services Supervisor	\$10,219	\$13,040
<i>Council Services and Records Manager *</i>	\$10,219	\$13,040
Deputy City Attorney	\$10,219	\$13,040
Economic Development Coordinator	\$10,219	\$13,040
Emergency Services Coordinator	\$10,219	\$13,040
GIS / Land Use Data Administrator	\$10,219	\$13,040
Maintenance Services Coordinator	\$10,219	\$13,040
<i>Older Adult Services Supervisor*</i>	\$10,219	\$13,040
Public Services Facilities Security Coordinator	\$10,219	\$13,040
Senior Human Resources Analyst	\$10,219	\$13,040
Risk Management Analyst (.50 FTE)	\$4,872	\$6,392
Group 1-C: Confidential Exempt	Bottom	Top
Administrative Analyst	\$9,741	\$12,782
Legal Specialist	\$8,764	\$11,532
Group 1-D: Confidential Non-Exempt	Bottom	Top
Accounting Technician	\$7,990	\$10,197
Human Resources Technician	\$7,771	\$10,197
<i>Human Resources Assistant *</i>	\$6,086	\$7,960

Exhibit B

City of Morgan Hill
 Resolution 25-039
 13 of 14

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

Effective: December 20, 2026

* Currently Unfunded Positions

Job Classification	Bottom of Range Monthly	Top of Range Monthly
Group 1-A: Executive Management		
Assistant City Manager for Administrative Services	\$19,869	\$26,107
Assistant City Manager for Development Services	\$19,869	\$26,107
Assistant City Manager/Public Services Director	\$19,869	\$26,107
Chief of Police	\$19,869	\$26,107
<i>Community Services Director *</i>	\$17,524	\$23,075
Development Services Director	\$17,524	\$23,075
Economic Development Director	\$17,524	\$23,075
<i>Engineering and Utilities Director *</i>	\$17,524	\$23,075
Finance Director	\$17,524	\$23,075
Housing and Economic Mobility Director	\$17,524	\$23,075
Human Resources Director	\$17,524	\$23,075
<i>Communications and Engagement Director*</i>	\$15,121	\$19,870
Information Technology Director	\$15,121	\$19,870
Group 1-B: Middle Management	Bottom	Top
Police Captain	\$16,192	\$21,274
Assistant City Attorney	\$15,121	\$19,870
<i>Assistant Finance Director*</i>	\$15,121	\$19,870
Building Official	\$15,121	\$19,870
City Clerk/Public Information Officer	\$15,121	\$19,870
Deputy Director for Engineering	\$15,121	\$19,870
Deputy Director for Utilities Services	\$15,121	\$19,870
<i>Housing Manager*</i>	\$15,121	\$19,870
<i>Planning Manager *</i>	\$15,121	\$19,870
<i>Program Administrator*</i>	\$15,121	\$19,870
<i>Assistant to the City Manager *</i>	\$14,168	\$18,586
Building Manager	\$13,368	\$17,534
<i>Economic Development Manager*</i>	\$13,368	\$17,534
Environmental Services Administrator	\$13,368	\$17,534
Maintenance Manager	\$13,368	\$17,534
Principal Planner	\$13,368	\$17,534
Recreation Manager	\$13,368	\$17,534
Senior Civil Engineer	\$13,368	\$17,534
Senior Project Manager	\$13,368	\$17,534
Budget Manager	\$12,361	\$16,258
<i>Communications and Engagement Manager *</i>	\$12,361	\$16,258
<i>Community Services Manager *</i>	\$12,361	\$16,258
Environmental Services Manager	\$12,361	\$16,258
<i>Information Services Manager *</i>	\$12,361	\$16,258
Network Architect	\$12,361	\$16,258
Police Support Services Manager	\$12,361	\$16,258
Public Services Administrative Manager	\$12,361	\$16,258
Supervising Civil Engineer	\$12,361	\$16,258
Utility Systems Manager	\$12,361	\$16,258
<i>Accounting Manager *</i>	\$11,506	\$15,124
<i>Financial and Policy Analyst *</i>	\$11,506	\$15,124
<i>Police Administrative Manager*</i>	\$11,506	\$15,124
Senior Planner	\$11,506	\$15,124
Senior Recreation Supervisor	\$10,945	\$13,965
Community Services Supervisor	\$10,423	\$13,301
<i>Council Services and Records Manager *</i>	\$10,423	\$13,301
Deputy City Attorney	\$10,423	\$13,301
Economic Development Coordinator	\$10,423	\$13,301
Emergency Services Coordinator	\$10,423	\$13,301
GIS / Land Use Data Administrator	\$10,423	\$13,301
Maintenance Services Coordinator	\$10,423	\$13,301
<i>Older Adult Services Supervisor*</i>	\$10,423	\$13,301
Public Services Facilities Security Coordinator	\$10,423	\$13,301
Senior Human Resources Analyst	\$10,423	\$13,301
Risk Management Analyst (.50 FTE)	\$4,969	\$6,520
Group 1-C: Confidential Exempt	Bottom	Top
Administrative Analyst	\$9,936	\$13,038
Legal Specialist	\$8,940	\$11,762
Group 1-D: Confidential Non-Exempt	Bottom	Top
Accounting Technician	\$8,150	\$10,401
Human Resources Technician	\$7,926	\$10,401
<i>Human Resources Assistant *</i>	\$6,207	\$8,120

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

City of Morgan Hill
 Resolution 25-039
 14 of 14

Effective: December 19, 2027

* Currently Unfunded Positions

Job Classification	Bottom of Range Monthly	Top of Range Monthly
Group 1-A: Executive Management		
Assistant City Manager for Administrative Services	\$20,067	\$26,368
Assistant City Manager for Development Services	\$20,067	\$26,368
Assistant City Manager/Public Services Director	\$20,067	\$26,368
Chief of Police	\$20,067	\$26,368
<i>Community Services Director *</i>	\$17,699	\$23,306
Development Services Director	\$17,699	\$23,306
Economic Development Director	\$17,699	\$23,306
<i>Engineering and Utilities Director *</i>	\$17,699	\$23,306
Finance Director	\$17,699	\$23,306
Housing and Economic Mobility Director	\$17,699	\$23,306
Human Resources Director	\$17,699	\$23,306
<i>Communications and Engagement Director*</i>	\$15,273	\$20,069
Information Technology Director	\$15,273	\$20,069
Group 1-B: Middle Management	Bottom	Top
Police Captain	\$16,354	\$21,487
Assistant City Attorney	\$15,273	\$20,069
<i>Assistant Finance Director*</i>	\$15,273	\$20,069
Building Official	\$15,273	\$20,069
City Clerk/Public Information Officer	\$15,273	\$20,069
Deputy Director for Engineering	\$15,273	\$20,069
Deputy Director for Utilities Services	\$15,273	\$20,069
<i>Housing Manager*</i>	\$15,273	\$20,069
<i>Planning Manager *</i>	\$15,273	\$20,069
<i>Program Administrator*</i>	\$15,273	\$20,069
<i>Assistant to the City Manager *</i>	\$14,310	\$18,772
Building Manager	\$13,501	\$17,709
<i>Economic Development Manager*</i>	\$13,501	\$17,709
Environmental Services Administrator	\$13,501	\$17,709
Maintenance Manager	\$13,501	\$17,709
Principal Planner	\$13,501	\$17,709
Recreation Manager	\$13,501	\$17,709
Senior Civil Engineer	\$13,501	\$17,709
Senior Project Manager	\$13,501	\$17,709
Budget Manager	\$12,485	\$16,420
<i>Communications and Engagement Manager *</i>	\$12,485	\$16,420
<i>Community Services Manager *</i>	\$12,485	\$16,420
Environmental Services Manager	\$12,485	\$16,420
<i>Information Services Manager *</i>	\$12,485	\$16,420
Network Architect	\$12,485	\$16,420
Police Support Services Manager	\$12,485	\$16,420
Public Services Administrative Manager	\$12,485	\$16,420
Supervising Civil Engineer	\$12,485	\$16,420
Utility Systems Manager	\$12,485	\$16,420
<i>Accounting Manager *</i>	\$11,621	\$15,275
<i>Financial and Policy Analyst *</i>	\$11,621	\$15,275
<i>Police Administrative Manager*</i>	\$11,621	\$15,275
Senior Planner	\$11,621	\$15,275
Senior Recreation Supervisor	\$11,054	\$14,105
Community Services Supervisor	\$10,528	\$13,434
<i>Council Services and Records Manager *</i>	\$10,528	\$13,434
Deputy City Attorney	\$10,528	\$13,434
Economic Development Coordinator	\$10,528	\$13,434
Emergency Services Coordinator	\$10,528	\$13,434
GIS / Land Use Data Administrator	\$10,528	\$13,434
Maintenance Services Coordinator	\$10,528	\$13,434
<i>Older Adult Services Supervisor*</i>	\$10,528	\$13,434
Public Services Facilities Security Coordinator	\$10,528	\$13,434
Senior Human Resources Analyst	\$10,528	\$13,434
Risk Management Analyst (.50 FTE)	\$5,019	\$6,585
Group 1-C: Confidential Exempt	Bottom	Top
Administrative Analyst	\$10,035	\$13,168
Legal Specialist	\$9,029	\$11,880
Group 1-D: Confidential Non-Exempt	Bottom	Top
Accounting Technician	\$8,231	\$10,505
Human Resources Technician	\$8,005	\$10,505
<i>Human Resources Assistant *</i>	\$6,269	\$8,201



City Council

Meeting Minutes

- Mark Turner - Mayor*
Marilyn Librers - Mayor Pro Tem
Soraida Iwanaga - Council Member
Yvonne Martínez Beltrán - Council Member
Miriam Vega - Council Member

Monday, December 15, 2025

12:00 p.m.

**Community and Cultural Center
17000 Monterey Road, Morgan Hill, CA 95037**

SPECIAL MEETING

A Special Meeting was called for the purpose of conducting a closed session.

CALL TO ORDER

Mayor Turner called the City Council meeting to order at 12:05 p.m.

ROLL CALL ATTENDANCE

City Clerk Bigelow called the roll.

PRESENT	Mark Turner, Marilyn Librers, Soraida Iwanaga, Yvonne Martinez Beltran, Miriam Vega
ABSENT	None

DECLARATION OF POSTING AGENDA

City Clerk Bigelow declared the posting of the agenda.

CLOSED SESSION

City Clerk Bigelow announced the closed session item.

Public Employment (§ 54957)

Title: City Attorney

OPPORTUNITY FOR PUBLIC COMMENT ON CLOSED SESSION

Public comment opened at 12:06 p.m. With no requests to speak, public comment closed.

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 12:06 p.m.

ADJOURNMENT

There being no further business, Mayor Turner adjourned the meeting at 4:30 p.m. with no reportable action on the closed session item.

Minutes Prepared by:

Michelle Bigelow, City Clerk



City Council

Meeting Minutes

- Mark Turner* - Mayor
Marilyn Librers - Mayor Pro Tem
Soraida Iwanaga - Council Member
Yvonne Martínez Beltrán - Council Member
Miriam Vega - Council Member

Wednesday, December 17, 2025

5:00 p.m. Closed Session

6:00 p.m. Regular Session

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

SPECIAL/REGULAR MEETING

A special meeting of the City Council was called at 5:00 p.m. for the purpose of conducting a closed session.

SPECIAL MEETING

5:00 p.m. Closed Session

CALL TO ORDER

Mayor Turner called the City Council meeting to order at 5:00 p.m.

ROLL CALL ATTENDANCE

Deputy City Clerk Rossi called the roll.

PRESENT	Mark Turner, Marilyn Librers, Soraida Iwanaga, Yvonne Martinez Beltran, Miriam Vega
ABSENT	None

Council Member Vega arrived at 5:58 p.m.

DECLARATION OF POSTING AGENDA

Deputy City Clerk Rossi declared the posting of the agenda.

CLOSED SESSION

City Attorney Larkin announced the closed session item.

REAL PROPERTY NEGOTIATIONS

Pursuant to: Government Code Section 54956.8

Property: APN – 81706002

Negotiating Parties: City Manager Christina Turner and Public Services Director Chris Ghione

Under Negotiation: Price and Terms

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

Initiation of litigation pursuant to § 54956.9(c)

(Unknown number of cases)

PUBLIC EMPLOYMENT (§ 54957)

Title: City Attorney

OPPORTUNITY FOR PUBLIC COMMENT ON CLOSED SESSION

Public comment opened at 5:00 p.m. With no requests to speak, public comment closed.

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 5:01 p.m.

REGULAR MEETING

The regular meeting convened at 6:00 p.m.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

RECOGNITION

Summer Brown

PRESENTATION

YAC Presentation - Developmental Asset #1: Family life provides high levels of love and support

CITY COUNCIL REPORT

Mayor Turner shared updates on his participation as a member of the VTA 2016 Measure B Caltrain Corridor Ad Hoc Committee, which met to discuss potential eligible 2016 Measure B projects, with additional items scheduled for discussion at future meetings. He highlighted the 12th year of Wreaths Across America, during which nearly 1,300 memorial wreaths were placed on veterans' graves across South County. At Morgan Hill's Mount Hope Cemetery, about 400 wreaths were placed with strong volunteer participation. He also shared that he spoke at the Hanukkah celebration at the CCC on December 14 and addressed attendees following the tragic shooting in Sydney, Australia. Additional updates included his participation in the Morgan Hill Historical Society's 15th Annual Holiday Tea events on December 6 and 7. He noted that Merry Morgan Hill activities were underway, acknowledged a successful Sidewalk Saturday, recognized the Morgan Hill Kiwanis Holiday Parade held on December 6 with appreciation to Margaret Graham and the Morgan Hill Kiwanis for their work, and highlighted holiday events including the Merry Morgan Hill Market at the Granada Theatre and the Morgan Hill Chamber of Commerce market at the CCC.

OTHER REPORTS

Council Member Librers marked her 11th year of appointment to the League of California Cities and expressed appreciation for the opportunity to serve and represent Morgan Hill at the state level, where she addressed issues related to housing, homelessness, families, food access, and related community needs. She shared that after two years on the Transportation Committee advocating for increased transportation resources for Morgan Hill, she was excited to return to the Community Services Committee, a personal passion.

Council Member Martinez Beltran shared updates on her regional and state-level service, including her role on the League of California Cities Board, where she participated in the League Leaders event and board meetings to establish statewide priorities for the year. She noted that the priorities included the financial health of cities, climate impacts such as wildfires and disasters, housing and affordability, and public safety, including police, fire, and public works. She also reported on her role as Chair of the Valley Transportation Authority's Policy Advisory Committee, where she delivered her final board report for the year, and her participation on the Cal Cities Peninsula Division Board representing the Bay Area, San Mateo County, and Santa Clara County, where regional priorities and upcoming events were discussed. Additional updates included her attendance at a local immigration convening and her continued leadership of the 7th Annual Posada event at the Grange, which will take place on Friday and include community giveaways such as bicycles, food, and other resources.

CITY MANAGER'S REPORT

City Manager Turner shared employee recognitions and provided several community updates, including the launch of Balancing Act in December 2025, an online General Fund budget simulation tool that gathered early public input to help inform the City's upcoming two-year budget. She also highlighted community events, including the Merry Morgan Hill Market on Thursday, December 18 at the Granada Theatre, the Posada at the Grange on Friday, December 19, and music and theatre performances at the Morgan Hill Community Playhouse and South Valley Civic Theatre on Saturday, December 20. She further noted a City-hosted Posada at the Community Cultural Center celebrating the adoption of the Healthy Neighborhoods for All Element, supported by South County H.E.A.L.S. and Santa Clara County Supervisor Sylvia Arenas. Additional updates included the opening of Philz Coffee on Cochrane Road and a reminder that City offices would be closed for the furlough period from December 22, 2025, through January 2, 2026, with recreation and aquatics facilities operating on limited schedules and closed on Christmas Day and New Year's Day.

CITY ATTORNEY'S REPORT

City Attorney Larkin reported that the City Council met in closed session prior to the meeting to conduct a conference with real estate negotiators, Christina Turner and Chris Ghione, to discuss the price and terms of sale for City-owned property, APN - 81706002. He also noted that two additional closed session items scheduled for the evening were continued to a later date.

PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

Public comment opened at 6:28 p.m. With no requests to speak, public comment closed.

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

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

CONSENT CALENDAR

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

MOTION:

Approving the consent calendar.

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

1. ACCEPT \$40,000 DONATION FROM THE FRIENDS OF THE MORGAN HILL SENIOR CENTER

Recommendation:

1. Accept \$40,000 donation from the Friends of the Morgan Hill Senior Center to support services at the Centennial Recreation Senior Center; and
2. Authorize the City Manager to execute any agreements necessary for donation acceptance.

2. ACCEPTANCE OF COUNCIL CHAMBER BUILDING ROOF REPLACEMENT PROJECT

Recommendation:

1. Accept as complete the Council Chamber Building Roof Replacement Project;
2. Authorize the Public Services Director to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

3. APPROVE SECOND AMENDMENT TO DESIGN CONSULTANT AGREEMENT WITH VERDE DESIGN FOR \$16,000 FOR ADDITIONAL UNANTICIPATED

SERVICES ASSOCIATED WITH THE BUTTERFIELD PARK CONSTRUCTION

Recommendation:

Authorize the City Manager to execute and administer an amendment to the design consultant agreement with Verde Design for the design of the Butterfield Park Site for an additional \$16,000.

4. APPROVE IMPROVEMENT AGREEMENT AND SUBSEQUENT DEVELOPMENT REIMBURSEMENT AGREEMENT FOR THE TENNANT - TEN SOUTH ACQUISITIONS PROJECT LOCATED AT 740 TENNANT AVENUE WITH ASSESSOR'S PARCEL NUMBER (APN) 817-08-032

Recommendation:

1. Approve an Improvement Agreement with 740 Tennant LP;
2. Approve a Subsequent Development Reimbursement Agreement with 740 Tennant LP; and
3. Authorize the City Manager to execute the Improvement Agreement and Subsequent Development Reimbursement Agreement.

5. APPROVE THE DECEMBER 3, 2025 CITY COUNCIL MEETING MINUTES

Recommendation:

Approve the December 3, 2025 City Council Meeting Minutes.

6. APPROVE A SERVICE AGREEMENT WITH CATHOLIC CHARITIES OF SANTA CLARA COUNTY FOR SOUTH COUNTY YOUTH TASK FORCE YOUTH SUPPORT SERVICES FOR A TOTAL AMOUNT OF \$135,531

Recommendation:

1. Authorize the City Manager to execute, administer, and further negotiate an agreement with Catholic Charities of Santa Clara County in the amount of \$135,531 for the provision of youth support services in association with the South County Youth Task Force;
2. Authorize the City Manager to extend this agreement for two additional one year terms should funding be available and appropriated within future fiscal year budgets;
3. Authorize the City Manager to execute, negotiate, and administer any required agreements with the Morgan Hill Unified School District to receive funding for services associated with the South County Youth Task Force; and
4. Adopt a resolution amending the FY 2025/26 Operating Budget to increase revenue and expenses by \$40,000 in the General Fund.

7. APPROVE AND AUTHORIZE THE CITY MANAGER TO EXECUTE AND

ADMINISTER A SECOND AMENDMENT TO THE AGREEMENT WITH SOLUTIONZ, INC., EXTENDING THE TERM OF THE AGREEMENT TO JUNE 30, 2026

Recommendation:

Approve and authorize the City Manager to execute and administer a second amendment to the Agreement with Solutionz, Inc., extending the term of the agreement to June 30, 2026.

8. **APPROVE MEMORANDUM OF UNDERSTANDING (MOU) WITH MORGAN HILL POLICE OFFICERS' ASSOCIATION (POA) AND CORRESPONDING SALARY SCHEDULES, AND APPROVE MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES RESOLUTION AND CORRESPONDING SALARY SCHEDULES, AND PART-TIME TEMPORARY AND SEASONAL EMPLOYEES SALARY SCHEDULE**

Recommendation:

1. Approve a Memorandum of Understanding (MOU) with POA effective December 21, 2025 - December 31, 2028 and corresponding salary schedules;
2. Approve the Management, Professional, and Confidential Employees Resolution effective December 21, 2025 and corresponding salary schedules; and
3. Approve the Part-Time Temporary and Seasonal Employees salary schedule effective December 21, 2025.

9. **AWARD LANDSCAPE MAINTENANCE SERVICE AGREEMENT TO MEDALLION LANDSCAPE MANAGEMENT, LLC FOR CITY PARKS MOWING, STREET MEDIANS, AND DOWNTOWN**

Recommendation:

1. Award a Maintenance Service Agreement to Medallion Landscape Management, LLC in the amount of \$379,392 for an initial two-year term (\$189,696 annually) to service Group 1: Park Mowing at City Parks; Group 3: Street Medians, Streetscapes, and Parking Lots; and Group 6: Downtown Area; and extra services;
2. Authorize the City Manager to extend the service agreement up to an additional three years subject to future annual budget appropriations by the City Council for a total term of five years; and
3. Authorize the City Manager to execute and administer said Agreement.

10. **RECEIVE MONTHLY BUDGET UPDATE AND OCTOBER 2025 FINANCIAL AND INVESTMENT REPORTS**

Recommendation:

Receive and file reports.

OTHER BUSINESS

11. REVIEW AND APPROVE DESIGN OF A PROPOSED DOWNTOWN GATEWAY ARCH BY THE DOWNTOWN MORGAN HILL IMPROVEMENT DISTRICT (DMHID)

Recommendation:

Review and approve the design of a Downtown Gateway Arch as proposed by the Downtown Morgan Hill Improvement District.

Economic Development Director Mahood provided a presentation and report.

Public comment opened at 7:01 p.m. The following people were called to speak:

David Dindak

Nick Gaich

Dan McCranie

Krista Rupp (Zoom)

Joe Baranowski (Zoom)

With no further requests to speak, public comment closed.

MOTION:

Approving the recommended action.

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

The meeting recessed at 7:23 p.m. and reconvened at 7:29 p.m.

12. RECEIVE REPORT REGARDING MORGAN HILL POLICE DEPARTMENT'S CALIFORNIA COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING MANAGEMENT STUDY

Recommendation:

Accept the report of Morgan Hill Police Department's California Commission on Peace Officer Standards and Training Management Study.

Police Chief Palsgrove provided a presentation and report.

Public comment opened at 7:53 p.m.
Doug Muirhead was called to speak.
With no further requests to speak, public comment closed.

Report received.

13. ADOPT PUBLIC ART MASTER PLAN

Recommendation:
Adopt the 2025 Public Art Master Plan.

Assistant City Manager Ramirez provided a presentation and report.

Public comment opened at 8:30 p.m. The following people were called to speak:
Nick Gaich
Rocke Garcia
With no further requests to speak, public comment closed.

MOTION:
Adopting the 2025 Public Art Master Plan.

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

FUTURE COUNCIL INITIATED AGENDA ITEMS

Review of RFP language and process.

ADJOURNMENT

There being no further business, Mayor Turner adjourned the meeting at 8:56 p.m.

Minutes Prepared by:

Vicky Rossi, Deputy City Clerk



City Council

Meeting Minutes

- Mark Turner* - Mayor
Marilyn Librers - Mayor Pro Tem
Soraida Iwanaga - Council Member
Yvonne Martínez Beltrán - Council Member
Miriam Vega - Council Member

Friday, January 16, 2026

12:00 p.m.

**Community and Cultural Center
Madrone Room
17000 Monterey Road, Morgan Hill, CA 95037**

SPECIAL MEETING

A Special Meeting was called for the purpose of conducting a closed session.

CALL TO ORDER

Mayor Turner called the City Council meeting to order at 12:16 p.m.

ROLL CALL ATTENDANCE

City Attorney Larkin called the roll.

PRESENT	Mark Turner, Marilyn Librers, Soraida Iwanaga, Yvonne Martinez Beltran, Miriam Vega
ABSENT	None

DECLARATION OF POSTING AGENDA

City Attorney Larkin declared the posting of the agenda.

CLOSED SESSION

City Attorney Larkin announced the closed session items.

Public Employment (§ 54957)

Title: City Attorney

Conference with Legal Counsel – Existing Litigation (§ 54956.9)

Name of Case: United States of America v. City of Morgan Hill; City of Petaluma
Northern District, Case No. 5:26-CV-00056-BLF

OPPORTUNITY FOR PUBLIC COMMENT ON CLOSED SESSION

Public comment opened at 12:18 p.m.

Armando Benavides was called to speak.

With no further requests to speak, public comment closed.

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 12:21 p.m.

ADJOURNMENT

There being no further business, Mayor Turner adjourned the meeting at 4:58 p.m. with no reportable action on the closed session items.

Minutes Prepared by:

Michelle Bigelow, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: January 28, 2026

PREPARED BY:

Maria Angeles, Senior Civil Engineer

APPROVED BY: City Manager

APPROVE THE AMENDED AND RESTATED SUBDIVISION IMPROVEMENTS AGREEMENT FOR WALNUT GROVE ESTATES – TRACT NO. 10422 LOCATED ON THE SOUTHEAST CORNER OF THE WALNUT GROVE DRIVE AND DIANA AVENUE INTERSECTION (APN: 726-07-090 - 726-07-098)

RECOMMENDATION(S)

1. Approve the Amended and Restated Subdivision Improvements Agreement for Walnut Grove Estates – Tract No. 10422;
2. Authorize the City Manager to execute the Amended and Restated Subdivision Improvements Agreement with Morgan Hill Mansions LLC (Subdivider); and
3. Authorize the recordation of the Amended and Restated Subdivision Improvements Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment and Preserving Open Space and Agricultural Land

Guiding Documents

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

Walnut Grove Estates - Tract No. 10422 is a nine-lot subdivision ("Project") located on the southeast corner of Walnut Grove Drive and Diana Avenue intersection as shown on the Site Map (Attachment 1). The Final Map for the Project was approved by the City Council on November 15, 2017, and the Final Map and original Subdivision Improvements Agreement were recorded on January 8, 2018.

The original owner and subdivider of the Project, Newland Homes, LLC, and the original builder, SiliconSage Builders, LLC, jointly executed the Subdivision Improvements Agreement (SIA) with the City that required the public improvements for the Project to be completed within eighteen (18) months from the date of the recording of the Final Map (no later than July 8, 2019). Due to project delays, the developer asked for and was granted on August 9, 2019 a six-month extension to the SIA by the City Manager,

through the execution of a first amendment to the SIA, as allowed by the terms of the original 2018 SIA. The first amendment to the SIA extended the completion date for the Project's public improvements to January 8, 2020.

The Project has changed hands multiple times since the recordation of the Final Map, which has contributed to further delays in completing the required public improvements. To date, the construction of the public improvements has yet to be started.

The current property owner, Morgan Hill Mansions LLC (new owner/subdivider) assumed ownership of the development on April 10, 2025). The new owner desires to enter into an amended Subdivision Improvements Agreement. An amended agreement is necessary for the new owner to proceed with the construction of the public improvements, and ultimately build out the residential lots.

Staff recommends that City Council approve the Amended and Restated Subdivision Improvements Agreement (Attachment 2) which sets the new owner's deadline to complete the public improvements for eighteen (18) months from the date of this City Council hearing (no later than July 28, 2027) to allow for the completion of the public improvements. The extension will also preserve the commitments made through the City's Residential Development Control System (RDCS) process which total approximately \$191,000 in funding for school pedestrian safety and capital improvements.

The new owner has made provisions to provide the City with the required fees, security, and insurance prior to recordation of the Amended and Restated Subdivision Improvements Agreement.

COMMUNITY ENGAGEMENT:

Inform

This report serves to inform the community of the recommended Amended and Restated Subdivision Improvements Agreement for Walnut Grove Estates – Tract No. 10422.

ALTERNATIVE ACTIONS:

The City Council could conditionally approve the Amended and Restated Subdivision Improvements Agreement with modifications or new terms/conditions to be negotiated with the new owner. The City Council could also decide not to approve the Amended and Restated Subdivision Improvements Agreement. If the Amended and Restated Subdivision Improvements Agreement is not approved, staff will start the process of "reversion to acreage" and will obtain approval from the City Council to consolidate the lots/parcels into a single parcel and file a new map. This will result in the loss of the RDCS commitments from the project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

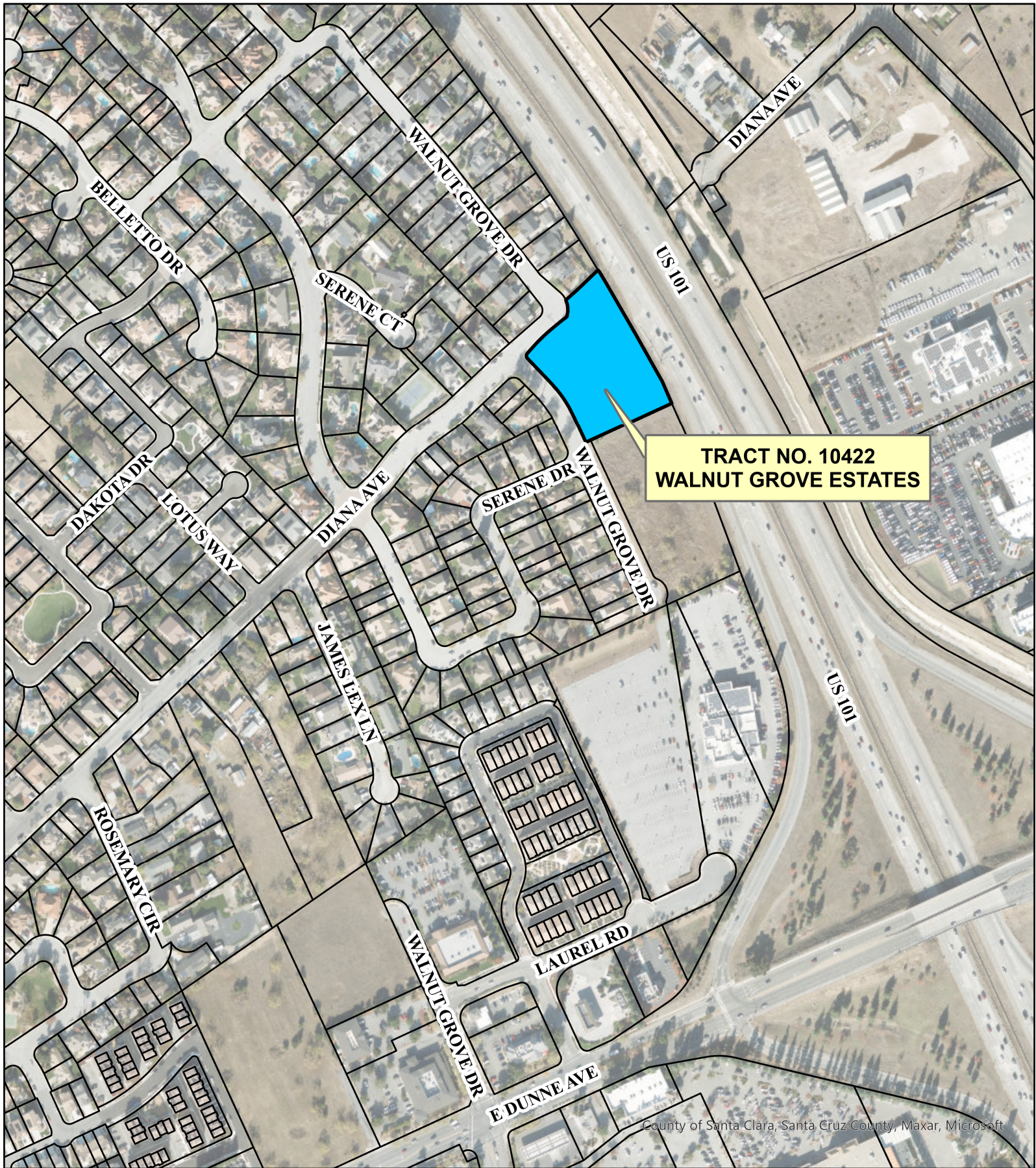
November 15, 2017 – City Council approved the Final Map and authorized execution of the Subdivision Improvements Agreement by the City Manager for Walnut Grove Estates - Tract No. 10422.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Project - Mitigated Negative Declaration was adopted on November 22, 2016 ([Planning Commission Resolution No. 16-66](#)).



**TRACT NO. 10422
WALNUT GROVE ESTATES**

County of Santa Clara, Santa Cruz County, Maxar, Microsoft

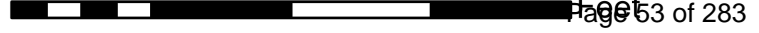


**Public Services Department
Land Development Engineering**

**SITE MAP
WALNUT GROVE ESTATES
TRACT NO. 10422**



0 125 250 500 750 1,000



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

AMENDED AND RESTATED SUBDIVISION IMPROVEMENTS AGREEMENT

MORGAN HILL MANSIONS LLC WALNUT GROVE ESTATES – TRACT NO. 10422

This Amended and Restated Subdivision Improvements Agreement (“Agreement”) between the City of Morgan Hill, a municipal corporation (“City”), and **Morgan Hill Mansions LLC**, a California Limited Liability Company (“Subdivider”), is entered into this ____ day of _____, 2026. City and Subdivider hereby acknowledge the following:

1. A Final Map for Tract No. 10422 was recorded on January 8, 2018 (“Final Map”) by Subdivider’s predecessor in interest for the subdivision known as **Walnut Grove Estates** (“Subdivision”).
2. City required, as part of the conditions of approval (“Conditions”) of the 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 Walnut Grove Estates, Tract No. 10422" (“Plans”).
3. Subdivider’s predecessor in interest entered into a Subdivision Improvements Agreement recorded on January 8, 2018 as document number 238844372, as amended on August 9, 2019 and recorded on August 22, 2019 as document number 24262132. This Agreement replaces and restates the original 2018 Subdivision Improvements Agreement, as amended.
4. Subdivider’s predecessor in interest was unable to complete, prior to filing of the Final Map, all of the Improvements required by City and failed to complete the Improvements after the recordation of the Final Map.
5. As the current owner of the Subdivision property, Subdivider desires to enter into this Agreement with the City to complete the Improvements.
6. 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.

7. To assure City that Subdivider will construct, install and complete all Improvements required for the Subdivision, the parties have entered into this Agreement.

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

Section 2. Construction of Improvements

(a) Subdivider shall construct, as provided for in the Conditions, the Improvements as shown fully executed in the Plans entitled “Improvement Plans for Walnut Grove Estates, Tract No. 10422” subject to the approval of City.

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

(c) Survey Monumentation:

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

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

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

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

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

owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

Section 3. Modification of Plans

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

Section 4. Security

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

Improvements and the City Engineer’s Estimated Costs of Improvements as of **September 4, 2025** are attached hereto as Exhibit “A”.

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

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

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

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

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

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

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

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

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

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

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

Section 5. Inspections

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

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

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

Section 6. Timing of Performance

Subdivider agrees to perform and complete all Improvements within eighteen (18) months from the date of the City Council approval of this Agreement; 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 arise.

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

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

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

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

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

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

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

Section 9. Indemnity

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

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

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

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

Section 10. Insurance

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

approved by City. If the Subdivider will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then Subdivider may opt to have all coverages provided by Subdivider's General Contractor, provided that a written contract is executed between Subdivider and the General Contractor whereby the written contract specifically required General Contractor to fulfill all of the City insurance requirements as outlined in this Agreement, including all endorsements in favor of the City. Verification of the written contract must be provided to City upon request. If Subdivider fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement City shall issue a stop work order, or terminate the Agreement for default. Subdivider further understands that the City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Subdivider, at any time as deemed necessary to protect the interests of the City.

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

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

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

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

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

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

(3) Automobile Liability: Subdivider shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Subdivider does not own automobiles, then

Subdivider shall maintain (Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

(1) ALL Policies:

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

(2) ALL Policies except Workers Compensation:

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

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

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

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

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

Certificate Holder address:

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

Section 11. Permits and Requisite Fees

(a) Subdivider shall pay all current fee obligations in the total amount of **\$793,752.34** due under City Resolution No. 5592, as amended, in accordance with the Department of Public Works Fee Schedule, as follows:

(1) **\$176,388.34** payable prior to approval of this Agreement, and

(2) **\$617,364.00** 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:

Anoop Hegde
Morgan Hill Mansions LLC
1016 S. De Anza Blvd #E106
San Jose CA 95129

- b. Address of City is as follows:

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

With a copy to:

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

Section 15. Noncompliance

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

Section 16. Notice of Breach and/or Default

City may serve written notice upon Subdivider and surety of breach of this Agreement or of any portion thereof, and default of Subdivider for any of the following circumstances:

- (a) Subdivider refuses or fails to complete the Improvements as required in Section 6 above.
- (b) Subdivider refuses or fails to perform or cure any defects in the Improvements as required in Section 7.

(c) Subdivider is insolvent, is subject to a receivership, or files any petition in bankruptcy, either voluntary or involuntary which Subdivider fails to discharge within thirty (30) days.

(d) The commencement of a foreclosure action against the Subdivision or any portion thereof, or any conveyance in lieu of or in avoidance of foreclosure.

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

Section 17. Performance by Surety or City

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

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

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

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

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

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

Section 18. Successors in Interest

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the Final Map of the Subdivision and shall constitute a covenant running with the land and an equitable servitude upon

the real property within the Subdivision. It shall be the responsibility of City to cause the executed Agreement to be recorded. Sale of all or part of the lands of the underlying Subdivision shall not serve to transfer the obligations of the Subdivider under this Agreement. All obligations under this Agreement attach to Subdivider until all obligations of Subdivider are fulfilled or transferred by substitution of replacement agreement and replacement securities acceptable to City.

Section 19. Effective Date

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

Section 20. Amendment of Agreement

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

Section 21. Execution

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

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

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

Section 23. Law to Govern: Venue

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

Section 24. Limitations Upon Subcontracting and Assignment.

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

Section 25. Miscellaneous

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

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

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

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

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

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

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

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

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

CITY OF MORGAN HILL

By:

Christina J. Turner, City Manager

Date: _____

ATTEST:

By:

Michelle Bigelow, City Clerk

Date: _____

APPROVED AS TO FORM:

By:

Donald A. Larkin, City Attorney

Date: _____

"Subdivider"

**Morgan Hill Mansions LLC, a
California Limited Liability
Company**

By:

Print Name and Title
(If Corporation, must be Chairperson of the
Board, President, or Vice President)

Date: _____

By:

Print Name and Title
(If Corporation, must be Secretary, Assistant
Secretary, CFO, or Assistant Treasurer)

Date: _____

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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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.

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SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT "A"

IMPROVEMENTS AND

ESTIMATED COSTS OF IMPROVEMENTS

AS OF SEPTEMBER 4, 2025

		Quantity	Unit	Unit Price	Total Cost
	Schedule III - Onsite Streets & Earthwork (Public)				
1	Existing curb and gutter removal	626	LF	\$ 16.00	\$ 10,016.00
2	Existing pavement removal	14210	SF	\$ 1.00	\$ 14,210.00
3	Existing sidewalk removal	935	SF	\$ 4.00	\$ 3,740.00
4	Existing street light relocation	1	LS	\$ 4,000.00	\$ 4,000.00
5	Existing water service removal	1	LS	\$ 1,500.00	\$ 1,500.00
6	Existing drop inlet and 12" SD removal	1	LS	\$ 1,500.00	\$ 1,500.00
7	Existing curb inlet and 15" SD removal	1	LS	\$ 1,500.00	\$ 1,500.00
8	Street finish grading	36410	SF	\$ 1.00	\$ 36,410.00
9	Sawcut existing pavement	698	LF	\$ 2.00	\$ 1,396.00
10	AC pavement (4" AC on 12" AB)	26354	SF	\$ 10.00	\$ 263,540.00
11	City std curb and gutter	1491	LF	\$ 27.00	\$ 40,257.00
12	City std. valley gutter	41	LF	\$ 20.00	\$ 820.00
13	Min 2" AC grind and overlay	3710	SF	\$ 5.40	\$ 20,034.00
14	City std street monument	2	EA	\$ 1,000.00	\$ 2,000.00
15	Sidewalk incl. driveway approaches	6046	SF	\$ 20.00	\$ 120,920.00
16	Signing & striping	1	LS	\$ 6,000.00	\$ 6,000.00
17	City std. electroliers	6	EA	\$ 6,225.00	\$ 37,350.00
18	Stop signs and legend	1	EA	\$ 1,500.00	\$ 1,500.00
	Schedule IV - Water Improvements (Public)				
1	8" water (DIP - class 50)	757	LF	\$ 150.00	\$ 113,550.00
2	City std. fire hydrants	1	EA	\$ 7,500.00	\$ 7,500.00
3	1" water services	12	EA	\$ 1,800.00	\$ 21,600.00
4	1 1/2" irrigation service w/RPBP	1	EA	\$ 2,600.00	\$ 2,600.00
5	Blow off valves	1	EA	\$ 3,000.00	\$ 3,000.00
	Schedule V - Sewer Improvements (Public)				
1	8" sewer PVC (SDR-26)	520	LF	\$ 60.00	\$ 31,200.00
2	City std. manholes	2	EA	\$ 10,000.00	\$ 20,000.00
3	4" sewer laterals	9	EA	\$ 1,000.00	\$ 9,000.00
	Schedule VI - Drainage (Public)				
1	15" RCP storm	210	LF	\$ 150.00	\$ 31,500.00
2	City std curb inlet	5	EA	\$ 5,500.00	\$ 27,500.00
3	City std storm manhole	1	EA	\$ 7,000.00	\$ 7,000.00
4	36"x36" DI	1	EA	\$ 3,000.00	\$ 3,000.00
				Subtotal	\$ 844,143.00
				10% Contingency	\$ 84,414.30
				Total	\$ 928,557.30

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 **Morgan Hill Mansions LLC** (hereinafter designated as "principal") have entered into an Amended and Restated Subdivision Improvements Agreement:

MORGAN HILL MANSIONS LLC
WALNUT GROVE ESTATES – TRACT NO. 10422

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 2025, and identified as project **Walnut Grove Estates – Tract No. 10422**, 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 **Nine Hundred Twenty Eight Thousand Five Hundred Fifty Seven dollars (\$928,557)** lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The Surety's office is located at _____,

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

License No.: _____

Address: _____

Telephone No.: _____

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

Name of non-resident agent: _____

Non-resident agent's office address: _____

Telephone No.: _____

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

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

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

Executed this _____ day of _____ 20 ____ .

[form document – do not execute]

[form document – do not execute]

Principal

Principal

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

Surety

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

Attorney-in Fact

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

California Resident Agent

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

Non-resident Agent - Attorney-in-Fact

APPROVED:

[form document – do not execute]

Scott Creer, City Engineer

Date:

APPROVED AS TO FORM:

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

Donald A. Larkin, City Attorney

Date:

(Acknowledgment on following page.)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

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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 **Morgan Hill Mansions LLC** (hereinafter designated as "the principal") have entered into an Amended and Restated Subdivision Improvements Agreement:

MORGAN HILL MANSIONS LLC
WALNUT GROVE ESTATES – TRACT NO. 10422

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 2025, and identified as project **Walnut Grove Estates – Tract No. 10422**, 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 **Nine Hundred Twenty Eight Thousand Five Hundred Fifty Seven dollars (\$928,557)**, 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]

[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**

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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 “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 **Morgan Hill Mansions LLC** (hereinafter designated as “Principal”) have entered into an Amended and Restated Subdivision Improvements Agreement (hereinafter “Agreement”):

**MORGAN HILL MANSIONS LLC
WALNUT GROVE ESTATES – TRACT NO. 10422**

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter “Improvements”), which said Agreement, dated _____, 2025, and identified as project **Walnut Grove Estates – Tract No. 10422**, 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 **Four Hundred Sixty Four Thousand Two Hundred Seventy Nine dollars (\$464,279)** 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

7. To assure City that Subdivider will construct, install and complete all Improvements required for the Subdivision, the parties have entered into this Agreement.

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

Section 2. Construction of Improvements

(a) Subdivider shall construct, as provided for in the Conditions, the Improvements as shown fully executed in the Plans entitled "Improvement Plans for Walnut Grove Estates, Tract No. 10422" subject to the approval of City.

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

(c) Survey Monumentation:

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

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

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

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

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

owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

Section 3. Modification of Plans

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

Section 4. Security

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

Improvements and the City Engineer’s Estimated Costs of Improvements as of **September 4, 2025** are attached hereto as Exhibit “A”.

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

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

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

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

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

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

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

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

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

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

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

Section 5. Inspections

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

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

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

Section 6. Timing of Performance

Subdivider agrees to perform and complete all Improvements within eighteen (18) months from the date of the City Council approval of this Agreement; 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 arise.

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

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

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

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

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

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

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

Section 9. Indemnity

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

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

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

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

Section 10. Insurance

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

approved by City. If the Subdivider will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then Subdivider may opt to have all coverages provided by Subdivider's General Contractor, provided that a written contract is executed between Subdivider and the General Contractor whereby the written contract specifically required General Contractor to fulfill all of the City insurance requirements as outlined in this Agreement, including all endorsements in favor of the City. Verification of the written contract must be provided to City upon request. If Subdivider fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement City shall issue a stop work order, or terminate the Agreement for default. Subdivider further understands that the City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Subdivider, at any time as deemed necessary to protect the interests of the City.

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

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

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

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

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

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

(3) Automobile Liability: Subdivider shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Subdivider does not own automobiles, then

Subdivider shall maintain (Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

(1) **ALL Policies:**

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

(2) **ALL Policies except Workers Compensation:**

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

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

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

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

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

Certificate Holder address:

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

Section 11. Permits and Requisite Fees

(a) Subdivider shall pay all current fee obligations in the total amount of **\$793,752.34** due under City Resolution No. 5592, as amended, in accordance with the Department of Public Works Fee Schedule, as follows:

(1) **\$176,388.34** payable prior to approval of this Agreement, and

(2) **\$617,364.00** 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:

Anoop Hegde
Morgan Hill Mansions LLC
1016 S. De Anza Blvd #E106
San Jose CA 95129

- b. Address of City is as follows:

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

With a copy to:

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

Section 15. Noncompliance

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

Section 16. Notice of Breach and/or Default

City may serve written notice upon Subdivider and surety of breach of this Agreement or of any portion thereof, and default of Subdivider for any of the following circumstances:

- (a) Subdivider refuses or fails to complete the Improvements as required in Section 6 above.
- (b) Subdivider refuses or fails to perform or cure any defects in the Improvements as required in Section 7.

(c) Subdivider is insolvent, is subject to a receivership, or files any petition in bankruptcy, either voluntary or involuntary which Subdivider fails to discharge within thirty (30) days.

(d) The commencement of a foreclosure action against the Subdivision or any portion thereof, or any conveyance in lieu of or in avoidance of foreclosure.

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

Section 17. Performance by Surety or City

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

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

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

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

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

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

Section 18. Successors in Interest

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the Final Map of the Subdivision and shall constitute a covenant running with the land and an equitable servitude upon

the real property within the Subdivision. It shall be the responsibility of City to cause the executed Agreement to be recorded. Sale of all or part of the lands of the underlying Subdivision shall not serve to transfer the obligations of the Subdivider under this Agreement. All obligations under this Agreement attach to Subdivider until all obligations of Subdivider are fulfilled or transferred by substitution of replacement agreement and replacement securities acceptable to City.

Section 19. Effective Date

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

Section 20. Amendment of Agreement

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

Section 21. Execution

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

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

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

Section 23. Law to Govern: Venue

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

Section 24. Limitations Upon Subcontracting and Assignment.

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

Section 25. Miscellaneous

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

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

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

- (d) Time of Essence. Time is of the essence in the performance of this Agreement.
- (e) Interpretation. This Agreement shall be interpreted as though prepared by both parties.
- (f) Preservation of Agreement. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.
- (g) Negotiated Document. It is agreed and understood by the parties hereto, that this Agreement has been arrived at through negotiations and that neither party is deemed to be the party which prepared the Agreement within the meaning of Civil Code Section 1654.

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

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

CITY OF MORGAN HILL

By:

Christina J. Turner, City Manager

Date: _____

ATTEST:

By:

Michelle Bigelow, City Clerk

Date: _____

APPROVED AS TO FORM:

By:

Donald A. Larkin, City Attorney

Date: _____

"Subdivider"

**Morgan Hill Mansions LLC, a
California Limited Liability
Company**

By: *Anoop Hegde*

Anoop Hegde,
Print Name and Title *Manager, MHM*
(If Corporation, must be Chairperson of the
Board, President, or Vice President)

Date: 12/05/2025

By: *See Attached Certificate
JC 12/05/2025*

Print Name and Title
(If Corporation, must be Secretary, Assistant
Secretary, CFO, or Assistant Treasurer)

Date: _____

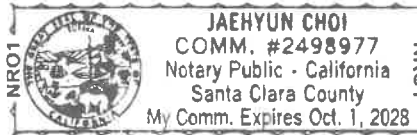
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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

On December 05 2025, before me, Jaehyun Choi a Notary Public in and for said County and State, personally appeared Anoop R. Hegde proved to me on the basis of satisfactory evidence to be the person whose name(s) ~~(s)~~ 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.



Jaehyun Choi
SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT "A"
IMPROVEMENTS AND
ESTIMATED COSTS OF IMPROVEMENTS
AS OF SEPTEMBER 4, 2025

		Quantity	Unit	Unit Price	Total Cost
Schedule III - Onsite Streets & Earthwork (Public)					
1	Existing curb and gutter removal	626	LF	\$ 16.00	\$ 10,016.00
2	Existing pavement removal	14210	SF	\$ 1.00	\$ 14,210.00
3	Existing sidewalk removal	935	SF	\$ 4.00	\$ 3,740.00
4	Existing street light relocation	1	LS	\$ 4,000.00	\$ 4,000.00
5	Existing water service removal	1	LS	\$ 1,500.00	\$ 1,500.00
6	Existing drop inlet and 12" SD removal	1	LS	\$ 1,500.00	\$ 1,500.00
7	Existing curb inlet and 15" SD removal	1	LS	\$ 1,500.00	\$ 1,500.00
8	Street finish grading	36410	SF	\$ 1.00	\$ 36,410.00
9	Sawcut existing pavement	698	LF	\$ 2.00	\$ 1,396.00
10	AC pavement (4" AC on 12" AB)	26354	SF	\$ 10.00	\$ 263,540.00
11	City std curb and gutter	1491	LF	\$ 27.00	\$ 40,257.00
12	City std. valley gutter	41	LF	\$ 20.00	\$ 820.00
13	Min 2" AC grind and overlay	3710	SF	\$ 5.40	\$ 20,034.00
14	City std street monument	2	EA	\$ 1,000.00	\$ 2,000.00
15	Sidewalk incl. driveway approaches	6046	SF	\$ 20.00	\$ 120,920.00
16	Signing & striping	1	LS	\$ 6,000.00	\$ 6,000.00
17	City std. electroliers	6	EA	\$ 6,225.00	\$ 37,350.00
18	Stop signs and legend	1	EA	\$ 1,500.00	\$ 1,500.00
Schedule IV - Water Improvements (Public)					
1	8" water (DIP - class 50)	757	LF	\$ 150.00	\$ 113,550.00
2	City std. fire hydrants	1	EA	\$ 7,500.00	\$ 7,500.00
3	1" water services	12	EA	\$ 1,800.00	\$ 21,600.00
4	1 1/2" irrigation service w/RPBP	1	EA	\$ 2,600.00	\$ 2,600.00
5	Blow off valves	1	EA	\$ 3,000.00	\$ 3,000.00
Schedule V - Sewer Improvements (Public)					
1	8" sewer PVC (SDR-26)	520	LF	\$ 60.00	\$ 31,200.00
2	City std. manholes	2	EA	\$ 10,000.00	\$ 20,000.00
3	4" sewer laterals	9	EA	\$ 1,000.00	\$ 9,000.00
Schedule VI - Drainage (Public)					
1	15" RCP storm	210	LF	\$ 150.00	\$ 31,500.00
2	City std curb inlet	5	EA	\$ 5,500.00	\$ 27,500.00
3	City std storm manhole	1	EA	\$ 7,000.00	\$ 7,000.00
4	36"x36" DI	1	EA	\$ 3,000.00	\$ 3,000.00
Subtotal					\$ 844,143.00
10% Contingency					\$ 84,414.30
Total					\$ 928,557.30

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 **Morgan Hill Mansions LLC** (hereinafter designated as "principal") have entered into an Amended and Restated Subdivision Improvements Agreement:

MORGAN HILL MANSIONS LLC
WALNUT GROVE ESTATES – TRACT NO. 10422

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 2025, and identified as project **Walnut Grove Estates – Tract No. 10422**, 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 **Nine Hundred Twenty Eight Thousand Five Hundred Fifty Seven dollars (\$928,557)** lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The Surety's office is located at _____,

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

License No.: _____

Address: _____

Telephone No.: _____

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

Name of non-resident agent: _____

Non-resident agent's office address: _____

Telephone No.: _____

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

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

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

Executed this _____ day of _____ 20 ____ .

[form document – do not execute]

[form document – do not execute]

Principal

Principal

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

Surety

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

Attorney-in Fact

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

California Resident Agent

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

Non-resident Agent - Attorney-in-Fact

APPROVED:

[form document – do not execute]

Scott Creer, City Engineer

Date:

APPROVED AS TO FORM:

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

Donald A. Larkin, City Attorney

Date:

(Acknowledgment on following page.)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and **Morgan Hill Mansions LLC** (hereinafter designated as "the principal") have entered into an Amended and Restated Subdivision Improvements Agreement:

MORGAN HILL MANSIONS LLC
WALNUT GROVE ESTATES – TRACT NO. 10422

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 2025, and identified as project **Walnut Grove Estates – Tract No. 10422**, 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 **Nine Hundred Twenty Eight Thousand Five Hundred Fifty Seven dollars (\$928,557)**, 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]

[form document – do not execute]

Principal

Principal

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

Surety

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

Attorney-in Fact

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

California Resident Agent

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

Non-resident Agent - Attorney-in-Fact

APPROVED:

[form document – do not execute]

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

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

Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

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

State of California
County of Santa Clara

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

State of California
County of Santa Clara

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

**EXHIBIT “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 **Morgan Hill Mansions LLC** (hereinafter designated as “Principal”) have entered into an Amended and Restated Subdivision Improvements Agreement (hereinafter “Agreement”):

**MORGAN HILL MANSIONS LLC
WALNUT GROVE ESTATES – TRACT NO. 10422**

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter “Improvements”), which said Agreement, dated _____, 2025, and identified as project **Walnut Grove Estates – Tract No. 10422**, 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 **Four Hundred Sixty Four Thousand Two Hundred Seventy Nine dollars (\$464,279)** 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

Warranty Bond Page 1 of 4
Version July 2017

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 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/ *[form document – do not execute]*

s/ *[form document – do not execute]*

Name: _____

Name: _____

Title: _____

Title: _____

(Attach Acknowledgment with Notary

Seal and Power of Attorney)

APPROVED:

[form document – do not execute]

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

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

Donald A. Larkin, City Attorney

Date: _____

END OF WARRANTY BOND

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

CITY COUNCIL STAFF REPORT

MEETING DATE: January 28, 2026

PREPARED BY:

Cynthia Iwanaga, Management Analyst

APPROVED BY: City Manager

APPROVE FIRST AMENDMENT TO MAINTENANCE SERVICE AGREEMENT WITH MJR ELECTRIC, INC. TO INCREASE THE NOT TO EXCEED AMOUNT BY \$160,000 FOR A TOTAL AGREEMENT AMOUNT OF \$260,000 FOR ON-CALL ELECTRICAL MAINTENANCE AND REPAIRS AT CITY FACILITIES

RECOMMENDATION(S)

1. Approve the First Amendment to the Maintenance Service Agreement with MJR Electric, Inc. for \$160,000 for a total agreement amount of \$260,000; and
2. Authorize the City Manager to execute and administer the First Amendment to the Maintenance Service Agreement with MJR Electric, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Maintaining and Enhancing Infrastructure

2024-2025 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider a First Amendment to the City's Maintenance Service Agreement with MJR Electric, Inc. for on-call electrical maintenance and repair services. The First Amendment will increase the total amount of the agreement by \$160,000 from \$100,000 to \$260,000. The City has utilized MJR Electric's existing on-call agreement for several building maintenance renovations and repairs, including the conversion of the City Hall lobby to office space, the Council Chamber audiovisual upgrades, and the Police Department's downtown camera installation. City staff utilized MJR Electric over other electrical contractors because of their routinely lower pricing.

The City has contracted for electrical maintenance and repair services for many years on an on-call, as-needed basis, as the City does not have the staffing resources to perform the work internally. The original amount of MJR Electric's agreement was \$100,000 for a two-year term from July 1, 2024, to June 30, 2026. There is currently a

balance of approximately \$30,000 remaining on the agreement. This First Amendment will add \$160,000 to the agreement to be used for energy-efficient lighting replacements to achieve cost savings, grant-funded electric vehicle charging station installation, and other as-needed on-call work. The revised total amount of the agreement will be \$260,000.

COMMUNITY ENGAGEMENT:

Not Applicable

Contract electrical repairs are a routine maintenance component of operating the City's facilities, and, as such, no engagement on this contract amendment was undertaken.

ALTERNATIVE ACTIONS:

The City Council could decline to approve the amendment, but this is not recommended because this would limit the City's options when repairs and other work are needed.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council awarded the original agreement to MJR Electric, Inc. on May 15, 2024. The original agreement was awarded through a competitive Request for Proposals (RFP) process conducted in March 2024.

FISCAL AND RESOURCE IMPACT:

The \$160,000 contract amendment will be funded within various areas of facility maintenance in Fund 741 Building Replacement, General Fund 010, and Building Maintenance Fund 740 to support various city buildings. No additional appropriation is needed to support this contract amendment.

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

**FIRST AMENDMENT TO AGREEMENT
MJR ELECTRIC, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and MJR ELECTRIC, INC., a California Corporation ("SERVICE PROVIDER" OR "CONTRACTOR"), hereinafter referred to collectively as the "Parties".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon the authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of May 22, 2024, for services for a maximum compensation of One Hundred Thousand Dollars (\$100,000.00), pursuant to the action of the Morgan Hill City Council taken on May 15, 2024. ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the MAINTENANCE SERVICE AGREEMENT, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:
 - A. Paragraph 4.1 shall be amended to reflect the increased total compensation that shall not exceed Two Hundred Sixty Thousand Dollars (\$260,000.00).
 - B. Paragraph 10.2 shall be amended and replaced in its entirety by the following:
 - "10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite.
 - 10.2.1. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
 - 10.2.2. SERVICE PROVIDER 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.

- 10.2.3. As applicable, if the Agreement Amount exceeds Thirty Thousand Dollars (\$30,000.00), SERVICE PROVIDER 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.
- 10.2.4. SERVICE PROVIDER must comply with the provisions of Labor Code Section 1815 with respect to payment of overtime.
- 10.2.5. Under Labor Code Section 1813, SERVICE PROVIDER will forfeit to CITY as a penalty, the sum of Twenty-Five Dollars (\$25.00) for each day during which a worker employed by SERVICE PROVIDER 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. Paragraph 13 shall be amended and replaced in its entirety by the following:

"13. **Conflict of Interest and Reporting.** SERVICE PROVIDER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement including, without limitation, complying with California Government Code section 1090 et seq., the California Political Reform Act (California Government Code section 87100 et seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et seq.). SERVICE PROVIDER will further comply and will ensure that its agents and its subcontractors comply, with California Government Code section 84308 ("Levine Act") and the applicable regulations of the Fair Political Practices Commission concerning campaign disclosure (2 California Code of Regulations sections 18438.1 – 18438.8)."

D. All references in Exhibit A to "Contractor" or "Proposer" shall be updated to "Service Provider".

- 2. **Notice of Security and/or Privacy Incident.** If SERVICE PROVIDER, or its subconsultant, suspect, discover or are notified of a data security incident or potential breach of security and/or privacy relating to CITY PII, PHI and/or PCI, SERVICE PROVIDER shall immediately, but in no event later than forty-eight (48) hours from suspicion, discovery, or notification of the incident or potential breach, notify CITY of such incident or potential breach. SERVICE PROVIDER shall, upon CITY's request, investigate such incident or potential breach, inform the CITY of the results of any such investigation, and assist the CITY in maintaining the confidentiality of such information. In addition to the foregoing, SERVICE PROVIDER shall provide CITY with any assistance necessary to comply with any state and/or federal laws requiring the provision of notice of any privacy incident or security breach with respect to any CITY PII, PHI and/or PCI to the affected or impacted individuals and/or organizations, in addition to any notification to applicable state and federal agencies. SERVICE PROVIDER agrees that it shall reimburse CITY for all expenses, costs, attorneys' fees, and resulting fines, penalties, and damages associated with such incident, breach, investigation and/or notification.
- 3. **Electronic Signatures.** Unless otherwise prohibited by law or CITY policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the CITY.

4. **Counterpart Signatures.** This Agreement may be signed in multiple counterparts, which shall, when executed by all the Parties, constitute a single binding agreement.
5. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Christina Turner, City Manager


Date: _____

Date: _____

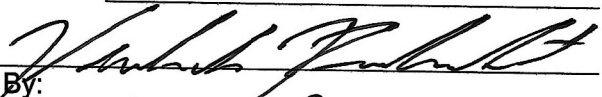
APPROVED AS TO FORM:
Donald A. Larkin, City Attorney

MJR ELECTRIC, INC.

Date: _____

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

Date: 1/20/26

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

Date: 1/20/26

439357

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

1000033504

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

Expiration Date(s) 5/31/2027

Expiration Date(s) 06/30/2026

Seal:

EXHIBIT 1

**MAINTENANCE SERVICE AGREEMENT
MJR Electric, Inc.**

THIS AGREEMENT is entered into and becomes effective on 5/22/2024 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and MJR Electric, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on May, 15, 2024.

2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2026 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum of three one-year extensions. Any such extension shall be in writing and signed by both Parties to this Agreement.

3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be on-call electrical maintenance and repair services as further described in **Exhibit A**.

4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:

4.1. **Amount.** \$100,000.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed One-Hundred Thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for each subsequent extended one-year term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the immediately preceding prior year of service.

4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

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

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

6.1. **Schedule.** SERVICE PROVIDER shall perform all work and services under this Agreement in conformance with the time schedule set forth on **Exhibit C**, "Schedule of Performance," attached hereto and incorporated herein by this reference. The City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement.

6.2. **Storage of Service Provider's Equipment.** If SERVICE PROVIDER desires to leave or store any of SERVICE PROVIDER'S equipment at a CITY site while SERVICE PROVIDER is performing work or service pursuant to this Agreement, SERVICE PROVIDER will first obtain the consent of the City Manager, or his/her delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at SERVICE PROVIDER'S sole risk.

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

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

8.1. **Insurance Types and Amounts.**

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

8.1.2. **Automobile Liability.** SERVICE PROVIDER shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if SERVICE PROVIDER does not own automobiles, then SERVICE PROVIDER shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

8.1.5. Professional Liability.

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

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

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

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

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

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

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

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

8.2.2. Workers Compensation.

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

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

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

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

Certificate Holder address:

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

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

10. **Compliance with Law.**

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

10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

10.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

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

Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal

Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

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

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

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

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

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

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

12. **Confidentiality.** All data, documents, or other information received by SERVICE PROVIDER from CITY or prepared in connection with SERVICE PROVIDER'S services under this Agreement are

deemed confidential and shall not be disclosed to any third party by SERVICE PROVIDER without prior written consent by CITY.

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

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

Address of SERVICE PROVIDER is as follows:

MJR Electric, Inc.
P.O. Box 668
Morgan Hill, CA 95038
Attn: Michael Rauschnot, President

Address of CITY is as follows:

Keri Russell, Maint. Manager	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

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

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

17. **Maintenance of Records.**

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

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

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

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

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

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

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

22. **Defense and Indemnification.**

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

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

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

22.4. **Right to Offset.** CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER'S failure to pay CITY promptly any indemnification arising under this Section (22) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER'S failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

22.5. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly

understood and agreed that the obligation of SERVICE PROVIDER to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

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

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

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

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

27. **Binding Agreement.** Notwithstanding the provisions of Section 20 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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

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Signatures are on the following page.

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

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

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

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

ATTEST:

DocuSigned by:

Michelle Bigelow

City Clerk/Deputy City Clerk

Michelle Bigelow

Print Name

Date: 5/22/2024

APPROVED AS TO FORM:

DocuSigned by:

Donald Larkin

City Attorney

Donald A. Larkin

Print Name

Date: 5/16/2024

CITY OF MORGAN HILL

DocuSigned by:

Christina Turner

City Manager

Christina J. Turner

Print Name

Date: 5/22/2024

MJR ELECTRIC, INC.

[Signature]

By:

Michael Rauschnot - President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 5/2/24

[Signature]

By:

Nicholas Rauschnot - Secretary

Print Name and Title of Signer.

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

Date: 5/2/24

439357

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

Expiration Date(s) 05/31/2025

1000033504

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

Expiration Date(s) 06/30/2024

EXHIBIT A SCOPE OF SERVICES

Contractor will provide full-service, on-call electrical maintenance and repair services at City facilities in compliance with all applicable laws, regulations, policies and procedures. Firms submitting bids must be prepared to immediately enter into a contract ("Agreement") for the services and duties as set forth in this RFP.

Services to be performed include the furnishing of all labor, materials, tools, equipment, supplies, services, tasks and incidental and customary work necessary to competently perform on-call electrical maintenance and repair work at various City facilities (see Attachment A).

The work will include the provision of a total maintenance and repair program consisting of a variety of tasks including, but not limited to, laying out, installing, replacing, wiring and testing electrical service and electrical wire systems and components used to provide heat, light, power, air conditioning, and refrigeration in municipal buildings and facilities. Services may also include installing and repairing conduit and other materials; connecting electrical machinery, equipment and controls and transmission systems and servicing other electrical related issues as they arise and services necessary to insure safe, well maintained electrical systems for City employees and the public. The scope and number of projects and tasks are unknown at the time of contract execution.

The Contractor shall leave work areas free of all dirt, litter, lubricants, or other materials utilized to perform electrical maintenance.

The Contractor shall erect barricades, warning signs, and any other devices to prevent unauthorized access by the public or unauthorized City staff to work areas.

The Contractor shall respond to all requests for repairs or unscheduled emergency repairs as required, 24 hours per day, 365 days per year, including holidays. All costs for labor and materials for these calls shall be included in the proposal. Response time by the Contractor shall be within four (4) hours of all requests.

The successful proposer will be responsible for providing labor, supervision, materials, equipment, transportation, service and the shop facilities necessary to perform high quality work. Contractor will also be responsible for discarding all used materials.

It is the intent of the City of Morgan Hill to identify and establish long term partnerships with highly qualified contractors. To achieve the best level of service, the City believes that the relationship must be based on mutual trust and respect. Teamwork, flexibility, and cooperation will be essential characteristics of the successful Contractor.

2-1 SCOPE OF SERVICE The Contractor shall provide full-service on-call electrical maintenance and repair services to City Facilities as outlined in this document. Contractor shall retain professional personnel who have successfully and competently provided municipal facility electrical maintenance and repair services on projects of similar scope and complexity. It shall be the Contractor's responsibility to effectively repair and maintain, to the satisfaction of the City representative, all aspects of electrical systems in City defined facilities with minimal downtime. All maintenance and repairs shall be provided in accordance with the

highest standards of the industry, skill, workmanship, applicable trade practices, shall meet warranties and be in conformance to all applicable laws, codes and regulations. The successful Contractor's electrical maintenance and repairs shall, at a minimum, include but not be limited to the specifications outlined herein.

2-2 SERVICES TO BE PROVIDED It is the Proposer's responsibility to provide an appropriate level of staffing and provide appropriate tools and vehicles necessary to support all facility electrical maintenance and repair functions during hours of operation and for response after normal working hours. Proposer shall maintain the appropriate license and will comply with all other license, insurance and permit requirements of the City, State and Federal governments, as well as all other requirements of the law.

2-3 TERM OF SERVICE The term of the contract will be from July 1, 2024 through June 30, 2026. The contract may be canceled or any portion thereof at any time during the term of service and such cancellations shall be effective upon giving thirty (30) days written notice. The City, at its option, may renew this contract for up to three, one year periods, beginning on July 1, 2026. This option will be exercised only if the contractor has demonstrated superior performance in provision of On-Call Electrical Maintenance and Repair Services to the City.

Pricing entries in the Bid Proposal apply to the period of July 1, 2024 to June 30, 2026. If the contract is renewed, a cost escalation will be reviewed each subsequent year beginning on July 1, 2026.

2-4 WORK HOURS Scheduled maintenance and repairs shall typically occur during normal business hours. Facility business hours are:

- Aquatics Center is open weekdays from 5:00 a.m. to 8:00 p. m., Saturdays from 7:00 a.m. to 1:00 p.m. (summer season to 6:30 p.m.), and Sundays 7:00 a.m. to 10:00am. (summer season to 6:30 p.m.).
- Centennial Recreation Center is an active facility on Weekdays from 5:00 a.m. to 9:30 p.m., Saturdays and Sundays from 6:30 a.m. to 5:00 p.m.
- City Hall is open Monday-Friday 8:00 a.m. – 5:00 p.m.
- Chambers Building is open Monday-Friday 8:00 a.m. – 5:00 p.m.
- The Community and Cultural Center is open Monday-Friday 8:00 a.m. – 5:00 p.m.
- The Police Department is open Monday-Friday 8:00 a.m. – 5:30 p.m.
- The Public Works Corporation Yard is open Monday-Thursday 6:30 a.m. – 4:00 p.m. and Fridays from 6:30 a.m. - 3:00 p.m.
- The Villas are open Monday-Friday 8:00 a.m. – 5:00 p.m.
- Community Park Restrooms are open seven days a week 6:00 a.m. to 10:00 p.m.
- Galvan Park Restroom are open seven days a week 6:00 a.m. to 10:00 p.m.
- Railroad Park Restroom are open seven days a week 6:00 a.m. to 10:00 p.m.

2-5 SERVICE AVAILABILITY The contractor shall have trouble-call service available on a twenty-four hours a day, seven days a week basis with a response time not to exceed the following:

EMERGENCIES.....two-hour response time
NON-EMERGENCIES..... four-hour response time

Time to respond shall start when the City calls the problem into Contractor's designated emergency phone number. Additionally, the contractor shall provide the ability to respond

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

2-6 TROUBLE-CALL/REPAIR SERVICE Should the City request the contractor to make unscheduled, emergency electrical system repairs, the City shall be responsible for labor and travel costs associated therewith. These costs, as listed in the proposal, will be a critical part of the bid evaluation in determining the lowest responsive and responsible contractor. Rates shall be firm for the term of the contract. The City reserves the right to contract with others for trouble calls and repairs.

2-7 BILLABLE WORK The Contractor shall not bill for unnecessary repairs, for repairs that were not completed satisfactorily, for repairs that did not fix an identified problem, or for facility visits that are made by staff unqualified to complete needed repairs.

2-8 STAFFING, WORKMANSHIP AND QUALITY LEVEL The Contractor shall provide a staffing level to perform on-call electrical maintenance and repair services at designated City facilities in a thorough and professional manner, so that the City is provided with reliable and high quality electrical maintenance at all times. The Contractor shall possess and maintain a C-10 General Electrical license by the State of California Contractors Licensing Board through the term of the contract. All personnel performing work under this Contract shall possess and maintain a state journeyman certification and be directly employed and supervised by the Contractor. Any assigned apprentice shall work directly under the supervision of a qualified journeyman. The Contractor shall provide management and technical supervision through competent supervisors as required. The Contractor shall be responsible for the skills, methods and actions of all employees, subcontractors and for all work done.

2-9 MAINTENANCE AND REPAIR LOCATIONS See Section 2-Attachment A

2-10 TOOLS AND EQUIPMENT The Contractor shall furnish and maintain all equipment necessary for properly servicing and maintaining electrical systems in City buildings. The City of Morgan Hill reserves the right to inspect equipment to be used to perform services under this contract. Any equipment determined to be in poor condition must be replaced immediately, at the contractor's expense. Failure to provide suitable equipment for carrying out all requirements of this contract may be grounds for termination.

2-11 PARTS AND MATERIALS The Contractor shall furnish all parts and materials necessary for properly maintaining and repairing electrical systems in City buildings. Mark-up on parts and materials may not exceed 10% of Contractor's cost. Invoices must identify the work performed, cost of labor, parts/materials used, parts/materials cost, and parts/materials mark-up cost.

2-12 INSPECTIONS AND REMEDIES So as to ensure consistent quality of the work being performed, the City Representative will perform periodic inspections of electrical systems to ensure compliance with the contract specifications. Inspections may be made by the City at any time to confirm that work performed meets specifications. If corrective work is required, the City will provide a written list of items and the Contractor shall correct deficiencies as directed. If deficiencies are not corrected in a timely manner, the City may perform the work using others and deduct the cost from the Contractor's payment.

2-13 DAMAGES The Contractor will be responsible for all damages to the facility or contents caused by Contractor, their staff or subcontractors during the performance of their duties.

2-14 SAFETY & SECURITY The Contractor and staff shall follow all established safety procedures and shall take special care not to endanger themselves and the public in any way. The Contractor is responsible for the security of all doors at the conclusion of work in each room. All exterior doors should remain locked at all times. Interior doors that are found open or unlocked shall be left in the same position/condition in which they were found.

2-15 FINGERPRINTING (Live Scan State of California Criminal Records Check): All Contractor staff who will be working on City facilities must pass a State of California Department of Justice (DOJ) Criminal Records and FBI Background Check at the contractor’s expense. The background checks can be performed at a Live Scan State of California Criminal Records Check locations or at the City of Morgan Hill Police Department. If the Contractor choses to complete the background check at the Morgan Hill Police Department, the fingerprinting appointments can be scheduled by calling 408-776-7300 or via online at <https://calendly.com/mhpdrecords/30min> . The Morgan Hill Police Department is located at 16200 Vineyard Boulevard, Morgan Hill. The total fee is currently \$69.00 per person (\$20.00 for PD appointment and \$32 for DOJ check and \$17 for FBI check) payable at the time of the appointment. The Contractor is responsible for providing the City of Morgan Hill with updated records check information for their employees.

2-16 EMERGENCY SITUATIONS For medical or public safety emergencies occurring at the Facilities call 9-1-1. For all building maintenance emergencies (water leaks, etc.) contact the Maintenance Manager or designated staff to report the issue immediately (24-hours/day).

2-17 REPORTS / INVOICING
All invoices should include a detailed summary of all work and repairs performed. Should a repair need to be made over \$1,000 a quote will need to be provided to the City before any work can be authorized.

ATTACHMENT A

**MUNICIPAL FACILITIES LOCATIONS
ELECTRICAL SYSTEMS TO BE MAINTAINED AT THESE LOCATIONS**

BUILDING/FACILITY	ADDRESS	SQUARE FOOTAGE
Aquatics Center (office area)	16200 Condit Road	5,294
Centennial Recreation Center	171 West Edmundson Avenue	25,135
City Hall	17575 Peak Avenue	13,900
Community and Cultural Center and Playhouse	17000 Monterey Road	20,500; 5,000
Council Chamber Building	17555 Peak Avenue	12,104
Police Department	16200 Vineyard Boulevard	43,286
Public Works Corporation Yard	100 Edes Court	4,583
The Villas	535 Alkire Avenue	4,500
Dunne Hill Fire Station	2100 East Dunne Avenue	
El Toro Fire Station	18300 Old Monterey Road	

All other parks and City-owned properties

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Please see hourly rates on the next page

ATTACHMENT A COST SCHEDULE

Electrical On-Call Maintenance Services at Morgan Hill City Facilities*

Name of Contractor: MJR Electric

Base Bid Item #	Item	Hourly Rate	Comments
1.	Shop Rate for Electrical Services – Apprentice (8:00 a.m. to 5:00 p.m.)	\$ \$250	
2.	Shop Rate for Electrical Services- Journeyman (8:00 a.m. to 5:00 p.m.)	\$ \$300	
3.	Shop Rate for Other Electrical Services- Describe in Comments Section	\$ n/a	
4.	Overtime Rate for Electrical Services- Apprentice (5:00 p.m. to 8:00 a.m.)	\$ \$375	
5.	Overtime Rate for Electrical Services- Journeyman (5:00 p.m. to 8:00 a.m.)	\$ \$450	
6.	Other Overtime Rate – Describe in Comments Section	\$ n/a	
7.	Saturday, Sunday and Holiday Rate- Apprentice	\$ \$375	
8.	Saturday, Sunday and Holiday Rate- Journeyman	\$ \$450	

***Please attach a separate "Equipment Rate Schedule": Describe Equipment Hourly Rate or Flat Rate**

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Services to be scheduled on an on-call basis with City Maintenance Staff.



CITY COUNCIL STAFF REPORT

MEETING DATE: January 28, 2026

PREPARED BY:

Spring Andrews, Information Technology Director

APPROVED BY: City Manager

AUTHORIZE THE CITY MANAGER TO EXECUTE A PURCHASE AGREEMENT FOR COMPUTER EQUIPMENT WITH SAVANT SOLUTIONS

RECOMMENDATION(S)

Authorize the City Manager to execute a purchase agreement for computer equipment with Savant Solutions with an amount not to exceed \$150,000.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

Supporting our Youth, Seniors, and Entire Community

Fostering a Positive Organizational Culture

2024-2025 Strategic Priorities

Fiscal Sustainability

Guiding Documents

GIS Strategic Plan

Morgan Hill 2035 General Plan

Public Safety Master Plan

REPORT NARRATIVE:

Background:

In order to more efficiently replace aged-out equipment, we are moving to a replacement cycle for workstation inventory. We are able to leverage more competitive pricing when buying annually in volume rather than multiple small purchases.

Current challenge:

Current workstations are no longer supported and have reached end-of-life.

Additionally, the workstation configurations do not support current business needs. Due to global supply constraints and pricing volatility, quotes are only valid for a limited time before being subject to increases or becoming void from lack of supply. Our current quote is only valid until 1/31/2026.

Proposal:

Leverage budgeted funds to replace end-of-life equipment that is no longer sustainable. The new equipment will improve our teammates' work experience by leveraging faster processors, additional memory and storage. The new workstations are custom-built based on business needs to support new applications and initiatives.

The quote from Savant Solutions, in the amount of \$148,799, utilizes a competitively solicited cooperative purchasing contract from the National Association of State Procurement Officials' (NASPO), a nationally recognized public sector cooperative contracting vehicle that aggregates demand to secure best-value pricing, and is permissible under the City of Morgan Hill's purchasing provisions, which allow procurement through cooperative contracts that have been competitively bid by another public agency as an exception to the City's formal competitive bidding requirements.

Staff recommends that the City Council authorize the City Manager to execute a purchase agreement for computer equipment with Savant Solutions for an amount not to exceed \$150,000.

COMMUNITY ENGAGEMENT:

This staff report serves to inform the Community of the City's need to purchase equipment.

ALTERNATIVE ACTIONS:

Council could direct staff to seek and purchase with an alternative provider; however, this will likely result in additional costs. Re-engaging another vendor to purchase computer equipment would not only result in additional costs, but also pose significant delays due to price volatility and supply chain issues, furthering our risk of equipment failure.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

There has been no prior City Council action related to this purchase, however, the City routinely purchases computer equipment.

FISCAL AND RESOURCE IMPACT:

There is sufficient funding available for this purchase. The amount has been budgeted for in the 2025-26 fiscal year.

CEQA (California Environmental Quality Act):

Not a project.

This agreement will not result in direct or indirect physical changes to the environment.

CITY COUNCIL STAFF REPORT

MEETING DATE: January 28, 2026

PREPARED BY:

Cynthia Iwanaga, Management Analyst

APPROVED BY: City Manager

AWARD CENTENNIAL RECREATION CENTER POOL REPLASTERING PROJECT

RECOMMENDATION(S)

1. Award contract to Earl Adams Tile-Coping & Plastering, Inc., dba Adams Pool Solutions in the amount of \$112,976 and authorize the expenditure of up to 20% contingency funds not to exceed \$22,595; and
2. Authorize the City Manager to execute and administer that certain construction contract with Earl Adams Tile-Coping & Plastering, Inc., dba Adams Pool Solutions.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2024-2025 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to consider the award of a contract to Earl Adams Tile-Coping & Plastering Inc. dba Adams Pool Solutions ("Adams Pool Solutions") in the amount of \$112,976 to complete the replastering of the Centennial Recreation Center's (CRC) swimming pool. The scope of work for the CRC Pool Replastering project ("Project") includes all labor and materials necessary to replaster the pool's entire 3,418 SF surface including the removal and replacement of attached equipment, and materials including drain covers, grates, recessed ladder steps, LED lights installation, and rebuilding the west and east entry steps. The contractor will also be responsible for refilling the pool with the water connection provided by and paid for by the City.

The replastering project is scheduled to occur in March 2026. At the same time, the CRC will also have Heating, Ventilation & Air Conditioning (HVAC) work done by a separate contractor on adjacent areas of the pool deck. These projects were scheduled to be completed simultaneously to minimize the amount of time the CRC pool will be closed to the public. The CRC pool was last replastered in 2013, and replastering will ensure the long-term operation of this community asset.

In soliciting for this contract, the City published a Notice Inviting Bids in the Morgan Hill Times on November 21, 2025. On November 24th, the bid documents were posted on the City website, and the Public Purchase online service. The bid documents were also sent to the Builders' Exchange of Santa Clara County, San Francisco Builders' Exchange, Bay Area Builders' Exchange, Central Coast Builders' Association, and Dodge and Data Analytics. Contractors registered on the City's Informal Bidders list with the required Contractor State Licensing Board (CSLB) license Class C-53 (Swimming Pools) were also notified of the bid. A non-mandatory pre-bid meeting and job walk was held at the CRC on December 2, 2025 and three contractors attended. On December 17, 2025, four bids were received.

Bidder's Name	Base Bid Amount
Adams Pool Solutions	\$112,976
BNO Builders, Inc.	\$193,000
Burkett's Pool Plastering, Inc.	\$127,507
USA Construction, LLC	\$149,640

The lowest responsive and responsible bidder was Adams Pool Solutions. This company has over 29 years of industry knowledge and experience in the replastering of commercial pools including replastering pools for jurisdictions including the City of Gilroy. City staff is recommending that the Council award the contract to Adams Pool solutions and authorize the City Manager to execute and administer the agreement (Attachment 1).

COMMUNITY ENGAGEMENT:

Inform

The CRC Pool Replastering project is scheduled to take place in March 2026. Information on the pool closure will be shared directly with members via social media and email communications. Several weeks before the CRC pool replastering begins, signs will be posted at the CRC informing members of the upcoming project and pool closure. The CRC Welcome Desk staff will be kept fully informed of the construction schedule so that they can keep CRC members up to date on the progress of the project.

ALTERNATIVE ACTIONS:

The City Council could decide not to approve this project. Postponing this work is not recommended, as the replastering of the pool surface and the HVAC work at the CRC pool were scheduled to occur simultaneously to reduce the amount of time the CRC pool is closed to the public.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

No prior action taken on this item.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this contract will be \$135,571, which includes the contract amount of \$112,976, and a 20% contingency of \$22,595. The contingency will support completing the project within the one-month planned pool closure window in order to best support customer service. This project will be funded by the Capital Improvement Project (CIP) Recreation Facility Renovation Fund (PR1005).

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

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

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and Earl Adams Tile-Coping & Plastering, Inc. dba Adams Pool Solutions, a California Corporation ("Contractor") for work on the CRC Swimming Pool Replastering 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 January 28, 2026, (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; and
 - 2.13 The following: No Other Documents.
3. **Contractor's Obligations.** Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor One Hundred Twelve Thousand Nine Hundred Seventy-Six Dollars (\$112,976) (the "Contract Price"), for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, federal, state and local taxes, insurance, bonds, and all overhead costs, in accordance with the payment provisions in the General Conditions.
5. **Time for Completion.** Contractor will fully complete the Work for the Project between March 2, 2026 to March 27, 2026 as set forth in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** As further specified in Section 5.4 of the General Conditions, if Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of Five Hundred Dollars (\$500.00) for each day of unexcused delay in achieving Final Completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract. Contract Price will be reduced accordingly.
7. **Labor Code Compliance.**
 - 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.
 - 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship, and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
 - 7.3 **DIR Registration.** City will not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
8. **Workers' Compensation Certification.** Pursuant to Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. **Conflicts of Interest.** Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement, or in violation of any California law, including Government Code Section 1090 *et seq.*, or the Political Reform Act, as set forth in Government Code Section 81000 *et seq.* and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.
10. **Independent Contractor.** Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.
11. **Notice.** Any notice required by the Contract Documents must be made in writing, 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: kerirussell@morganhill.ca.gov

Contractor:

Name: Earl Adams Tile-Coping & Plastering Inc. dba Adams Pool Solutions
Address: 3675 Old Santa Rita Road
City/State/Zip: Pleasanton, CA 94588
Phone: (925) 828-3100
Attn: Debra Eula, CFO
Email: debbie@adamspools.com
Copy to: tony@adamspools.com

12. **General Provisions.**

- 12.1 **Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's lawful heirs, successors, and permitted assigns.

- 12.2 Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract.
- 12.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Santa Clara County, and no other place.
- 12.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 12.5 Integration; 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.
- 12.6 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. If Contractor is a partnership, signature by a general partner with authority to bind the partnership is required. If Contractor is a limited liability company (LLC), a signature by a member or manager with authority to bind the LLC is required.
- 12.7 Electronic Signatures.** Unless otherwise prohibited by law or City policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City.
- 12.8 Notice of Security and/or Privacy Incident.** If Contractor, or its subcontractor, suspect, discover or are notified of a data security incident or potential breach of security and/or privacy relating to City PII, PHI and/or PCI, Contractor shall immediately, but in no event later than forty-eight (48) hours from suspicion, discovery or notification of the incident or potential breach, notify City of such incident or potential breach. Contractor shall, upon City's request, investigate such incident or potential breach, inform the City of the results of any such investigation, and assist the City in

maintaining the confidentiality of such information. In addition to the foregoing, Contractor shall provide City with any assistance necessary to comply with any state and/or federal laws requiring the provision of notice of any privacy incident or security breach with respect to any City PII, PHI and/or PCI to the affected or impacted individuals and/or organizations, in addition to any notification to applicable state and federal agencies. Contractor agrees that it shall reimburse City for all expenses, costs, attorneys' fees, and resulting fines, penalties, and damages associated with such incident, breach, investigation and/or notification.

[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:

EARL ADAMS TILE-COPING &
PLASTERING, INC DBA ADAMS POOL
SOLUTIONS



Signature

Debra Eula, CFO

Name/Title [print]

Date: 1/6/26

*Corporate entities must provide a
second signature:*



Signature

Tony Adams, CEO

Name/Title [print]

Date: 1/6/26

726779

Contractor's License Number(s)

8/31/2026

Expiration Date(s)

Seal:

1000006072

Contractor's DIR Registration Number(s)

06/30/2028

Expiration Date

END OF CONTRACT

PERFORMANCE BOND

The City of Morgan Hill ("City") and Earl Adams Tile-Coping & Plastering, Inc. dba Adams Pool Solutions ("Contractor") have entered into a contract, dated January 28, 2026 ("Contract") for work on the CRC Swimming Pool Replastering Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

1. **General.** Under this Bond, Contractor as Principal and _____
The Ohio Casualty Insurance Company, its surety ("Surety"), are bound to City as obligee for an amount not less than
*See Below Dollars (\$ 112,976.00) (the "Bond Sum") to ensure Contractor's faithful performance of its obligations under the Contract. By executing this Bond, Contractor and Surety bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, to the provisions of this Bond.
2. **Surety's Obligations.** Surety's obligations are co-extensive with Contractor's obligations under the Contract. If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, Surety's obligations under this Bond will become null and void. Otherwise, Surety's obligations will remain in full force and effect.
3. **Waiver.** Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code Sections 2819 and 2845.
4. **Application of Contract Balance.** Upon making a demand on this Bond, City will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by City to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which City is entitled under the terms of the Contract.
5. **Contractor Default.** Upon written notification from City that Contractor is in default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:
 - 5.1 Arrange for completion of the Work under the Contract by Contractor, with City's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;

*One Hundred Twelve Thousand Nine Hundred Seventy-Six Dollars & 00/100

5.2 Arrange for completion of the Work under the Contract by a qualified contractor acceptable to City, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense; or

5.3 Waive its right to complete the Work under the Contract and reimburse City the amount of City's costs to have the remaining Work completed.

- 6. Surety Default.** If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.
- 7. Notice.** Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: James Ross
Address: 1990 North California Blvd., Suite 620
City/State/Zip: Walnut Creek, CA 94596
Phone: 415-537-2521
Fax: 925-482-1000
Email: james.ross@libertymutual.com

- 8. Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Superior Court of Santa Clara County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.
- 9. Effective Date; Execution.** This Bond is entered into and is effective on January 5th, 2026.

[Signatures are on the following page.]

SURETY:

s/ WAS

Name: Wendy A. Stewart

Title: Attorney-in-Fact

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

s/ Debra Eula

Name: Debra Eula

Title: CFO

APPROVED AS TO FORM:

By: Donald A. Larkin, City Attorney

Date: _____

END OF PERFORMANCE BOND

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California }
County of Contra Costa }

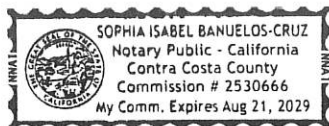
On January 5, 2026 before me, Sophia Isabel Banuelos-Cruz
Date Here Insert Name and Title of the Officer

personally appeared Wendy A. Stewart
Name(s) of Signer(s)

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 [Handwritten Signature]
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Performance Bond

Document Date: 1/5/20 Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name:

- Corporate Officer - Title(s):
Partner - Limited General
Individual Attorney in Fact
Trustee Guardian or Conservator
Other:

Signer is Representing:

Signer's Name:

- Corporate Officer - Title(s):
Partner - Limited General
Individual Attorney in Fact
Trustee Guardian or Conservator
Other:

Signer is Representing:

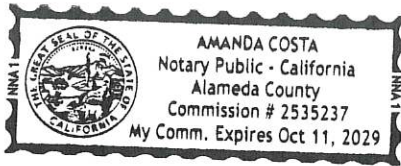
CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California
County of Alameda
On January 6, 2026 before me, Amanda Costa - Notary Public
personally appeared Debra Eula

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 [Handwritten Signature]
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title or Type of Document: Performance Bond
Document Date: Number of Pages:
Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)
Signer's Name:
Corporate Officer - Title(s):
Partner - Limited General
Individual Attorney in Fact
Trustee Guardian or Conservator
Other:
Signer is Representing:

PAYMENT BOND

The City of Morgan Hill ("City") and Earl Adams Tile-Coping & Plastering, Inc. dba Adams Pool Solutions ("Contractor") have entered into a contract, dated January 28, 2026 ("Contract") for work on the CRC Swimming Pool Replastering Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____
The Ohio Casualty Insurance Company, its surety ("Surety"), are bound to City as obligee in an amount not less than _____*See Below Dollars (\$112,976.00-----) ("Bond Sum"), under California Civil Code Sections 9550, et seq., to ensure payment to authorized claimants. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor
2. **Surety's Obligation.** If Contractor or any of its Subcontractors fails to pay a person authorized in California Civil Code Section 9100 to assert a claim against a payment bond, any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors, under California Unemployment Insurance Code Section 13020, with respect to the work and labor, then Surety will pay the obligation.
3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code Section 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4. **Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code Sections 2819 and 2845. City waives 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:

*One Hundred Twelve Thousand Nine Hundred Seventy-Six Dollars & 00/100

Attn: James Ross
Address: 1990 North California Blvd., Suite 620
City/State/Zip: Walnut Creek, CA 94596
Phone: 415-537-2521
Fax: 925-482-1000
Email: james.ross@libertymutual.com

6. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Superior Court of Santa Clara County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.
7. **Effective Date; Execution.** This Bond is entered into and is effective on January 5th, 2026.

SURETY:

s/ 

Name: Wendy A. Stewart

Title: Attorney-in-Fact

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

s/ 

Name: Debra Eula

Title: CFO

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF PAYMENT BOND

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California }
County of Contra Costa

On January 5, 2020 before me, Sophia Isabel Banuelos-Cruz
Date Here Insert Name and Title of the Officer

personally appeared Wendy A. Stewart
Name(s) of Signer(s)

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 [Handwritten Signature]
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Payment Bond

Document Date: 1/5/20 Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: Signer's Name:

Corporate Officer - Title(s): Corporate Officer - Title(s):

Partner - Limited General Partner - Limited General

Individual Attorney in Fact Individual Attorney in Fact

Trustee Guardian or Conservator Trustee Guardian or Conservator

Other: Other:

Signer is Representing: Signer is Representing:



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8208975-984841

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Andrew Bolger; Christina Davis; Cory Higgins; Jamie Yaudes; Jessica Griewahn; Julie Heckman; Lisa Reyes; Nicole Sidlauskas; Wendy Stewart

all of the city of Walnut Creek state of CA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 7th day of November, 2022.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

State of PENNSYLVANIA
County of MONTGOMERY

On this 7th day of November, 2022 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 5th day of January, 2026.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California

County of Alameda }

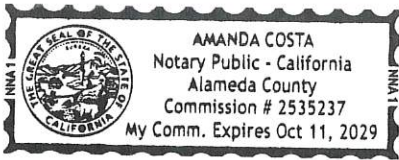
On January 6, 2026 before me, Amanda Costa - Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Debra Eula
Name(s) of Signer(s)

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.



Place Notary Seal and/or Stamp Above

Signature *A Costa*
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Payment Bond

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

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, e.g., additional definitions that apply solely to the Specifications or other technical documents. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the following (in any tense or form): “day,” “furnish,” “including,” “install,” “work day,” or “working day.”

Allowance means a specific amount that must be included in the Bid Proposal for Work that may or may not be included in the Project, depending on conditions that will not become known until after bids are opened. If the Contract Price includes an Allowance and the cost of performing the Work covered by that Allowance is greater or less than the Allowance, the Contract Price will be increased or decreased accordingly.

Article, as used in these General Conditions, means a numbered Article of the General Conditions, unless otherwise indicated by the context.

Change Order means a written document duly approved and executed by City, which changes the scope of Work, the Contract Price, or the Contract Time.

City means the City of Morgan Hill, acting through its City Council, officers, employees, City Engineer, and any other authorized representatives.

City Engineer means the City Engineer for the City and his or her authorized delegee(s).

Claim means a separate demand by Contractor for a change in the Contract Time or Contract Price, that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part; a written demand by Contractor disputing a unilateral Change Order or a portion thereof; or a written demand by Contractor objecting to the amount of Final Payment.

Contract means the signed agreement between City and Contractor for performing the Work required for the Project, and all documents expressly incorporated therein.

Contract Documents means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Notice Inviting 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 Plans and Specifications; any Change Orders; and any other documents that are clearly and unambiguously made part of the Contract Documents. The Contract Documents do not include documents provided "For Reference Only," or documents that are intended solely to provide information regarding existing conditions.

Contract Price means the total compensation to be paid to Contractor for performance of the Work, as set forth in the Contract and as may be amended by Change Order or adjusted for an Allowance. The Contract Price is not subject to adjustment due to inflation or due to the increased cost of labor, material, or equipment following submission of the Bid Proposal. The Contract Price is deemed to include all applicable federal, state, and local taxes.

Contract Time means the number of days specified for complete performance of the Work, as set forth in the Contract and as amended by Change Order.

Contractor means the individual, partnership, corporation, or joint-venture that has signed the Contract with City to perform the Work.

Day means a calendar day unless otherwise specified.

Design Professional means the licensed individual(s) or firm(s) retained by City to provide architectural, engineering, or other design professional services for the Project. If no Design Professional has been retained for this Project, any reference to Design Professional is deemed to refer to the Engineer.

DIR means the California Department of Industrial Relations.

Drawings has the same meaning as Plans, and does not include Shop Drawings.

Engineer means the City Engineer for the City of Morgan Hill and his or her authorized delegee(s).

Excusable Delay is defined in Section 5.3(B), Excusable Delay.

Extra Work means new or unforeseen work added to the Project, as determined by the Engineer in his or her sole discretion, including Work that was not part of or incidental to the scope of the Work when the Contractor's bid was submitted; Work that is substantially different from the Work as described in the Contract Documents at bid time; or Work that results from a substantially differing and unforeseeable condition.

Final Completion means Contractor has fully completed all of the Work required by the Contract Documents to the City's satisfaction, including all punch list items, and any required commissioning or training, and has provided the City with all required submittals, including the instructions and manuals, product warranties, and as-built drawings.

Final Payment means payment to Contractor of the unpaid Contract Price, including release of undisputed retention, less amounts withheld or deducted pursuant to the Contract Documents.

Furnish means to purchase and deliver for the Project.

Government Code Claim means a claim submitted pursuant to California Government Code Section 900 et seq.

Hazardous Materials means any substance or material identified now or in the future as hazardous under any Laws, or any other substance or material that may be considered hazardous or otherwise subject to Laws governing handling, disposal, or cleanup.

Including, whether or not capitalized, means "including, but not limited to," unless the context clearly requires otherwise.

Inspector means the individual(s) or firm(s) retained or employed by City to inspect the workmanship, materials, and manner of construction of the Project and its components to ensure compliance with the Contract Documents and all Laws.

Install means to fix in place for materials, and to fix in place and connect for equipment.

Laws means all applicable local, state, and federal laws, regulations, rules, codes, ordinances, permits, orders, and the like enacted or imposed by or under the auspices of any governmental entity with jurisdiction over any of the Work or any performance of the Work, including health and safety requirements.

Non-Excusable Delay is defined in Section 5.3(D), Non-Excusable Delay.

Plans means the City-provided plans, drawings, details, or graphical depictions of the Project requirements, but does not include Shop Drawings.

Project means the public works project referenced in the Contract.

Project Manager means the individual designated by City to oversee and manage the Project on City's behalf and may include his or her authorized delegee(s) when the Project Manager is unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to the Engineer.

Recoverable Costs is defined in Section 5.3(F), Recoverable Costs.

Request for Information or RFI means Contractor's written request for information about the Contract Documents, the Work or the Project, submitted to City in the manner and format specified by City.

Section, when capitalized in these General Conditions, means a numbered section or subsection of the General Conditions, unless the context clearly indicates otherwise.

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to City acceptance, which are intended to provide details for fabrication, installation, and the like, of items required by or shown in the Plans or Specifications.

Specialty Work means Work that must be performed by a specialized Subcontractor with the specified license or other special certification, and that the Contractor is not qualified to self-perform.

Specifications means the technical, text specifications describing the Project requirements, which are prepared for and incorporated into the Contract by or on behalf of City, and does not include the Contract, General Conditions or Special Conditions.

Subcontractor means an individual, partnership, corporation, or joint-venture retained by Contractor directly or indirectly through a subcontract to perform a specific portion of the Work. The term Subcontractor applies to subcontractors, suppliers, fabricators, and equipment lessors of all tiers, unless otherwise

indicated by the context. A third party such as a utility performing related work on the Project is not a Subcontractor, even if Contractor must coordinate its Work with the third party.

Technical Specifications has the same meaning as Specifications.

Work means all of the construction and services necessary for or incidental to completing the Project in conformance with the requirements of the Contract Documents.

Work Day or Working Day, whether or not capitalized, means a weekday when the City is open for business, and does not include holidays observed by City.

Worksite means the place or places where the Work is performed, which includes, but may extend beyond the Project site, including separate locations for staging, storage, or fabrication.

Article 2 Roles and Responsibilities

2.1 City.

(A) **City Council.** The City Council has final authority in all matters affecting the Project, except to the extent it has delegated authority to the Engineer.

(B) **Engineer.** The Engineer, acting within the authority conferred by the City Council, is responsible for administration of the Project on behalf of City, including authority to provide directions to the Design Professional and to Contractor to ensure proper and timely completion of the Project. The Engineer's decisions are final and conclusive within the scope of his or her authority, including interpretation of the Contract Documents.

(C) **Project Manager.** The Project Manager assigned to the Project will be the primary point of contact for the Contractor and will serve as City's representative, for daily administration of the Project on behalf of City. Unless otherwise specified, all of Contractor's communications to City (in any form) will go to or through the Project Manager. City reserves the right to reassign the Project Manager role at any time or to delegate duties to additional City representatives, without prior notice to or consent of Contractor.

(D) **Design Professional.** The Design Professional is responsible for the overall design of the Project, and to the extent authorized by City, may act on City's behalf to ensure performance of the Work in compliance with the Plans and Specifications, including any design changes authorized by Change Order. The Design Professional's duties may include review of Contractor's submittals, visits to any Worksite, inspecting the Work, evaluating test and inspection results, and participation in Project-related meetings, including any pre-construction conference, weekly meetings, and coordination meetings. The Design Professional's interpretation of the Plans or Specifications is final and conclusive.

2.2 Contractor.

(A) **General.** Contractor must provide all labor, materials, supplies, equipment, services, and incidentals necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economical and efficient manner in the best interests of City, and with minimal inconvenience to the public.

(B) **Responsibility for the Work and Risk of Loss.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate

the efficient and timely completion of the Work. Contractor is solely responsible for, and required to exercise full control over the Work, including the construction means, methods, techniques, sequences, procedures, safety precautions and programs, and coordination of all portions of the Work with that of all other contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions. Contractor's responsibilities extend to any plan, method or sequence suggested, but not required by City or specified in the Contract Documents. From the date of commencement of the Work until either the date on which City formally accepts the Project or the effective date of termination of the Contract, whichever is later, Contractor bears all risks of injury or damage to the Work and the materials and equipment delivered to any Worksite, by any cause including fire, earthquake, wind, weather, vandalism or theft, subject to the limitations of Laws, including Public Contract Code section 7105.

(C) **Project Administration.** Contractor must provide sufficient and competent administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents. Before starting the Work, Contractor must designate in writing and provide complete contact information, including telephone numbers and email address, for the officer or employee in Contractor's organization who is to serve as Contractor's primary representative for the Project, and who has authority to act on Contractor's behalf. A Subcontractor may not serve as Contractor's primary representative.

(D) **On-Site Superintendent.** Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent acceptable to City, and assistants, as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. The superintendent must have full authority to act and communicate on behalf of Contractor, and Contractor will be bound by the superintendent's communications to City. City's approval of the superintendent is required before the Work commences. If City is not satisfied with the superintendent's performance, City may request a qualified replacement of the superintendent. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of Contract Time, until an approved superintendent is physically present to supervise the Work. Contractor must provide written notice to City, as soon as practicable, before replacing the superintendent.

(E) **Standards.** Contractor must, at all times, ensure that the Work is performed in an efficient, skillful manner following best practices and in full compliance with the Contract Documents, Laws, and applicable manufacturer's recommendations. Contractor has a material and ongoing obligation to provide true and complete information, to the best of its

knowledge, with respect to all records, documents, or communications pertaining to the Project, including oral or written reports, statements, certifications, Change Order requests, or Claims.

(F) **Meetings.** Contractor, its project manager, superintendent, and any primary Subcontractors requested by City, must attend a pre-construction conference, if requested by City, as well as weekly Project progress meetings scheduled with City. If applicable, Contractor may also be required to participate in coordination meetings with other parties relating to other work being performed on or near the Project site or in relation to the Project, including work or activities performed by City, other contractors, or other utility owners.

(G) **Construction Records.** Contractor will maintain up-to-date, thorough, legible, and dated daily job reports, which document all significant activity on the Project for each day that Work is performed on the Project. The daily report for each day must include the number of workers at the Project site; primary Work activities; major deliveries; problems encountered, including injuries, if any; weather and site conditions; and delays, if any. Contractor will take date and time-stamped photographs to document general progress of the Project, including site conditions prior to construction activities, before and after photographs at offset trench laterals, existing improvements and utilities, damage and restoration. Contractor will maintain copies of all subcontracts, Project-related correspondence with Subcontractors, and records of meetings with Subcontractors. Upon request by the City, Contractor will permit review of and/or provide copies of any of these construction records.

(H) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any Subcontractors, or any other party or parties performing portions of the Work or providing equipment, materials, or services for or on behalf of Contractor or the Subcontractors. Upon City's written request, Contractor must promptly and permanently remove from the Project, at no cost to City, any employee, Subcontractor, or employee of a Subcontractor who the Engineer has determined to be incompetent, intemperate or disorderly, or who has failed or refused to perform the Work as required under the Contract Documents.

(I) **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by City to be deficient or defective in any way, including workmanship, materials, parts, or equipment. Workmanship, materials, parts, or equipment that do not conform to the requirements under the Contract Documents, as determined by City, will be considered defective and subject to rejection. Contractor must also promptly correct, at Contractor's sole expense, any Work performed beyond the lines and grades shown on the Plans or established

by City, and any Extra Work performed without City's prior written approval. If Contractor fails to correct or to take reasonable steps toward correcting defective Work within five days following notice from City, or within the time specified in City's notice to correct, City may elect to have the defective Work corrected by its own forces or by a third party, in which case the cost of correction will be deducted from the Contract Price. If City elects to correct defective Work due to Contractor's failure or refusal to do so, City or its agents will have the right to take possession of and use any equipment, supplies, or materials available at the Project site or any Worksite on City property, in order to effectuate the correction, at no extra cost to City. Contractor's warranty obligations under Section 11.2, Warranty, will not be waived nor limited by City's actions to correct defective Work under these circumstances. Alternatively, City may elect to retain defective Work, and deduct the difference in value, as determined by the Engineer, from payments otherwise due to Contractor. This paragraph applies to any defective Work performed by Contractor during the one-year warranty period under Section 11.2.

(J) **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos, electronic records, approved samples, and the construction records required pursuant to paragraph (G), above. Project records subject to this provision include complete Project cost records and records relating to preparation of Contractor's bid, including estimates, take-offs, and price quotes or bids.

(1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as Extra Work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.

(2) Contractor must continue to maintain its Project-related records in an organized manner for a period of five years after City's acceptance of the Project or following Contract termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours. Contractor's records may also be subject to

examination and audit by the California State Auditor, pursuant to Government Code Section 8546.7. The record-keeping requirements set forth in this subsection 2.2(J) will survive expiration or termination of the Contract.

(K) **Copies of Project Documents.** Contractor and its Subcontractors must keep copies, at the Project site, of all Work-related documents, including the Contract, permit(s), Plans, Specifications, addenda, Contract amendments, Change Orders, RFIs and RFI responses, Shop Drawings, as-built drawings, schedules, daily records, testing and inspection reports or results, and any related written interpretations. These documents must be available to City for reference at all times during construction of the Project.

2.3 Subcontractors.

(A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work, for reasons including the Subcontractor's poor reputation, lack of relevant experience, financial instability, and lack of technical ability or adequately trained workforce. Each Subcontractor must obtain a City business license before performing any Work.

(B) **Contractual Obligations.** Contractor must require each Subcontractor to comply with the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, including the generally applicable terms of the Contract Documents, and to likewise bind their subcontractors. Contractor will provide that the rights that each Subcontractor may have against any manufacturer or supplier for breach of warranty or guarantee relating to items provided by the Subcontractor for the Project, will be assigned to City. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and City, but City is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor. Copies of subcontracts must be available to the Engineer upon request. Before a Subcontractor commences Work on the Project, Contractor must provide the Engineer a written statement with the name of the Subcontractor, a description of each portion of the Work performed by the Subcontractor, and the percentage of the overall Work to be performed by the Subcontractor.

(C) **Termination.** If the Contract is terminated, each Subcontractor's agreement must be assigned by Contractor to City, subject to the prior rights of any surety, but only if and to the extent that City accepts, in writing, the assignment by written notification, and assumes all rights and obligations of Contractor pursuant to each such subcontract agreement.

(D) **Substitution of Subcontractor.** If Contractor requests substitution of a listed Subcontractor under Public Contract Code Section 4107, Contractor is solely responsible for all costs City incurs in responding to the request, including legal fees and costs to conduct a hearing, and any increased subcontract cost to perform the Work that was to be performed by the listed Subcontractor. If City determines that a Subcontractor is unacceptable to City based on the Subcontractor's failure to satisfactorily perform its Work, or for any of the grounds for substitution listed in Public Contract Code Section 4107(a), City may request removal of the Subcontractor from the Project. Upon receipt of a written request from City to remove a Subcontractor pursuant to this paragraph, Contractor will immediately remove the Subcontractor from the Project and, at no further cost to City, will either (1) self-perform the remaining Work to the extent that Contractor is duly licensed and qualified to do so, or (2) substitute a Subcontractor that is acceptable to City, in compliance with Public Contract Code Section 4107, as applicable.

2.4 Coordination of Work.

(A) **Concurrent Work.** City reserves the right to perform, have performed, or permit performance of other work on or adjacent to the Project site while the Work is being performed for the Project. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, including by any utility companies or agencies, and must avoid hindering, delaying, or interfering with the work of other contractors, individuals, or entities, and must ensure safe and reasonable site access and use as required or authorized by City. To the full extent permitted by law, Contractor must hold harmless and indemnify City against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of any utility company or agency or another contractor or subcontractor.

(B) **Coordination.** If Contractor's Work will connect or interface with work performed by others, Contractor is responsible for independently measuring and visually inspecting such work to ensure a correct connection and interface. Contractor is responsible for any failure by Contractor or its Subcontractors to confirm measurements before proceeding with connecting Work. Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give the Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any known or reasonably discoverable defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work. Contractor must also promptly notify City if work performed by others, including work or activities performed by City's own forces, is operating to hinder, delay, or interfere

with Contractor's timely performance of the Work. City reserves the right to backcharge Contractor for any additional costs incurred due to Contractor's failure to comply with the requirements in this Section 2.4.

2.5 Submittals. Unless otherwise specified, Contractor must submit to the Engineer for review and acceptance, all schedules, Shop Drawings, samples, product data and similar submittals required by the Contract Documents, or upon request by the Engineer. Unless otherwise specified, all submittals, including Requests for Information, are subject to the general provisions of this Section, as well as specific submittal requirements that may be included elsewhere in the Contract Documents, including the Special Conditions or Specifications. The Engineer may require submission of a submittal schedule at or before a pre-construction conference, as may be specified in the Notice to Proceed.

(A) **General.** Contractor is responsible for ensuring that its submittals are accurate and conform to the Contract Documents.

(B) **Time and Manner of Submission.** Contractor must ensure that its submittals are prepared and delivered in a manner consistent with the current City-accepted schedule for the Work and within the applicable time specified in the Contract Documents, or if no time is specified, in such time and sequence so as not to delay the performance of the Work or completion of the Project.

(C) **Required Contents.** Each submittal must include the Project name and contract number, Contractor's name and address, the name and address of any Subcontractor or supplier involved with the submittal, the date, and references to applicable Specification section(s) and/or drawing and detail number(s).

(D) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections as specified in full conformance with the requirements of this Section, or other requirements that apply to that submittal.

(E) **Effect of Review and Acceptance.** Review and acceptance of a submittal by City will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for any errors in any submittal, and review or acceptance of a submittal by City is not an assumption of risk or liability by City.

(F) **Enforcement.** Any Work performed or any material furnished, installed, fabricated, or used without City's prior acceptance of a required submittal is performed or provided at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing

and replacing such Work or material, repairs to other affected portions of the Work or material, and the cost of additional time or services required of City, including costs for the Design Professional, Project Manager, or Inspector.

(G) **Excessive RFIs.** An RFI will be considered excessive or unnecessary if the City determines that the explanation or response to the RFI is clearly and unambiguously discernable from the Contract Documents. City's costs to review and respond to excessive or unnecessary RFIs may be deducted from payments otherwise due to Contractor.

2.6 Shop Drawings. When Shop Drawings are required by the Specifications or requested by the Engineer, they must be prepared according to best practices at Contractor's expense. The Shop Drawings must be of a size and scale to clearly show all necessary details. Unless otherwise specified by City, Shop Drawings must be provided to the Engineer for review and acceptance at least 30 days before the Work will be performed. If City requires changes, the corrected Shop Drawings must be resubmitted to the Engineer for review within the time specified by the Engineer. For all Project components requiring Shop Drawings, Contractor will not furnish materials or perform any Work until the Shop Drawings for those components are accepted by City. Contractor is responsible for any errors or omissions in the Shop Drawings, shop fits and field corrections; any deviations from the Contract Documents; and for the results obtained by the use of Shop Drawings. Acceptance of Shop Drawings by City does not relieve Contractor of Contractor's responsibility.

2.7 Access to Work. Contractor must afford prompt and safe access to any Worksite by City and its employees, agents, or consultants authorized by City; and upon request by City, Contractor must promptly arrange for City representatives to visit or inspect manufacturing sites or fabrication facilities for items to be incorporated into the Work.

2.8 Personnel. Contractor and its Subcontractors must employ only competent and skillful personnel to perform the Work. Contractor and its Subcontractor's supervisors, security or safety personnel, and employees who have unescorted access to the Project site must possess proficiency in English sufficient to read, understand, receive, and implement oral or written communications or instructions relating to their respective job functions, including safety and security requirements. Upon written notification from the Engineer, Contractor and its Subcontractors must immediately discharge any personnel who are incompetent, disorderly, disruptive, threatening, abusive, or profane, or otherwise refuse or fail to comply with the requirements of the Contract Documents or Laws, including Laws pertaining to health and safety. Any such discharged personnel may not be re-employed or permitted on the Project in any capacity without City's prior written consent.

Article 3 - Contract Documents

3.1 Interpretation of Contract Documents.

(A) **Plans and Specifications.** The Plans and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Plans and Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all Work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Plans and Specifications, the Specifications will control, unless the Plan(s) at issue are dated later than the Specification(s) at issue. Detailed drawings take precedence over general drawings, and large-scale drawings take precedence over smaller scale drawings. Any arrangement or division of the Plans and Specifications into sections is for convenience and is not intended to limit the Work required by separate trades. A conclusion presented in the Plans or Specifications is only a recommendation. Actual locations and depths must be determined by Contractor's field investigation. Contractor may request access to underlying or background information in City's possession that is necessary for Contractor to form its own conclusions.

(B) **Duty to Notify and Seek Direction.** If Contractor becomes aware of a changed condition in the Project, or of any ambiguity, conflict, inconsistency, discrepancy, omission, or error in the Contract Documents, including the Plans or Specifications, Contractor must promptly submit a Request for Information to the Engineer and wait for a response from City before proceeding further with the related Work. The RFI must notify the City of the issue and request clarification, interpretation, or direction. The Engineer's clarification, interpretation, or direction will be final and binding on Contractor. If Contractor proceeds with the related Work before obtaining City's response, Contractor will be responsible for any resulting costs, including the cost of correcting any incorrect or defective Work that results. Timely submission of a clear and complete RFI is essential to avoiding delay. Delay resulting from Contractor's failure to submit a timely and complete RFI to the Engineer is Non-Excusable Delay. If Contractor believes that City's response to an RFI justifies a change to the Contract Price or Contract Time, Contractor must perform the Work as directed, but may submit a timely Change Order request in accordance with the Contract Documents. (See Articles 5 and 6.)

(C) **Figures and Dimensions.** Figures control over scaled dimensions.

(D) **Technical or Trade Terms.** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those meanings, unless otherwise specifically defined in the Contract Documents.

(E) **Measurements.** Contractor must verify all relevant measurements in the Contract Documents and at the Project site before ordering any material or performing any Work, and will be responsible for the correctness of those measurements or for costs that could have been avoided by independently verifying measurements.

(F) **Compliance with Laws.** The Contract Documents are intended to comply with Laws and will be interpreted to comply with Laws.

3.2 Order of Precedence. Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. Unless otherwise specified in the Special Conditions, in case of any conflict or inconsistency among the Contract Documents, the following order of precedence will apply, beginning from highest to lowest, with the most recent version taking precedent over an earlier version:

- (A) Change Orders;
- (B) Addenda;
- (C) Contract;
- (D) Notice to Proceed;
- (E) Attachment B- Federal Contract Requirements (only if used);
- (F) Special Conditions;
- (G) General Conditions;
- (H) Payment and Performance Bonds;
- (I) Specifications;
- (J) Plans;
- (K) Notice of Award
- (L) Notice Inviting Bids;
- (M) Attachment A – Federal Bidding Requirements (only if used);
- (N) Instructions to Bidders;
- (O) Contractor’s Bid Proposal and attachments;
- (P) The City’s standard specifications, as applicable; and
- (Q) Any generic documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, such as Caltrans Standard Specifications or Caltrans Special Provisions.

3.3 Caltrans Standard Specifications. Any reference to or incorporation of the Standard Specifications of the State of California, Department of Transportation (“Caltrans”), including “Standard Specifications,” “Caltrans Specifications,” “State

Specifications,” or “CSS,” means the most current edition of Caltrans’ Standard Specifications, unless otherwise specified (“Caltrans Standard Specifications”), including the most current amendments as of the date that Contractor’s bid was submitted for this Project. The following provisions apply to use of or reference to the Caltrans Standard Specifications or Special Provisions:

(A) **Limitations.** None of the “General Provisions” of the Caltrans Standard Specifications, i.e., sections 1 through 9, applies to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.

(B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Caltrans Standard Specifications or Special Provisions and a provision of these Contract Documents, as determined by City, the provision in the Contract Documents will govern.

(C) **Meanings.** Terms used in the Caltrans Standard Specifications or Special Provisions are to be interpreted as follows:

(1) Any reference to the “Engineer” is deemed to mean the City Engineer.

(2) Any reference to the “Special Provisions” is deemed to mean the Special Conditions, unless the Caltrans Special Provisions are expressly included in the Contract Documents listed in Section 2 of the Contract.

(3) Any reference to the “Department” or “State” is deemed to mean City.

3.4 For Reference Only. Contractor is responsible for the careful review of any document, study, or report provided by the City or appended to the Contract Documents solely for informational purposes and identified as “For Reference Only.” Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. Contractor is advised that City or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Any record drawings or similar final or accepted drawings or maps that are not part of the Contract Documents are deemed to be For Reference Only. The provisions of the Contract Documents are not modified by any perceived or actual conflict with provisions in any document that is provided For Reference Only.

3.5 Current Versions. Unless otherwise specified by City, any reference to standard specifications, technical specifications, or any City or state codes or

regulations means the latest specification, code or regulation in effect on the date the Contract is signed.

3.6 Conformed Copies. If City prepares a conformed set of the Contract Documents following award of the Contract, it will provide Contractor with two hard copy (paper) sets and one copy of the electronic file in PDF format. It is Contractor's responsibility to ensure that all Subcontractors, including fabricators, are provided with the conformed set of the Contract Documents at Contractor's sole expense.

3.7 Ownership. No portion of the Contract Documents may be used for any purpose other than construction of the Project, without prior written consent from City. Contractor is deemed to have conveyed the copyright in any designs, drawings, specifications, Shop Drawings, or other documents (in paper or electronic form) developed by Contractor for the Project, and City will retain all rights to such works, including the right to possession.

Article 4 Bonds, Indemnity, and Insurance

4.1 Payment and Performance Bonds. Within ten days following issuance of the Notice of Award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than 100% of the Contract Price, and each executed by Contractor and its surety using the bond forms included with the Contract Documents.

(A) Surety. Each bond must be issued and executed by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from City, Contractor must substitute a surety acceptable to City. If Contractor fails to substitute an acceptable surety within the specified time, City may, at its sole discretion, withhold payment from Contractor until the surety is replaced to City's satisfaction, or terminate the Contract for default.

(B) Supplemental Bonds for Increase in Contract Price. If the Contract Price increases during construction by five percent or more over the original Contract Price, Contractor must provide supplemental or replacement bonds within ten days of written notice from City pursuant to this Section, covering 100% of the increased Contract Price and using the bond forms included with the Contract Documents.

4.2 Indemnity. To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its Council, officers, officials, employees, agents, volunteers, and consultants, and Design Professional (individually, an "Indemnatee," and collectively the "Indemnitees") from and

against any and all liability, loss, damage, claims, causes of action, demands, charges, fines, costs, and expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or in failing to comply with any obligation of Contractor under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's bid for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this Contract will be deemed a material breach of this Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code Section 9201. Contractor waives any right to express or implied indemnity against any Indemnitee. Contractor's indemnity obligations under this Contract will survive the expiration or any early termination of the Contract.

4.3 Insurance. No later than ten days following issuance of the Notice of Award, Contractor must procure and provide proof of the insurance coverage required by this Section in the form of certificates and endorsements acceptable to City. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract through the date of City's acceptance of the Project. **The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein.** If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, City may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. **Contractor further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Contractor, at any time as deemed necessary to protect the interests of City.** The procurement of the required insurance will not be construed to limit Contractor's liability under this Contract or to fulfill Contractor's indemnification obligations under this Contract.

(A) **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by City. If the City's Risk Manager determines that the deductibles and/or self-insured

retentions are unacceptably high, at City's option, Contractor must either reduce or eliminate the deductibles and/or self-insured retentions as they apply to City and all required Additional Insured; or must provide a financial guarantee, to City's satisfaction, guaranteeing payment of losses and related investigation, claim administration, and legal expenses.

(B) **Policies and Limits.** The following insurance policies and limits are required for this Contract unless otherwise specified in the Special Conditions:

- (1) **Commercial General Liability Insurance ("CGL").**

Contractor shall maintain CGL and must include coverage for liability arising from Contractor's or its Subcontractor's acts or omissions in the performance of the Work against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) **two million dollars (\$2,000,000.00)** combined single limit each occurrence and either a general aggregate limit of **four million dollars (\$4,000,000.00)** or a general aggregate limit of **two million dollars (\$2,000,000.00)** as applied on a "per project" or "per location" basis, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

 - a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.
 - b. CGL policy must include contractor's protected coverage, blanket contractual, and completed operations.
- (2) **BUILDERS RISK NOT APPLICABLE**

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.

POLLUTION LIABILITY NOT APPLICABLE

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

- (6) **Professional Liability:**
- a. If the performance of Contractor's work or service under this Contract involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, legal services, and appraisers), Contractor shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) **One Million Dollars (\$1,000,000.00)** each claim, or (ii) the maximum amount of such insurance

available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if Contractor maintains a claims-made policy, Contractor shall provide written evidence of such insurance to City for at least five (5) years after the completion of work performed under this Contract.

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

(C) **Required Endorsements.** Contractor must provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

- (1) For all Policies except Builder's Risk and Professional Liability:
 - a. "Waiver of Subrogation" endorsements providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and the City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.
- (2) General Liability, Automobile, and Pollution Liability:
 - a. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds on a form at least as broad as ISO Form CG 20 10 for ongoing operations and at least as broad as ISO Form CG 20 37 for completed operations.
 - b. "Primary and Non-Contributing" - Insurance shall be endorsed to be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 01;

(3) General Liability:

- a. "Separation of Insureds" endorsements stating that the inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(D) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the Additional Insureds and waiver of subrogation, but excluding pollution liability or builder's risk insurance unless otherwise specified in the Special Conditions. A Subcontractor may be eligible for reduced insurance coverage or limits, but only to the extent approved in writing in advance by the City's Risk Manager. Contractor must confirm that each Subcontractor has complied with these insurance requirements before the Subcontractor is permitted to begin Work on the Project. Upon request by the City, Contractor must provide certificates and endorsements submitted by each Subcontractor to prove compliance with this requirement. The insurance requirements for Subcontractors do not replace or limit the Contractor's insurance obligations.

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

(F) **Certificates.** Contractor must furnish City with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, Contractor shall promptly furnish City of Morgan Hill with copies of all policies outlined herein. Each certificate must state that coverage afforded by the policy subject to Contractor's Contract with City shall not be reduced, canceled, allowed to expire, or materially changed except after 30 days' advance written notice by the insurer to City, unless due to non-payment of premiums, in which case ten days advance written notice must be made to City. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address as follows:

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue

Morgan Hill, CA 95037

(G) **Contractor's Responsibilities.** This Section 4.3 establishes the minimum requirements for Contractor's insurance coverage in relation to this Project, but is not intended to limit Contractor's ability to procure additional or greater coverage. Contractor is responsible for its own risk assessment and needs and is encouraged to consult its insurance provider to determine what coverage it may wish to carry beyond the minimum requirements of this Section. Contractor is solely responsible for the cost of its insurance coverage, including premium payments, deductibles, or self-insured retentions, and no Additional Insured will be responsible or liable for any of the cost of Contractor's insurance coverage.

Article 5 Contract Time

5.1 Time is of the Essence. Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.

(A) **General.** Contractor must commence the Work on the date indicated in the Notice to Proceed, and must fully complete the Work, in strict compliance with all requirements of the Contract Documents, and within the Contract Time. Contractor may not begin performing the Work before the date specified in the Notice to Proceed

(B) **Authorization.** Contractor is not entitled to compensation or credit for any Work performed before the date specified in the Notice to Proceed, with the exception of any schedules, submittals, or other requirements, if any, that must be provided or performed before issuance of the Notice to Proceed.

(C) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If City determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, City may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to City, in order to achieve a rate of progress satisfactory to City. If Contractor fails to comply with City's directive in this regard, City may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use City's own forces to achieve the necessary rate of progress. Alternatively, City may terminate the Contract based on Contractor's default.

5.2 Schedule Requirements. Contractor must prepare all schedules using standard, commercial scheduling software acceptable to the City, and must provide the schedules in electronic and paper form as requested by the City. In addition to the general scheduling requirements set forth below, Contractor must also comply with any scheduling requirements included in the Special Conditions or in the Technical Specifications.

(A) **Baseline (As-Planned) Schedule.** Within ten calendar days following City's issuance of the Notice to Proceed (or as otherwise specified in the Notice to Proceed), Contractor must submit to City for review and acceptance a baseline (as-planned) schedule using critical path methodology showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time, including labor, equipment, materials, and fabricated items. The baseline schedule must show the order of the major items of Work and the dates of start and completion of each item, including when the materials and equipment will be procured. The schedule must also include the work of all trades, reflecting anticipated labor or crew hours and equipment loading for the construction activities, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the baseline schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates of the activity, and the duration of the activity.

(1) **Specialized Materials Ordering.** Within five calendar days following issuance of the Notice to Proceed, Contractor must order any specialized material or equipment for the Work that is not readily available from material suppliers. Contractor must also retain documentation of the purchase order date(s).

(B) **City's Review of Schedules.** City will review and may note exceptions to the baseline schedule, and to the progress schedules submitted as required below, to assure completion of the Work within the Contract Time. Contractor is solely responsible for resolving any exceptions noted in a schedule and, within seven days, must correct the schedule to address the exceptions. City's review or acceptance of Contractor's schedules will not operate to waive or limit Contractor's duty to complete the Project within the Contract Time, nor to waive or limit City's right to assess liquidated damages for Contractor's unexcused failure to do so.

(C) **Progress Schedules.** After City accepts the final baseline schedule with no exceptions, Contractor must submit an updated progress schedule and three-week look-ahead schedule, in the format specified by City, for

review and acceptance with each application for a progress payment, or when otherwise specified by City, until completion of the Work. The updated progress schedule must: show how the actual progress of the Work as constructed to date compares to the baseline schedule; reflect any proposed changes in the construction schedule or method of operations, including to achieve Project milestones within the Contract Time; and identify any actual or potential impacts to the critical path. Contractor must also submit periodic reports to City of any changes in the projected material or equipment delivery dates for the Project.

(1) Float. The progress schedule must show early and late completion dates for each task. The number of days between those dates will be designated as the "float." Any float belongs to the Project and may be allocated by the Engineer to best serve timely completion of the Project.

(2) Failure to Submit Schedule. Reliable, up-to-date schedules are essential to efficient and cost-effective administration of the Project and timely completion. If Contractor fails to submit a schedule within the time periods specified in this Section, or submits a schedule to which City has noted exceptions that are not corrected, City may withhold up to five percent from payment(s) otherwise due to Contractor until the exceptions are resolved, the schedule is corrected and resubmitted, and City has accepted the schedule. In addition, Contractor's failure to comply with the schedule requirements in this Section 5.2 will be deemed a material default and a waiver of any claims for Excusable Delay or loss of productivity arising during any period when Contractor is out of compliance, subject only to the limits of Public Contract Code Section 7102.

(D) Recovery Schedule. If City determines that the Work is more than one week behind schedule, within seven days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.

(E) Effect of Acceptance. Contractor and its Subcontractors must perform the Work in accordance with the most current City-accepted schedule unless otherwise directed by City. City's acceptance of a schedule does not operate to extend the time for completion of the Work or any component of the Work, and will not affect City's right to assess liquidated damages for Contractor's unexcused delay in completing the Work within the Contract Time.

(F) Posting. Contractor must at all times prominently post a copy of the most current City-accepted progress or recovery schedule in its on-site office.

(G) Reservation of Rights. City reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by City or others, or to facilitate City's use of its property. The Contract Time or Contract Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.

(H) Authorized Working Days and Times. Contractor is limited to working Monday through Friday, excluding holidays, during City's normal business hours, except as provided in the Special Conditions or as authorized in writing by City. City reserves the right to charge Contractor for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in the Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

(A) Notice of Delay. If Contractor becomes aware of any actual or potential delay affecting the critical path, Contractor must promptly notify the Engineer in writing, regardless of the nature or cause of the delay, so that City has a reasonable opportunity to mitigate or avoid the delay.

(B) Excusable Delay. The Contract Time may be extended if Contractor encounters "Excusable Delay," which is an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through reasonable care, planning, foresight, or diligence, provided that Contractor is otherwise fully performing its obligations under the Contract Documents. Grounds for Excusable Delay may include fire, natural disasters including earthquake or unusually severe weather, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, or suspension for convenience under Article 13. The Contract Time will not be extended based on circumstances which will not unavoidably delay completing the Work within the Contract Time based on critical path analysis.

(C) Weather Delays. A "Weather Delay Day" is a Working Day during which Contractor and its forces, including Subcontractors, are unable to

perform more than 40% of the critical path Work scheduled for that day due to adverse weather conditions which impair the ability to safely or effectively perform the scheduled critical path Work that day. Adverse weather conditions may include rain, saturated soil, and Project site clean-up required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, City-approved schedule. Contractor will be entitled to a non-compensable extension of the Contract Time for each Weather Delay Day in excess of the normal Weather Delay Days within a given month as determined by reliable records, including monthly rainfall averages, for the preceding ten years (or as otherwise specified in the Special Conditions or Specifications).

- (1) Contractor must fully comply with the applicable procedures in Articles 5 and 6 of the General Conditions regarding requests to modify the Contract Time.
 - (2) Contractor will not be entitled to an extension of time for a Weather Delay Day to the extent Contractor is responsible for concurrent delay on that day.
 - (3) Contractor must take reasonable steps to mitigate the consequences of Weather Delay Days, including prudent workforce management and protecting the Work, Project Site, materials, and equipment.
- (D) Non-Excusable Delay. Delay which Contractor could have avoided or mitigated through reasonable care, planning, foresight, or diligence is "Non-Excusable Delay." Contractor is not entitled to an extension of Contract Time or any compensation for Non-Excusable Delay, or for Excusable Delay that is concurrent with Non-Excusable Delay. Non-Excusable Delay includes delay caused by:
- (1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten years;
 - (2) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for completion of the Work within the Contract Time;
 - (3) Contractor's failure to provide adequate notification to utility companies or agencies for connections or services necessary for completion of the Work within the Contract Time;

(4) foreseeable conditions which Contractor could have ascertained from reasonably diligent inspection of the Project site or review of the Contract Documents or other information provided or available to Contractor;

(5) Contractor's failure, refusal, or financial inability to perform the Work within the Contract Time, including insufficient funds to pay its Subcontractors or suppliers;

(6) performance or non-performance by Contractor's Subcontractors or suppliers;

(7) the time required to respond to excessive RFIs (see Section 2.5(G));

(8) delayed submission of required submittals, or the time required for correction and resubmission of defective submittals;

(9) time required for repair of, re-testing, or re-inspection of defective Work;

(10) enforcement of Laws by City, or outside agencies with jurisdiction over the Work; or

(11) City's exercise or enforcement of any of its rights or Contractor's duties pursuant to the Contract Documents, including correction of defective Work, extra inspections or testing due to non-compliance with Contract requirements, safety compliance, environmental compliance, or rejection and return of defective or deficient submittals.

(E) **Compensable Delay.** Pursuant to Public Contract Code Section 7102, in addition to entitlement to an extension of Contract Time, Contractor is entitled to compensation for costs incurred due to delay caused solely by City, when that delay is unreasonable under the circumstances involved and not within the contemplation of the parties ("Compensable Delay"). Contractor is not entitled to an extension of Contract Time or recovery of costs for Compensable Delay that is concurrent with Non-Excusable Delay. Delay due to Weather Delay Days in excess of normal for a given month, as set forth in Section 5.3(C), is not Compensable Delay, and will only entitle Contractor to an extension of time commensurate with the time lost due to such delay.

(F) **Recoverable Costs.** Contractor is not entitled to compensation for Excusable Delay unless it is Compensable Delay, as defined above. Contractor is entitled to recover only the actual, direct, reasonable, and

substantiated costs (“Recoverable Costs”) for each working day that the Compensable Delay prevents Contractor from proceeding with more than 50% of the critical path Work scheduled for that day, based on the most recent progress schedule accepted by City. Recoverable Costs will not include home office overhead or lost profit.

(G) Request for Extension of Contract Time or Recoverable Costs. A request for an extension of Contract Time or any associated Recoverable Costs must be submitted in writing to City within 14 calendar days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time, or any entitlement to the Contract Time extension or to the Recoverable Costs will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6 below. Strict compliance with these requirements is necessary to ensure that any delay or consequences of delay may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project and timely performance of the Work. Any request for an extension of Contract Time or Recoverable Costs that does not strictly comply with all of the requirements of Article 5 and Article 6 will be deemed waived.

(1) Required Contents. The request must include a detailed description of the cause(s) of the delay and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, such as by workforce management or by a change in sequencing. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor’s plan for continued mitigation of the delay or its effects.

(2) Delay Days and Costs. The request must specify the number of days of Excusable Delay claimed or provide a realistic estimate if the duration of the delay is not yet known. If Contractor believes it is entitled to Recoverable Costs for Compensable Delay, the request must specify the amount and basis for the Recoverable Costs that are claimed or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known. The maximum extension of Contract Time will be the number of days, if any, by which an Excusable Delay or a Compensable Delay exceeds any concurrent Non-Excusable Delay. Contractor is entitled to an extension of Contract Time, or compensation for Recoverable Costs, only if, and only to the extent that, such delay will unavoidably delay Final Completion.

(3) Supporting Documentation. The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including scheduling and cost impacts with a time impact analysis using critical path methodology and demonstrating the unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to City.

(4) Burden of Proof. Contractor has the burden of proving that: the delay was an Excusable Delay or Compensable Delay, as defined above; Contractor has fully complied with its scheduling obligations in Section 5.2, Schedule Requirements; Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts; the delay will unavoidably result in delaying Final Completion; and any Recoverable Costs claimed by Contractor were actually incurred and were reasonable under the circumstances.

(5) Legal Compliance. Nothing in this Section 5.3 is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code Section 7102.

(6) No Waiver. Any grant of an extension of Contract Time, or compensation for Recoverable Costs due to Compensable Delay, will not operate as a waiver of City's right to assess liquidated damages for Non-Excusable Delay.

(7) Dispute Resolution. In the event of a dispute over entitlement to an extension of Contract Time or compensation for Recoverable Costs, Contractor may not stop Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on City's rejection of a Change Order request for an extension of Contract Time or compensation for Recoverable Costs is to comply with the dispute resolution provisions set forth in Article 12 below.

5.4 Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, City will suffer damages from the delay that are difficult to determine and accurately specify. Pursuant to Public Contract Code section 7203, if Contractor fails to achieve Final Completion within the Contract Time due to Contractor's Non-Excusable Delay, City will charge Contractor in the amount specified in the Contract for each calendar day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty. Any waiver of

accrued liquidated damages, in whole or in part, is subject to approval of the City Council or its authorized delegee.

(A) **Liquidated Damages.** Liquidated damages will not be assessed for any Excusable Delay or Compensable 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 deduct the amount of liquidated damages assessed against any payments otherwise due to Contractor, including progress payments, Final Payment, or unreleased retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, City is entitled to recover the balance from Contractor or its performance bond surety.

(D) **Occupancy or Use.** Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute City's acceptance of the Project and will not operate as a waiver of City's right to assess liquidated damages for Contractor's Non-Excusable Delay in achieving Final Completion.

(E) **Other Remedies.** City's right to liquidated damages under this Section applies only to damages arising from Contractor's Non-Excusable Delay or failure to complete the Work within the Contract Time. City retains its right to pursue all other remedies under the Contract for other types of damage, including damage to property or persons, costs or diminution in value from defective materials or workmanship, costs to repair or complete the Work, or other liability caused by Contractor.

Article 6 Contract Modification

6.1 Contract Modification. Subject to the limited exception set forth in subsection (D) below, any change in the Work or the Contract Documents, including the Contract Price or Contract Time, will not be a valid and binding change to the Contract unless it is formalized in a Change Order, including a "no-cost" Change Order or a unilateral Change Order. Changes in the Work pursuant to this Article 6 will not operate to release, limit, or abridge Contractor's warranty obligations pursuant to Article 11 or any obligations of Contractor's bond sureties.

(A) **City-Directed Changes.** City may direct changes in the scope or sequence of Work or the requirements of the Contract Documents, without invalidating the Contract. Such changes may include Extra Work as set

forth in subsection (C) below, or deletion or modification of portions of the Work. Contractor must promptly comply with City-directed changes in the Work in accordance with the original Contract Documents, even if Contractor and City have not yet reached agreement as to adjustments to the Contract Price or Contract Time for the change in the Work or for the Extra Work. Contractor is not entitled to extra compensation for cost savings resulting from “value engineering” pursuant to Public Contract Code Section 7101, except to the extent authorized in advance by City in writing, and subject to any applicable procedural requirements for submitting a proposal for value engineering cost savings.

(B) **Disputes.** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to a City-directed change in the Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute. Likewise, in the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents or constitute Extra Work, or otherwise dispute the interpretation of any portion(s) of the Contract Documents, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute, as directed by City. If Contractor refuses to perform the Work in dispute, City may, acting in its sole discretion, elect to delete the Work from the Contract and reduce the Contract Price accordingly, and self-perform the Work or direct that the Work be performed by others. Alternatively, City may elect to terminate the Contract for convenience or for cause. Contractor’s sole recourse for an unresolved dispute related to changes in the Work or performance of any Extra Work is to comply with the dispute resolution provisions set forth in Article 12, below.

(C) **Extra Work.** City may direct Contractor to perform Extra Work related to the Project. Contractor must promptly perform any Extra Work as directed or authorized by City in accordance with the original Contract Documents, even if Contractor and City have not yet reached agreement on adjustments to the Contract Price or Contract Time for such Extra Work. If Contractor believes it is necessary to perform Extra Work due to changed conditions, Contractor must promptly notify the Engineer in writing, specifically identifying the Extra Work and the reason(s) the Contractor believes it is Extra Work. This notification requirement does not constitute a Change Order request pursuant to Section 6.2, below. Contractor must maintain detailed daily records that itemize the cost of each element of Extra Work, and sufficiently distinguish the direct cost of

the Extra Work from the cost of other Work performed. For each day that Contractor performs Extra Work, or Work that Contractor contends is Extra Work, Contractor must submit no later than the following Working Day, a daily report of the Extra Work performed that day and the related costs, together with copies of certified payroll, invoices, and other documentation substantiating the costs ("Extra Work Report"). The Engineer will make any adjustments to Contractor's Extra Work Report(s) based on the Engineer's records of the Work. When an Extra Work Report(s) is agreed on and signed by both City and Contractor, the Extra Work Report(s) will become the basis for payment under a duly authorized and signed Change Order. Failure to submit the required documentation by close of business on the next Working Day is deemed a full and complete waiver for any change in the Contract Price or Contract Time for any Extra Work performed that day.

(D) **Minor Changes and RFIs.** Minor field changes, including RFI replies from City, that do not affect the Contract Price or Contract Time and that are approved by the Engineer acting within his or her scope of authority, do not require a Change Order. By executing an RFI reply from City, Contractor agrees that it will perform the Work as clarified therein, with no change to the Contract Price or Contract Time.

(E) **Remedy for Non-Compliance.** Contractor's failure to promptly comply with a City-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, City may, at its sole discretion, hire another contractor or use its own forces to complete the disputed Work at Contractor's sole expense, and may deduct the cost from the Contract Price.

6.2 Contractor Change Order Requests. Contractor must submit a request or proposal for a change in the Work, compensation for Extra Work, or a change in the Contract Price or Contract Time as a written Change Order request or proposal.

(A) **Time for Submission.** Any request for a change in the Contract Price or the Contract Time must be submitted in writing to the Engineer within 14 calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time. If City requests that Contractor propose the terms of a Change Order, unless otherwise specified in City's request, Contractor must provide the Engineer with a written proposal for the change in the Contract Price or Contract Time within five working days of receiving City's request, in a form satisfactory to the Engineer.

(B) **Required Contents.** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes, insurance, subcontract amounts, and, if applicable, Extra Work Reports. Any estimated cost must be updated in writing as soon as the actual amount is known.

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions. Upon request, Contractor must permit City to inspect its original and unaltered bidding records, subcontract agreements, subcontract change orders, purchase orders, invoices, or receipts associated with the claimed costs.

(D) **Required Form.** Contractor must use City's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by City.

(E) **Certification.** All Change Order requests must be signed by Contractor and must include the following certification:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete as to the Work or changes referenced herein, and agrees that any known or foreseeable costs, expenses, or time extension requests not included herein, are deemed waived."

6.3 Adjustments to Contract Price. The amount of any increase or decrease in the Contract Price will be determined based on one of the following methods listed below, in the order listed with unit pricing taking precedence over the other methods. Markup applies only to City-authorized time and material Work, and does not apply to any other payments to Contractor. For Work items or components that are deleted in their entirety, Contractor will only be entitled to compensation for those direct, actual, and documented costs (including restocking fees), reasonably incurred before Contractor was notified of the City's intent to delete the Work, with no markup for overhead, profit, or other indirect costs.

(A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or in a post-award schedule of values pursuant to Section 8.1, Schedule of Values, will apply to determine the price for the affected Work, to the extent applicable unit

prices have been provided for that type of Work. No additional markup for overhead, profit, or other indirect costs will be added to the calculation.

(B) **Lump Sum.** A mutually agreed upon, all-inclusive lump sum price for the affected Work with no additional markup for overhead, profit, or other indirect costs.

(C) **Time and Materials.** On a time and materials basis, if and only to the extent compensation on a time and materials basis is expressly authorized by City in advance of Contractor's performance of the Work and subject to any not-to-exceed limit. Time and materials compensation for increased costs or Extra Work (but not decreased costs or deleted Work) will include allowed markup for overhead, profit, and other indirect costs, calculated as the total of the following sums, the cumulative total of which may not exceed the maximum markup rate of 15%:

- (1) All direct labor costs provided by the Contractor, excluding superintendence, project management, or administrative costs, plus 15% markup;
- (2) All direct material costs provided by the Contractor, including sales tax, plus 15% markup;
- (3) All direct plant and equipment rental costs provided by the Contractor, plus 15% markup;
- (4) All direct additional subcontract costs plus 10% markup for Work performed by Subcontractors; and
- (5) Increased bond or insurance premium costs computed at 1.5% of the total of the previous four sums.

6.4 Unilateral Change Order. If the parties dispute the terms of a proposed Change Order, including disputes over the amount of compensation or extension of time that Contractor has requested, the value of deleted or changed Work, what constitutes Extra Work, or quantities used, City may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time for the adjustment to compensation or time that the City believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

6.5 Non-Compliance Deemed Waiver. Contractor waives its entitlement to any increase in the Contract Price or Contract Time if Contractor fails to fully comply with the provisions of this Article. Contractor will not be paid for unauthorized Extra Work.

Article 7
General Construction Provisions

7.1 Permits, Fees, Business License, and Taxes.

(A) **Permits, Fees, and City Business License.** Contractor must obtain and pay for all permits, fees, and licenses required to perform the Work, including a City business license. Contractor must cooperate with and provide notifications to all government agencies with jurisdiction over the Project, as may be required. Contractor must provide City with copies of all records of permits and permit applications, payment of required fees, and any licenses required for the Work.

(B) **Taxes.** Contractor must pay for all taxes on labor, material, and equipment, except Federal Excise Tax to the extent that City is exempt from Federal Excise Tax.

7.2 Temporary Facilities. Contractor must provide, at Contractor's sole expense, any and all temporary facilities for the Project, including an onsite staging area for materials and equipment, a field office, sanitary facilities, utilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any incidental utility services. The location of all temporary facilities must be approved by the City prior to installation. Temporary facilities must be safe and adequate for the intended use and installed and maintained in accordance with Laws and the Contract Documents. Contractor must fence and screen the Project site and, if applicable, any separate Worksites, including the staging area, and its operation must minimize inconvenience to neighboring properties. Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.

(A) **Utilities.** Contractor must install and maintain the power, water, sewer, and all other utilities required for the Project site, including the piping, wiring, internet and wifi connections, and any related equipment necessary to maintain the temporary facilities.

(B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to City's property or to other property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

7.3 Noninterference and Site Management. Contractor must avoid interfering with City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures. Contractor must also minimize disruption of access to private property in the Project vicinity. Contractor must coordinate with affected property owners, tenants, and businesses, and maintain some vehicle and pedestrian access to their residences or properties at all times. Temporary access ramps, fencing or other measures must be provided as needed. Before blocking access to a private driveway or parking lot, Contractor must provide effective notice to the affected parties at least 48 hours in advance of the pending closure and allow them to remove vehicles. Private driveways, residences and parking lots must have access to a roadway during non-Work hours.

(A) **Offsite Acquisition.** Unless otherwise provided by City, Contractor must acquire, use, and dispose of, at its sole expense, any Worksites, licenses, easements, and temporary facilities necessary to access and perform the Work.

(B) **Offsite Staging Area and Field Office.** If additional space beyond the Project site is needed, such as for the staging area or the field office, Contractor may need to make arrangements with the nearby property owner(s) to secure the space. Before using or occupying any property owned by a third party, Contractor must provide City with a copy of the necessary license agreement, easement, or other written authorization from the property owner, together with a written release from the property owner holding City harmless from any related liability, in a form acceptable to the City Attorney.

(C) **Traffic Management.** Contractor must provide traffic management and traffic controls as specified in the Contract Documents, as required by Laws, and as otherwise required to ensure public and worker safety, and to avoid interference with public or private operations or the normal flow of vehicular, bicycle, or pedestrian traffic.

7.4 Signs. No signs may be displayed on or about City's property, except signage which is required by Laws or by the Contract Documents, without City's prior written approval as to size, design, and location.

7.5 Project Site and Nearby Property Protections.

(A) **General.** Contractor is responsible at all times, on a 24-hour basis and at its sole cost, for protecting the Work, the Project site, and the materials and equipment to be incorporated into the Work, until the City has accepted the Project, excluding any exceptions to acceptance, if any.

Except as specifically authorized by City, Contractor must confine its operations to the area of the Project site indicated in the Plans and Specifications. Contractor is liable for any damage caused by Contractor or its Subcontractors to the Work, City's property, the property of adjacent or nearby property owners and the work or personal property of other contractors working for City, including damage related to Contractor's failure to adequately secure the Work or any Worksite.

(1) Subject to City's approval, Contractor will provide and install safeguards to protect the Work; any Worksite, including the Project site; City's real or personal property and the real or personal property of adjacent or nearby property owners, including plant and tree protections.

(2) City wastewater systems may not be interrupted. If the Work disrupts existing sewer facilities, Contractor must immediately notify City and establish a plan, subject to City's approval, to convey the sewage in closed conduits back into the sanitary sewer system. Sewage must not be permitted to flow in trenches or be covered by backfill.

(3) Contractor must remove with due care, and store at City's request, any objects or material from the Project site that City will salvage or reuse at another location.

(4) If directed by Engineer, Contractor must promptly repair or replace any property damage, as specified by the Engineer. However, acting in its sole discretion, City may elect to have the property damage remedied otherwise, and may deduct the cost to repair or replace the damaged property from payment otherwise due to Contractor.

(5) Contractor will not permit any structure or infrastructure to be loaded in a manner that will damage or endanger the integrity of the structure or infrastructure.

(B) **Securing Project Site.** After completion of Work each day, Contractor must secure the Project site and, to the extent feasible, make the area reasonably accessible to the public unless City approves otherwise. All excess materials and equipment not protected by approved traffic control devices must be relocated to the staging area or demobilized. Trench spoils must be hauled off the Project site daily and open excavations must be protected with steel plates. Contractor and Subcontractor personnel may not occupy or use the Project site for any purpose during non-Work hours, except as may be provided in the Contract Documents or pursuant to prior written authorization from City.

(C) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Plans or apparent from inspection of the Project site, Contractor must immediately notify the City and promptly submit a Request for Information to obtain further directions from the Engineer. Contractor must avoid taking any action which could cause damage to the facilities or utilities pending further direction from the Engineer. The Engineer's written response will be final and binding on Contractor. If the Engineer's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6 above.

(D) **Support; Adjacent Properties.** Contractor must provide, install, and maintain all shoring, bracing, and underpinning necessary to provide support to City's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by Laws. See also, Section 7.15, Trenching of Five Feet or More.

(E) **Notification of Property Damage.** Contractor must immediately notify the City of damage to any real or personal property resulting from Work on the Project. Contractor must immediately provide a written report to City of any such property damage in excess of \$500 (based on estimated cost to repair or replace) within 24 hours of the occurrence. The written report must include: (1) the location and nature of the damage, and the owner of the property, if known; (2) the name and address of each employee of Contractor or any Subcontractor involved in the damage; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with another government agency, Contractor will provide a copy of the report to City.

7.6 Materials and Equipment.

(A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new, free from defects, and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Contractor must employ measures to preserve the specified quality and fitness of the materials and equipment. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation and must be installed in accordance with the manufacturer's recommendations or instructions. Contractor is responsible for all shipping, handling, and

storage costs associated with the materials and equipment required for the Work. Contractor is responsible for providing security and protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until City has formally accepted the Project as set forth in Section 11.1, Final Completion. Contractor will not assign, sell, mortgage, or hypothecate any materials or equipment for the Project, or remove any materials or equipment that have been installed or delivered.

(B) **City-Provided.** If the Work includes installation of materials or equipment to be provided by City, Contractor is solely responsible for the proper examination, handling, storage, and installation in accordance with the Contract Documents. Contractor must notify City of any defects discovered in City-provided materials or equipment, sufficiently in advance of scheduled use or installation to afford adequate time to procure replacement materials or equipment as needed. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.

(C) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization or license required for use of patented or copyright-protected materials, equipment, devices, or processes that are incorporated into the Work. Contractor's indemnity obligations in Article 4 apply to any claimed violation of intellectual property rights.

7.7 Substitutions.

(A) **"Or Equal."** Any Specification designating a material, product, or thing (collectively, "item") or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate the quality and type of item or service desired, and Contractor may request use of any equal item or service. Unless otherwise stated in the Specifications, any reference to a specific brand or trade name for an item or service that is used solely for the purpose of describing the type of item or service desired, will be deemed to be followed by the words "or equal." A substitution will only be approved if it is a true "equal" item or service in every aspect of design, function, and quality, as determined by City, including dimensions, weight, maintenance requirements, durability, fit with other elements, and schedule impacts.

(B) **Request for Substitution.** A post-award request for substitution of an item or service must be submitted in writing to the Engineer for

approval in advance, within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within 35 days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.

(C) **Substantiation.** Any available data substantiating the proposed substitute as an equal item or service must be submitted with the written request for substitution. Contractor's failure to timely provide all necessary substantiation, including any required test results as soon as they are available, is grounds for rejection of the proposed substitution, without further review.

(D) **Burden of Proving Equality.** Contractor has the burden of proving the equality of the proposed substitution at Contractor's sole cost. City has sole discretion to determine whether a proposed substitution is equal, and City's determination is final.

(E) **Approval or Rejection.** If the proposed substitution is approved, Contractor is solely responsible for any additional costs or time associated with the substituted item or service. If the proposed substitution is rejected, Contractor must, without delay, install the item or use the service as specified by City.

(F) **Contractor's Obligations.** City's approval of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. In the event Contractor makes an unauthorized substitution, Contractor will be solely responsible for all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

7.8 Testing and Inspection.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection and testing by City at all times and at all locations during construction and/or fabrication, including at any Worksite, shops, and yards. All manufacturers' application or installation instructions must be provided to the Inspector at least ten days prior to the first such application or installation. Contractor must, at all times, make the Work available for testing or inspection. Neither City's inspection or testing of Work, nor its failure to do so, operate to waive or limit Contractor's duty to complete the Work in accordance with the Contract Documents.

(B) **Scheduling and Notification.** Contractor must cooperate with City in coordinating the inspections and testing. Contractor must submit samples of materials, at Contractor's expense, and schedule all tests

required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must notify the Engineer no later than noon of the Working Day before any inspection or testing and must provide timely notice to the other necessary parties as specified in the Contract Documents. If Contractor schedules an inspection or test beyond regular Work hours, or on a Saturday, Sunday, or recognized City holiday, Contractor must notify the Engineer at least two Working Days in advance for approval. If approved, Contractor must reimburse City for the cost of the overtime inspection or testing. Such costs, including the City's hourly costs for required personnel, may be deducted from payments otherwise due to Contractor.

(C) **Responsibility for Costs.** City will bear the initial cost of inspection and testing to be performed by independent consultants retained by City, subject to the following exceptions:

- (1) Contractor will be responsible for the costs of any subsequent inspections or tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.
- (2) Contractor will be responsible for inspection costs, at City's hourly rates, for inspection time lost because the Work is not ready, or Contractor fails to appear for a scheduled inspection.
- (3) If any portion of the Work that is subject to inspection or testing is covered or concealed by Contractor prior to the inspection or testing, Contractor will bear the cost of making that portion of the Work available for the inspection or testing required by the Contract Documents, and any associated repair or remediation costs.
- (4) Contractor is responsible for properly shoring all compaction test sites deeper than five feet below grade, as required under Section 7.15 below.
- (5) Any Work or material that is defective or fails to comply with the requirements of the Contract Documents must be promptly repaired, removed, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work or material was previously inspected or included in a progress payment.

(D) **Contractor's Obligations.** Contractor is solely responsible for any delay occasioned by remediation of defective or noncompliant Work or material. Inspection or testing of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified. Any Work

done without the inspection(s) or testing required by the Contract Documents will be subject to rejection by City.

(E) ***Distant Locations.*** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.

(F) ***Final Inspection.*** The provisions of this Section 7.8 also apply to final inspection under Article 11, Completion and Warranty Provisions.

7.9 Project Site Conditions and Maintenance. Contractor must at all times, on a 24-hour basis and at its sole cost, maintain the Project site and staging and storage areas in clean, neat, and sanitary condition and in compliance with all Laws pertaining to safety, air quality, and dust control. Adequate toilets must be provided, and properly maintained and serviced for all workers on the Project site, located in a suitably secluded area, subject to City's prior approval. Contractor must also, on a daily basis and at its sole cost, remove and properly dispose of the debris and waste materials from the Project site.

(A) ***Air Emissions Control.*** Contractor must not discharge smoke or other air contaminants into the atmosphere in violation of any Laws. Contractor must comply with all Laws, including the California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.).

(B) ***Dust and Debris.*** Contractor must minimize and confine dust and debris resulting from the Work. Contractor must abate dust nuisance by cleaning, sweeping, and immediately sprinkling with water excavated areas of dirt or other materials prone to cause dust, and within one hour after the Engineer notifies Contractor that an airborne nuisance exists. The Engineer may direct that Contractor provide an approved water-spraying truck for this purpose. If water is used for dust control, Contractor will only use the minimum necessary. Contractor must take all necessary steps to keep waste water out of streets, gutters, or storm drains. See Section 7.19, Environmental Control. If City determines that the dust control is not adequate, City may have the work done by others and deduct the cost from the Contract Price. Contractor will immediately remove any excess excavated material from the Project site and any dirt deposited on public streets.

(C) ***Clean up.*** Before discontinuing Work in an area, Contractor must clean the area and remove all debris and waste along with the construction equipment, tools, machinery, and surplus materials.

(1) Except as otherwise specified, all excess Project materials, and the materials removed from existing improvements on the Project site with no salvage value or intended reuse by City, will be Contractor's property.

(2) Hauling trucks and other vehicles leaving the Project site must be cleaned of exterior mud or dirt before traveling on City streets. Materials and loose debris must be delivered and loaded to prevent dropping materials or debris. Contractor must immediately remove spillage from hauling on any publicly traveled way. Streets affected by Work on the Project must be kept clean by street sweeping.

(D) **Disposal.** Contractor must dispose of all Project debris and waste materials in a safe and legal manner. Contractor may not burn or bury waste materials on the Project site. Contractor will not allow any dirt, refuse, excavated material, surplus concrete or mortar, or any associated washings, to be disposed of onto streets, into manholes or into the storm drain system.

(E) **Completion.** At the completion of the Work, Contractor must remove from the Project site all of its equipment, tools, surplus materials, waste materials and debris, presenting a clean and neat appearance. Before demobilizing from the Project site, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas. Contractor must ensure that all parts of the construction are properly joined with the previously existing and adjacent improvements and conditions. Contractor must provide all cutting, fitting and patching needed to accomplish that requirement. Contractor must also repair or replace all existing improvements that are damaged or removed during the Work, both on and off the Project site, including curbs, sidewalks, driveways, fences, signs, landscaping, utilities, street surfaces and structures. Repairs and replacements must be at least equal to the previously existing improvements, and the condition, finish and dimensions must match the previously existing improvements. Contractor must restore to original condition all property or items that are not designated for alteration under the Contract Documents and leave each Worksite clean and ready for occupancy or use by City.

(F) **Non-Compliance.** If Contractor fails to comply with its maintenance and cleanup obligations or any City clean up order, City may, acting in its sole discretion, elect to suspend the Work until the condition(s) is corrected with no increase in the Contract Time or Contract Price, or undertake appropriate cleanup measures without further notice

and deduct the cost from any amounts due or to become due to Contractor.

7.10 Instructions and Manuals. Contractor must provide to City three copies each of all instructions and manuals required by the Contract Documents, unless otherwise specified. These must be complete as to drawings, details, parts lists, performance data, and other information that may be required for City to easily maintain and service the materials and equipment installed for this Project.

(A) **Submittal Requirements.** The instructions and manuals, along with any required guarantees, must be delivered to City for review prior to requesting final inspection pursuant to Section 11.1(A), unless otherwise specified.

(B) **Training.** Contractor or its Subcontractors must train City's personnel in the operation and maintenance of any complex equipment or systems as a condition precedent to Final Completion, if required in the Contract Documents.

7.11 As-built Drawings. Contractor and its Subcontractors must prepare and maintain at the Project site a detailed, complete and accurate as-built set of the Plans which will be used solely for the purpose of recording changes made in any portion of the original Plans in order to create accurate record drawings at the end of the Project.

(A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. City may withhold the estimated cost for City to have the as-built drawings prepared from payments otherwise due to Contractor, until the as-built drawings are brought up to date to the satisfaction of City. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities installed underground, in walls, floors, or otherwise concealed. Deviations from the original Plans must be shown in detail. The exact location of all main runs, whether piping, conduit, ductwork or drain lines, must be shown by dimension and elevation. The location of all buried pipelines, appurtenances, or other improvements must be represented by coordinates and by the horizontal distance from visible above-ground improvements.

(B) **Final Completion.** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to the Engineer for review and acceptance as a condition precedent to Final Completion and Final Payment.

7.12 Existing Utilities.

(A) **General.** The Work may be performed in developed, urban areas with existing utilities, both above and below ground, including utilities identified in the Contract Documents or in other informational documents or records. Contractor must take due care to locate identified or reasonably identifiable utilities before proceeding with trenching, excavation, or any other activity that could damage or disrupt existing utilities. This may include excavation with small equipment, potholing, or hand excavation, and, if practical, using white paint or other suitable markings to delineate the area to be excavated. Except as otherwise provided herein, Contractor will be responsible for costs resulting from damage to identified or reasonably identifiable utilities due to Contractor's negligence or failure to comply with the Contract Documents, including the requirements in this Article 7.

(B) **Unidentified Utilities.** Pursuant to Government Code § 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 utility facilities not indicated in the Plans or Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent the delay was caused by City's failure to provide for removal or relocation of the utility facilities.

7.13 Notice of Excavation. Contractor must comply with all applicable requirements in Government Code § 4216 et seq., which are incorporated by reference herein.

7.14 Trenching and Excavations of Four Feet or More. As required by Public Contract Code § 7104, if the Work includes digging trenches or other excavations that extend deeper than four feet below the surface, the provisions in this Section apply to the Work and the Project.

(A) **Duty to Notify.** Contractor must promptly, and before the following conditions are disturbed, provide written notice to City if Contractor finds any of the following conditions:

- (1) Material that Contractor believes may be a hazardous waste, as defined in § 25117 of the Health and Safety Code, that is

required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing Laws;

(2) Subsurface or latent physical conditions at the Project site differing from those indicated by information about the Project site made available to bidders prior to the deadline for submitting bids; or

(3) Unknown physical conditions at the Project site of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.

(B) **City Investigation.** City will promptly investigate the conditions and if City finds that the conditions materially differ from those indicated, apparent, or reasonably inferred from information about the Project site made available to bidders, or involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, City will issue a Change Order.

(C) **Disputes.** In the event that a dispute arises between City and Contractor regarding any of the conditions specified in subsection (B) above, or the terms of a Change Order issued by City, Contractor will not be excused from completing the Work within the Contract Time, but must proceed with all Work to be performed under the Contract. Contractor will retain any and all rights provided either by the Contract or by Laws which pertain to the resolution of disputes between Contractor and City.

7.15 Trenching of Five Feet or More. As required by Labor Code § 6705, if the Contract Price exceeds \$25,000 and the Work includes the excavation of any trench or trenches of five feet or more in depth, a detailed plan must be submitted to City for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it must be prepared by a California registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.

7.16 New Utility Connections. Except as otherwise specified, City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify City sufficiently in advance of the time needed to request service from each utility provider

so that connections and services are initiated in accordance with the Project schedule.

7.17 Lines and Grades. Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work. Contractor must also provide, preserve, and replace if necessary, all construction stakes required for the Project. All stakes or marks must be set by a California licensed surveyor or a California registered civil engineer. Contractor must notify the Engineer of any discrepancies found between Contractor's staking and grading and information provided by the Contract Documents. Upon completion, all Work must conform to the lines, elevations, and grades shown in the Plans, including any changes directed by a Change Order.

7.18 Historic or Archeological Items.

(A) **Contractor's Obligations.** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify the Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, a burial ground, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").

(B) **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an 85-foot radius of the find and may not resume until authorized in writing by City. If required by City, Contractor must assist in protecting or recovering the Historic or Archeological Items, with any such assistance to be compensated as Extra Work on a time and materials basis under Article 6, Contract Modification. At City's discretion, a suspension of Work required due to discovery of Historic or Archeological Items may be treated as Excusable Delay pursuant to Article 5, or as a suspension for convenience under Article 13.

7.19 Environmental Control. Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor must prevent the release of any hazardous material or hazardous waste into the soil or groundwater, and prevent the unlawful discharge of pollutants into City's storm drain system and watercourses as required below. Contractor and its Subcontractors must at all times in the performance of the Work comply with all Laws concerning pollution of waterways.

(A) **Stormwater Permit.** Contractor must comply with all applicable conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity (“Stormwater Permit”).

(B) **Contractor’s Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City’s principal administrative offices, and Contractor must comply with it 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 also must comply with all other Laws governing discharge of stormwater, including applicable municipal stormwater management programs.

7.20 Noise Control. Contractor must comply with all applicable noise control Laws. Noise control requirements apply to all equipment used for the Work or related to the Work, including trucks, transit mixers or transient equipment that may or may not be owned by Contractor.

7.21 Mined Materials. Pursuant to Public Contract Code § 20676, Contractor will not purchase any sand, gravel, or other minerals for the Work from an operation subject to the Surface Mining and Reclamation Act of 1975 (Public Resources Code § 2710 et seq.) unless the Contractor certifies, under penalty of perjury, that the minerals are from a mining operation included on the AB 3098 List, which may be accessed online at: <https://www.conservation.ca.gov/smgb/Pages/AB-3098-List.aspx>.

Article 8 Payment

8.1 Schedule of Values. Prior to submitting its first application for payment, Contractor must prepare and submit to the Project Manager a schedule of values apportioned to the various divisions and phases of the Work, including mobilization and demobilization. If a Bid Schedule was submitted with Contractor’s bid, the amounts in the schedule of values must be consistent with the Bid Schedule. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor’s bid.

(A) **Measurements for Unit Price Work.** Materials and items of Work to be paid for on the basis of unit pricing will be measured according to the methods specified in the Contract Documents.

(B) **Deleted or Reduced Work.** Contractor will not be compensated for Work that City has deleted or reduced in scope, except for any labor, material, or equipment costs for such Work that Contractor reasonably incurred before Contractor learned that the Work could be deleted or reduced. Contractor will only be compensated for those actual, direct and documented costs incurred, and will not be entitled to any mark up for overhead or lost profits.

8.2 Progress Payments. Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to the Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.

(A) **Application for Payment.** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Project site, as well as authorized and approved Change Orders. Each payment application must be supported by the unit prices submitted with Contractor's Bid Schedule and/or schedule of values and any other substantiating data required by the Contract Documents.

Each application for payment shall be accompanied by completed "Contract Balance Form," a copy of which is provided at the end of Article 8.

(B) **Payment of Undisputed Amounts.** City will pay the undisputed amount due within 30 days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code § 20104.50. City will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may deduct or withhold additional amounts as set forth in Section 8.3, below.

8.3 Adjustment of Payment Application. City may adjust or reject the amount requested in a payment application, including application for Final Payment, in whole or in part, if the amount requested is disputed or unsubstantiated. Contractor will be notified in writing of the basis for the modification to the amount requested. City may also deduct or withhold from payment otherwise due based upon any of the circumstances and amounts listed below. Sums withheld from payment otherwise due will be released when the basis for that withholding has been remedied and no longer exists.

(A) For Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch

list items, City may withhold or deduct an amount based on the City's estimated cost to correct or complete the Work.

(B) For loss or damage caused by Contractor or its Subcontractors arising out of or relating to performance of the Work or any failure to protect the Project site, City may deduct an amount based on the estimated cost to repair or replace.

(C) For Contractor's failure to pay its Subcontractors and suppliers when payment is due, City may withhold an amount equal to the total of past due payments and may opt to pay that amount separately via joint check pursuant to Section 8.6(B), Joint Checks.

(D) For Contractor's failure to timely correct rejected, nonconforming, or defective Work, City may withhold or deduct an amount based on the City's estimated cost to correct or complete the Work.

(E) For any unreleased stop notice, City may withhold 125% of the amount claimed.

(F) For Contractor's failure to submit any required schedule or schedule update in the manner specified or within the time specified in the Contract Documents, City may withhold an amount equal to five percent of the total amount requested until Contractor complies with its schedule submittal obligations.

(G) For Contractor's failure to maintain or submit as-built documents in the manner specified or within the time specified in the Contract Documents, City may withhold or deduct an amount based on the City's cost to prepare the as-builts.

(H) For Work performed without Shop Drawings that have been accepted by City, when accepted Shop Drawings are required before proceeding with the Work, City may deduct an amount based on the estimated cost to correct unsatisfactory Work or diminution in value.

(I) For fines, payments, or penalties assessed under the Labor Code, City may deduct from payments due to Contractor as required by Laws and as directed by the Division of Labor Standards Enforcement.

(J) For any other fines, payments, or penalties assessed against the City relating to Contractor's acts or omissions, including violations of Laws, City may withhold or deduct such amounts from payment otherwise due to Contractor.

(K) For any other costs or charges that may be withheld or deducted from payments to Contractor, as provided in the Contract Documents, including liquidated damages, City may withhold or deduct such amounts from payment otherwise due to Contractor.

8.4 Early Occupancy. Neither City's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work.

8.5 Retention. City will retain five percent of the full amount due on each progress payment (i.e., the amount due before any withholding or deductions pursuant to Section 8.3, Adjustment of Payment Application), or the percentage stated in the Notice Inviting Bids, whichever is greater, as retention to ensure full and satisfactory performance of the Work. Contractor is not entitled to any reduction in the rate of withholding at any time, nor to release of any retention before 35 days following City's recordation of the Notice of Completion, subject to the terms of Public Contract Code Section 7107.

(A) **Substitution of Securities.** As provided by Public Contract Code Section 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code Section 22300 and will be subject to approval as to form by City's legal counsel. If City exercises its right to draw upon such securities in the event of default pursuant to section (7) of the statutory Escrow Agreement for Security Deposits in Lieu of Retention, pursuant to subdivision (g) of Public Contract Code Section 22300 ("Escrow Agreement"), and if Contractor disputes that it is in default, its sole remedy is to comply with the dispute resolution procedures in Article 12 and the provisions therein. It is agreed that for purposes of this paragraph, an event of default includes City's rights pursuant to these Contract Documents to withhold or deduct sums from retention, including withholding or deduction for liquidated damages, incomplete or defective Work, stop payment notices, or backcharges. It is further agreed that if any individual authorized to give or receive written notice on behalf of a party pursuant to section (10) of the Escrow Agreement are unavailable to give or receive notice on behalf of that party due to separation from employment, retirement, death, or other circumstances, the successor or delegee of the named individual is deemed to be the individual authorized to give or receive notice pursuant to section (10) of the Escrow Agreement.

(B) **Release of Undisputed Retention.** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld pursuant to Section 8.3, Adjustment of

Payment Application, will be released as Final Payment to Contractor no sooner than 35 days following recordation of the notice of completion, and no later than 60 days following acceptance of the Project by City's governing body or authorized designee pursuant to Section 11.1(C), Acceptance, or, if the Project has not been accepted, no later than 60 days after the Project is otherwise considered complete pursuant to Public Contract Code Section 7107(c).

8.6 Payment to Subcontractors and Suppliers. Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Project site by the Subcontractor or supplier during the preceding month. Such payments must be made in accordance with the requirements of Laws pertaining to such payments, and those of the Contract Documents and applicable subcontract or supplier contract.

(A) ***Withholding for Stop Notice.*** Pursuant to Civil Code Section 9358, City will withhold 125% of the amount claimed by an unreleased stop notice, a portion of which may be retained by City for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.

(B) ***Joint Checks.*** City reserves the right, acting in its sole discretion, to issue joint checks made payable to Contractor and a Subcontractor or supplier, if City determines this is necessary to ensure fair and timely payment for a Subcontractor or supplier who has provided services or goods for the Project. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by the City Attorney's Office. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

8.7 Final Payment. Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. If Contractor fails to submit a timely application for Final Payment, City reserves the right to unilaterally process and issue Final Payment without an application from Contractor in order to close out the Project. For the purposes of determining the deadline for Claim submission pursuant to Article 12, the date of Final Payment is deemed to be the date that City acts to release undisputed retention as final payment to Contractor, or otherwise provides written

notice to Contractor of Final Payment or that no undisputed funds remain available for Final Payment due to offsetting withholdings or deductions pursuant to Section 8.3, Adjustment of Payment Application. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.

8.8 Release of Claims. City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written waiver and release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts subject to the limitations of Public Contract Code Section 7100. Any disputed amounts may be specifically excluded from the release.

8.9 Warranty of Title. Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

Article 9 Labor Provisions

9.1 Discrimination Prohibited. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Laws prohibiting discrimination including the California Fair Employment and Housing Act (Government Code Section 12900 et seq.), Government Code Section 11135, and Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5.

9.2 Labor Code Requirements.

(A) **Eight Hour Day.** Pursuant to Labor Code Section 1810, eight hours of labor constitute a legal day's work under this Contract.

(B) **Penalty.** Pursuant to Labor Code Section 1813, Contractor will forfeit to City as a penalty, the sum of \$25.00 for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight hours in any one calendar day or more than 40 hours per calendar week, except if such workers are paid overtime under Labor Code Section 1815.

(C) **Apprentices.** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code Section 1777.5, which is fully incorporated by reference.

(D) **Notices.** Pursuant to Labor Code Section 1771.4, Contractor is required to post all job site notices prescribed by Laws.

9.3 Prevailing Wages. Each worker performing Work under this Contract that is covered under Labor Code Sections 1720, 1720.3, or 1720.9, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Worksite.

(A) **Penalties.** Pursuant to Labor Code Section 1775, Contractor and any Subcontractor will forfeit to City as a penalty up to \$200.00 for each calendar day, or portion of a day, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

(B) **Federal Requirements.** If this Project is subject to federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the currently applicable state or federal prevailing wage rates.

9.4 Payroll Records. Contractor must comply with the provisions of Labor Code Sections 1771.4, 1776, and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for electronic submission of payroll records to the DIR.

(A) **Contractor and Subcontractor Obligations.** Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct; and

(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, to the Division of Labor Standards Enforcement, to the Division of Apprenticeship Standards of the DIR, and as further required by the Labor Code.

(C) **Enforcement.** Upon notice of noncompliance with Labor Code Section 1776, Contractor or Subcontractor has ten days in which to comply with the requirements of this section. If Contractor or Subcontractor fails to do so within the ten day period, Contractor or Subcontractor will forfeit a penalty of \$100.00 per day, or portion of a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from payments then due to Contractor.

9.5 Labor Compliance. Pursuant to Labor Code section 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the DIR.

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

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

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

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

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

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

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

Article 10 Safety Provisions

10.1 Safety Precautions and Programs. Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must at all times comply with all applicable health and safety Laws and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at any Worksite, materials and equipment stored on or off site, and property at or adjacent to any Worksite.

(A) **Reporting Requirements.** Contractor must immediately notify the City of any death, serious injury or illness resulting from Work on the Project. Contractor must immediately provide a written report to City of each recordable accident or injury occurring at any Worksite within 24 hours of the occurrence. The written report must include: (1) the name and address of the injured or deceased person; (2) the name and address of each employee of Contractor or of any Subcontractor involved in the incident; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to City.

(B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide City with copies of all notices required by Laws.

(C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.

(D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or 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 in the Contract Documents, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the 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 is solely responsible for complying with Section 5194 of Title 8 of the California Code of Regulations, including by providing information to Contractor's employees about any hazardous chemicals to which they may be exposed in the course of the Work. A hazard communication program and other forms of warning and training about such exposure must be used. Contractor must also maintain Safety Data Sheets ("SDS") at the Worksite, as required by Law, for materials or substances used or consumed in the performance of the Work. The SDS will be accessible and available to Contractor's employees, Subcontractors, and City.

(A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Worksite and/or used in the performance of the Work. Contractor must notify the Engineer if a specified product or material cannot be used safely

(B) **Labeling.** Contractor must ensure proper labeling on any material brought onto the 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.

- 10.4 Hazardous Condition.** Contractor is solely responsible for determining whether a hazardous condition exists or is created during the course of the Work, involving a risk of bodily harm to any person or risk of damage to any property. If a hazardous condition exists or is created, Contractor must take all precautions necessary to address the condition and ensure that the Work progresses safely under the circumstances. Hazardous conditions may result from, but are not limited to, use of specified materials or equipment, the Work location, the Project site condition, the method of construction, or the way any Work must be performed.
- 10.5 Emergencies.** In an emergency affecting the safety or protection of persons, Work, or property at or adjacent to any Worksite, Contractor must take reasonable and prompt actions to prevent damage, injury, or loss, without prior authorization from the City if, under the circumstances, there is inadequate time to seek prior authorization from the City.

Article 11 Completion and Warranty Provisions

11.1 Final Completion.

(A) ***Final Inspection and Punch List.*** When the Work required by this Contract is fully performed, Contractor must provide written notification to the City requesting final inspection. The Engineer will schedule the date and time for final inspection, which must include Contractor's primary representative for the Project and its superintendent. Based on that inspection, City will prepare a punch list of items that are incomplete, missing, defective, incorrectly installed, or otherwise not compliant with the Contract Documents. The punch list to Contractor will specify the time by which all of the punch list items must be completed or corrected. The punch list may include City's estimated cost to complete each punch list item if Contractor fails to do so within the specified time. The omission of any non-compliant item from a punch list will not relieve Contractor from fulfilling all requirements of the Contract Documents. Contractor's failure to complete any punch list item within the time specified in the punch list will not waive or abridge its warranty obligations for any such items that must be completed by the City or by a third party retained by the City due to Contractor's failure to timely complete any such outstanding item.

(B) ***Requirements for Final Completion.*** Final Completion will be achieved upon completion or correction of all punch list items, as verified by City's further inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents, and submission of all final submittals, including instructions

and manuals as required under Section 7.10, and complete, final as-built drawings as required under Section 7.11, all to City's satisfaction.

(C) **Acceptance.** The Project will be considered accepted upon City Council action during a public meeting to accept the Project, unless the Engineer is authorized to accept the Project, in which case the Project will be considered accepted upon the date of the Engineer's issuance of a written notice of acceptance. In order to avoid delay of Project close out, the City may elect, acting in its sole discretion, to accept the Project as complete subject to exceptions for punch list items that are not completed within the time specified in the punch list.

(D) **Final Payment and Release of Retention.** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than 35 days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, City may withhold up to one hundred fifty percent 150% of City's estimated cost to complete each of the remaining items from Final Payment and may use the withheld retention to pay for the costs to self-perform the outstanding items or to retain a third party to complete any such outstanding punch list item.

11.2 Warranty.

(A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor warrants that materials or items incorporated into the Work comply with the requirements and standards in the Contract Documents, including compliance with Laws, and that any Hazardous Materials encountered or used were handled as required by Laws. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

(B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one year from the project acceptance (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors, suppliers and manufacturers any special or extended warranties required by the Contract Documents.

(C) **Warranty Documents.** As a condition precedent to Final Completion, Contractor must supply City with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.

(D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor expressly agrees to be co-guarantor of such Work.

(E) **Contractor's Obligations.** Upon written notice from City to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period. Work performed during the Warranty Period ("Warranty Work") will be subject to the warranty provisions in this Section 11.2 for a one-year period that begins upon completion of such Warranty Work to City's satisfaction.

(F) **City's Remedies.** If Contractor or its responsible Subcontractor fails to correct defective Work within ten days following notice by City, or sooner, if required by the circumstances, City may correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor must reimburse City for its costs in accordance with subsection (H) below.

(G) **Emergency Repairs.** In cases of emergency where any delay in correcting defective Work could cause harm, loss or damage, City may immediately correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor or its surety must reimburse City for its costs in accordance with subsection (H), below.

(H) **Reimbursement.** Contractor must reimburse City for its costs to repair under subsections (F) or (G), above, within 30 days following City's submission of a demand for payment pursuant to this provision. If City is required to initiate legal action to compel Contractor's compliance with this provision, and City is the prevailing party in such action, Contractor and its surety are solely responsible for all of City's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein in addition to any and all costs 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 of the Project, in whole or in part, prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

(B) **City's Responsibility.** City will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before Final Completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to complete the Work within the Contract time.

11.4 Substantial Completion. For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to 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) **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.

(B) **Scope of Article.** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount, and applies in addition to the provisions of Public Contract Code Section 9204 and Sections 20104, *et seq.*, which are incorporated herein by this reference.

(C) **No Work Delay.** Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of a Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to a Claim or other dispute.

(D) **Informal Resolution.** Contractor will make a good faith effort to informally resolve a dispute before initiating a Claim, preferably by face-to-face meeting between authorized representatives of Contractor and City.

12.2 Claims Submission. The following requirements apply to any Claim subject to this Article:

(A) **Substantiation.** The Claim must be submitted to City in writing by registered or certified mail with return receipt requested and clearly identified as a "Claim" submitted pursuant to this Article 12. The Claim 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 known or estimated labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each component of claimed cost. Any Claim for an extension of time or delay costs must be substantiated with a schedule analysis and narrative depicting and explaining claimed time impacts. Contractor understands that submission of a Claim which has no basis in fact or which Contractor knows to be false may violate the False Claims Act (Government Code Section 12650 *et seq.*).

(B) **Claim Format and Content.** A Claim must be submitted in the following format:

- (1) Provide a cover letter, specifically identifying the submission as a "Claim" submitted under this Article 12, and specifying the requested remedy (e.g., amount of proposed change to Contract Price and/or change to Contract Time).

(2) Provide a summary of each Claim, including underlying facts and the basis for entitlement and identify each specific demand at issue, including the specific Change Order request (by number and submittal date), and the date of City's rejection of that demand, in whole or in part.

(3) Provide a detailed explanation of each issue in dispute. For multiple issues included within a single Claim or for multiple Claims submitted concurrently, separately number and identify each individual issue or Claim and include the following for each separate issue or Claim:

(a) A succinct statement of the matter in dispute, including Contractor's position and the basis for that position;

(b) Identify and attach all documents that substantiate the Claim, including relevant provisions of the Contract Documents, RFIs, calculations, and schedule analysis (see subsection (A), Substantiation, above);

(c) A chronology of relevant events; and

(d) Analysis and basis for claimed changes to Contract Price, Contract Time, or any other remedy requested.

(4) Provide a summary of issues and corresponding claimed damages. If, by the time of the Claim submission deadline (below), the precise amount of the requested change in the Contract Price or Contract Time is not yet known, Contractor must provide a good faith estimate, including the basis for that estimate, and must identify the date by which it is anticipated that the Claim will be updated to provide final amounts.

(5) Include the following certification, executed by Contractor's authorized representative:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim submittal are true and correct. Contractor warrants that this Claim submittal is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay not included herein are deemed waived."

(C) ***Submission Deadlines.***

(1) A Claim disputing rejection of a request for a change in the Contract Time or Contract Price must be submitted within 21 days following the date that City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part. A Claim disputing the terms of a unilateral Change Order must be submitted within 21 days following the date of issuance of the unilateral Change Order. These Claim deadlines apply even if Contractor cannot yet quantify the total amount of any requested change in the Contract Time or Contract Price. If the Contractor cannot quantify those amounts, it must submit an estimate of the amounts claimed pending final determination of the requested remedy by Contractor.

(2) With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment, or will be deemed waived.

(3) A Claim disputing the amount of Final Payment must be submitted within 21 days of the effective date of Final Payment, under Section 8.7, above.

(4) Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.

12.3 City's Response. City will respond within 45 days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the 45 day period is extended by mutual agreement of City and Contractor, or as otherwise allowed under Public Contract Code Section 9204. However, if City determines that the Claim is not adequately substantiated pursuant to Section 12.2(A), Substantiation, City may first request, in writing, within 30 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against the Claim.

(A) **Additional Information.** If additional information is thereafter required, it may be requested and provided upon mutual agreement of City and Contractor. If Contractor's Claim is based on estimated amounts, Contractor has a continuing duty to update its Claim as soon as possible with information on actual amounts in order to facilitate prompt and fair resolution of the Claim.

(B) **Non-Waiver.** Any failure by City to respond within the times specified above will not be construed as acceptance of the Claim in whole or in part, or as a waiver of any provision of these Contract Documents.

12.4 Meet and Confer. If Contractor disputes City's written response, or City fails to respond within the specified time, within 15 days of receipt of City's response or within 15 days of City's failure to respond within the applicable 45-day time period under Section 12.3, respectively, Contractor may notify City of the dispute in writing sent by registered or certified mail, return receipt requested and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to notify City of the dispute and demand an informal conference to meet and confer in writing within the specified time, Contractor's Claim will be deemed waived.

(A) **Schedule Meet and Confer.** Upon receipt of the demand to meet and confer, City will schedule the meet and confer conference to be held within 30 days, or later if needed to ensure the mutual availability of each of the individuals that each party requires to represent its interests at the meet and confer conference.

(B) **Location for Meet and Confer.** The meet and confer conference will be scheduled at a location at or near City's principal office.

(C) **Written Statement After Meet and Confer.** Within ten working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.

(D) **Submission to Mediation.** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the Contractor may identify in writing disputed portion(s) of the claim that will be submitted for mediation as set forth below.

12.5 Mediation and Government Code Claims.

(A) **Mediation.** Within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute following the meet and confer, City and Contractor will mutually agree to a mediator, as provided under Public Contract Code § 9204. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. If there are multiple Claims in dispute, the parties may agree to schedule the mediation to address all outstanding Claims at the same time. The parties will share the costs of the mediator and

mediation fees equally, but each party is otherwise solely and separately responsible for its own costs to prepare for and participate in the mediation, including costs for its legal counsel or any other consultants.

(B) **Government Code Claims.**

(1) Timely presentation of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract. Compliance with the Claim submission requirements in this Article 12 is a condition precedent to filing a Government Code Claim.

(2) The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied in whole or in part at the conclusion of the meet and confer process, including any period of time used by the meet and confer process. However, if the Claim is submitted to mediation, the time for filing a Government Code Claim will be tolled until conclusion of the mediation, including any continuations, if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

12.6 Tort Claims. This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.

12.7 Arbitration. It is expressly agreed, under Code of Civil Procedure Section 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.

12.8 Burden of Proof and Limitations. Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to speculative, special, or consequential damages, including home office overhead or any form of overhead not directly incurred at the Project site or any other Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract. The Eichleay Formula or similar formula will not be used for any recovery under the Contract. The City will not be directly liable to any Subcontractor or supplier.

12.9 Legal Proceedings. In any legal proceeding that involves enforcement of any requirements of the Contract Documents, the finder of fact will receive detailed instructions on the meaning and operation of the Contract Documents, including conditions, limitations of liability, remedies, claim procedures, and other provisions bearing on the defenses and theories of liability. Detailed findings of fact will be requested to verify enforcement of the Contract Documents. All of the City's remedies under the Contract Documents will be construed as cumulative, and not exclusive, and the City reserves all rights to all remedies available under law or equity as to any dispute arising from or relating to the Contract Documents or performance of the Work.

12.10 Other Disputes. The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, including disputes regarding suspension or early termination of the Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 Suspension and Termination

13.1 Suspension for Cause. In addition to all other remedies available to City, if Contractor fails to perform or correct Work in accordance with the Contract Documents, including non-compliance with applicable environmental or health and safety Laws, City may immediately order the Work, or any portion of it, suspended until the circumstances giving rise to the suspension have been eliminated to City's satisfaction.

(A) **Notice of Suspension.** Upon receipt of City's written notice to suspend the Work, in whole or in part, except as otherwise specified in the notice of suspension, Contractor and its Subcontractors must promptly stop Work as specified in the notice of suspension; comply with directions for cleaning and securing the Worksite; and protect the completed and in-progress Work and materials. Contractor is solely responsible for any damages or loss resulting from its failure to adequately secure and protect the Project.

(B) **Resumption of Work.** Upon receipt of the City's written notice to resume the suspended Work, in whole or in part, except as otherwise specified in the notice to resume, Contractor and its Subcontractors must promptly re-mobilize and resume the Work as specified; and within ten days from the date of the notice to resume, Contractor must submit a recovery schedule, prepared in accordance with the Contract Documents, showing how Contractor will complete the Work within the Contract Time.

(C) **Failure to Comply.** Contractor will not be entitled to an increase in the Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.

(D) **No Duty to Suspend.** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

13.2 Suspension for Convenience. City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience. Upon notice by City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work and secure the Project site as directed by City except for taking measures to protect completed or in-progress Work as directed in the suspension notice, and subject to the provisions of Section 13.1(A) and (B), above. If Contractor submits a timely request for a Change Order in compliance with Articles 5 and 6, the Contract Price and the Contract Time will be equitably adjusted by Change Order pursuant to the terms of Articles 5 and 6 to reflect the cost and delay impact occasioned by such suspension for convenience, except to the extent that any such impacts were caused by Contractor's failure to comply with the Contract Documents or the terms of the suspension notice or notice to resume. However, the Contract Time will only be extended if the suspension causes or will cause unavoidable delay in Final Completion. If Contractor disputes the terms of a Change Order issued for such equitable adjustment due to suspension for convenience, its sole recourse is to comply with the Claim procedures in Article 12.

13.3 Termination for Default. City may declare that Contractor is in default of the Contract for a material breach of or inability to fully, promptly, or satisfactorily perform its obligations under the Contract.

(A) **Default.** Events giving rise to a declaration of default include Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; Contractor's refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct defective Work or damage; Contractor's failure to comply with Laws, or orders of any public agency with jurisdiction over the Project; evidence of Contractor's bankruptcy, insolvency, or lack of financial capacity to complete the Work as required within the Contract Time; suspension, revocation, or expiration and nonrenewal of Contractor's license or DIR registration; dissolution, liquidation, reorganization, or other major change in Contractor's organization, ownership, structure, or existence as a business entity;

unauthorized assignment of Contractor's rights or duties under the Contract; or any material breach of the Contract requirements.

(B) **Notice of Default and Opportunity to Cure.** Upon City's declaration that Contractor is in default due to a material breach of the Contract Documents, if City determines that the default is curable, City will afford Contractor the opportunity to cure the default within ten days of City's notice of default, or within a period of time reasonably necessary for such cure, including a shorter period of time if applicable.

(C) **Termination.** If Contractor fails to cure the default or fails to expediently take steps reasonably calculated to cure the default within the time period specified in the notice of default, City may issue written notice to Contractor and its performance bond surety of City's termination of the Contract for default.

(D) **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond within seven calendar days from the date of the notice of termination pursuant to paragraph (C), City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by City to complete the Work following termination, where "additional cost" means all cost in excess of the cost City would have incurred if Contractor had timely completed Work without the default and termination. In addition, City will have the right to immediate possession and use of any materials, supplies, and equipment procured for the Project and located at the Project site or any Worksite on City property for the purposes of completing the remaining Work.

(E) **Compensation.** Within 30 days of receipt of updated as-builts, all warranties, manuals, instructions, or other required documents for Work installed to date, and delivery to City of all equipment and materials for the Project for which Contractor has already been compensated, Contractor will be compensated for the Work satisfactorily performed in compliance with the Contract Documents up to the effective date of the termination pursuant to the terms of Article 8, Payment, subject to City's rights to withhold or deduct sums from payment otherwise due pursuant to Section 8.3, and excluding any costs Contractor incurs as a result of the termination, including any cancellation or restocking charges or fees due to third parties. If Contractor disputes the amount of compensation determined by City, its sole recourse is to comply with the Claim Procedures in Article 12, by submitting a Claim no later than 30 days following notice from City of the total compensation to be paid by City.

(F) **Wrongful Termination.** If Contractor disputes the termination, its sole recourse is to comply with the Claim procedures in Article 12. If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience under Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including special or consequential damages, lost opportunity costs, or lost profits, and any award of damages is subject to Section 12.8, Burden of Proof and Limitations.

13.4 Termination for Convenience. City reserves the right, acting in its sole discretion, to terminate all or part of the Contract for convenience upon written notice to Contractor.

(A) Compensation to Contractor. In the event of City's termination for convenience, Contractor waives any claim for damages, including for loss of anticipated profits from the Project. The following will constitute full and fair compensation to Contractor, and Contractor will not be entitled to any additional claim or compensation:

(1) Completed Work. The value of its Work satisfactorily performed as of the date notice of termination is received, based on Contractor's schedule of values and unpaid costs for items delivered to the Project site that were fabricated for incorporation in the Work;

(2) Demobilization. Demobilization costs specified in the schedule of values, or if demobilization costs were not provided in a schedule of values pursuant to Section 8.1, then based on actual, reasonable, and fully documented demobilization costs; and

(3) Termination Markup. Five percent of the total value of the Work performed as of the date of notice of termination, including reasonable, actual, and documented costs to comply with the direction in the notice of termination for convenience, and demobilization costs, which is deemed to cover all overhead and profit to date.

(B) Disputes. If Contractor disputes the amount of compensation determined by City pursuant to paragraph (A), above, its sole recourse is to comply with the Claim procedures in Article 12, by submitting a Claim no later than 30 days following notice from City of total compensation to be paid by City.

13.5 Actions Upon Termination for Default or Convenience. The following provisions apply to any termination under this Article, whether for default or convenience, and whether in whole or in part.

(A) **General.** Upon termination, City may immediately enter upon and take possession of the Project and the Work and all tools, equipment, appliances, materials, and supplies procured or fabricated for the Project. Contractor will transfer title to and deliver all completed Work and all Work in progress to City.

(B) **Submittals.** Unless otherwise specified in the notice of termination, Contractor must immediately submit to City all designs, drawings, as-built drawings, Project records, contracts with vendors and Subcontractors, manufacturer warranties, manuals, and other such submittals or Work-related documents required under the terms of the Contract Documents, including incomplete documents or drafts.

(C) **Close Out Requirements.** Except as otherwise specified in the notice of termination, Contractor must comply with all of the following:

(1) Immediately stop the Work, except for any Work that must be completed pursuant to the notice of termination and comply with City's instructions for cessation of labor and securing the Project and any other Worksite(s).

(2) Comply with City's instructions to protect the completed Work and materials, using best efforts to minimize further costs.

(3) Contractor must not place further orders or enter into new subcontracts for materials, equipment, services or facilities, except as may be necessary to complete any portion of the Work that is not terminated.

(4) As directed in the notice, Contractor must assign to City or cancel existing subcontracts that relate to performance of the terminated Work, subject to any prior rights, if any, of the surety for Contractor's performance bond, and settle all outstanding liabilities and claims, subject to City's approval.

(5) As directed in the notice, Contractor must use its best efforts to sell any materials, supplies, or equipment intended solely for the terminated Work in a manner and at market rate prices acceptable to City.

(D) **Payment Upon Termination.** Upon completion of all termination obligations, as specified herein and in the notice of termination, Contractor

will submit its request for Final Payment, including any amounts due following termination pursuant to this Article 13. Payment will be made in accordance with the provisions of Article 8, based on the portion of the Work satisfactorily completed, including the close out requirements, and consistent with the previously submitted schedule of values and unit pricing, including demobilization costs. Adjustments to Final Payment may include deductions for the cost of materials, supplies, or equipment retained by Contractor; payments received for sale of any such materials, supplies, or equipment, less re-stocking fees charged; and as otherwise specified in Section 8.3, Adjustment of Payment Application.

(E) **Continuing Obligations.** Regardless of any Contract termination, Contractor's obligations for portions of the Work already performed will continue and the provisions of the Contract Documents will remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, record maintenance, or other such rights and obligations arising prior to the termination date.

Article 14 Miscellaneous Provisions

- 14.1 Assignment of Unfair Business Practice Claims.** Under Public Contract Code Section 7103.5, Contractor and its Subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or any subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.
- 14.2 Provisions Deemed Inserted.** Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be deemed amended accordingly.
- 14.3 Waiver.** City's waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will not be effective unless it is in writing and signed by the City. City's waiver of any breach, failure, right, or remedy will not be deemed a waiver of any other breach, failure, right, or remedy, whether or

not similar, nor will any waiver constitute a continuing waiver unless specified in writing by the City.

- 14.4 Titles, Headings, and Groupings.** The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.
- 14.5 Statutory and Regulatory References.** With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that bids were due.
- 14.6 Survival.** The provisions that survive termination or expiration of this Contract include Contract Section 11, Notice, and subsections 12.1, 12.2, 12.3, 12.4, 12.5, and 12.6 of Section 12, General Provisions; and the following provisions in these General Conditions: Section 2.2(J), Contractor's Records, Section 2.3(C), Termination, Section 3.7, Ownership, Section 4.2, Indemnity, Article 12, Dispute Resolution, and Section 11.2, Warranty.

END OF GENERAL CONDITIONS

SPECIAL CONDITIONS

1. **Emergency Contact.** Prior to the commencement of Work on the Project, Contractor must provide contact information to the 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.



CITY COUNCIL STAFF REPORT

MEETING DATE: January 28, 2026

PREPARED BY:

Matt Mahood, Economic Development Director

APPROVED BY: City Manager

ACCEPT MORGAN HILL PROPERTY AND BUSINESS IMPROVEMENT DISTRICT (MHPBID) OWNERS' ASSOCIATION ANNUAL REPORT (DBA DOWNTOWN MORGAN HILL IMPROVEMENT DISTRICT)

RECOMMENDATION(S)

Accept and file the Downtown Morgan Hill Improvement District Annual Report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Maintaining and Enhancing Infrastructure

Preserving and Cultivating Public Trust

2024-2025 Strategic Priorities

Fiscal Sustainability

Economic Development and Tourism

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

Downtown Strategic Plan

Economic Blueprint

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

The Downtown Morgan Hill Improvement District (DMHID) serves as the Owners' Association of the Morgan Hill Property and Business Improvement District (MHPBID), and is required to present an annual report at the end of each year of operation to the Morgan Hill City Council pursuant to Streets and Highways Code §36650. The Purpose of this staff report is to present the MHPBID's 2025 Annual Report (Attachment 1) for acceptance by the City Council.

Background:

On November 16, 2022, the City Council adopted a resolution establishing a Morgan Hill Property and Business Improvement District (MHPBID) for a five-year term.

The MHPBID provides for the collection of a property assessment from all parcels located within the District that are categorized as commercial, government or nonprofit.

The assessment rate (cost to the parcel owner) is based on parcel type, parcel square footage, and in some cases, linear frontage. To determine a parcel's assessment, the applicable square footage rates are applied to the parcels within the MHPBID as follows:

Commercial and government parcels are assessed at a rate of \$0.10 per square foot and non-profit parcels are assessed at a rate of \$0.04 per square foot. Frontage rates are applied to parcels fronting East 3rd St, after Monterey Rd. intersection, Monterey Rd., and Depot St. Frontage rates are applied to the parcels within these areas as follows: Commercial parcels are assessed at an additional rate of \$5.00 per linear foot and non-profit parcels are assessed at an additional rate of \$2.00 per linear foot. MHPBID assessments are public/private funds managed by a non-profit board and are used to support clean and safe, capital improvement, marketing and special event efforts, designed to increase foot traffic, beautification and vibrancy to the District.

The Streets and Highways Code §36650 requires the MHPBID to provide the City Council with an Annual Report that articulates the following:

- Any proposed changes in the boundaries of the improvement district or any benefit zones or classification of businesses within the district.
- The improvements, maintenance, and activities provided for that fiscal year.
- An estimate of the cost of providing improvements, maintenance, and activities for that fiscal year.
- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against their business for that fiscal year.
- The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.
- A statement confirming that all required annual federal and state filings to ensure corporate good standing and to maintain tax-exempt status are completed and up to date.
- A copy of the previous year's accepted federal and state tax filings.

Management District Plan:

A Management District Plan (MDP) identifies the MHPBID's boundaries, budget, services, and governance. Below is a summary of MHPBID's Plan:

- **Boundary:** The MHPBID boundary includes parcels north of Dunne, east of Del Monte, south of Main, and west of Butterfield, as shown on the map in the MDP.
- **Term:** Five (5)-year assessment beginning January 1, 2024, through December 31, 2028, with an annual 30-day period of protest for termination by assessed businesses.
- **Budget:** Annual assessment rates as outlined above will produce an annual

budget of approximately \$284,640. The MDP allows the Owners Association to annually approve incremental increases to the MHPBID rate up to 3%.

- **Mission:** The purpose of the MHPBID is to provide improvements, maintenance, and activities which constitute and convey a special benefit to assessed parcels. The MHPBID will provide Clean and Safe programs, Capital Improvements and Art Installations, Marketing and Special Events, and related Management and Administration directly and only to assessed parcels within its boundaries.
- **Governance:** A non-profit corporation, Downtown Morgan Hill Improvement District (DMHID), serves as the “Owners' Association” charged with the management of funds and implementation of the MHPBID Management District Plan. An annual report is required to be provided to the City Council at the end of each year of operation. The owner’s association first report shall be due after the first year of operation of the District (January 1, 2024 - December 31, 2024).

Owners' Association Makeup and Goal (DMHID Board of Directors):

The MHPBID shall be governed by the Downtown Morgan Hill Improvement District (DMHID) Board, with oversight from the Morgan Hill City Council.

The Owners' Association, DMHID, is a private entity separate from the City of Morgan Hill. The corporation shall have no less than five (5) and no more than nine (9) Directors. A majority of the Board of Directors of the DMHID must be parcel owners paying the assessment and the remaining Board seats must represent a variety of interests within the MHPBID as follows: a minimum of three (3) Directors must be property owners or approved managers paying the MHPID assessment, a minimum of two (2) Directors must be City of Morgan Hill staff members representing Public Works and Economic Development, and a combination of up to four (4) Directors can be business owners within the MHPBID, Downtown residents, and/or additional property owners or approved managers paying the MHPBID assessment. Currently, the Economic Development Director and the Public Services Director serve on the DMHID Board.

The goal of DMHID is to maintain the Downtown District as a safe and inviting environment, attract more tenants, shoppers, and visitors, increase property values, and stabilize occupancy. The DMHID will achieve these goals by providing clean and safe programs, capital improvements, art installations, marketing, special events, and related district management within the Downtown boundary. This private/public partnership will have the ability to leverage parcel owners’ investment with additional public investment to provide the financial resources necessary to develop and implement a focused strategy to support existing and future businesses and patrons in Downtown Morgan Hill.

Annual Report

The Owners' Association is required to present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code §36650. The 2025 Annual Report is attached for the City Council’s review and acceptance (Attachment 1).

DMHID's Annual Report does not propose any changes to the boundaries, benefit zones, or classifications of businesses. A list of activities and accomplishments undertaken by the district are listed in the Annual Report, including illumination of trees in the center median from Main Ave to Dunne, annual sidewalk cleaning, funding of the Morgan Hill Police Department's 2-year pilot program installing Condor Cameras on Monterey Rd. and Depot St., funding and content creation for the Visit Morgan Hill Destination Guide, management of the Sidewalk Saturdays Makers Market, creation and management of three Twilight Markets, as well as other marketing and partnership efforts.

In 2025, DMHID's income was \$313,994, which consisted of \$267,407 in assessment funds and \$46,587 in non-assessment revenue. The 2025 end of year account balance as of December 31, 2025, was \$258,537.

A copy of the DMHID's 2025 Statement of Financial Position (Attachment 2) and 2024 Tax Return (Attachment 3) are attached.

COMMUNITY ENGAGEMENT:

The DMHID board of directors meets every month and conforms with Brown Act noticing requirements. These meetings are open to the public, and meeting records are kept at www.dmhid.org.

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is an annual report on activities which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On January 15, 2025, the City Council accepted and filed the 2024 Downtown Morgan Hill Improvement District Annual Report.

On November 16, 2022, the City Council signed a resolution to form the Morgan Hill Property and Business Improvement District, approving the assessment formula and levying the assessments.

On September 28, 2022, the City Council adopted a Resolution of Intent to form the PBID and authorized the City Manager to sign the ballot for all city-owned properties in support of the formation.

FISCAL AND RESOURCE IMPACT:

As provided by State Law, the MHPBID assessment will appear as a separate line item on annual property tax bills prepared by the County of Santa Clara (County). The County is responsible for collecting the assessment on a bi-annual basis and remitting to the City. The City forwards the assessments to the Owners' Association, known as the Downtown Morgan Hill Improvement District (DMHID), a nonprofit corporation managing the MHPBID funds in accordance with the MDP. The PBID funds are a

combination of public and private funds managed by a non-profit board (DMHID).

The City gets paid a fee equal to two percent (2%) of the amount of the assessment collected to cover administration costs. In 2025, the City collected \$5,457.00 from the administration fee.

CEQA (California Environmental Quality Act):

Categorical Exemption

Pursuant to CEQA, organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment are exempt activities.

**MORGAN HILL PROPERTY AND
BUSINESS IMPROVEMENT DISTRICT**

ANNUAL REPORT

2025



JAN 01-DEC 31

Prepared by:

**DOWNTOWN MORGAN
HILL IMPROVEMENT
DISTRICT**

ANNUAL REPORT

This report serves as the Annual Report from the Downtown Morgan Hill Improvement District Board (DMHID), responsible for the Downtown District and Morgan Hill Property and Business Improvement District (MHPBID) to the Morgan Hill City Council.

District Background

Developed by a coalition of Downtown property owners, the Morgan Hill Property and Business Improvement District (MHPBID) is a benefit assessment district whose main goal is to provide improvements, maintenance, and activities which constitute and convey a special benefit to assessed parcels. The MHPBID includes parcels north of Dunne Avenue, east of Del Monte Street, south of Main Street, and west of Butterfield Boulevard. As required by state law, property owners have created this Management District Plan (Plan) to form the MHPBID. The Downtown MHPBID is managed by a 501c6 non-profit organization, the Downtown Morgan Hill Improvement District (DMHID), in agreement with the City and guided by a board of directors comprised of property owners, business owners, residents and city staff. The DMHID aligns services with the direct benefits to those who contribute, ensuring a vibrant future for Downtown Morgan Hill.

Downtown Morgan Hill Improvement District (DMHID)

The Downtown Morgan Hill Improvement District (DMHID) is dedicated to enhancing the vibrancy and economic success of Downtown Morgan Hill. Funded by Downtown commercial property owners, non-profits and the City, their mission is to promote a safe, clean, and welcoming environment through targeted programming, beautification, and marketing. The DMHID will achieve these goals by providing clean and safe programs, capital improvements, art installations, marketing, special events, and related district management within the Downtown boundary. This private/public partnership will have the ability to leverage property owners' investment along with additional private investment to provide the financial resources necessary to develop and implement a focused strategy to support existing and future businesses and patrons in Downtown Morgan Hill.

ASSESSMENT OVERVIEW

District Boundary

The boundaries of the Assessment District include approximately 15 blocks surrounding the Monterey Road commercial corridor. The Assessment District is generally bounded on the south of Main Avenue, on the west of Butterfield Boulevard, on the north of Dunne Avenue, and on the East by Del Monte Avenue, as shown on the map below.



ASSESSMENT OVERVIEW

Assessment Term

The MHPBID was established with an initial five (5)-year assessment term beginning January 1, 2024, through December 31, 2028, with an annual 30-day period of protest for termination by assessed businesses.

Assessment Roll

The assessment roll is a listing of the proposed assessment for the Fiscal Year 2024/2025 apportioned to each parcel, as shown on the last equalized roll of the Assessor of the County of Santa Clara. The assessment roll for Fiscal Year 2024/2025 has been attached as Appendix 1.

Time and Manner of Collecting Assessments

As provided by State Law, the MHPBID assessment will appear as a separate line item on annual property tax bills prepared by the County of Santa Clara (County). The Santa Clara County Assessor's Office is responsible for collecting the assessment from the property owners and remitting it to the City on a bi-annual basis. The County levies and collects the assessments in the same manner and at the same time as ordinary *ad valorem* property taxes. The City forwards the assessments to the Owners' Association, known as the Downtown Morgan Hill Improvement District (DMHID), a nonprofit corporation managing the MHPBID funds in accordance with the MDP, defined as "Plan" above.

Resolution Disputes

If a property owner believes that an assessment has been calculated or applied in error, the owner may contact the Board to correct the property information used to calculate the assessment. For Fiscal Year 2025/2026, the DMHID did not receive any requested corrections from property owners.

ASSESSMENT OVERVIEW

Assessment Formula

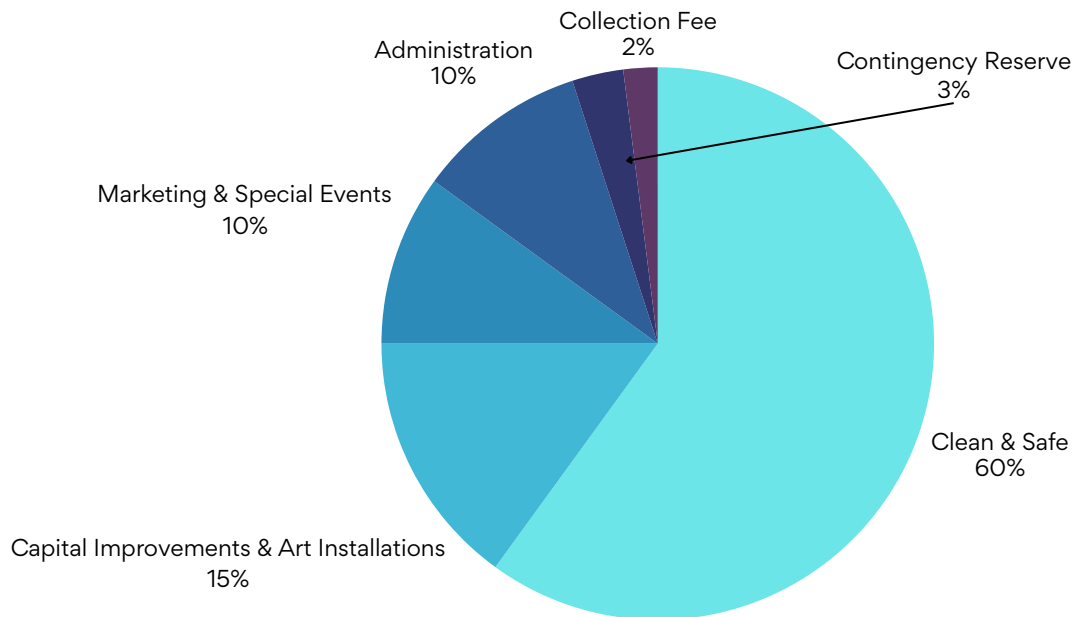
Parcels located within the District that are categorized as commercial, government, or nonprofit are subject to the assessment. The assessment rate (cost to the parcel owner) is based on parcel type, parcel square footage, and in some cases, linear frontage. To determine a parcel's assessment, the applicable square footage and linear frontage rates in the table below are applied to the parcels within the MHPBID. Frontage rates are applied to parcels fronting East 3rd St, after Monterey Rd. intersection, Monterey Rd., and Depot St. The initial annual assessment rates are shown below. Assessment rates may be subject to an increase of no more than three percent (3%) per year.

Parcel Type	Square Footage Assessment Rate (sq.ft.)	Linear Frontage Assessment Rate (ln.ft.)
Commercial/Government	\$0.10	\$5.00
Non-profit	\$0.04	\$2.00

58
Property Owners

92
Properties

\$284,640
Annual Budget



KEY FOCUS AREAS

Service Plan

A service plan to provide special benefits to assessed properties was developed using several methods. A series of property owner meetings, a survey of property owners, and an analysis of current property conditions and needs were all conducted. The primary needs identified were: Clean and Safe programs, Capital Improvements and Art Installations, and Marketing and Special Events. The MHPBID can provide these services to the District and directly benefit the assessed parcels within its boundaries.

Clean and Safe

The Clean & Safe Program helps create a cleaner, safer, and more welcoming Downtown District through enhanced services like litter removal, graffiti abatement, pressure washing, and investments in improved lighting and security measures.

Capital Improvements and Art Installations

The Capital Improvements and Art Installation Program helps enhance the Downtown District through investments in public space improvements, streetscape features, and public art installations.

Marketing and Special Events

The Marketing and Special Events Program helps enhance the visibility and appeal of the Downtown District through investments in coordinated marketing, special events, and positive media outreach.



2025 PROGRAM ACTIVITIES

The focus of the Morgan Hill Property Business Improvement District (MHPBID) is to maintain the Downtown District as a safe and inviting environment, attract more tenants and shoppers, increase property values, and stabilize occupancy. Under the leadership of the elected members of the Association (the “Board”), the Association implements and funds various improvements, services, and activities that will benefit the nonresidential properties throughout the Assessment District. The Assessment District maintains a 3% operating reserve for unanticipated expenses and new programs or projects not listed below.

The improvements, services, and activities detailed below are collectively referred to as the Program Activities Plan. The City currently provides certain improvements, services, and activities throughout the Downtown area. The Program Activities Plan funded by assessment revenue is in addition to those services provided by the City. The Program Activities Plan may be amended in any year and is subject to the review and approval of the Board prior to City Council approval.

CLEAN & SAFE



Monterey Median Tree Lighting

- Completed the illumination of all trees in the median from Monterey Road to Dunne Avenue.
- Lighting colors are changed every other month to reflect the holiday or occasion.
- Facilitated the removal of unkept sidewalk tree lighting between Monterey Road and Dunne Avenue.



Condor Camera Pilot Program

- Partnered with the Morgan Hill Police Department to fund 50% of a 2-year pilot program to add security cameras to Downtown.



Sidewalk Cleaning

- Managed and funded a District-wide sidewalk cleaning after the 4th of July festivities.

EVENTS



Sidewalk Saturdays

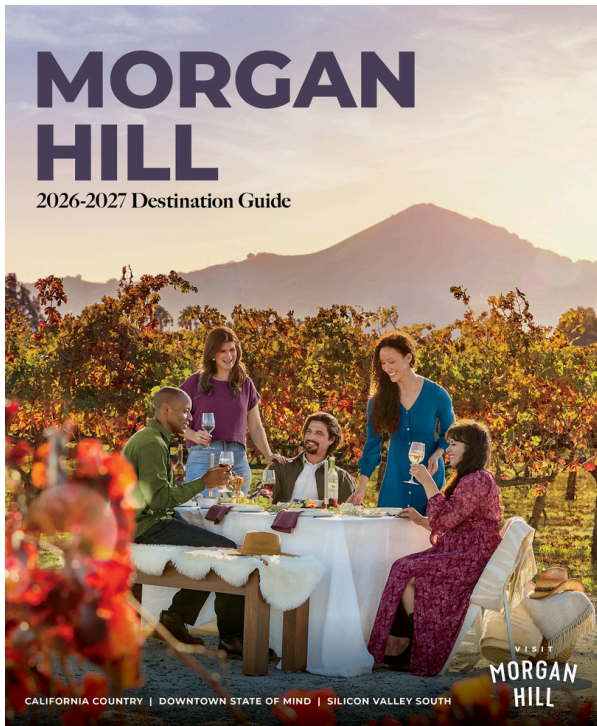
- Organized and managed eight local Makers Markets on the 2nd Saturday of every month, during the months of May-December.
- Averaged 45 vendors per event and opened booth space for community partners.
- Included a partial closure of 3rd Street.

Twilight Markets

- Developed three additional markets on Thursday evenings called “Twilight Markets,” in June, August, and October.
- Included over 35 vendor, community partner, resource, and kids’ activity booths.
- Offered activities free of charge to support the community.



MARKETING



DESTINATION GUIDE

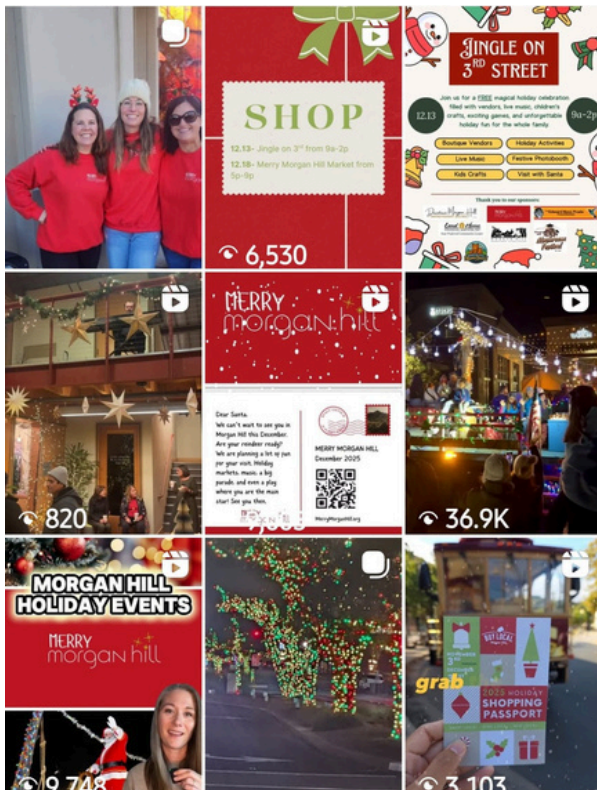
- Assisted with funding and content creation for Visit Morgan Hill's 2026-2027 Destination Guide.

SOCIAL MEDIA/ PRINT MEDIA

- Grew Instagram account by 56%.
- Authored bi-monthly column in Morgan Hill Times Publication.

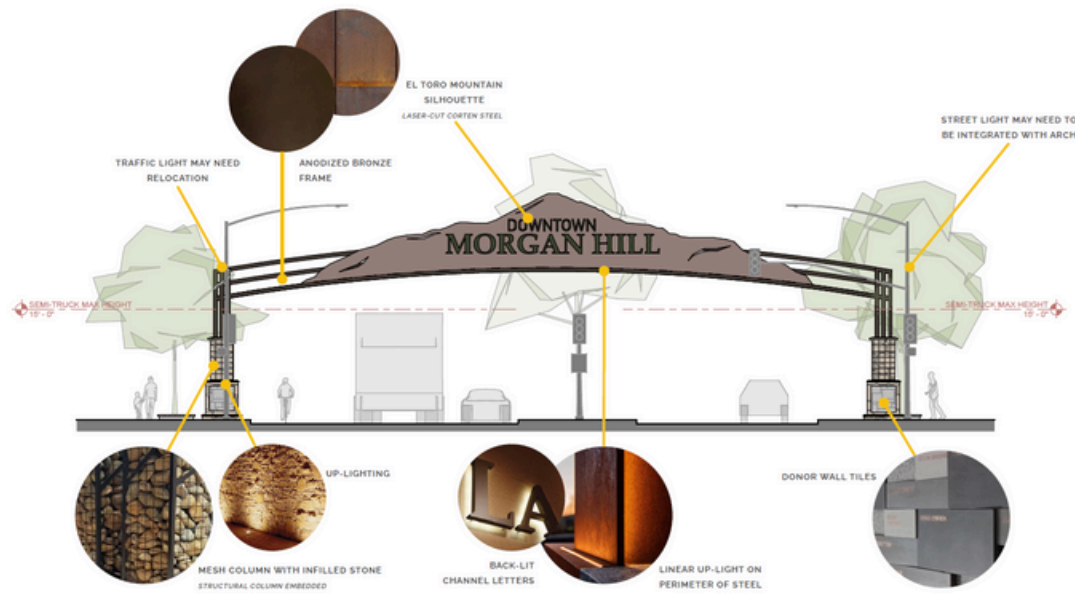
COMMUNITY OUTREACH

- Presented to and collaborated with local non-profit, business, and service organizations including: Rotary, Kiwanis, Morgan Hill Downtown Association, Morgan Hill Chamber of Commerce, South County Real Estate Association, Mushroom Festival, Edward Boss Prado Foundation, YMCA of Silicon Valley, LCAC, MHUSD, Wineries of Santa Clara Valley, Freedom Fest, and Historical Society.



2026 PROGRAM ACTIVITIES PLAN

- Maintain Sidewalk Saturday and Twilight Markets, while growing program visibility, diversifying vendors, and increasing foot traffic.
- Work with partner organizations to host and implement events to leverage costs and permit accessibility.
- Fundraise and manage the construction and implementation of a Downtown Gateway Arch Project.
- Replace and upgrade garbage cans along Depot Street.
- Enhance landscaping along Depot Street.
- Coordinate Quarterly Downtown Clean up Days in collaboration with partner organizations.
- Research developing a Downtown Street Team to help with graffiti abatement, Utilize “See Click Fix” reporting to support clean and safe efforts.
- Develop grant programs to cost-share upgrades to parking lot lighting and the removal of brick planter boxes.
- Increase safety through enhanced lighting and access to the VTA Parking Lot.
- Fund year two of the Downtown security camera Pilot Program.
- Perform annual sidewalk cleaning.
- Investigate funding strategies to install twinkle lights on Monterey Road sidewalk trees.



FINANCIALS

* 2025 REVENUE	\$313,994.09
Non-Assessment Revenue	\$45,306.98
Assessment Collection	\$267,406.84
Other Revenue	\$1,280.27
* 2025 EXPENSES	\$226,843.04
Administration	\$89,261.54
Clean & Safe	\$85,301.24
Capital Improvement/ Art Installation	\$13,145.00
Marketing and Special Events	\$26,235.26
PBID Startup Fund Repayment	\$12,900.00
* 2025 NET REVENUE	\$87,151.05

The organization's 2025 financial report has been attached as Appendix 2

FINANCIALS

Taxes Prepared Without Audit

- DMHID/ MHPBID 2024 Federal Return of Organization Exempt from Income Tax was electronically filed and accepted with the Internal Revenue Service.
- No tax is payable with the filing of this return.
- DMHID's 2024 California Exempt Organization Annual Information Return was electronically filed.
- No audit conducted for 2024.

Other Contributions

No other financial contributions to the DMHID were made.

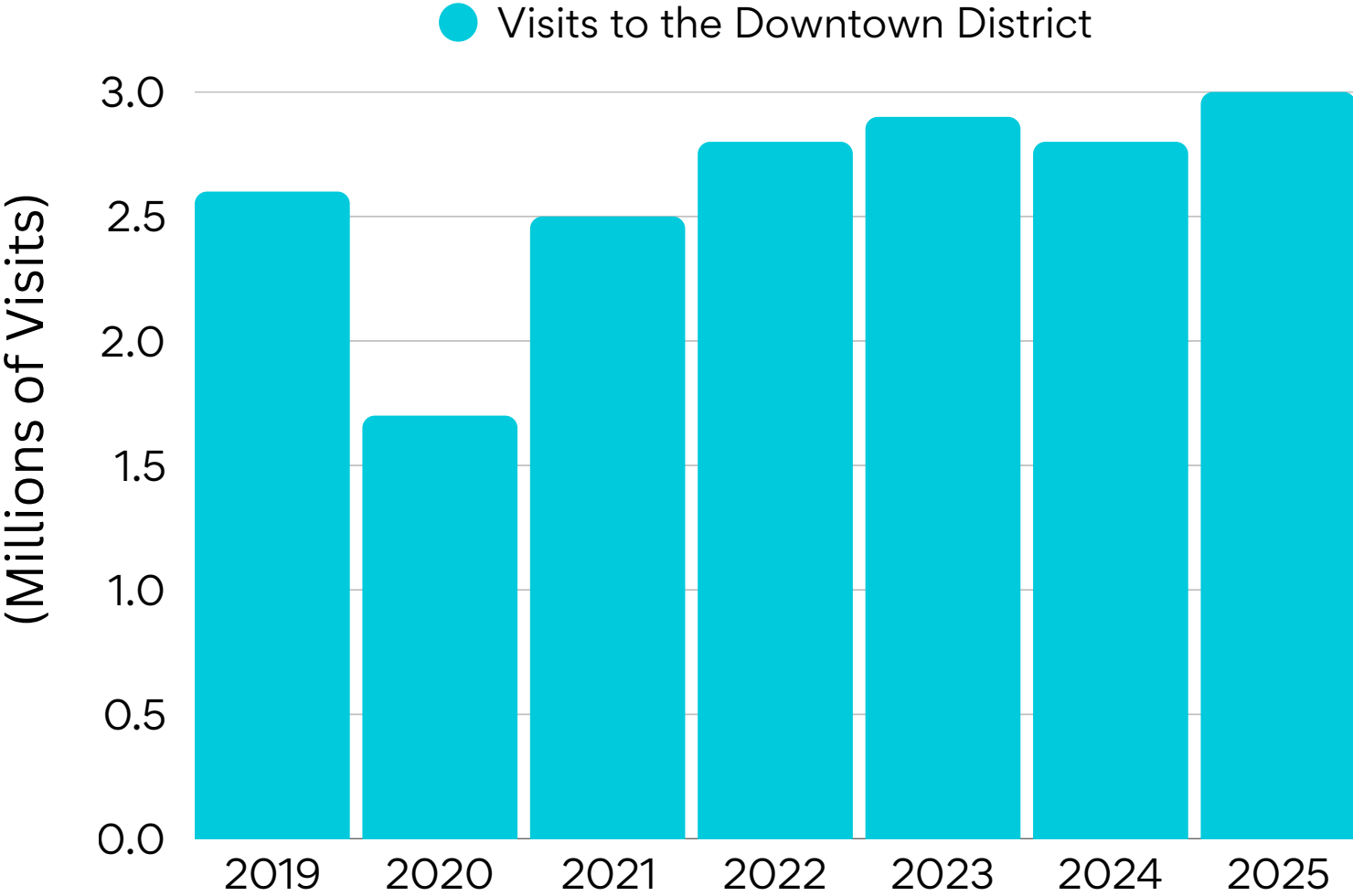
Proposed Changes

There are no proposed changes to the boundaries of the improvement district or to any of the benefit zones or classification of business within the district.

Conclusion

The Morgan Hill Property and Business Improvement District (MHPBID) is a benefit assessment district whose main goal is to provide improvements, maintenance, and activities which constitute and convey a special benefit to assessed parcels. This approach has been used successfully in other cities throughout the country to provide special benefits to property owners, namely increased sales, attraction of new tenants, increased occupancies, and specifically increased property values. The goal in years to come is to meet and exceed the criteria of each of the target areas outlined in the MDP, generate revenue and sales tax, and grow Downtown Morgan Hill as a vibrant, beautiful, and welcoming destination.

DOWNTOWN METRICS



2025 Visitors

574K*



Average Length of Stay

103 MINUTES*

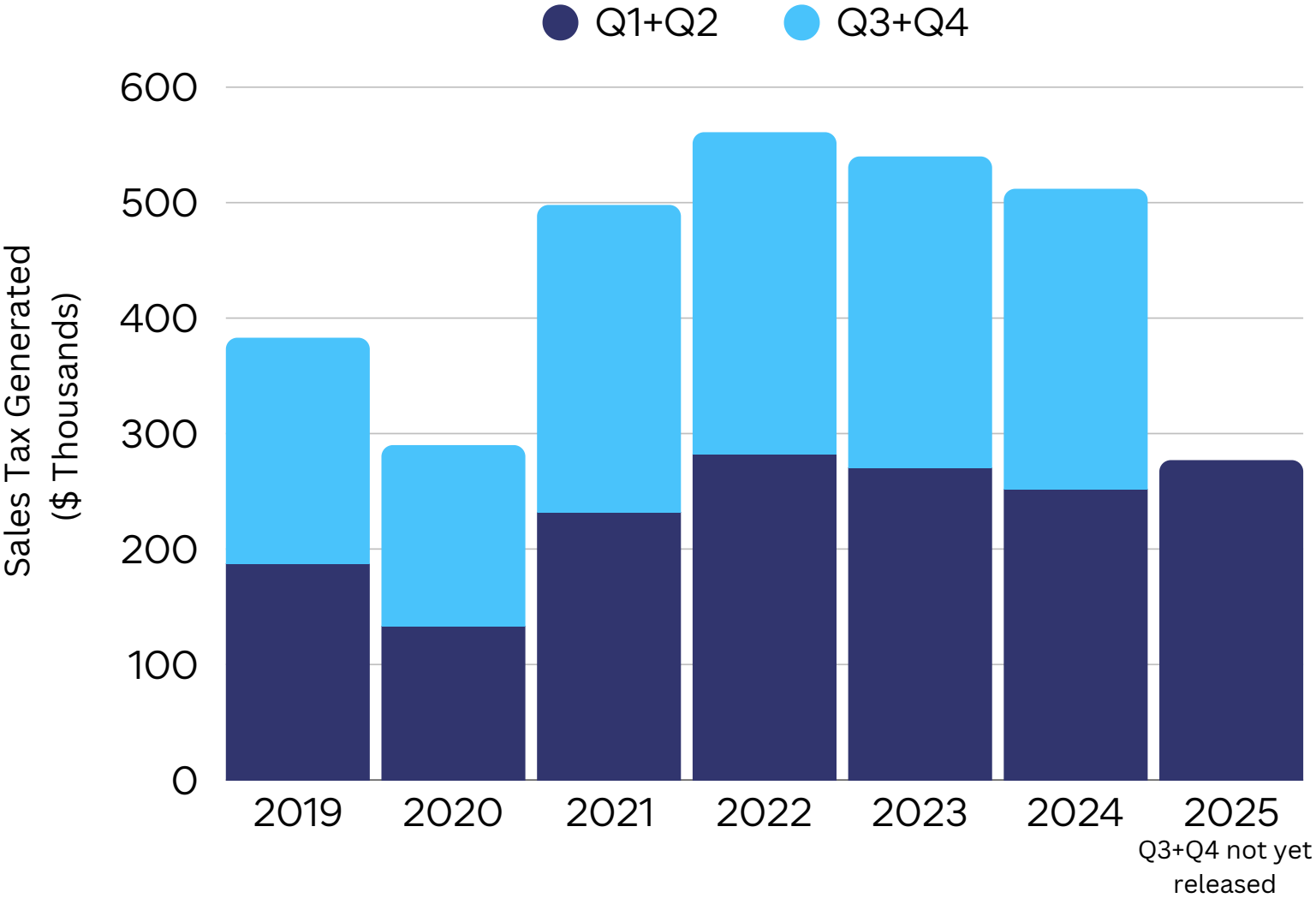


Average Number of Visits per Visitor

5.22*

*Data collected from Placer.ai platform

DOWNTOWN METRICS



2025 Sales Tax

\$524K*

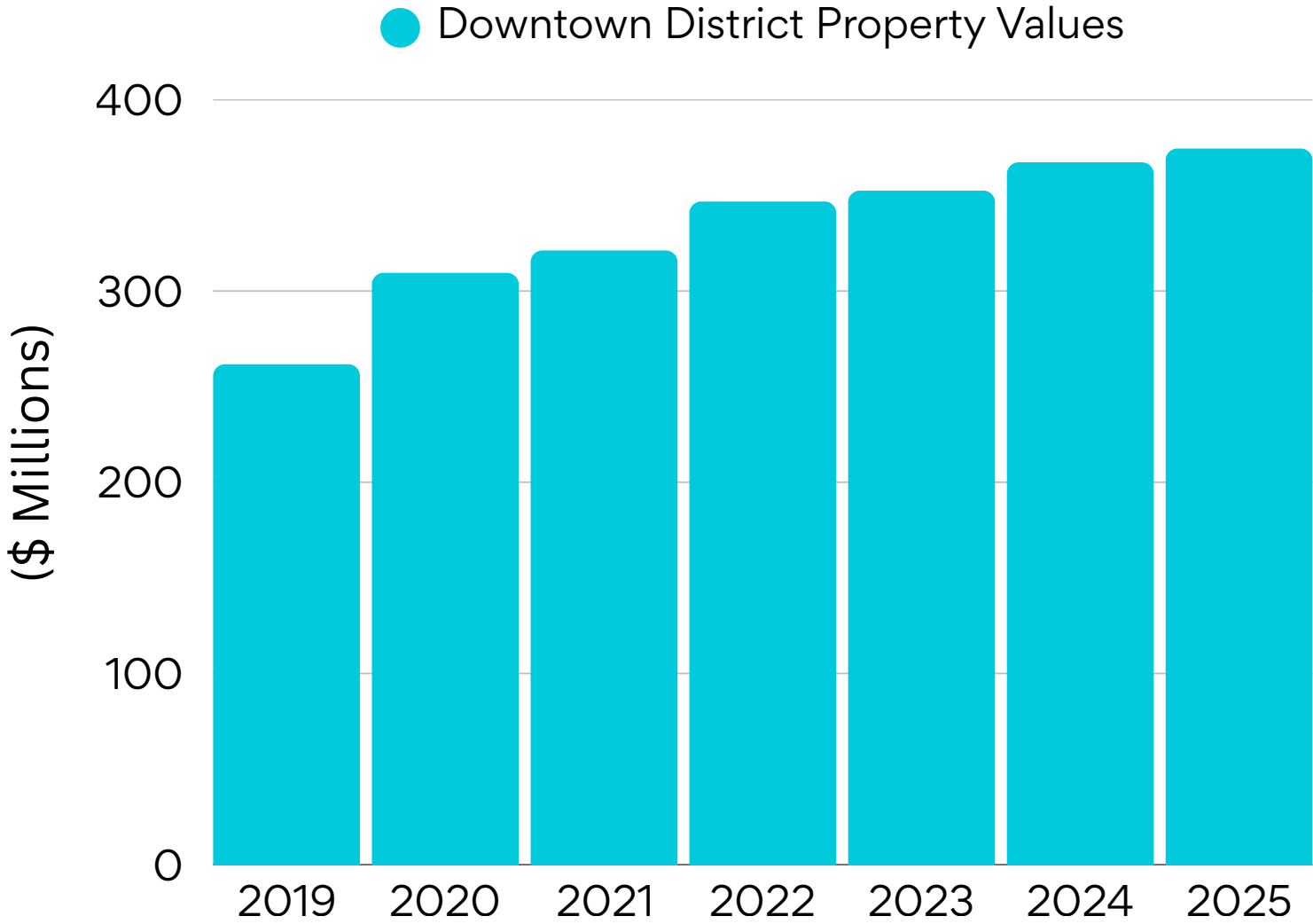


2025 vs 2019

+25%*

*Data collected from HdL Company

DOWNTOWN METRICS



2025 Property Value

\$374.5M*



Vacancies

5

*Data collected from Santa Clara County Assessor's Office

DMHID BOARD OF DIRECTORS

As of December 31, 2025, the DMHID Board Members were:



DAN MCCRANIE

Chairman



ERIC WALLACE

Treasurer



MATT MAHOOD

Secretary



CHRIS GHIONE

Director



FRANK LEAL

Director



HONNIE MURPHY

Director



LARRY CARR

Director



ROSY BERGIN

Director



SAM CARLSON

Director

CONTACT US

Morgan Hill

Phone/

408-310-4623

Email/

manager@dmhid.org

Website/

dmhid.org

#destinationdowntownmh

APPENDIX 1

Fiscal Year 2024/2025 Assessment Roll

Property APN	Lot Square Feet	Assessment
72615003	1,141	\$ 114.10
72614008	3,200	\$ 520.00
76708011	5,434	\$ 543.40
76708003	5,600	\$ 560.00
76707010	5,000	\$ 700.00
76707011	5,000	\$ 700.00
76707042	7,405	\$ 740.50
72614007	5,600	\$ 760.00
72614041	8,527	\$ 1,252.70
76707050	10,000	\$ 1,400.00
72614042	13,600	\$ 1,760.00
72615004	23,031	\$ 2,303.10
76707065	25,353	\$ 2,535.30
72615070	40,306	\$ 4,030.60
72613055	42,852	\$ 5,060.20
72613047	40,946	\$ 6,104.60
72614076	46,995	\$ 7,119.50
72615072	77,536	\$ 7,753.60
76708008	94,089	\$ 9,408.90
72604001	98,058	\$ 9,805.80
72612005	105,826	\$ 10,582.60
72615071	264,409	\$ 26,440.90
72613052	300,059	\$ 34,795.90
		\$ 134,991.70
72612006	354,578	\$ 35,457.80
72614074	47,600	\$ 5,560.00
72614028	11,530	\$ 1,553.00
76707027	4,995	\$ 699.50

APPENDIX 1

Fiscal Year 2024/2025 Assessment Roll

Property APN	Lot Square Feet	Assessment
76707028	5,000	\$ 700.00
76707029	5,002	\$ 700.20
76707041	21,700	\$ 2,170.00
		\$ 11,382.70
72613058	71,702	\$ 9,800.20
72604015	54,450	\$ 5,445.00
72613049	21,780	\$ 6,488.00
72614075	31,609	\$ 5,435.90
76708046	33,000	\$ 4,300.00
72604008	34,816	\$ 3,481.60
72614051	13,509	\$ 1,350.90
72614050	13,872	\$ 1,817.20
76707059	30,494	\$ 3,049.40
76707031	5,000	\$ 700.00
76707030	5,000	\$ 700.00
76707066	12,117	\$ 1,611.70
		\$ 3,011.70
72614015	5,600	\$ 560.00
72614013	5,662	\$ 766.20
72614014	11,200	\$ 1,520.00
		\$ 2,846.20
76707064	21,200	\$ 2,495.00
76707014	12,400	\$ 1,240.00
		\$ 2,444.50
76708034	16,932	\$ 2,383.20
72613021	16,600	\$ 2,260.00
72613037	11,200	\$ 1,520.00
		\$ 1,520.00

APPENDIX 1

Fiscal Year 2024/2025 Assessment Roll

Property APN Lot Square Feet Assessment

72613056	7,875	\$ 1,677.50
72613057	10,525	\$ 1,417.50
76708004	10,000	\$ 1,400.00
72614052	13,851	\$ 1,385.10
76708033	9,680	\$ 1,368.00
72614047	12,800	\$ 1,280.00
76707004	12,400	\$ 1,240.00
72613050	11,605	\$ 1,160.50
76708007	11,200	\$ 1,120.00
76707007	11,200	\$ 1,120.00
76708018	11,200	\$ 1,120.00
76707006	11,200	\$ 1,120.00
72614020	2,400	\$ 240.00
72614019	5,840	\$ 879.00
		\$ 1,119.00
72614009	3,800	\$ 1,055.00
72613031	8,276	\$ 1,027.60
76708006	6,000	\$ 1,000.00
72613060	6,880	\$ 988.00
72613041	6,000	\$ 975.00
72614048	6,720	\$ 912.00
76707055	9,000	\$ 900.00
72613022	22,400	\$ 896.00
76708014	7,281	\$ 371.24
76708015	6,797	\$ 431.88
		\$ 803.12
76707057	5,405	\$ 775.50
72613018	5,600	\$ 760.00
72614012	5,600	\$ 760.00
72614011	5,600	\$ 760.00
76708045	5,000	\$ 700.00

APPENDIX 1

Fiscal Year 2024/2025 Assessment Roll

Property APN Lot Square Feet Assessment

Property APN	Lot Square Feet	Assessment
76707047	5,000	\$ 700.00
72614027	4,737	\$ 678.70
72613059	6,776	\$ 677.60
72614010	4,356	\$ 660.60
72613017	5,600	\$ 660.00
76707016	5,600	\$ 560.00
76707017	5,600	\$ 560.00
72654014	2,770	\$ 277.00
72654031	1,810	\$ 181.00
72654033	585	\$ 58.50
72654032	585	\$ 58.50
		\$ 277,034.84

APPENDIX 2

Calendar Year 2025 Financial Report

Downtown Morgan Hill Improvement District

Statement of Activity

January - December 2025

	TOTAL		
	JAN - DEC 2025	JAN - DEC 2024 (PY)	CHANGE
Revenue			
Event Revenue			
Block Party/Night Market Revenue	1,200.00		1,200.00
Downtown Brochure Revenue		7,650.00	-7,650.00
Merry Morgan Hill Revenue	10,095.00		10,095.00
Oktoberfest Revenue		1,250.00	-1,250.00
Pumpkin Market/Halloween Street Revenue	4,650.00		4,650.00
Sidewalk Saturdays Revenue	29,361.98	28,860.00	501.98
Total Event Revenue	45,306.98	37,760.00	7,546.98
Property Assessments	267,406.84	267,406.85	-0.01
Total Revenue	\$312,713.82	\$305,166.85	\$7,546.97
GROSS PROFIT	\$312,713.82	\$305,166.85	\$7,546.97
Expenditures			
Administration Expenses (10%)			
Bank charges	30.00	30.00	0.00
Bookkeeping	1,488.75		1,488.75
Insurance	2,510.00	2,039.00	471.00
Legal fees	14,399.72		14,399.72
Meals	385.48	57.29	328.19
Office Supplies & Software	2,755.86	964.15	1,791.71
Service Contracts/Annual Report		1,317.50	-1,317.50
Staff	63,000.00	21,000.00	42,000.00
Tax Preparation & Filing	850.00	800.00	50.00
Tax Roll Preparation & Submission	3,120.00	3,120.00	0.00
Website/Domain	721.73	347.88	373.85
Total Administration Expenses (10%)	89,261.54	29,675.82	59,585.72
Capital Improvements & Art Installation (15%)			
Gateway Arch	13,145.00		13,145.00
Total Capital Improvements & Art Installation (15%)	13,145.00		13,145.00
Clean & Safe Programs (60%)			
Flock Cameras	22,500.00		22,500.00
Sidewalk Power Washing	22,553.52	22,553.52	0.00
Tree Lighting	40,247.72	116,152.11	-75,904.39
Total Clean & Safe Programs (60%)	85,301.24	138,705.63	-53,404.39
Marketing & Special Events (10%)			
Downtown Block Party/Night Market Expenses	406.28	288.89	117.39
Downtown Business Brochure Expenses	10,000.00	26,484.93	-16,484.93
Merry Morgan Hill Expenses	5,219.90		5,219.90
Oktoberfest Expenses		24.69	-24.69
Pumpkin Market/Halloween Street Expenses	106.02		106.02

APPENDIX 2

Calendar Year 2025 Financial Report

Downtown Morgan Hill Improvement District

Statement of Activity

January - December 2025

	TOTAL		
	JAN - DEC 2025	JAN - DEC 2024 (PY)	CHANGE
Sidewalk Saturdays Expenses	10,503.06	24,485.99	-13,982.93
Total Marketing & Special Events (10%)	26,235.26	51,284.50	-25,049.24
PBID Start-up Funds Repayment	12,900.00	12,900.00	0.00
Total Expenditures	\$226,843.04	\$232,565.95	\$ -5,722.91
NET OPERATING REVENUE	\$85,870.78	\$72,600.90	\$13,269.88
Other Revenue			
Interest Income	1,280.27	1,553.29	-273.02
Total Other Revenue	\$1,280.27	\$1,553.29	\$ -273.02
NET OTHER REVENUE	\$1,280.27	\$1,553.29	\$ -273.02
NET REVENUE	\$87,151.05	\$74,154.19	\$12,996.86

Attachment 2

Downtown Morgan Hill Improvement District

Statement of Financial Position

As of December 31, 2025

	TOTAL		
	AS OF DEC 31, 2025	AS OF DEC 31, 2024 (PY)	CHANGE
ASSETS			
Current Assets			
Bank Accounts			
Heritage CKNG (*8837) - 1	6,672.05	17,242.02	-10,569.97
Heritage MMKT (*8845) - 1	251,865.25	154,144.23	97,721.02
Total Bank Accounts	\$258,537.30	\$171,386.25	\$87,151.05
Total Current Assets	\$258,537.30	\$171,386.25	\$87,151.05
TOTAL ASSETS	\$258,537.30	\$171,386.25	\$87,151.05
LIABILITIES AND EQUITY			
Liabilities			
Total Liabilities			\$0.00
Equity			
Net Assets	171,386.25	97,232.06	74,154.19
Net Revenue	87,151.05	74,154.19	12,996.86
Total Equity	\$258,537.30	\$171,386.25	\$87,151.05
TOTAL LIABILITIES AND EQUITY	\$258,537.30	\$171,386.25	\$87,151.05

Downtown Morgan Hill Improvement District

Statement of Activity

January - December 2025

	TOTAL		CHANGE
	JAN - DEC 2025	JAN - DEC 2024 (PY)	
Revenue			
Event Revenue			
Block Party/Night Market Revenue	1,200.00		1,200.00
Downtown Brochure Revenue		7,650.00	-7,650.00
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Total Revenue	\$312,713.82	\$305,166.85	\$7,546.97
GROSS PROFIT	\$312,713.82	\$305,166.85	\$7,546.97
Expenditures			
Administration Expenses (10%)			
Bank charges	30.00	30.00	0.00
Bookkeeping	1,488.75		1,488.75
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Tax Roll Preparation & Submission	3,120.00	3,120.00	0.00
Website/Domain	721.73	347.88	373.85
Total Administration Expenses (10%)	89,261.54	29,675.82	59,585.72
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Gateway Arch	13,145.00		13,145.00
Total Capital Improvements & Art Installation (15%)	13,145.00		13,145.00
Clean & Safe Programs (60%)			
Flock Cameras	22,500.00		22,500.00
Sidewalk Power Washing	22,553.52	22,553.52	0.00
Tree Lighting	40,247.72	116,152.11	-75,904.39
Total Clean & Safe Programs (60%)	85,301.24	138,705.63	-53,404.39
Marketing & Special Events (10%)			
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Downtown Business Brochure Expenses	10,000.00	26,484.93	-16,484.93
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Oktoberfest Expenses		24.69	-24.69
Pumpkin Market/Halloween Street Expenses	106.02		106.02

Downtown Morgan Hill Improvement District

Statement of Activity

January - December 2025

		TOTAL	
	JAN - DEC 2025	JAN - DEC 2024 (PY)	CHANGE
Sidewalk Saturdays Expenses	10,503.06	24,485.99	-13,982.93
Total Marketing & Special Events (10%)	26,235.26	51,284.50	-25,049.24
PBID Start-up Funds Repayment	12,900.00	12,900.00	0.00
Total Expenditures	\$226,843.04	\$232,565.95	\$ -5,722.91
NET OPERATING REVENUE	\$85,870.78	\$72,600.90	\$13,269.88
Other Revenue			
Interest Income	1,280.27	1,553.29	-273.02
Total Other Revenue	\$1,280.27	\$1,553.29	\$-273.02
NET OTHER REVENUE	\$1,280.27	\$1,553.29	\$-273.02
NET REVENUE	\$87,151.05	\$74,154.19	\$12,996.86

Attachment 3

NICHOLS, RICK & COMPANY
16360 MONTEREY ROAD, SUITE 170
MORGAN HILL, CA 95037
(408) 779-3313

April 9, 2025

DOWNTOWN MORGAN HILL
IMPROVEMENT DISTRICT
17575 PEAK AVENUE
MORGAN HILL, CA 95037

TAX PAYER'S COPY

Dear BRITTNEY:

Your 2024 Federal Return of Organization Exempt from Income Tax will be electronically filed with the Internal Revenue Service upon receipt of a signed Form 8879-TE - IRS e-file Signature Authorization. No tax is payable with the filing of this return.

Your 2024 California Exempt Organization Annual Information Return will be electronically filed with the Franchise Tax Board upon receipt of a signed Form 8453-EO. No tax is payable with the filing of this return.

Please be sure to call us if you have any questions.

Sincerely,

JOHN S RICK

Return of Organization Exempt From Income Tax

2024

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

Open to Public Inspection

Department of the Treasury Internal Revenue Service

Do not enter social security numbers on this form as it may be made public. Go to www.irs.gov/Form990 for instructions and the latest information.

A For the 2024 calendar year, or tax year beginning, 2024, and ending, 20

B Check if applicable: Address change, Name change, Initial return, Final return/terminated, Amended return, Application pending. C DOWNTOWN MORGAN HILL IMPROVEMENT DISTRICT 17575 PEAK AVENUE MORGAN HILL, CA 95037. D Employer identification number 88-3740933. E Telephone number (408) 310-4623. G Gross receipts \$ 306,653. H(a) Is this a group return for subordinates? Yes No. H(b) Are all subordinates included? Yes No. I Tax-exempt status: 501(c)(3) 501(c) (6) (insert no.) 4947(a)(1) or 527. J Website: https://www.dmhid.org/. K Form of organization: X Corporation Trust Association Other. L Year of formation: 2023. M State of legal domicile: CA.

Part I Summary

Table with 3 columns: Description, Prior Year, Current Year. Rows include: 1 Briefly describe the organization's mission or most significant activities: See Schedule O. 2-7a Activities & Governance. 8-12 Revenue. 13-19 Expenses. 20-22 Net Assets or Fund Balances.

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here: Signature of officer DAN McCRANIE, Chairman. Date. Preparer's name JOHN S RICK, Preparer's signature JOHN S RICK, Date, Check self-employed if PTIN P00067323. Firm's name Nichols, Rick & Company, Firm's address 16360 Monterey Road, Suite 170 Morgan Hill, CA 95037, Firm's EIN 77-0454740, Phone no. (408) 779-3313.

May the IRS discuss this return with the preparer shown above? See instructions. X Yes No

Part III Statement of Program Service Accomplishments

Check if Schedule O contains a response or note to any line in this Part III.

1 Briefly describe the organization's mission:

See Schedule O

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ? Yes No

If "Yes," describe these new services on Schedule O.

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services? Yes No

If "Yes," describe these changes on Schedule O.

4 Describe the organization's program service accomplishments for each of its three largest program services, as measured by expenses. Section 501(c)(3) and 501(c)(4) organizations are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.

4a (Code:) (Expenses \$ including grants of \$) (Revenue \$)

Pursuant to an agreement with the City of Morgan Hill, the Downtown Morgan Hill Improvement District was formed for the sole purpose of improving downtown Morgan Hill. Annual work plans and budgets are developed by a board composed of stakeholders that own property in downtown Morgan Hill. Improvements and activities provided are subject to private sector performance standards, controls, and accountability.

4b (Code:) (Expenses \$ including grants of \$) (Revenue \$)

4c (Code:) (Expenses \$ including grants of \$) (Revenue \$)

4d Other program services (Describe on Schedule O.)
(Expenses \$ including grants of \$) (Revenue \$)

4e Total program service expenses 0.

Part IV Checklist of Required Schedules

	Yes	No
1 Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? <i>If "Yes," complete Schedule A.</i>		X
2 Is the organization required to complete <i>Schedule B, Schedule of Contributors</i> ? See instructions		X
3 Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? <i>If "Yes," complete Schedule C, Part I.</i>		X
4 Section 501(c)(3) organizations. Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year? <i>If "Yes," complete Schedule C, Part II.</i>		
5 Is the organization a section 501(c)(4), 501(c)(5), or 501(c)(6) organization that receives membership dues, assessments, or similar amounts as defined in Revenue Procedure 98-19? <i>If "Yes," complete Schedule C, Part III.</i>		X
6 Did the organization maintain any donor advised funds or any similar funds or accounts for which donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts? <i>If "Yes," complete Schedule D, Part I.</i>		X
7 Did the organization receive or hold a conservation easement, including easements to preserve open space, the environment, historic land areas, or historic structures? <i>If "Yes," complete Schedule D, Part II.</i>		X
8 Did the organization maintain collections of works of art, historical treasures, or other similar assets? <i>If "Yes," complete Schedule D, Part III.</i>		X
9 Did the organization report an amount in Part X, line 21, for escrow or custodial account liability, serve as a custodian for amounts not listed in Part X; or provide credit counseling, debt management, credit repair, or debt negotiation services? <i>If "Yes," complete Schedule D, Part IV.</i>		X
10 Did the organization, directly or through a related organization, hold assets in donor-restricted endowments or in quasi-endowments? <i>If "Yes," complete Schedule D, Part V.</i>		X
11 If the organization's answer to any of the following questions is "Yes," then complete Schedule D, Parts VI, VII, VIII, IX, or X, as applicable.		
a Did the organization report an amount for land, buildings, and equipment in Part X, line 10? <i>If "Yes," complete Schedule D, Part VI.</i>		X
b Did the organization report an amount for investments — other securities in Part X, line 12, that is 5% or more of its total assets reported in Part X, line 16? <i>If "Yes," complete Schedule D, Part VII.</i>		X
c Did the organization report an amount for investments — program related in Part X, line 13, that is 5% or more of its total assets reported in Part X, line 16? <i>If "Yes," complete Schedule D, Part VIII.</i>		X
d Did the organization report an amount for other assets in Part X, line 15, that is 5% or more of its total assets reported in Part X, line 16? <i>If "Yes," complete Schedule D, Part IX.</i>		X
e Did the organization report an amount for other liabilities in Part X, line 25? <i>If "Yes," complete Schedule D, Part X.</i>		X
f Did the organization's separate or consolidated financial statements for the tax year include a footnote that addresses the organization's liability for uncertain tax positions under FIN 48 (ASC 740)? <i>If "Yes," complete Schedule D, Part X.</i>		X
12a Did the organization obtain separate, independent audited financial statements for the tax year? <i>If "Yes," complete Schedule D, Parts XI and XII.</i>		X
b Was the organization included in consolidated, independent audited financial statements for the tax year? <i>If "Yes," and if the organization answered "No" to line 12a, then completing Schedule D, Parts XI and XII is optional.</i>		X
13 Is the organization a school described in section 170(b)(1)(A)(ii)? <i>If "Yes," complete Schedule E.</i>		X
14a Did the organization maintain an office, employees, or agents outside of the United States?		X
b Did the organization have aggregate revenues or expenses of more than \$10,000 from grantmaking, fundraising, business, investment, and program service activities outside the United States, or aggregate foreign investments valued at \$100,000 or more? <i>If "Yes," complete Schedule F, Parts I and IV.</i>		X
15 Did the organization report on Part IX, column (A), line 3, more than \$5,000 of grants or other assistance to or for any foreign organization? <i>If "Yes," complete Schedule F, Parts II and IV.</i>		X
16 Did the organization report on Part IX, column (A), line 3, more than \$5,000 of aggregate grants or other assistance to or for foreign individuals? <i>If "Yes," complete Schedule F, Parts III and IV.</i>		X
17 Did the organization report a total of more than \$15,000 of expenses for professional fundraising services on Part IX, column (A), lines 6 and 11e? <i>If "Yes," complete Schedule G, Part I.</i> See instructions.		X
18 Did the organization report more than \$15,000 total of fundraising event gross income and contributions on Part VIII, lines 1c and 8a? <i>If "Yes," complete Schedule G, Part II.</i>	X	
19 Did the organization report more than \$15,000 of gross income from gaming activities on Part VIII, line 9a? <i>If "Yes," complete Schedule G, Part III.</i>		X
20a Did the organization operate one or more hospital facilities? <i>If "Yes," complete Schedule H.</i>		X
b If "Yes" to line 20a, did the organization attach a copy of its audited financial statements to this return?		
21 Did the organization report more than \$5,000 of grants or other assistance to any domestic organization or domestic government on Part IX, column (A), line 1? <i>If "Yes," complete Schedule I, Parts I and II.</i>		X

Part IV Checklist of Required Schedules (continued)

Table with 3 columns: Question ID, Question Text, Yes, No. Rows include questions 22 through 38 regarding grants, compensation, tax-exempt bonds, and excess benefit transactions.

Part V Statements Regarding Other IRS Filings and Tax Compliance

Check if Schedule O contains a response or note to any line in this Part V. []

Table with 3 columns: Question ID, Question Text, Yes, No. Rows include questions 1a, 1b, and 1c regarding Form 1096, Forms W-2G, and backup withholding rules.

Part V Statements Regarding Other IRS Filings and Tax Compliance (continued)

Table with columns for question number, description, and Yes/No checkboxes. Includes questions 2a through 17 regarding employee reporting, federal employment tax returns, unrelated business gross income, foreign accounts, prohibited tax shelter transactions, annual gross receipts, deductible contributions, and various organizational requirements.

Part VI Governance, Management, and Disclosure. For each "Yes" response to lines 2 through 7b below, and for a "No" response to line 8a, 8b, or 10b below, describe the circumstances, processes, or changes on Schedule O. See instructions.

Check if Schedule O contains a response or note to any line in this Part VI [X]

Section A. Governing Body and Management

Table with 3 columns: Question, Yes, No. Rows include: 1a (9), 1b, 2 (X), 3 (X), 4 (X), 5 (X), 6 (X), 7a (X), 7b (X), 8a (X), 8b (X), 9 (X).

Section B. Policies (This Section B requests information about policies not required by the Internal Revenue Code.)

Table with 3 columns: Question, Yes, No. Rows include: 10a (X), 10b, 11a (X), 11b, 12a (X), 12b, 12c, 13 (X), 14 (X), 15a (X), 15b (X), 16a (X), 16b.

Section C. Disclosure

- 17 List the states with which a copy of this Form 990 is required to be filed CA
18 Section 6104 requires an organization to make its Forms 1023 (1024 or 1024-A, if applicable), 990, and 990-T (section 501(c)(3)s only) available for public inspection. Indicate how you made these available. Check all that apply.
19 Describe on Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year. See Schedule O
20 State the name, address, and telephone number of the person who possesses the organization's books and records. BRITNEY SHERMAN 17575 PEAK AVENUE MORGAN HILL CA 95037 (408) 410-9333

Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

Check if Schedule O contains a response or note to any line in this Part VII.

Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

1a Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year.

- List all of the organization's **current** officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter -0- in columns (D), (E), and (F) if no compensation was paid.
- List all of the organization's **current** key employees, if any. See the instructions for definition of "key employee."
- List the organization's five **current** highest compensated employees (other than an officer, director, trustee, or key employee) who received reportable compensation (box 5 of Form W-2, box 6 of Form 1099-MISC, and/or box 1 of Form 1099-NEC) of more than \$100,000 from the organization and any related organizations.
- List all of the organization's **former** officers, key employees, and highest compensated employees who received more than \$100,000 of reportable compensation from the organization and any related organizations.
- List all of the organization's **former directors or trustees** that received, in the capacity as a former director or trustee of the organization, more than \$10,000 of reportable compensation from the organization and any related organizations.

See the instructions for the order in which to list the persons above.

Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)					(D) Reportable compensation from the organization (W-2/1099-MISC/1099-NEC)	(E) Reportable compensation from related organizations (W-2/1099-MISC/1099-NEC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee			
(1) CHRIS GHIONE Director	2 0	X					0.	0.	0.
(2) FRANK LEAL Director	2 0	X					0.	0.	0.
(3) HONNIE MURPHY Director	2 0	X					0.	0.	0.
(4) LARRY CARR Director	2 0	X					0.	0.	0.
(5) ROSY BERGIN Director	2 0	X					0.	0.	0.
(6) SAM CARLSON Director	2 0	X					0.	0.	0.
(7) DAN McCRANIE Chairman	2 0			X			0.	0.	0.
(8) ERIC WALLACE Treasurer	2 0			X			0.	0.	0.
(9) MATT MAHOOD Secretary	2 0			X			0.	0.	0.
(10)									
(11)									
(12)									
(13)									
(14)									

Part VII Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees (continued)

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)					(D) Reportable compensation from the organization (W-2/1099-MISC/1099-NEC)	(E) Reportable compensation from related organizations (W-2/1099-MISC/1099-NEC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee			
(15) -----									
(16) -----									
(17) -----									
(18) -----									
(19) -----									
(20) -----									
(21) -----									
(22) -----									
(23) -----									
(24) -----									
(25) -----									
1b Subtotal						0.	0.	0.	
c Total from continuation sheets to Part VII, Section A						0.	0.	0.	
d Total (add lines 1b and 1c)						0.	0.	0.	

2 Total number of individuals (including but not limited to those listed above) who received more than \$100,000 of reportable compensation from the organization **0**

	Yes	No
3 Did the organization list any former officer, director, trustee, key employee, or highest compensated employee on line 1a? <i>If "Yes," complete Schedule J for such individual</i>		X
4 For any individual listed on line 1a, is the sum of reportable compensation and other compensation from the organization and related organizations greater than \$150,000? <i>If "Yes," complete Schedule J for such individual</i>		X
5 Did any person listed on line 1a receive or accrue compensation from any unrelated organization or individual for services rendered to the organization? <i>If "Yes," complete Schedule J for such person</i>		X

Section B. Independent Contractors

1 Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.

(A) Name and business address	(B) Description of services	(C) Compensation

2 Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 of compensation from the organization **0**

Part VIII Statement of Revenue

Check if Schedule O contains a response or note to any line in this Part VIII

			(A) Total revenue	(B) Related or exempt function revenue	(C) Unrelated business revenue	(D) Revenue excluded from tax under sections 512-514	
Contributions, Gifts, Grants, and Other Similar Amounts	1a	Federated campaigns					
	1b	Membership dues					
	1c	Fundraising events					
	1d	Related organizations					
	1e	Government grants (contributions)					
	1f	All other contributions, gifts, grants, and similar amounts not included above					
	1g	Noncash contributions included in lines 1a-1f					
	1h	Total. Add lines 1a-1f					
Program Service Revenue	2a	<u>DOWNTOWN PROPERTY ASSESS</u>	267,407.	267,407.			
	b						
	c						
	d						
	e						
	f	All other program service revenue					
	g	Total. Add lines 2a-2f	267,407.				
Other Revenue	3	Investment income (including dividends, interest, and other similar amounts)	1,486.			1,486.	
	4	Income from investment of tax-exempt bond proceeds					
	5	Royalties					
	6a	Gross rents	(i) Real				
			(ii) Personal				
	6b	Less: rental expenses					
	6c	Rental income or (loss)					
	6d	Net rental income or (loss)					
	7a	Gross amount from sales of assets other than inventory	(i) Securities				
			(ii) Other				
	7b	Less: cost or other basis and sales expenses					
	7c	Gain or (loss)					
7d	Net gain or (loss)						
8a	Gross income from fundraising events (not including \$ of contributions reported on line 1c). See Part IV, line 18	37,760.					
8b	Less: direct expenses	51,285.					
8c	Net income or (loss) from fundraising events	-13,525.					
9a	Gross income from gaming activities. See Part IV, line 19						
9b	Less: direct expenses						
9c	Net income or (loss) from gaming activities						
10a	Gross sales of inventory, less returns and allowances						
10b	Less: cost of goods sold						
10c	Net income or (loss) from sales of inventory						
Miscellaneous Revenue	Business Code						
	11a						
	b						
	c						
	d	All other revenue					
	e	Total. Add lines 11a-11d					
12	Total revenue. See instructions		255,368.	267,407.	0.	1,486.	

Part IX Statement of Functional Expenses

Section 501(c)(3) and 501(c)(4) organizations must complete all columns. All other organizations must complete column (A).

Check if Schedule O contains a response or note to any line in this Part IX.

Do not include amounts reported on lines 6b, 7b, 8b, 9b, and 10b of Part VIII.	(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
1 Grants and other assistance to domestic organizations and domestic governments. See Part IV, line 21.				
2 Grants and other assistance to domestic individuals. See Part IV, line 22.				
3 Grants and other assistance to foreign organizations, foreign governments, and foreign individuals. See Part IV, lines 15 and 16.				
4 Benefits paid to or for members.				
5 Compensation of current officers, directors, trustees, and key employees.	0.	0.	0.	0.
6 Compensation not included above to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B).	0.	0.	0.	0.
7 Other salaries and wages.	21,000.	21,000.		
8 Pension plan accruals and contributions (include section 401(k) and 403(b) employer contributions).				
9 Other employee benefits.				
10 Payroll taxes.				
11 Fees for services (nonemployees):				
a Management.				
b Legal.				
c Accounting.	800.	800.		
d Lobbying.				
e Professional fundraising services. See Part IV, line 17.				
f Investment management fees.				
g Other. (If line 11g amount exceeds 10% of line 25, column (A), amount, list line 11g expenses on Schedule O.)				
12 Advertising and promotion.				
13 Office expenses.	1,020.	1,020.		
14 Information technology.				
15 Royalties.				
16 Occupancy.				
17 Travel.				
18 Payments of travel or entertainment expenses for any federal, state, or local public officials.				
19 Conferences, conventions, and meetings.				
20 Interest.				
21 Payments to affiliates.				
22 Depreciation, depletion, and amortization.				
23 Insurance.	2,039.	2,039.		
24 Other expenses. Itemize expenses not covered above. (List miscellaneous expenses on line 24e. If line 24e amount exceeds 10% of line 25, column (A), amount, list line 24e expenses on Schedule O.)				
a <u>STREET TREE LIGHTING</u>	116,152.	116,152.		
b <u>SIDEWALK POWER WASHING</u>	22,554.	22,554.		
c <u>PBID START UP FUNDS REPLENISH</u>	12,900.	12,900.		
d <u>TAX ROLL PREPARATION</u>	3,120.	3,120.		
e All other expenses.	1,696.	1,696.		
25 Total functional expenses. Add lines 1 through 24e.	181,281.	181,281.	0.	0.
26 Joint costs. Complete this line only if the organization reported in column (B) joint costs from a combined educational campaign and fundraising solicitation. Check here <input type="checkbox"/> if following SOP 98-2 (ASC 958-720).				

Part X Balance Sheet

Check if Schedule O contains a response or note to any line in this Part X.

		(A) Beginning of year		(B) End of year	
Assets	1	Cash – non-interest-bearing	5,765.	1	17,240.
	2	Savings and temporary cash investments	91,467.	2	154,079.
	3	Pledges and grants receivable, net		3	
	4	Accounts receivable, net		4	
	5	Loans and other receivables from any current or former officer, director, trustee, key employee, creator or founder, substantial contributor, or 35% controlled entity or family member of any of these persons		5	
	6	Loans and other receivables from other disqualified persons (as defined under section 4958(f)(1)), and persons described in section 4958(c)(3)(B)		6	
	7	Notes and loans receivable, net		7	
	8	Inventories for sale or use		8	
	9	Prepaid expenses and deferred charges		9	
	10a	Land, buildings, and equipment: cost or other basis. Complete Part VI of Schedule D		10a	
	b	Less: accumulated depreciation		10b	10c
	11	Investments – publicly traded securities		11	
	12	Investments – other securities. See Part IV, line 11		12	
	13	Investments – program-related. See Part IV, line 11		13	
	14	Intangible assets		14	
	15	Other assets. See Part IV, line 11		15	
16	Total assets. Add lines 1 through 15 (must equal line 33)	97,232.	16	171,319.	
Liabilities	17	Accounts payable and accrued expenses		17	
	18	Grants payable		18	
	19	Deferred revenue		19	
	20	Tax-exempt bond liabilities		20	
	21	Escrow or custodial account liability. Complete Part IV of Schedule D		21	
	22	Loans and other payables to any current or former officer, director, trustee, key employee, creator or founder, substantial contributor, or 35% controlled entity or family member of any of these persons		22	
	23	Secured mortgages and notes payable to unrelated third parties		23	
	24	Unsecured notes and loans payable to unrelated third parties		24	
25	Other liabilities (including federal income tax, payables to related third parties, and other liabilities not included on lines 17-24). Complete Part X of Schedule D ..		25		
26	Total liabilities. Add lines 17 through 25	0.	26	0.	
Net Assets or Fund Balances	Organizations that follow FASB ASC 958, check here and complete lines 27, 28, 32, and 33. <input type="checkbox"/>				
	27	Net assets without donor restrictions		27	
	28	Net assets with donor restrictions		28	
	Organizations that do not follow FASB ASC 958, check here and complete lines 29 through 33. <input checked="" type="checkbox"/>				
	29	Capital stock or trust principal, or current funds	97,232.	29	171,319.
	30	Paid-in or capital surplus, or land, building, or equipment fund		30	
	31	Retained earnings, endowment, accumulated income, or other funds		31	
32	Total net assets or fund balances.	97,232.	32	171,319.	
33	Total liabilities and net assets/fund balances.	97,232.	33	171,319.	

Part XI Reconciliation of Net Assets

Check if Schedule O contains a response or note to any line in this Part XI

1	Total revenue (must equal Part VIII, column (A), line 12)	1	255,368.
2	Total expenses (must equal Part IX, column (A), line 25)	2	181,281.
3	Revenue less expenses. Subtract line 2 from line 1	3	74,087.
4	Net assets or fund balances at beginning of year (must equal Part X, line 32, column (A))	4	97,232.
5	Net unrealized gains (losses) on investments	5	
6	Donated services and use of facilities	6	
7	Investment expenses	7	
8	Prior period adjustments	8	
9	Other changes in net assets or fund balances (explain on Schedule O)	9	0.
10	Net assets or fund balances at end of year. Combine lines 3 through 9 (must equal Part X, line 32, column (B))	10	171,319.

Part XII Financial Statements and Reporting

Check if Schedule O contains a response or note to any line in this Part XII

		Yes	No
1	Accounting method used to prepare the Form 990: <input checked="" type="checkbox"/> Cash <input type="checkbox"/> Accrual <input type="checkbox"/> Other		
If the organization changed its method of accounting from a prior year or checked "Other," explain on Schedule O.			
2a	Were the organization's financial statements compiled or reviewed by an independent accountant?		X
If "Yes," check a box below to indicate whether the financial statements for the year were compiled or reviewed on a separate basis, consolidated basis, or both.			
<input type="checkbox"/> Separate basis <input type="checkbox"/> Consolidated basis <input type="checkbox"/> Both consolidated and separate basis			
b	Were the organization's financial statements audited by an independent accountant?		X
If "Yes," check a box below to indicate whether the financial statements for the year were audited on a separate basis, consolidated basis, or both.			
<input type="checkbox"/> Separate basis <input type="checkbox"/> Consolidated basis <input type="checkbox"/> Both consolidated and separate basis			
c	If "Yes" to line 2a or 2b, does the organization have a committee that assumes responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant?		
If the organization changed either its oversight process or selection process during the tax year, explain on Schedule O.			
3a	As a result of a federal award, was the organization required to undergo an audit or audits as set forth in the Uniform Guidance, 2 C.F.R. Part 200, Subpart F?		X
b	If "Yes," did the organization undergo the required audit or audits? If the organization did not undergo the required audit or audits, explain why on Schedule O and describe any steps taken to undergo such audits		

**SCHEDULE G
(Form 990)**

(Rev. December 2024)

Department of the Treasury
Internal Revenue Service

Supplemental Information Regarding Fundraising or Gaming Activities

Complete if the organization answered "Yes" on Form 990, Part IV, line 17, 18, or 19; or if the organization entered more than \$15,000 on Form 990-EZ, line 6a.

Attach to Form 990 or Form 990-EZ.

Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

Open to Public Inspection

Name of the organization **DOWNTOWN MORGAN HILL
IMPROVEMENT DISTRICT**

Employer identification number
88-3740933

Part I Fundraising Activities. Complete if the organization answered "Yes" on Form 990, Part IV, line 17. Form 990-EZ filers are not required to complete this part.

1 Indicate whether the organization raised funds through any of the following activities. Check all that apply.

- a Mail solicitations
- b Internet and email solicitations
- c Phone solicitations
- d In-person solicitations
- e Solicitation of nongovernment grants
- f Solicitation of government grants
- g Special fundraising events

2a Did the organization have a written or oral agreement with any individual (including officers, directors, trustees, or key employees listed in Form 990, Part VII) or entity in connection with professional fundraising services? Yes No

b If "Yes," list the 10 highest paid individuals or entities (fundraisers) pursuant to agreements under which the fundraiser is to be compensated at least \$5,000 by the organization.

(i) Name and address of individual or entity (fundraiser)	(ii) Activity	(iii) Did fundraiser have custody or control of contributions?		(iv) Gross receipts from activity	(v) Amount paid to (or retained by) fundraiser listed in col. (i)	(vi) Amount paid to (or retained by) organization
		Yes	No			
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
Total						0.

3 List all states in which the organization is registered or licensed to solicit contributions or has been notified it is exempt from registration or licensing.

Part II Fundraising Events. Complete if the organization answered "Yes" on Form 990, Part IV, line 18, or reported more than \$15,000 of fundraising event contributions and gross income on Form 990-EZ, lines 1 and 6b. List events with gross receipts greater than \$5,000.

		(a) Event #1	(b) Event #2	(c) Other events	(d) Total events	
		<u>SIDEWALK SATUR</u> (event type)	_____ (event type)	<u>None</u> (total number)	(add col. (a) through col. (c))	
Revenue	1	Gross receipts	37,760.		37,760.	
	2	Less: Contributions				
	3	Gross income (line 1 minus line 2)	37,760.		37,760.	
Direct Expenses	4	Cash prizes				
	5	Noncash prizes				
	6	Rent/facility costs				
	7	Food and beverages				
	8	Entertainment				
	9	Other direct expenses	51,285.		51,285.	
	10	Direct expense summary. Add lines 4 through 9 in column (d)				51,285.
	11	Net income summary. Subtract line 10 from line 3, column (d)				-13,525.

Part III Gaming. Complete if the organization answered "Yes" on Form 990, Part IV, line 19, or reported more than \$15,000 on Form 990-EZ, line 6a.

		(a) Bingo	(b) Pull tabs/instant bingo/progressive bingo	(c) Other gaming	(d) Total gaming
		Yes _____ % No _____ %	Yes _____ % No _____ %	Yes _____ % No _____ %	(add col. (a) through col. (c))
Revenue	1	Gross revenue			
Direct Expenses	2	Cash prizes			
	3	Noncash prizes			
	4	Rent/facility costs			
	5	Other direct expenses			
	6	Volunteer labor			
7	Direct expense summary. Add lines 2 through 5 in column (d)				
8	Net gaming income summary. Subtract line 7 from line 1, column (d)				

9 Enter the state(s) in which the organization conducts gaming activities: _____

a Is the organization licensed to conduct gaming activities in each of these states? Yes No

b If "No," explain: _____

10 a Were any of the organization's gaming licenses revoked, suspended, or terminated during the tax year? Yes No

b If "Yes," explain: _____

- 11 Does the organization conduct gaming activities with nonmembers? Yes No
- 12 Is the organization a grantor, beneficiary, or trustee of a trust; or a member of a partnership or other entity formed to administer charitable gaming? Yes No

13 Indicate the percentage of gaming activity conducted in:

a The organization's facility	13 a	%
b An outside facility	13 b	%

14 Enter the name and address of the person who prepares the organization's gaming/special events books and records:

Name -----

Address -----

15 a Does the organization have a contract with a third party from whom the organization receives gaming revenue? Yes No

b If "Yes," enter the amount of gaming revenue received by the organization \$ _____ and the amount of gaming revenue retained by the third party \$ _____

c If "Yes," enter the name and address of the third party:

Name -----

Address -----

16 Gaming manager information:

Name -----

Gaming manager compensation \$ _____

Description of services provided -----

- Director/officer
- Employee
- Independent contractor

17 Mandatory distributions:

a Is the organization required under state law to make charitable distributions from the gaming proceeds to retain the state gaming license? Yes No

b Enter the amount of distributions required under state law to be distributed to other exempt organizations or spent in the organization's own exempt activities during the tax year . . . \$ _____

Part IV Supplemental Information. Provide the explanations required by Part I, line 2b, columns (iii) and (v); and Part III, lines 9, 9b, 10b, 15b, 15c, 16, and 17b, as applicable. Also provide any additional information. See instructions.

**SCHEDULE O
(Form 990)**

(Rev. December 2024)

Department of the Treasury
Internal Revenue Service

Supplemental Information to Form 990 or 990-EZ

Complete to provide information for responses to specific questions on
Form 990 or 990-EZ or to provide any additional information.
Attach to Form 990 or Form 990-EZ.

Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

**Open to Public
Inspection**

Name of the organization

DOWNTOWN MORGAN HILL
IMPROVEMENT DISTRICT

Employer identification number

88-3740933

Form 990, Part I, Line 1 - Organization Mission or Significant Activities

The goal of the Downtown Morgan Hill Improvement District is to maintain the Downtown District as a safe and inviting environment, attract more tenants and shoppers, increase property values, and stabilize occupancy. The company will provide Clean and Safe programs, Capital Improvements, Art Installations, Marketing, Special Events, and related Management and Administration directly and only to assessed parcels within the Downtown boundary. This entity will have the ability to leverage parcel owners' investment with additional public investment to provide the financial resources necessary to develop and implement a focused strategy to support existing and future businesses and patrons in Downtown Morgan Hill.

Form 990, Part III, Line 1 - Organization Mission

The goal of the Downtown Morgan Hill Improvement District is to maintain the Downtown District as a safe and inviting environment, attract more tenants and shoppers, increase property values, and stabilize occupancy. The company will provide Clean and Safe programs, Capital Improvements, Art Installations, Marketing, Special Events, and related Management and Administration directly and only to assessed parcels within the Downtown boundary. This entity will have the ability to leverage parcel owners' investment with additional public investment to provide the financial resources necessary to develop and implement a focused strategy to support existing and future businesses and patrons in Downtown Morgan Hill.

Form 990, Part VI, Line 11b - Form 990 Review Process

No review was or will be conducted.

Form 990, Part VI, Line 19 - Other Organization Documents Publicly Available

No other documents available to the public.

**California Exempt Organization
Annual Information Return**

Calendar Year 2024 or fiscal year beginning (mm/dd/yyyy) _____, and ending (mm/dd/yyyy) _____.

Corporation/Organization name **DOWNTOWN MORGAN HILL IMPROVEMENT DISTRICT** California corporation number **5154620**

Additional information. See instructions. FEIN **88-3740933**

Street address (suite or room) **17575 PEAK AVENUE** PMB no. _____

City **MORGAN HILL** State **CA** ZIP code **95037**

Foreign country name _____ Foreign province/state/county _____ Foreign postal code _____

A First return. Yes No

B Amended return. Yes No

C IRC Section 4947(a)(1) trust. Yes No

D Final information return?
 Dissolved Surrendered (Withdrawn) Merged/Reorganized

Enter date: (mm/dd/yyyy) ● _____

E Check accounting method:
 1 Cash 2 Accrual 3 Other

F Federal return filed? 1 ● 990T 2 ● 990-PF
 3 ● Sch H (990) 4 Other 990 series

G Is this a group filing? See instructions. ● Yes No

H Is this organization in a group exemption. Yes No
 If "Yes," what is the parent's name? _____

I Did the organization have any changes to its guidelines not reported to the FTB? See instructions. ● Yes No

J If exempt under R&TC Section 23701d, has the organization engaged in political activities? See instructions. ● Yes No

K Is the organization exempt under R&TC Section 23701g? ● Yes No
 If "Yes," enter the gross receipts from nonmember sources. \$ _____

L Is the organization a limited liability company? ● Yes No

M Did the organization file Form 100 or Form 109 to report taxable income? ● Yes No

N Is the organization under audit by the IRS or has the IRS audited in a prior year? ● Yes No

O Is federal Form 1023/1024 pending? Yes No
 Date filed with IRS _____

Part I Complete Part I unless not required to file this form. See General Information B and C.

Receipts and Revenues	1	Gross sales or receipts from other sources. From Side 2, Part II, line 8.	●	1	306,653.
	2	Gross dues and assessments from members and affiliates	●	2	
	3	Gross contributions, gifts, grants, and similar amounts received.	●	3	
	4	Total gross receipts for filing requirement test. Add line 1 through line 3. This line must be completed. If the result is less than \$50,000, see General Information B.	●	4	306,653.
	5	Cost of goods sold	●	5	
	6	Cost or other basis, and sales expenses of assets sold	●	6	
	7	Total costs. Add line 5 and line 6	●	7	
	8	Total gross income. Subtract line 7 from line 4.	●	8	306,653.
Expenses	9	Total expenses and disbursements. From Side 2, Part II, line 18.	●	9	232,566.
	10	Excess of receipts over expenses and disbursements. Subtract line 9 from line 8.	●	10	74,087.
Payments	11	Total payments	●	11	
	12	Use tax. See General Information K.	●	12	
	13	Payments balance. If line 11 is more than line 12, subtract line 12 from line 11	●	13	
	14	Use tax balance. If line 12 is more than line 11, subtract line 11 from line 12.	●	14	
	15	Penalties and interest. See General Information J.	●	15	
	16	Balance due. Add line 12 and line 15. Then subtract line 11 from the result.	●	16	0.

Sign Here Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer **CHAIRMAN** Title Date Telephone **(408) 310-4623**

Paid Preparer's Use Only Preparer's signature **JOHN S RICK** Date Check if self-employed PTIN **P00067323**

Firm's name (or yours, if self-employed) and address **NICHOLS, RICK & COMPANY** Telephone **77-0454740**
16360 MONTEREY ROAD, SUITE 170
MORGAN HILL, CA 95037 Telephone **(408) 779-3313**

May the FTB discuss this return with the preparer shown above? See instructions. ● Yes No

CACA1112L 01/14/25

Part II Organizations with gross receipts of more than \$50,000 and private foundations regardless of amount of gross receipts – complete Part II or furnish substitute information.

Receipts from Other Sources	1	Gross sales or receipts from all business activities. See instructions.	●	1	
	2	Interest	●	2	1,486.
	3	Dividends	●	3	
	4	Gross rents	●	4	
	5	Gross royalties	●	5	
	6	Gross amount received from sale of assets (See instructions)	●	6	
	7	Other income. Attach schedule	●	7	305,167.
	8	Total gross sales or receipts from other sources. Add line 1 through line 7. Enter here and on Side 1, Part I, line 1	●	8	306,653.
	9	Contributions, gifts, grants, and similar amounts paid. Attach schedule.	●	9	
Expenses and Disbursements	10	Disbursements to or for members.	●	10	
	11	Compensation of officers, directors, and trustees. Attach schedule	●	11	0.
	12	Other salaries and wages	●	12	21,000.
	13	Interest	●	13	
	14	Taxes	●	14	
	15	Rents	●	15	
	16	Depreciation and depletion (See instructions)	●	16	
	17	Other expenses and disbursements. Attach schedule	●	17	211,566.
	18	Total expenses and disbursements. Add line 9 through line 17. Enter here and on Side 1, Part I, line 9.	●	18	232,566.

Schedule L Balance Sheet		Beginning of taxable year		End of taxable year	
		(a)	(b)	(c)	(d)
Assets					
1	Cash		97,232.	●	171,319.
2	Net accounts receivable			●	
3	Net notes receivable			●	
4	Inventories			●	
5	Federal and state government obligations			●	
6	Investments in other bonds			●	
7	Investments in stock			●	
8	Mortgage loans			●	
9	Other investments. Attach schedule			●	
10 a	Depreciable assets				
b	Less accumulated depreciation				
11	Land			●	
12	Other assets. Attach schedule			●	
13	Total assets		97,232.		171,319.
Liabilities and net worth					
14	Accounts payable			●	
15	Contributions, gifts, or grants payable			●	
16	Bonds and notes payable			●	
17	Mortgages payable			●	
18	Other liabilities. Attach schedule			●	
19	Capital stock or principal fund		97,232.	●	171,319.
20	Paid-in or capital surplus. Attach reconciliation			●	
21	Retained earnings or income fund			●	
22	Total liabilities and net worth		97,232.		171,319.

Schedule M-1 Reconciliation of income per books with income per return

Do not complete this schedule if the amount on Schedule L, line 13, column (d), is less than \$50,000.

1	Net income per books	●	74,087.	7	Income recorded on books this year not included in this return. Attach schedule	●	
2	Federal income tax	●		8	Deductions in this return not charged against book income this year.	●	
3	Excess of capital losses over capital gains	●		9	Total. Add line 7 and line 8	●	
4	Income not recorded on books this year. Attach schedule	●		10	Net income per return.	●	
5	Expenses recorded on books this year not deducted in this return. Attach schedule	●			Subtract line 9 from line 6	●	
6	Total. Add line 1 through line 5	●	74,087.			●	74,087.

**Statement 1
Form 199, Part II, Line 7
Other Income**

Income from Special Events.....	\$ 37,760.
Program Service Revenue.....	267,407.
Total	<u>\$ 305,167.</u>

**Statement 2
Form 199, Part II, Line 11
Compensation of Officers, Directors, Trustees and Key Employees**

Current Officers:

Name and Address	Title and Average Hours Per Week Devoted	Total Compen- sation	Contri- bution to EBP & DC	Expense Account/ Other
DAN McCRANIE 17575 PEAK AVENUE MORGAN HILL, CA 95037	Chairman 2.00	\$ 0.	\$ 0.	\$ 0.
ERIC WALLACE 17575 PEAK AVENUE MORGAN HILL, CA 95037	Treasurer 2.00	0.	0.	0.
MATT MAHOOD 17575 PEAK AVENUE MORGAN HILL, CA 95037	Secretary 2.00	0.	0.	0.
CHRIS GHIONE 17575 PEAK AVENUE MORGAN HILL, CA 95037	Director 2.00	0.	0.	0.
FRANK LEAL 17575 PEAK AVENUE MORGAN HILL, CA 95037	Director 2.00	0.	0.	0.
HONNIE MURPHY 17575 PEAK AVENUE MORGAN HILL, CA 95037	Director 2.00	0.	0.	0.
LARRY CARR 17575 PEAK AVENUE MORGAN HILL, CA 95037	Director 2.00	0.	0.	0.
ROSY BERGIN 17575 PEAK AVENUE MORGAN HILL, CA 95037	Director 2.00	0.	0.	0.
SAM CARLSON 17575 PEAK AVENUE MORGAN HILL, CA 95037	Director 2.00	0.	0.	0.
Total		<u>\$ 0.</u>	<u>\$ 0.</u>	<u>\$ 0.</u>

Statement 3
Form 199, Part II, Line 17
Other Expenses

Accounting Fees.....	\$	800.
ANNUAL REPORT.....		1,318.
BANK CHARGES.....		30.
Insurance.....		2,039.
Office Expenses.....		1,020.
PBID START UP FUNDS REPLENISH.....		12,900.
SIDEWALK POWER WASHING.....		22,554.
Special Event Expenses.....		51,285.
STREET TREE LIGHTING.....		116,152.
TAX ROLL PREPARATION.....		3,120.
WEBSITE DOMAIN.....		348.
Total	\$	<u>211,566.</u>

CITY COUNCIL STAFF REPORT MEETING DATE: January 28, 2026

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

REPEAL CHAPTER 15.63 (PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MORGAN HILL MUNICIPAL CODE

RECOMMENDATION(S)

Waive the reading and introduce an Ordinance repealing Chapter 15.63 of the Morgan Hill Municipal Code regarding the prohibition of natural gas infrastructure in new buildings.

COUNCIL PRIORITIES, GOALS & STRATEGIES

None

REPORT NARRATIVE:

On November 6, 2019, the City Council adopted Ordinance No. 2306, which added [Chapter 15.63](#) to the Municipal Code. This ordinance prohibited the installation of natural gas infrastructure in newly constructed buildings effective March 1, 2020, as a strategy to reduce the community's carbon footprint.

However, a judicial ruling by the Ninth Circuit Court of Appeals in *California Restaurant Association v. City of Berkeley* has fundamentally changed the legal landscape. The court held that the federal Energy Policy and Conservation Act (EPCA) preempts local ordinances that prohibit the installation of natural gas infrastructure. The City has not denied any permits for gas infrastructure based on the 2019 ordinance since the courts struck down Berkeley's similar ordinance and has approved projects with gas infrastructure since that time. The City recently received notice that the United States Department of Justice filed a lawsuit on January 5, 2026, against the City (and the City of Petaluma) to strike down its 2019 ban on natural gas infrastructure in new buildings.

In addition to banning gas infrastructure, the City's ordinance also requires that when natural gas is allowed by exception that the development include sufficient electrical capacity, wiring and conduit to facilitate future full building electrification. However, State requirements now include the same requirements that are included in Ordinance No. 2306, so it is unnecessary to retain these provisions in the City's code. Because Morgan Hill's local ordinance prohibits natural gas infrastructure and staff had previously determined it is now preempted by federal law and is no longer legally enforceable, City

staff is recommending the repeal of the ordinance to clearly demonstrate the City's position.

The City will continue to encourage but not require developers to utilize all electric construction in alignment with the City's Climate Action Plan.

COMMUNITY ENGAGEMENT:

Inform

City staff provided notice of repeal via various communication channels to the community. City staff emailed community members that were engaged in our climate action plan work, informing them of the repeal and City Council meeting.

ALTERNATIVE ACTIONS:

There is no feasible alternative to the recommended action. While the City is not required to actively repeal ordinances that have been invalidated so long as the ordinances are not being enforced, repeal of the ordinance will eliminate any confusion over the status of the ordinance. Since the Ninth Circuit Court of Appeals struck down the City of Berkeley's gas ban in 2023, cities have shifted away from "direct bans" on gas piping or appliances. Because federal law prevents local governments from regulating the **energy use** of appliances, cities are now using alternative strategies, such as "Reach Codes" to restrict the use of natural gas in new construction. The City Council could choose to direct staff to research and bring back alternatives for reducing natural gas in new construction. However, this would need to occur following the action associated with this agenda item.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The ordinance eliminating natural gas for new construction was adopted by the City Council on November 6, 2019. The City's intent to reduce natural gas use in the City was reinforced by the City Council's adoption of its Climate Action Plan on December 15, 2021.

FISCAL AND RESOURCE IMPACT:

There are no direct fiscal impacts associated with this repeal.

CEQA (California Environmental Quality Act):

Not a Project

In accordance with CEQA Guidelines section 15378(b)(5), action on this item is not a project subject to CEQA because it is an administrative and legal action that will not result in a direct physical change to the environment.

ORDINANCE NO. XXXX, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
REPEALING CHAPTER 15.63 (PROHIBITION OF
NATURAL GAS INFRASTRUCTURE IN NEW
BUILDINGS) OF TITLE 15 (BUILDINGS AND
CONSTRUCTION) OF THE MORGAN HILL MUNICIPAL
CODE**

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

Section 1. **Findings.** The City Council finds and declares as follows:

1. The City of Morgan Hill previously adopted Chapter 15.63 of the Municipal Code to prohibit natural gas infrastructure in newly constructed buildings.
2. The City Council finds that the Ninth Circuit Court of Appeals' decision in *California Restaurant Association v. City of Berkeley* held that the federal Energy Policy and Conservation Act (EPCA) preempts local ordinances that prohibit the installation of natural gas infrastructure in new buildings. Consequently, Chapter 15.63 of the Morgan Hill Municipal Code is now preempted by federal law and is no longer legally enforceable.
3. The repeal of this ordinance ensures that building standards in Morgan Hill remain consistent with the judicial rulings and the current practices of the City.

Section 2. **Repeal.** Chapter 15.63 (Prohibition of Natural Gas Infrastructure in New Buildings) of the Morgan Hill Municipal Code is hereby repealed in its entirety.

Section 3. **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 4. **Effective Date; Posting.** This Ordinance shall take effect on the 31st day following adoption. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 28TH DAY OF JANUARY, 2026, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 18TH DAY OF FEBRUARY, 2026, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

ATTEST:

MARK TURNER, Mayor

MICHELLE BIGELOW, City Clerk

CERTIFICATE OF THE CITY CLERK

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2362, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th day of February 2026.

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

DATE: _____

MICHELLE BIGELOW, City Clerk