



## 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>

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**Wednesday, June 17, 2026**

**Closed Session 5:30 p.m.**  
**Regular Session 6:00 p.m.**

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

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

### **MEETING PARTICIPATION**

#### **Language Interpretation / Interpretación de idiomas**

Live Digital Language Interpretation is available. To access the interpretation during the meeting, go to:

<https://live.pocketalk.com/guest/S71BBUiWwiqXh3sPBf9Bfs2Ey4OYY9zgv8vZB5>

or scan the QR code below:

Tenemos Interpretación digital en vivo. Para usar la interpretación durante la reunión, visite:

<https://live.pocketalk.com/guest/S71BBUiWwiqXh3sPBf9Bfs2Ey4OYY9zgv8vZB5>

o escanee el código QR a continuación:



You can use a headset on your phone for audio or read the transcript on your device. Tablets and disposable headphones will be provided in person during the meeting to those who do not have their own devices.

Puede usar audífonos en su celular para escuchar el audio o leer la transcripción. Durante la reunión, se prestarán tabletas y audífonos desechables para las personas que no tengan su propio aparato.

### **Remote 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](mailto: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](mailto: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 5:30 p.m. for the purpose of conducting a closed session.

### **SPECIAL MEETING**

5:30 p.m. Closed Session

### **CALL TO ORDER**

**ROLL CALL ATTENDANCE**

**DECLARATION OF POSTING AGENDA**

**CLOSED SESSION**

**CONFERENCE WITH COUNSEL – EXISTING LITIGATION [Government Code § 54956.9(d)(1)]**

Bertram Berns v. City of Morgan Hill, et al.  
Superior Court of California, County of Santa Clara Case No. 25CV472644

**OPPORTUNITY FOR PUBLIC COMMENT ON CLOSED SESSION**

**ADJOURN TO CLOSED SESSION**

**REGULAR MEETING**

6:00 p.m.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

**PROCLAMATIONS**

Parks and Recreation Month

**CITY COUNCIL REPORTS**

Mayor Turner

**OTHER REPORTS**

**CITY MANAGER'S REPORT**

**CITY ATTORNEY'S REPORT**

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

## **ADOPTION OF AGENDA**

### **CONSENT CALENDAR**

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

1. **ADOPT A RESOLUTION TO DEDICATE TWO EASEMENTS TO PACIFIC GAS AND ELECTRIC COMPANY (PG&E) FOR THE UPPER LLAGAS CREEK FLOOD CONTROL AND HALE AVENUE EXTENSION PHASE 2B PROJECT**

Recommendation:

Adopt a resolution and authorize the City Manager to execute and administer two easement deeds to dedicate to Pacific Gas and Electric Company (PG&E) in order to underground overhead utilities along Hale Avenue.

2. **APPROVE A CONSULTANT AGREEMENT WITH PLANET FUTSAL, INC. DBA FUTSAL KINGZ TO PROVIDE YOUTH FUTSAL, SOCCER CLASSES, AND CAMPS FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$150,000**

Recommendation:

Authorize the City Manager to execute a consultant agreement with Planet Futsal, Inc. DBA Futsal Kingz to provide youth futsal, soccer classes, and camps not-to-exceed \$150,000.

3. **APPROVE FINAL MAP FOR SPRING VIEW – TRACT NO. 10589 AND RELATED SUBDIVISION IMPROVEMENT AGREEMENT (335 SPRING AVENUE)**

Recommendation:

1. Approve the Final Map;
2. Approve a Subdivision Improvements Agreement with 335 Spring LLC, a California limited liability company;
3. Authorize the City Manager to execute the Subdivision Improvements Agreement; and
4. Authorize the recordation of the Final Map and Subdivision Improvements Agreement.

4. **APPROVE PACIFIC GAS AND ELECTRIC COMPANY (PG&E) AGREEMENT TO UNDERGROUND DRY UTILITIES FOR THE UPPER LLAGAS CREEK FLOOD CONTROL AND HALE AVENUE EXTENSION PHASE 2B PROJECT**

Recommendation:

Approve and authorize the City Manager to execute and administer a Pacific Gas and Electric Company (PG&E) Agreement to underground dry utilities at the intersection of Hale and Wright Avenues for a not-to-exceed amount of \$297,083.51.

5. **APPROVE PURCHASE OF SOLAR SYSTEMS AT THE AQUATICS CENTER AND POLICE DEPARTMENT FOR UP TO \$1.91 MILLION**

Recommendation:

Authorize the City Manager to purchase the existing solar systems at the Police Department and Morgan Hill Aquatics Center for a purchase price of up to \$1,910,000.

6. **APPROVE SEVENTH AMENDMENT TO THE LEASE WITH THE MORGAN HILL UNIFIED SCHOOL DISTRICT FOR TRANSPORTATION YARD FACILITY**

Recommendation:

Authorize the City Manager to enter into a Seventh Amendment to the lease agreement with the Morgan Hill Unified School District for the transportation yard facility.

7. **APPROVE THE JUNE 3, 2026 CITY COUNCIL MEETING MINUTES**

Recommendation:

Approve the June 3, 2026 City Council Meeting Minutes.

8. **APPROVE THIRD AMENDMENT TO ON-CALL REPAIR CONTRACT WITH GOLDEN BAY CONSTRUCTION FOR A NEW TOTAL COMPENSATION UP TO \$1,200,000**

Recommendation:

Authorize the City Manager to execute a third amendment to the on-call water and sewer repair contract with Golden Bay Construction with compensation up to \$1,200,000.

9. **AUTHORIZE CITY MANAGER TO EXECUTE FIRST AMENDMENT TO PROPERTY USE AGREEMENT WITH NEW CINGULAR WIRELESS FOR CELL SITE AT 2275 ROLLING HILL DRIVE**

Recommendation:

Authorize the City Manager to execute the First Amendment to New Cingular Wireless PCS's Property Use Agreement.

10. **AWARD ON-CALL PLUMBING MAINTENANCE SERVICE AGREEMENTS**

Recommendation:

1. Award maintenance service agreements to Burr Plumbing and Pumping, Inc. and Stephen Ciari Plumbing & Heating, Inc. in the not-to-exceed amount of \$100,000 each to provide on-call plumbing maintenance and repair services; and
2. Authorize the City Manager to execute and administer said agreements.

## **PUBLIC HEARINGS**

11. **ADOPT RESOLUTION OF INTENTION AND INTRODUCTION OF ORDINANCE TO AMEND THE CONTRACT BETWEEN THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS) AND THE CITY OF MORGAN HILL TO PROVIDE FOR EMPLOYEES SHARING ADDITIONAL COSTS UNDER GOVERNMENT CODE SECTION 20516 (EMPLOYEES SHARING ADDITIONAL COSTS)**

Recommendation:

1. Adopt Resolution of Intention of the City Council of the City of Morgan Hill stating its intent to amend the contract between the California Public Employees' Retirement System (CalPERS) and the City of Morgan Hill in order to provide for employees sharing additional cost under Government Code Section 20516 (Employees Sharing Additional Cost);
2. Open/close the public hearing;
3. Waive the first and second reading of the ordinance amending the City's contract with CalPERS; and
4. Introduce ordinance.

## **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](mailto: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 2026-2027

- Fiscal Sustainability
- Public Safety
- Affordable Housing and Homelessness
- Economic Development and Tourism
- Transportation
- Economic Mobility

## 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
- Promoting a Healthy Community



## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: June 17, 2026**

PREPARED BY:  
David Gittleson, Associate Engineer  
APPROVED BY: City Manager

### **ADOPT A RESOLUTION TO DEDICATE TWO EASEMENTS TO PACIFIC GAS AND ELECTRIC COMPANY (PG&E) FOR THE UPPER LLAGAS CREEK FLOOD CONTROL AND HALE AVENUE EXTENSION PHASE 2B PROJECT**

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

Adopt a resolution and authorize the City Manager to execute and administer two easement deeds to dedicate to Pacific Gas and Electric Company (PG&E) in order to underground overhead utilities along Hale Avenue.

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

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

Enhancing Public Safety and Quality of Life  
Maintaining and Enhancing Infrastructure

##### **Strategic Priorities 2026-2027**

Transportation

##### **Guiding Documents**

Morgan Hill 2035 General Plan

#### **REPORT NARRATIVE:**

The Upper Llagas Creek Flood Protection Project is scheduled to be completed by early 2027. Included in the project is the reconstruction of Hale Avenue and the undergrounding of the overhead utilities along the west side of Hale Avenue between Main Avenue and Wright Avenue. As part of the undergrounding work, PG&E requires easements to be provided in locations where the undergrounding improvements extend outside the existing street right-of-way. As such, there are two locations within Galvin Park where easements are needed by PG&E to accommodate the undergrounding work (See Attachment 1-Easement Location Map). Additionally, PG&E requires that the easements be conveyed to them via a resolution (See Attachment 2).

Therefore, staff is requesting City Council approve the resolution and authorize the City Manager to execute and administer the two easement documents in order to allow the undergrounding work to proceed.

**COMMUNITY ENGAGEMENT:**

The City continues to engage the community on the work happening in association with Valley Water's Upper Llagas Creek Flood Control Project through updates on Nextdoor and the City's website.

**ALTERNATIVE ACTIONS:**

The City Council could elect not to dedicate the PG&E easements at this time. This is not recommended as PG&E requires the easements prior to the installing the underground wires and significant under-grounding infrastructure has been installed thus far.

**PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

The City has taken numerous actions over the last several decades in support of undergrounding the overhead lines along Hale Avenue, Most recently:

On November 4, 2020, City Council approved a PG&E agreement to underground dry utilities for the Hale Avenue Extension Project for \$384,876.

On August 17, 2022, City Council approved a PG&E agreement to underground dry utilities along the west side of Hale Avenue between Main and Wright for \$589,199.

**FISCAL AND RESOURCE IMPACT:**

No fiscal impact.

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

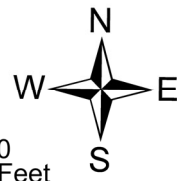
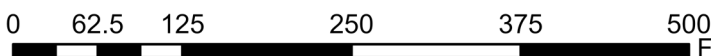
Environmental Impact Report & Categorical Exemption An Environmental Impact Report (EIR) was certified for the Hale Avenue Extension and Santa Teresa Corridor Widening and Realignment Project in accordance with the California Environmental Quality Act (CEQA). Valley Water certified an Environmental Impact Report for the Flood Control Project. Additionally, relocation of infrastructure and utility work along existing roadways and associated with the Valley Water Project is exempt from CEQA per categorical exemption of Class 1, Existing Facilities.



CITY OF MORGAN HILL  
 PUBLIC SERVICES DEPARTMENT  
 CIP ENGINEERING DIVISION

G:\R-14\Proj\JH\Dave\_PGE\_Undgrnd Easment

**Project Location Map**  
 for  
**Proposed PG&E Easements**  
**Upper Llagas Creek Flood Control Project**



**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE DEDICATION OF EASEMENTS FOR A PUBLIC PROJECT (UPPER LLAGAS CREEK FLOOD CONTROL AND HALE AVENUE EXTENSION PHASE 2B PROJECT)**

**WHEREAS**, Pacific Gas and Electric Company is requiring the City to dedicate two easements for the right to excavate, construct, reconstruct, install, replace, remove, maintain, inspect and use facilities within the easement area including ingress and egress therefrom over and above the lands of the Grantor, situated in Morgan Hill, California.

**WHEREAS**, the easements use is as follows: underground and aboveground facilities, appurtenances, and associated equipment for the purpose of distribution of electric energy, conveyance of gas, communication, and other public utility purposes.

**WHEREAS**, undergrounding wires and infrastructure will improve utility infrastructure, safety and service to the public.

**WHEREAS**, it is in the public interest to grant the easements.

**WHEREAS**, the easements are located within the City of Morgan Hill, CA, Assessor's Parcel Number 764-17-009, more particularly described in **Exhibits A and B**, attached hereto and incorporated herein by this reference, for the Upper Llagas Creek Flood Control and Hale Avenue Extension Phase 2B Project ("Project"); and

**WHEREAS**, An Environmental Impact Report (EIR) was certified for the Hale Avenue Extension and Santa Teresa Corridor Widening and Realignment Project in accordance with the California Environmental Quality Act (CEQA). Valley Water certified an Environmental Impact report for the Flood Control Project. Additionally, relocation of infrastructure and utility work along existing roadways and associated with the Valley Water Project is exempt from CEQA per categorical exemption of Class 1, Existing facilities.

**THEREFORE, BE IT RESOLVED** by the City Council of the City of Morgan Hill that it finds and determines as follows:

1. Dedicating the two easements for the purpose of undergrounding the overhead lines is necessary for the Project.
2. All environmental review required by law has been prepared and adopted.

3. The City Manager is hereby authorized to execute the PG&E easement deeds as described in **Exhibit A1**.

**PASSED AND ADOPTED** by the City Council of the City of Morgan Hill at a regular meeting held on the 17th day of June 2026 by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

**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 (or Ordinance) No. \_\_\_\_\_ adopted by the City Council at the Regular City Council Meeting of June 17, 2026.

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

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

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

**EXHIBIT A1**

Distribution Electric and Gas Easement Version 1.1 (Rev.09/25)  
**RECORDING REQUESTED BY AND RETURN TO:**

**PACIFIC GAS AND ELECTRIC COMPANY**  
**300 Lakeside Drive, Suite 210**  
**Oakland, CA 94612**  
**Attn: Land Rights Library**

Location: City/~~Union~~ Morgan Hill

Recording Fee \$ \_\_\_\_\_

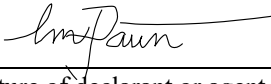
Document Transfer Tax \$ None

This is a conveyance where the consideration and Value is less than \$100.00 (R&T 11911).

Computed on Full Value of Property Conveyed, or

Computed on Full Value Less Liens & Encumbrances Remaining at Time of Sale

Exempt from the fee per GC 27388.1 (a) (2); This document is subject to Documentary Transfer Tax



\_\_\_\_\_  
Signature of declarant or agent determining tax

(SPACE ABOVE FOR RECORDER'S USE ONLY)

**LD# 2209-03-11503**

**EASEMENT DEED**

CITY OF MORGAN HILL, a municipal corporation of the State of California,

("Grantors"), hereby grants to PACIFIC GAS AND ELECTRIC COMPANY, a California corporation ("Grantee"), the right from time to time to excavate for, construct, reconstruct, install, replace (of initial or any other size), remove, maintain, inspect and use facilities of the type hereinafter specified, together with a right of way therefor, within the easement area set forth below, and also ingress thereto and egress therefrom, over and across the lands of Grantor situated in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

(APN 764-17-009)

Lot 71 as shown upon the map entitled "Morgan Hill Ranch Map No. 3", filed for record September 21, 1892 in Book "G" of Maps at page 20, Santa Clara County Records.

The facilities and easement area are described as follows:

Underground and aboveground facilities, appurtenances, and associated equipment, as Grantee deems necessary, for the distribution of electric energy, conveyance of gas, communication, and other public utility purposes, all to be located within the strip of land as described in Exhibit "A" and shown upon Exhibit "B", attached hereto and made a part hereof.

Grantor further grants to Grantee the right, from time to time, to trim or to cut down, without Grantee paying compensation, any and all trees and brush now or hereafter within said easement area, and shall have the further right, from time to time, to trim and cut down trees and brush along each side of said easement area which now or hereafter in the opinion of Grantee may interfere with or be a hazard to

the facilities installed hereunder, or as Grantee deems necessary to comply with applicable state or federal regulations.

Grantor also grants to Grantee the right to use such portion of said lands contiguous to said easement area as may be reasonably necessary in connection with the excavation, construction, reconstruction, replacement, removal, maintenance and inspection of said facilities.

Grantor hereby covenants and agrees not to place or construct, nor allow a third party to place or construct, any building or other structure, or store flammable substances, or drill or operate any well, or construct any reservoir or other obstruction within said easement area, or diminish or substantially add to the ground level within said easement area, or construct any fences that will interfere with the maintenance and operation of said facilities.

Grantor further grants to Grantee the right to apportion to another public utility (as defined in Section 216 of the California Public Utilities Code) the right to construct, reconstruct, replace, remove, maintain, inspect, and use the communications facilities within said easement area including ingress thereto and egress therefrom.

Grantor acknowledges that they have read the “Grant of Easement Disclosure Statement”, Exhibit “C”, attached hereto and made a part hereof.

This document may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto, and all covenants shall apply to and run with the land.

Dated: \_\_\_\_\_, 2026.

CITY OF MORGAN HILL, a municipal corporation of the State of California

I hereby certify that a resolution was adopted on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the \_\_\_\_\_ authorizing the foregoing grant of easement.  
By \_\_\_\_\_

By \_\_\_\_\_  
Christina J. Turner  
City Manager

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 \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_ Notary Public,  
Insert name

personally appeared \_\_\_\_\_,

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

(Seal)

**CAPACITY CLAIMED BY SIGNER**

- Individual(s) signing for oneself/themselves
- Corporate Officer(s) of the above named corporation(s)
- Trustee(s) of the above named Trust(s)
- Partner(s) of the above named Partnership(s)
- Attorney(s)-in-Fact of the above named Principal(s)
- Other \_\_\_\_\_

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**PACIFIC GAS & ELECTRIC EASEMENT**

BEING A PACIFIC GAS & ELECTRIC EASEMENT SITUATED IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 71 AS SHOWN ON THAT CERTAIN MAP ENTITLED "MORGAN HILL RANCH MAP NO. 3", RECORDED ON SEPTEMBER 21, 1892 IN BOOK G, PAGES 20 AND 21 AND BEING A PORTION OF THE DEED TO THE CITY OF MORGAN HILL, RECORDED FEBRUARY 24, 1959 IN BOOK 4332 AT PAGE 384, OFFICIAL RECORDS OF SANTA CLARA COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE INTERSECTION OF THE NORTHWESTERLY RIGHT OF WAY LINE OF WEST MAIN STREET (66 FEET WIDE) AND THE SOUTHWESTERLY RIGHT OF WAY LINE OF HALE AVENUE (66 FEET WIDE) AS SHOWN ON RECORD OF SURVEY, RECORDED NOVEMBER 18, 1959 IN BOOK 113, PAGE 54, OFFICIAL RECORDS OF SANTA CLARA COUNTY;

THENCE ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE NORTH 34° 52' 00" WEST, 549.70 FEET TO THE **POINT OF BEGINNING**;

THENCE LEAVING SAID SOUTHWESTERLY RIGHT OF WAY LINE ALONG THE FOLLOWING THREE (3) COURSES AND DISTANCES:

- 1) SOUTH 55° 08' 00" WEST, 12.00 FEET,
- 2) NORTH 34° 52' 00" WEST, 45.00 FEET, AND
- 3) NORTH 55° 08' 00" EAST, 12.00 FEET TO SAID SOUTHWESTERLY RIGHT OF WAY LINE;

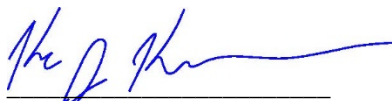
THENCE ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE SOUTH 34° 52' 00" EAST, 45.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 540 SQUARE FEET OF LAND, MORE OR LESS.

BASIS OF BEARINGS: THE BEARING OF NORTH 34° 52' 00" WEST BEING THE SOUTHWESTERLY RIGHT OF WAY LINE OF HALE AVENUE AS SHOWN ON RECORD OF SURVEY, RECORDED NOVEMBER 18, 1959 IN BOOK 113, PAGE 54, OFFICIAL RECORDS OF SANTA CLARA COUNTY.

AS SHOWN ON EXHIBIT "B", ATTACHED HERETO AND MADE A PART HEREOF.

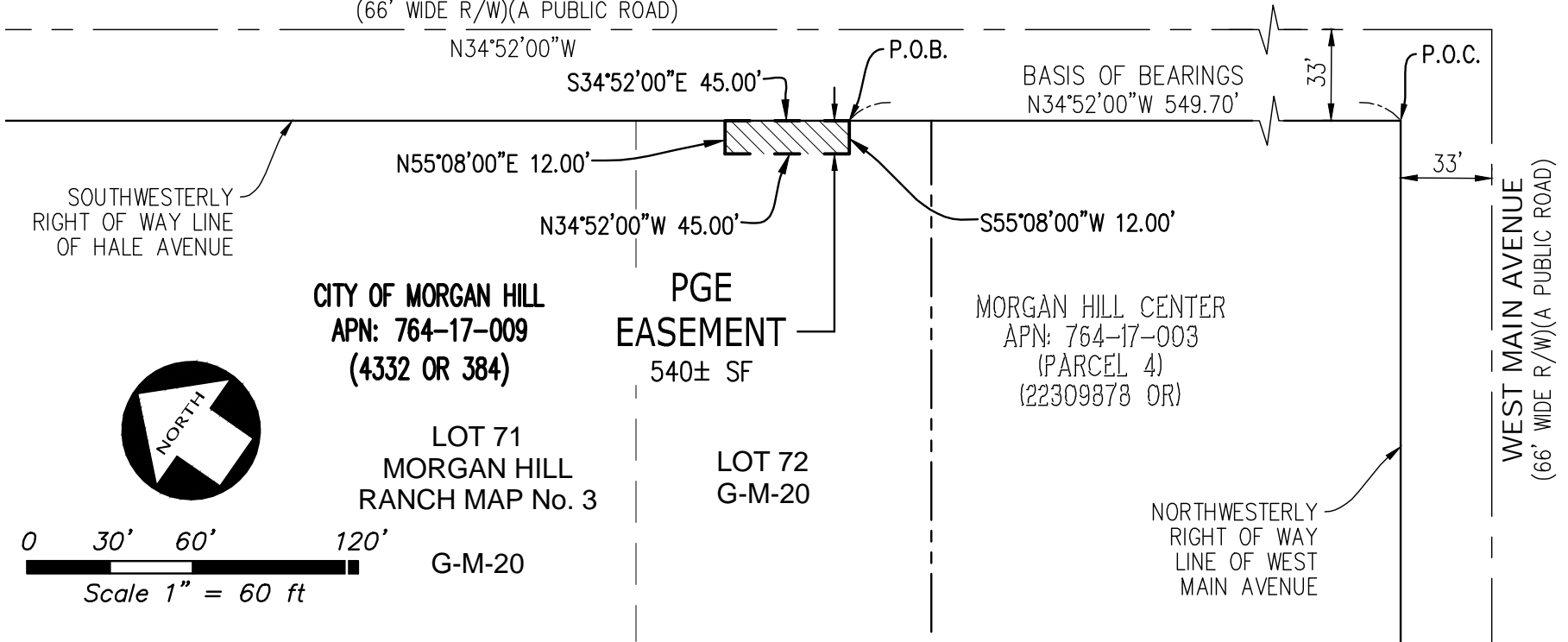
KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC.

  
KC J. KELLER, P.L.S. 9731

12/8/2025  
DATE



HALE AVENUE  
(66' WIDE R/W)(A PUBLIC ROAD)



SOUTHWESTERLY  
RIGHT OF WAY LINE  
OF HALE AVENUE

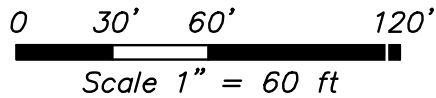
CITY OF MORGAN HILL  
APN: 764-17-009  
(4332 OR 384)

PG&E  
EASEMENT  
540± SF

MORGAN HILL CENTER  
APN: 764-17-003  
(PARCEL 4)  
(22309878 OR)

WEST MAIN AVENUE  
(66' WIDE R/W)(A PUBLIC ROAD)

NORTHWESTERLY  
RIGHT OF WAY  
LINE OF WEST  
MAIN AVENUE



**NOTE:**

UNLESS OTHERWISE SHOWN, ALL COURSES  
EXTEND TO OR ALONG ALL BOUNDARIES  
OR LINES.

**BASIS OF BEARINGS:**

THE BEARING OF NORTH 34° 52' 00" WEST  
BEING THE SOUTHWESTERLY RIGHT OF WAY  
LINE OF HALE AVENUE AS SHOWN ON  
RECORD OF SURVEY, RECORDED NOVEMBER  
18, 1959 IN BOOK 113, PAGE 54, OFFICIAL  
RECORDS OF SANTA CLARA COUNTY.

**LEGEND & ABBREVIATIONS**

- — — — — CENTER LINE
- — — — — PROPERTY LINE
- — — — — OLD LOT LINE
- EASEMENT AREA
- APN ASSESSOR PARCEL NUMBER
- OR OFFICIAL RECORDS
- POB POINT OF BEGINNING
- POC POINT OF COMMENCEMENT
- SF SQUARE FEET



2850 Collier Canyon Road Phone: (925) 245-8788  
Livermore, CA 94551 www.kierwright.com

EXHIBIT "B"  
PACIFIC GAS & ELECTRIC  
EASEMENT

MORGAN HILL SANTA CLARA COUNTY CALIFORNIA

DATE	NOVEMBER, 2025
SCALE	1" = 60'
BY	KJK
JOB NO.	A25110
SHEET	1 OF 1

**Pacific Gas and Electric Company**



**EXHIBIT “C”**

**GRANT OF EASEMENT DISCLOSURE STATEMENT**

This Disclosure Statement will assist you in evaluating the request for granting an easement to Pacific Gas and Electric Company (PG&E) to accommodate a utility service extension to PG&E’s applicant. **Please read this disclosure carefully before signing the Grant of Easement.**

- You are under no obligation or threat of condemnation by PG&E to grant this easement.
- The granting of this easement is an accommodation to PG&E’s applicant requesting the extension of PG&E utility facilities to the applicant’s property or project. Because this easement is an accommodation for a service extension to a single customer or group of customers, PG&E is not authorized to purchase any such easement.
- By granting this easement to PG&E, the easement area may be used to serve additional customers in the area. Installation of any proposed facilities outside of this easement area will require an additional easement.
- Removal and/or pruning of trees or other vegetation on your property may be necessary for the installation of PG&E facilities. You have the option of having PG&E’s contractors perform this work on your property, if available, or granting permission to PG&E’s applicant or the applicant’s contractor to perform this work. Additionally, in order to comply with California fire laws and safety orders, PG&E or its contractors will periodically perform vegetation maintenance activities on your property as provided for in this grant of easement in order to maintain proper clearances from energized electric lines or other facilities.
- The description of the easement location where PG&E utility facilities are to be installed across your property must be satisfactory to you.
- The California Public Utilities Commission has authorized PG&E’s applicant to perform the installation of certain utility facilities for utility service. In addition to granting this easement to PG&E, your consent may be requested by the applicant, or applicant’s contractor, to work on your property. Upon completion of the applicant’s installation, the utility facilities will be inspected by PG&E. When the facility installation is determined to be acceptable the facilities will be conveyed to PG&E by its applicant.

By signing the Grant of Easement, you are acknowledging that you have read this disclosure and understand that you are voluntarily granting the easement to PG&E. Please return the signed and notarized Grant of Easement with this Disclosure Statement attached to PG&E. The duplicate copy of the Grant of Easement and this Disclosure Statement is for your records.

Attach to LD: 2209-03-11503  
Area 3, San Jose Division  
Land Service Office: San Jose  
Line of Business: Electric Distribution (43)  
Business Doc Type: Easements  
MTRSQ: (22.09.03.20.22) Rancho Ojo De Agua Del La Coche  
FERC License Number: N/A  
PG&E Drawing Number: N/A  
Plat No.: L2307 (Electric), 3541-G1 (Gas)  
LD of Affected Documents: N/A  
LD of Cross Referenced Documents: N/A  
Type of interest: Electric Underground Easements (4), Communication Easements (6), Utility Easement (86)  
SBE Parcel: N/A  
% Being Quitclaimed: N/A  
Order or PM: 31488619-0170  
JCN: N/A  
County: Santa Clara  
Utility Notice Number: N/A  
851 Approval Application No: N/A; Decision: N/A  
Prepared By: mqpv  
Checked By: kv2

Distribution Electric and Gas Easement Version 1.1 (Rev.09/25)  
**RECORDING REQUESTED BY AND RETURN TO:**

**PACIFIC GAS AND ELECTRIC COMPANY**  
**300 Lakeside Drive, Suite 210**  
**Oakland, CA 94612**  
**Attn: Land Rights Library**

Location: City/~~Union~~ Morgan Hill

Recording Fee \$ \_\_\_\_\_

Document Transfer Tax \$ None

This is a conveyance where the consideration and Value is less than \$100.00 (R&T 11911).

Computed on Full Value of Property Conveyed, or

Computed on Full Value Less Liens & Encumbrances Remaining at Time of Sale

Exempt from the fee per GC 27388.1 (a) (2); This document is subject to Documentary Transfer Tax



\_\_\_\_\_  
Signature of declarant or agent determining tax

(SPACE ABOVE FOR RECORDER'S USE ONLY)

LD# 2209-03-10118

EASEMENT DEED

CITY OF MORGAN HILL, a municipal corporation of the State of California,

("Grantors"), hereby grants to PACIFIC GAS AND ELECTRIC COMPANY, a California corporation ("Grantee"), the right from time to time to excavate for, construct, reconstruct, install, replace (of initial or any other size), remove, maintain, inspect and use facilities of the type hereinafter specified, together with a right of way therefor, within the easement area set forth below, and also ingress thereto and egress therefrom, over and across the lands of Grantor situated in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

(APN 764-17-009)

Lot 70 as shown upon the map entitled "Morgan Hill Ranch Map No. 3", filed for record September 21, 1892 in Book "G" of Maps at page 20, Santa Clara County Records.

The facilities and easement area are described as follows:

Underground and aboveground facilities, appurtenances, and associated equipment, as Grantee deems necessary, for the distribution of electric energy, conveyance of gas, communication, and other public utility purposes, all to be located within the strip of land as described in Exhibit "A" and shown upon Exhibit "B", attached hereto and made a part hereof.

Grantor further grants to Grantee the right, from time to time, to trim or to cut down, without Grantee paying compensation, any and all trees and brush now or hereafter within said easement area, and shall have the further right, from time to time, to trim and cut down trees and brush along each side of said easement area which now or hereafter in the opinion of Grantee may interfere with or be a hazard to

the facilities installed hereunder, or as Grantee deems necessary to comply with applicable state or federal regulations.

Grantor also grants to Grantee the right to use such portion of said lands contiguous to said easement area as may be reasonably necessary in connection with the excavation, construction, reconstruction, replacement, removal, maintenance and inspection of said facilities.

Grantor hereby covenants and agrees not to place or construct, nor allow a third party to place or construct, any building or other structure, or store flammable substances, or drill or operate any well, or construct any reservoir or other obstruction within said easement area, or diminish or substantially add to the ground level within said easement area, or construct any fences that will interfere with the maintenance and operation of said facilities.

Grantor further grants to Grantee the right to apportion to another public utility (as defined in Section 216 of the California Public Utilities Code) the right to construct, reconstruct, replace, remove, maintain, inspect, and use the communications facilities within said easement area including ingress thereto and egress therefrom.

Grantor acknowledges that they have read the “Grant of Easement Disclosure Statement”, Exhibit “C”, attached hereto and made a part hereof.

This document may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto, and all covenants shall apply to and run with the land.

Dated: \_\_\_\_\_, 2026.

CITY OF MORGAN HILL, a municipal corporation of the State of California

By \_\_\_\_\_

Christina J. Turner  
City Manager

I hereby certify that a resolution was adopted on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the \_\_\_\_\_ authorizing the foregoing grant of easement.  
  
By \_\_\_\_\_

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 \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_ Notary Public,  
Insert name

personally appeared \_\_\_\_\_  
\_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

(Seal)

**CAPACITY CLAIMED BY SIGNER**

- Individual(s) signing for oneself/themselves
- Corporate Officer(s) of the above named corporation(s)
- Trustee(s) of the above named Trust(s)
- Partner(s) of the above named Partnership(s)
- Attorney(s)-in-Fact of the above named Principal(s)
- Other \_\_\_\_\_

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**PACIFIC GAS & ELECTRIC EASEMENT**

BEING A PACIFIC GAS & ELECTRIC EASEMENT SITUATED IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 70 AS SHOWN ON THAT CERTAIN MAP ENTITLED "MORGAN HILL RANCH MAP NO. 3", RECORDED ON SEPTEMBER 21, 1892 IN BOOK G, PAGES 20 AND 21 AND BEING A PORTION OF THE DEED TO THE CITY OF MORGAN HILL, RECORDED FEBRUARY 24, 1959 IN BOOK 4332 AT PAGE 384, OFFICIAL RECORDS OF SANTA CLARA COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE INTERSECTION OF THE NORTHWESTERLY RIGHT OF WAY LINE OF WEST MAIN STREET (66 FEET WIDE) AND THE SOUTHWESTERLY RIGHT OF WAY LINE OF HALE AVENUE (66 FEET WIDE) AS SHOWN ON RECORD OF SURVEY, RECORDED NOVEMBER 18, 1959 IN BOOK 113, PAGE 54, OFFICIAL RECORDS OF SANTA CLARA COUNTY;

THENCE ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE NORTH 34° 52' 00" WEST, 913.46 FEET TO THE **POINT OF BEGINNING**;

THENCE LEAVING SAID SOUTHWESTERLY RIGHT OF WAY LINE ALONG THE FOLLOWING THREE (3) COURSES AND DISTANCES:

- 1) SOUTH 55° 08' 00" WEST, 12.00 FEET,
- 2) NORTH 34° 52' 00" WEST, 19.00 FEET, AND
- 3) NORTH 55° 08' 00" EAST, 12.00 FEET TO SAID SOUTHWESTERLY RIGHT OF WAY LINE;

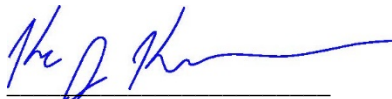
THENCE ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE SOUTH 34° 52' 00" EAST, 19.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 228 SQUARE FEET OF LAND, MORE OR LESS.

BASIS OF BEARINGS: THE BEARING OF NORTH 34° 52' 00" WEST BEING THE SOUTHWESTERLY RIGHT OF WAY LINE OF HALE AVENUE AS SHOWN ON RECORD OF SURVEY, RECORDED NOVEMBER 18, 1959 IN BOOK 113, PAGE 54, OFFICIAL RECORDS OF SANTA CLARA COUNTY.

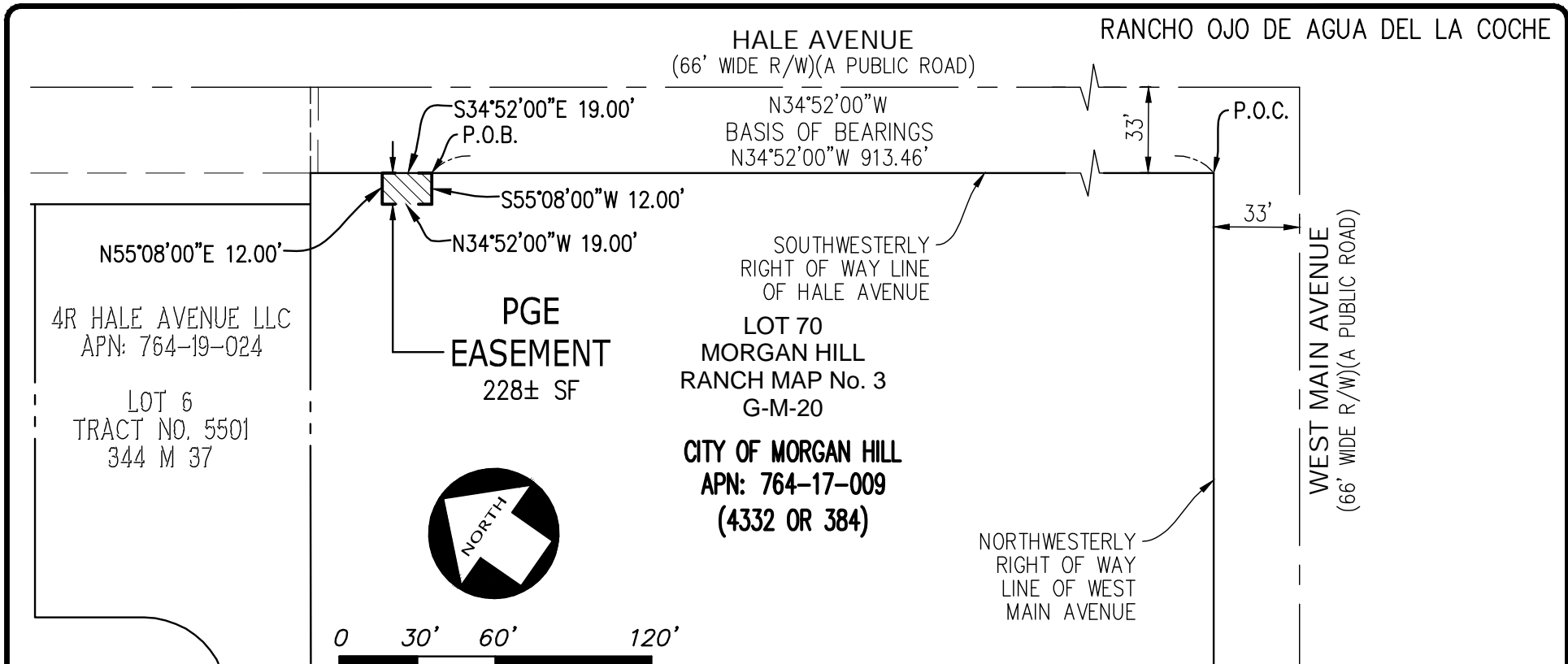
AS SHOWN ON EXHIBIT "B", ATTACHED HERETO AND MADE A PART HEREOF.

KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC.

  
KC J. KELLER, P.L.S. 9731

12/8/2025  
DATE






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OR LINES.

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- POB POINT OF BEGINNING
- POC POINT OF COMMENCEMENT
- SF SQUARE FEET



2850 Collier Canyon Road  
Livermore, CA 94551

Phone: (925) 245-8788  
www.kierwright.com

**EXHIBIT "B"**  
**PACIFIC GAS & ELECTRIC  
EASEMENT**

MORGAN HILL SANTA CLARA COUNTY CALIFORNIA

DATE	DECEMBER, 2025
SCALE	1" = 60'
BY	KJK
JOB NO.	A25110
SHEET	1 OF 1

**Pacific Gas and Electric Company**



**EXHIBIT “C”**

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Attach to LD: 2209-03-10118  
Area 3, San Jose Division  
Land Service Office: San Jose  
Line of Business: Electric Distribution (43)  
Business Doc Type: Easements  
MTRSQ: (22.09.03.20.22) Rancho Ojo De Agua Del La Coche  
FERC License Number: N/A  
PG&E Drawing Number: N/A  
Plat No.: L2307 (Electric), 3541-G1 (Gas)  
LD of Affected Documents: N/A  
LD of Cross Referenced Documents: N/A  
Type of interest: Electric Underground Easements (4), Communication Easements (6), Utility Easement (86)  
SBE Parcel: N/A  
% Being Quitclaimed: N/A  
Order or PM: 31488619-0170  
JCN: N/A  
County: Santa Clara  
Utility Notice Number: N/A  
851 Approval Application No: N/A; Decision: N/A  
Prepared By: mqpv  
Checked By: kv2

## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: June 17, 2026**

PREPARED BY:

Jennie Tucker, Recreation Manager

APPROVED BY: City Manager

### **APPROVE A CONSULTANT AGREEMENT WITH PLANET FUTSAL, INC. DBA FUTSAL KINGZ TO PROVIDE YOUTH FUTSAL, SOCCER CLASSES, AND CAMPS FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$150,000**

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

Authorize the City Manager to execute a consultant agreement with Planet Futsal, Inc. DBA Futsal Kingz to provide youth futsal, soccer classes, and camps not-to-exceed \$150,000.

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

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

Supporting our Youth, Seniors, and Entire Community  
Promoting a Healthy Community

##### **Strategic Priorities 2026-2027**

Fiscal Sustainability

##### **Guiding Documents**

Bikeways, Trails, and Recreation Master Plan

#### **REPORT NARRATIVE:**

The Parks and Recreation Division regularly engages independent contractors for the delivery of recreational activities and programs to the Morgan Hill and surrounding community. Upon acceptance of a contractor proposal, staff works with the contractor to determine the specifications of the activity, facility availability, participant minimums and maximums, and participant age range. All contractors set their own prices and schedules for their activities or programs. The Division advertises the programs in the activity guide, provides facility space, and manages all enrollment and registration. The contractor invoices the City for sixty percent (60%) of the total class revenue. The use of contract instructors is critical to meet community needs and support the Recreation cost-recovery goal of the City Council.

Planet Futsal, INC. DBA Futsal Kingz has been providing their services to the City of Morgan Hill for the past several years and staff has received positive feedback from participants. Traditionally, all instructor agreements are executed to not exceed seventy-

five thousand (\$75,000), which is within the threshold for the City Manager's approval. Due to the popularity of Futsal Kingz, the course offerings and enrollment have expanded and will now exceed the threshold for City Manager approval and therefore require City Council approval.

**COMMUNITY ENGAGEMENT:**

Involve

The success of classes and programs offered by independent contractors in the Parks and Recreation Division, relies heavily on participation from the community. The community is involved in the ultimate success of the program by continuing to enroll in classes and programs.

**ALTERNATIVE ACTIONS:**

The City Council could decide not to approve the agreement and direct staff to reduce the number of courses offered by this independent contractor, resulting in a negative impact on customer satisfaction and loss of revenue for the City.

**PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

The City Council approved a previous two-year agreement at the June 19, 2024 Council meeting.

**FISCAL AND RESOURCE IMPACT:**

The agreement is subject to budget appropriation by City Council. Funding of the \$150,000 is included in the Fiscal Year 2026-2027 and 2027-2028 Adopted Budget, in the General Fund (010), within the Parks and Recreation Division (010.2140.42226). The expenditures are fully offset by revenue.

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

Not a Project

This is an administrative program that will not result in a physical change of the environment and therefore does not constitute a project under CEQA.

**CONSULTANT AGREEMENT**  
**Planet Futsal, Inc. DBA Futsal Kingz**

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

1. **City Authority**. This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_.
  
2. **Term of Agreement**. This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2028 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum of two two-year extensions; unless otherwise authorized by Council. Any such extension shall be in writing and signed by both Parties to this Agreement.
  
3. **Scope of Service**. The services to be performed by CONSULTANT shall be to provide youth futsal and soccer classes and/or camps.
  
4. **Compensation**. CONSULTANT shall be compensated as follows:
  - 4.1. **Amount**. 60% of the resident-member registration fees to CONSULTANT. Compensation under this Agreement during its initial term set forth in Section 2 above shall not exceed \$150,000 (ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS). If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed for two years of service during the immediately preceding two years of service.
  
  - 4.2. **Billing**. CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed by CONSULTANT. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). CITY shall pay for services and expenses (if so provided) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
  
5. **Termination**. CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without

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

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

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

7.1. **Insurance Types and Amounts.**

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

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

7.1.3. **Workers' Compensation Insurance and Employer's Liability.** CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including

any excess or “umbrella” policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

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

7.2.1. General Liability.

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

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

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

7.2.2. Workers Compensation.

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

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

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

compliance with any insurance requirements in this Section 7. Certificates, including renewal certificates, may be mailed electronically to [riskmgmt@morganhill.ca.gov](mailto:riskmgmt@morganhill.ca.gov) or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

8. **Background Checks.** CONSULTANT, as well as their employees, subcontractors, and volunteers (hereinafter collectively "STAFF"), must satisfy the following requirements, prior to providing in-person or virtual services contracted with the CITY:

- 8.1. CONSULTANT STAFF must pass a background check using LiveScan. If an individual has been convicted of a crime other than a minor traffic violation, the individual cannot work or be present in any CITY facility unless he/she receives a criminal record exemption from the CITY.
- 8.2. CONSULTANT must designate a human resources administrator responsible for attestation to background check requirement.
- 8.3. CONSULTANT designated human resources administrator shall not attest for their own background check. Background checks for these individuals shall be submitted to the CITY for review.
- 8.4. CONSULTANT shall not attest for their own, or for any person legally related to CONSULTANT, background check. Background checks for these individuals shall be submitted to the CITY for review.
- 8.5. CONSULTANTS with limited numbers of employees may request individual background check(s) through the City as an alternative to provisions 8.1 through 8.4 in this section.
- 8.6. CONSULTANT is responsible for all costs associated with the background checks for its STAFF.

9. **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.

10. **Compliance with Law**

- 10.1. CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon any basis prohibited by State and 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. Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

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

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

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

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

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

Notice to City Related to Wage Theft Prevention: Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. The Notice provisions of this Section are

separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

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

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

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

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 CONSULTANT is as follows:

Planet Futsal, Inc. DBA Futsal Kingz  
14938 Camden Ave, Ste 93  
San Jose, CA 95124

Address of CITY is as follows:

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

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

17. **Maintenance of Records.**

17.1. **Maintenance.** CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to

services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3 year period, then CONSULTANT shall retain said records until such action is resolved.

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

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

17.4. **Public Record.** The City, as a public agency, is subject to the disclosure requirements of the California Public Records Act ("CPRA"). This Agreement, including Consultant's rates and fees, is a public record under the California Public Records Act. If Consultant has proprietary information contained in these documents, and Consultant wishes to claim that such information falls within one or more CPRA exemptions, Consultant must clearly mark such information "Confidential and Proprietary," and identify the specific lines containing the information. In the event of a request for such information, the City will make reasonable efforts to provide notice to Consultant prior to such disclosure.

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

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 CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.

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.** CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards,

agencies, officers, agents, employees, and volunteers (“INDEMNITEES”) from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors (“CLAIM”).

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

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 CONSULTANT.

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

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

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 CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.

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. **Notice of Security and/or Privacy Incident.** If CONSULTANT, 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, CONSULTANT 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. CONSULTANT 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, CONSULTANT 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. CONSULTANT 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.

26. **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.

27. **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.

28. **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 CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

29. **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.

30. **Counterpart Signatures.** This Agreement may be signed in multiple counterparts, which shall, when executed by all Parties, constitute a single binding agreement.

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Signatures follow on next page

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

\_\_\_\_\_  
City Clerk/Deputy City Clerk

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

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

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

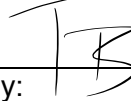
Date: \_\_\_\_\_

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

APPROVED AS TO FORM:

Planet Futsal, Inc. DBA Futsal Kingz

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

By: 

Elisa Tolentino  
\_\_\_\_\_  
Print Name

Name & Title: TOM BROUGH, OWNER

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

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

Date: 5/26/2026



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

Name & Title: TIM NEWSOME, DIRECTOR OF COACHING

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

Date: 5/26/2026

## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: June 17, 2026**

PREPARED BY:

Maria Angeles, Senior Civil Engineer

APPROVED BY: City Manager

### **APPROVE FINAL MAP FOR SPRING VIEW – TRACT NO. 10589 AND RELATED SUBDIVISION IMPROVEMENT AGREEMENT (335 SPRING AVENUE)**

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

1. Approve the Final Map;
2. Approve a Subdivision Improvements Agreement with 335 Spring LLC, a California limited liability company;
3. Authorize the City Manager to execute the Subdivision Improvements Agreement; and
4. Authorize the recordation of the Final Map and Subdivision Improvements Agreement.

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

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

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

##### **Guiding Documents**

Morgan Hill 2035 General Plan

#### **REPORT NARRATIVE:**

Spring View – Tract No. 10589 is a 23-unit residential development consisting of 18 single-family attached units and five single-family detached units with associated improvements. The project site is located on the north side of Spring Avenue with a current address of 335 Spring Avenue, Morgan Hill, as shown on the attached Site Map (Attachment 1).

##### Subdivision Improvements Agreement

The project's Subdivision Improvements Agreement (Attachment 2) requires the development to construct public improvements along Spring Avenue, including, but not limited to, curb and gutter, sidewalk, street trees, a streetlight, and approximately 490 linear feet of public water line along the project site's private driveway.

Final Map

The Developer, 335 Spring LLC, has completed all the conditions specified in the project's Tentative Map (Resolution 21-11), which was approved by the Planning Commission, and the conditions in the Design Permit (Approval Certificate No. 21-008), which the Development Services Director administratively approved.

The City Council is required to approve the Final Map (Attachment 3) if it conforms to all the requirements of the Subdivision Map Act and any conditions of approval for the Tentative Map.

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

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

**COMMUNITY ENGAGEMENT:**

Inform

The Planning Commission approved the project's Tentative Map (SD2020-0010) at its October 12, 2021 meeting. The project's Design Permit (SR2020-0028) was separately approved administratively by the Development Services Director on November 1, 2021. The project was publicly noticed including a mailing to property owners within 600 feet of the project. A subsequent time extension of the Design Permit was approved by the Development Services Director on November 5, 2024.

**ALTERNATIVE ACTIONS:**

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

**PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

October 12, 2021 - Planning Commission adopted Resolution 21-11 approving the project's Tentative Map.

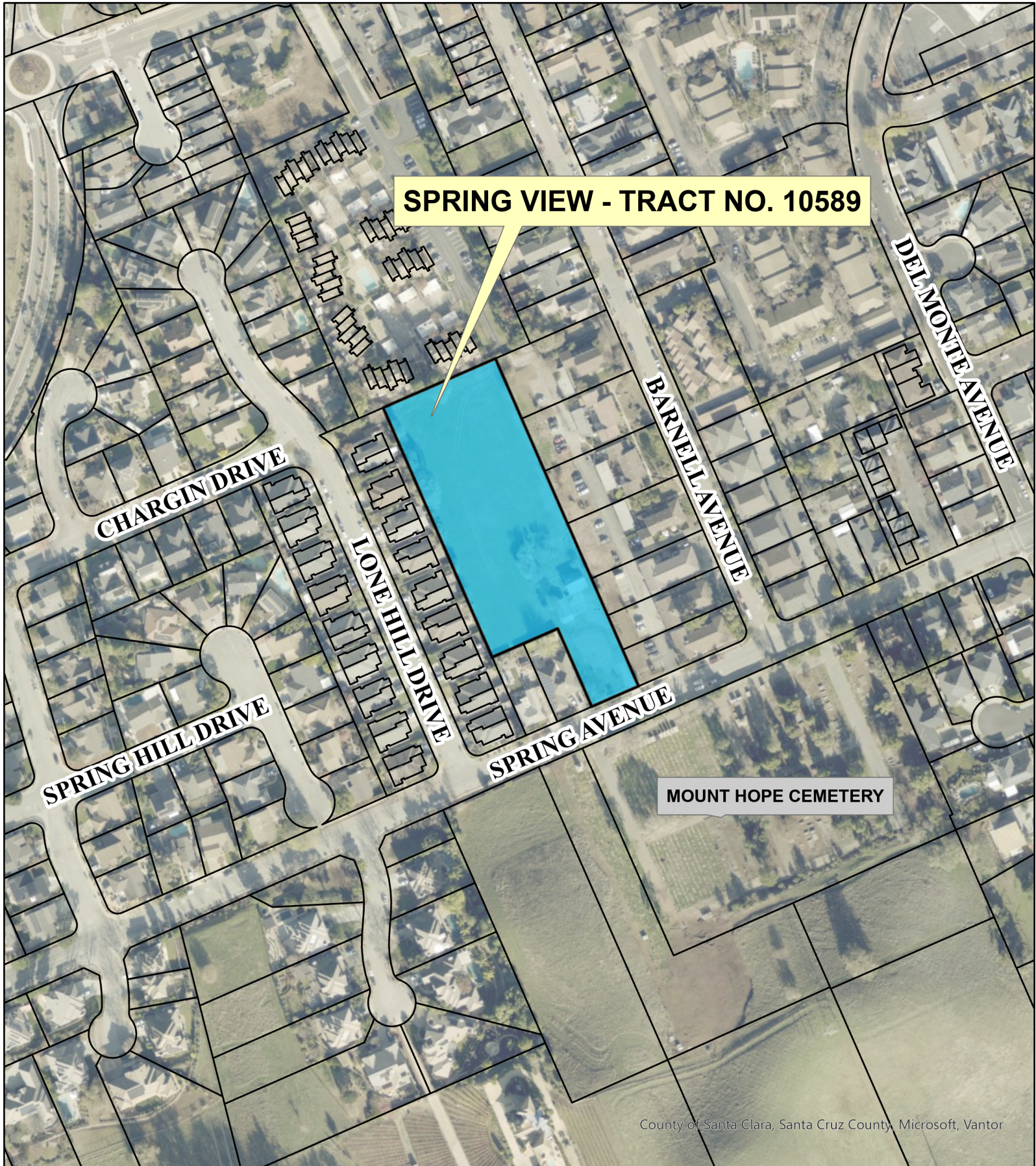
**FISCAL AND RESOURCE IMPACT:**

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

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

Categorical Exemption

The project was found to be exempt from CEQA pursuant to Section 15332 – Infill Development.



**SPRING VIEW - TRACT NO. 10589**

**MOUNT HOPE CEMETERY**

County of Santa Clara, Santa Cruz County, Microsoft, Vantor



**Public Services Department  
Land Development Engineering**

**SITE MAP  
SPRING VIEW - TRACT NO. 10589**

0 80 160 320 480 640



RECORDING REQUESTED BY  
WHEN RECORDED RETURN TO

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

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

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

## SUBDIVISION IMPROVEMENTS AGREEMENT

### 335 SPRING LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

#### SPRING VIEW – TRACT NO. 10589

This Subdivision Improvements Agreement (“Agreement”) between the City of Morgan Hill, a municipal corporation (“City”), and **335 Spring LLC**, a California limited liability company (“Subdivider”), is entered into this \_\_\_\_ day of \_\_\_\_\_, 2026. City and Subdivider hereby acknowledge the following:

1. Subdivider has filed a Tentative Subdivision Map and supporting documents for Tract No. 10589, the subdivision known as **Spring View** (“Map”).
2. City desires, as part of the conditions of approval (“Conditions”) of the Final Tract Map or Parcel Map (“Final Map”), that certain improvements be installed by Subdivider (“Improvements”) as shown on the City Engineer approved and signed Subdivision Improvement Plans entitled "Improvement Plans - Spring View, Tract No. 10589" (“Plans”).
3. Subdivider has been unable to complete, prior to filing of the Final Map, all of the improvements required by City to the satisfaction of the City Engineer.
4. Subdivider is required by the terms of the Morgan Hill Municipal Code (“Municipal Code”), to improve all streets, highways, or public areas which are part of the development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer and to post certain securities to secure the completion of the Improvements.
5. To assure City that Subdivider will construct, install and complete all Improvements required for the Subdivision, the parties have entered into this Agreement.
6. This Agreement is executed pursuant to California Government Code Section 66410 et seq., and Chapter 17.32 of the Municipal Code in order to provide for the manner in which Improvements shall be constructed and completed.

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

**Section 1. Incorporation by Reference**

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

**Section 2. Construction of Improvements**

(a) Subdivider shall construct, as provided for in the Conditions, the Improvements as shown fully executed in the Plans entitled "Improvement Plans - Spring View, Tract No. 10589" subject to the approval of City.

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

(c) Survey Monumentation:

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

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

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

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

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

### **Section 3. Modification of Plans**

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

### **Section 4. Security**

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

Improvements and the City Engineer's Estimated Costs of Improvements as of May 21, 2026 are attached hereto as Exhibit "A".

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

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

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

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

- (1) The performance of the work covered by the Agreement or the performance of the required act.
- (2) The performance of any changes or alterations in such work; provided that all changes or alterations do not exceed ten percent of the original estimated cost of the Improvements.
- (3) The guarantee and warranty of the work for a period of one year following completion and acceptance thereof, against any defective work or labor done or defective materials furnished in the performance of the Agreement or the performance of the act.
- (4) Costs and reasonable expenses and fees, including reasonable attorneys' fees.

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

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

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

### **Section 5. Inspections**

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

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

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

### **Section 6. Timing of Performance**

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

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

### **Section 7. Work Performance and Warranty**

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

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

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

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

(d) The work performance for the Improvements shall not be deemed complete until such time as such Improvements have been accepted for maintenance by the City Council.

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

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

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

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

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

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

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

(b) Except as otherwise provided by this Agreement, City rejects all lands, rights-of-way, and easements offered for dedication on the Final Map of the Subdivision. All such offers shall, however,

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

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

### **Section 9. Indemnity**

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

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

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

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

### **Section 10. Insurance**

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

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

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

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

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

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

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

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

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

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

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

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

(1) **ALL Policies:**

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

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

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

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

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

(d) **Qualification of Insurers.** All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in

the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VIII" or better.

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

Certificate Holder address:

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

#### **Section 11. Permits and Requisite Fees**

(a) Subdivider shall pay all current fee obligations in the total amount of **\$1,550,158.19** due under City Resolution No. 5592, as amended, in accordance with the Department of Public Works fee schedule, as follows:

(1) **\$145,019.77** payable at the time of recording of the Final Map, and

(2) **\$1,405,138.42** 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:  
335 Spring LLC  
1140 Camino Pablo  
San Jose, CA 95125

- 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
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**Section 15. Noncompliance**

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

**Section 16. Notice of Breach and/or Default**

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

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

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

### **Section 17. Performance by Surety or City**

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

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

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

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

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

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

### **Section 18. Successors in Interest**

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

**Section 19. Effective Date**

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

**Section 20. Amendment of Agreement**

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

**Section 21. Execution**

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

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

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

**Section 23. Law to Govern: Venue**

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

**Section 24. Limitations Upon Subcontracting and Assignment.**

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

**Section 25. Miscellaneous**

- (a) Compliance with Law: Subdivider shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
- (b) Non-Discrimination. Subdivider covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, ancestry, or sexual orientation in any activity pursuant to this Agreement.
- (c) Conflict of Interest and Reporting. Subdivider shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
- (d) Time of Essence. Time is of the essence in the performance of this Agreement.
- (e) Interpretation. This Agreement shall be interpreted as though prepared by both parties.

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

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

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

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

**CITY OF MORGAN HILL**

By:

\_\_\_\_\_  
Christina J. Turner, City Manager

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

**ATTEST:**

By:

\_\_\_\_\_  
Michelle Bigelow, City Clerk

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

**APPROVED AS TO FORM:**

By:

\_\_\_\_\_  
Elisa Tolentino, City Attorney

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

**"Subdivider"**

**335 Spring LLC, a California  
limited liability company**

By:



\_\_\_\_\_  
Greg B. Mussallem, Manager

(If Corporation, must be Chairperson of the Board, President, or Vice President)

Date: 6/3/2026

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.

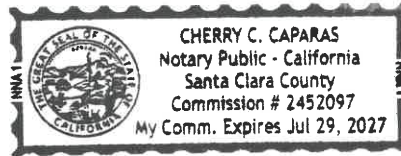
State of California  
County of Santa Clara

On June 3 2026, before me, Cherry C. Caparas a Notary Public in and for said County and State, personally appeared - GREGG B. MUSSALLEM - 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.

[Handwritten Signature]  
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 MAY 21, 2026**

MH 98043

5/21/2026

**Engineers Cost Estimate**  
**For Spring View Public Improvements**

**Public Improvements (Schedule III - V)**

**Schedule III - Street & Earthwork Offsite**

1	Sidewalk Incl. driveway approaches	792	SF	\$	8.00	\$	6,336.00
2	Relocate Existing Riser	1	LS	\$	4,000.00	\$	4,000.00
3	City std. electroliers	1	EA	\$	3,200.00	\$	3,200.00
4	Std curb and gutter	90	LF	\$	50.00	\$	4,500.00
5	2" AC Type A Grind and Overlay	1,800	SF	\$	14.00	\$	25,200.00
<b>Total Schedule III</b>							<b>\$ 43,236.00</b>

**Schedule IV - Sewer Improvements**

1	8" Sewer PVC	447	LF	\$	52.00	\$	23,244.00
2	City std. manholes	2	EA	\$	4,000.00	\$	8,000.00
3	4" sewer laterals	23	EA	\$	1,800.00	\$	41,400.00
<b>Total Schedule IV</b>							<b>\$ 72,644.00</b>

**Schedule V - Water Improvements**

1	8" Water D.I.P. - Class 50 (incl. valves and fittings)	687	LF	\$	150.00	\$	103,050.00
2	Existing fire hydrant relocation	1	EA	\$	5,000.00	\$	5,000.00
3	City std. fire hydrants	1	EA	\$	5,000.00	\$	5,000.00
4	1" water services	23	EA	\$	3,000.00	\$	69,000.00
5	1 1/2" irrigation service w/RBPB	1	EA	\$	3,500.00	\$	3,500.00
<b>Total Schedule V</b>							<b>\$ 185,550.00</b>

<b>Total Offsite</b>	<b>\$ 301,430.00</b>
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<b>Offsite</b>	<b>\$ 301,430.00</b>
<b>10% Contingency</b>	<b>\$ 30,143.00</b>
<b>Total</b>	<b>\$ 331,573.00</b>

**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 **335 Spring LLC** (hereinafter designated as "principal") have entered into a Subdivision Improvements Agreement:

**335 SPRING LLC, A CALIFORNIA LIMITED LIABILITY COMPANY**  
**SPRING VIEW – TRACT NO. 10589**

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated \_\_\_\_\_, 2026, and identified as project **Spring View – Tract No. 10589**, 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 Three Hundred Thirty One Thousand Five Hundred Seventy Three dollars (\$331,573) 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]*

\_\_\_\_\_  
Elisa Tolentino, City Attorney

Date:

\_\_\_\_\_

(Acknowledgment on following page.)

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

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

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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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 **335 Spring LLC** (hereinafter designated as "the principal") have entered into a Subdivision Improvements Agreement:

**335 SPRING LLC, A CALIFORNIA LIMITED LIABILITY COMPANY**  
**SPRING VIEW – TRACT NO. 10589**

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated \_\_\_\_\_, 2026, and identified as project **Spring View – Tract No. 10589**, 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 Three Hundred Thirty One Thousand Five Hundred Seventy Three dollars (\$331,573), 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]*

\_\_\_\_\_  
Elisa Tolentino, 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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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 **335 Spring LLC** (hereinafter designated as "Principal") have entered into a Subdivision Improvements Agreement (hereinafter "Agreement"):

**335 SPRING LLC, A CALIFORNIA LIMITED LIABILITY COMPANY**  
**SPRING VIEW – TRACT NO. 10589**

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter "Improvements"), which said Agreement, dated \_\_\_\_\_, 2026, and identified as project Spring View – Tract No. 10589, 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 One Hundred Sixty Five Thousand Seven Hundred Eighty Seven dollars (\$165,787) 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]*

\_\_\_\_\_  
Elisa Tolentino, 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)

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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)

**Owner's Statement**

We hereby state that we are the owners of, or have some right, title, or interest in and to the real property included within the subdivision shown upon the herein map; that we are the only persons whose consents are necessary to pass a clear title to said real property; that we hereby consent to the preparation and filing of said map and subdivision as shown within the distinctive boundary line.

The real property described below is dedicated as an easement for public purposes: easements for public service facilities including, but not limited to sidewalks, wires and conduits for electrical, telephone, television, gas, storm, sanitary and water services, and all appurtenances thereto under, over, upon and across the land designated as Public Service Easement (P.S.E.) as shown upon the within map.

The real property described below is dedicated as an easement for public purposes: an easement for storm drainage in, under, upon and across those strips of land delineated and designated as Storm Drainage Easement (S.D.E.) as shown upon the within map.

We hereby reserve for the exclusive use of the owners of immediately adjacent lots, private storm drainage easements in, under, upon and across those strips of land delineated and designated as Private Storm Drainage Easement (P.S.D.E.) on the within map. Said easements shall be conveyed to and maintained by the Homeowners' Association.

We hereby reserve for the benefit of the owners of the lots and parcels within the "Spring View" Subdivision, their licensees, visitors, and tenants, for the purposes of ingress, egress, parking (where designated) and of the installation and maintenance of private utilities under, upon and over the private drive aisle depicted on the map. Said parcel shall be conveyed to, and maintained by, the Homeowners' Association created for the "Spring View" subdivision as stated in the covenants, conditions, and restrictions.

We hereby reserve for the Homeowners' Association for the benefit of lots 1 through 23, Open Space A, Open Space B and Open Space C, parcels for the purposes of storing, treating and conveying storm water; landscaping, recreational amenities and all other appurtenances thereto. No further subdivision and or residential development of said parcels shall be allowed. Said Open Space parcels shall be conveyed to and maintained by the Homeowners' Association.

All of the herein described streets, parcels, and easements shall be kept free of buildings, except lawful unsupported roof overhangs, and obstructions that do not impair the use of or are inconsistent with the purposes of the streets, parcels, and easements.

The herein described offers of dedication to the City of Morgan Hill are to be accepted only when the City Council of the City of Morgan Hill or its successor agency adopts and records in the office of the Recorder of Santa Clara County a resolution accepting said streets and easements. Until said resolution(s) are recorded, all streets and easements encompassed within such offers of dedication shall be maintained by the developer during any required warranty period and thereafter by the owner(s) of the lots or parcels in the subdivision. The City of Morgan Hill shall not be responsible for maintenance and shall incur no liability with respect to such offered streets and easements or any improvement thereon. All dedicated Rights-of-Way and Easements not accepted for maintenance by the City or other public agency shall be maintained by the owner(s) of the lots or parcels in the subdivision.

As Owner(s):

335 Spring LLC, Joseph Giancola and Sheila Giancola as members

By: Joe Giancola  
Name: Joseph Giancola

By: Sheila Giancola  
Name: Sheila Giancola

# Tract No. 10589

A Portion of the Lot 61 as shown upon that certain map entitled "Map of Knob Hill Acres", which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on December 21, 1928, in Book "X" of Maps, at pages 22 and 23.

Lying within the  
City of Morgan Hill, County of Santa Clara, State of California

May 2026

**NOTES**

1. The distinctive boundary line indicates the boundaries of the land subdivided by this Final Map.
2. The area within the distinctive boundary is 2.69 acres.
3. All distances and dimensions are in feet and decimals thereof.

**Acknowledgment**

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

State Of California  
County Of Santa Clara

On June 3 2026 before me, Cherry C. Caparas, Notary Public personally appeared JOSEPH GIANCOLA 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.

Cherry C. Caparas  
Name: CHERRY C. CAPARAS, Notary Public In  
And For Said County And State

(Seal)

Principal County Of Business: Santa Clara  
Commission Expires: July 29, 2027  
Commission # Of Notary: 2452097

**Acknowledgment**

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

State Of California  
County Of Santa Clara

On June 3 2026 before me, Cherry C. Caparas, Notary Public personally appeared SHEILA GIANCOLA 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.

Cherry C. Caparas  
Name: CHERRY C. CAPARAS, Notary Public In  
And For Said County And State

(Seal)

Principal County Of Business: Santa Clara  
Commission Expires: July 29, 2027  
Commission # Of Notary: 2452097

**City Clerk's Statement**

I hereby state that the City Council of the City of Morgan Hill at its regular meeting held on 20 2026, duly approved the final map shown hereon, authorized its recordation, and accepts on behalf of the public, subject to their improvement in accordance with City standards, the streets and easements offered for dedication for public use in conformity with the terms of the offer of dedication.

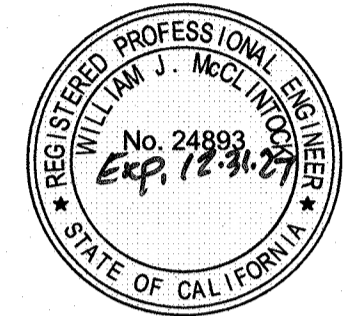
Michelle Bigelow  
City Clerk of the City of Morgan Hill

DATE

**Engineer's Statement**

This map was prepared by me or under my direction and is based upon a Field Survey in conformance with the requirements of the Subdivision Map Act and local ordinance at the request of Tony & Sheila Giancola, on August 1, 2019. I hereby state that all the monuments are of the character and occupy the positions indicated or that they will be set in those positions before June 30, 2027 and that the monuments are, or will be sufficient to enable the survey to be retraced, and that this final map substantially conforms to the conditionally approved Tentative Map. The survey is true and complete as shown.

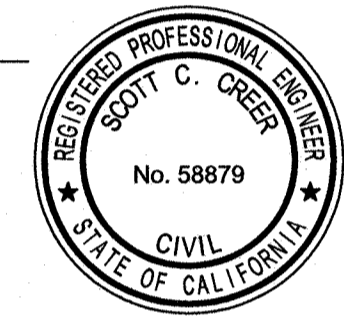
William J. McClintock 6-2-2026  
William J. McClintock DATE  
R.C.E. NO. 24893



**City Engineer's Statement**

I hereby state that I have examined this final map. The Subdivision as shown is substantially the same as it appeared on the Tentative Map, if required, and any approved alterations thereof. All provisions of the Subdivision Map Act, as amended, and of any local ordinances applicable at the time of approval of the Tentative Map, if required, have been complied with.

Scott C. Creer - City Engineer DATE  
City of Morgan Hill, California  
R.C.E. NO. 58879



**City Surveyor's Statement**

I hereby state that I have examined this final map and that I am satisfied that said map is technically correct.

Bryan Pierce - Acting City Surveyor  
Ruggeri - Jensen - Azar  
P.L.S. NO. 8859



**Planning Commission Statement**

I hereby state that the tentative map for the final map shown hereon was conditionally approved on October 12, 2021, by the Planning Commission of the City of Morgan Hill, California, by Resolution Number 21-11 application number SD 2020-0010.

Jennifer Carman DATE  
Secretary of the Planning Commission

**County Recorder's Statement**

Filed this      day of     , 20     at      M. In Book      of Maps, at Pages      at the request of MH Engineering Co.

File No.      Fee:     

Louis Chiamonte, County Recorder of Santa Clara County

BY:       
Deputy



MH Job No.: 98043

Sheet 1 of 4









## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: June 17, 2026**

PREPARED BY:

David Gittleson, Associate Engineer

APPROVED BY: City Manager

### **APPROVE PACIFIC GAS AND ELECTRIC COMPANY (PG&E) AGREEMENT TO UNDERGROUND DRY UTILITIES FOR THE UPPER LLAGAS CREEK FLOOD CONTROL AND HALE AVENUE EXTENSION PHASE 2B PROJECT**

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

Approve and authorize the City Manager to execute and administer a Pacific Gas and Electric Company (PG&E) Agreement to underground dry utilities at the intersection of Hale and Wright Avenues for a not-to-exceed amount of \$297,083.51.

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

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

Enhancing Public Safety and Quality of Life  
Maintaining and Enhancing Infrastructure

##### **Strategic Priorities 2026-2027**

Transportation

##### **Guiding Documents**

Morgan Hill 2035 General Plan

#### **REPORT NARRATIVE:**

For decades, the City has supported Valley Water in efforts to complete the Upper Llagas Creek Flood Protection Project. The completion of this project will provide flood control for the West Little Llagas Creek running through Morgan Hill, protecting homes and businesses. Valley Water is currently under construction with Phase 2B of the Flood Control Project and is scheduled to be complete by January 2027.

Included in the project is the reconstruction of Hale Avenue, the undergrounding of overhead utilities along the west side of Hale Avenue between Main Avenue and Wright Avenue, and the installation of a new traffic signal at the Wright Avenue and Hale Avenue intersection (Attachment 1-Project Location Map). In order to eliminate identified conflicts between the new traffic signal poles and the overhead electrical lines at the intersection, additional undergrounding work will need to be completed along the east side of Hale Avenue. To complete this work, the City is required to enter into a new agreement with Pacific Gas and Electric Company (PG&E) in the amount of

\$297,083.51 (Attachment 2-PG&E Agreement). As with most PG&E contracts, the vaults and conduits will be installed by Valley Water's electrical contractor and PG&E will install the cables, transformers and remove the overhead lines and poles.

Staff is requesting City Council approve the PG&E contract in order to remove the overhead utilities from the intersection and eliminate any potential conflicts with the traffic signal poles. The traffic signal installation is scheduled to begin in the Fall of 2026.

#### **COMMUNITY ENGAGEMENT:**

The City continues to engage the community on the work happening in association with Valley Water's Upper Llagas Creek Flood Control Project. Significant work has been completed thus far, with only a short section of box culvert remaining at Hale and Wright.

#### **ALTERNATIVE ACTIONS:**

The City Council could elect not to execute the PG&E agreement at this time. This is not recommended as the PG&E wires may be in conflict with the new traffic signal poles/arms at the Hale and Wright intersection.

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

The City has taken numerous actions over the last several decades in support of undergrounding the overhead lines along Hale Avenue, Most recently:  
 On November 4, 2020, City Council approved a PG&E agreement to underground dry utilities for the Hale Avenue Extension Project for \$384,876.  
 On August 17, 2022, City Council approved a PG&E agreement to underground dry utilities along the east side of Hale Avenue between Main and Wright for \$589,199.

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

Funding for this project is allocated within the approved Capital Improvement Program in the Traffic Signal and Intersection Improvements Project/Fund 309.

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

Environmental Impact Report & Categorical Exemption  
 An Environmental Impact Report (EIR) was certified for the Hale Avenue Extension and Santa Teresa Corridor Widening and Realignment Project in accordance with the California Environmental Quality Act (CEQA). Valley Water certified an Environmental Impact Report for the Flood Control Project. Additionally, relocation of infrastructure and utility work along existing roadways and associated with the Valley Water Project is exempt from CEQA per categorical exemption of Class 1, Existing Facilities.



County of Santa Clara, Esri, Microsoft, Vantor

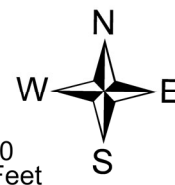


CITY OF MORGAN HILL  
PUBLIC SERVICES DEPARTMENT  
CIP ENGINEERING DIVISION

G:\R-14\Proj\JH\Dave\_PGE\_Undgrnd

### Project Location Map for PG&E Undergrounding at Hale Ave. and Wright Ave.

0 150 300 600 900 1,200 Feet





# Customer Payment Coupon

May 27, 2026

City of Morgan Hill  
17575 Peak Ave.  
MORGAN HILL, CA 95037

References	
Notification #	118358618
Contract #	50145245 V1
E20C-PM #	35722675
Customer #	2530290

## Customer Cost Summary

HALE ROAD, MORGAN HILL

Amounts Due	Total Due
Rule 20C Non-Refundable Payment	\$297,083.51
	<b>\$297,083.51</b>

## Important Payment Information

To complete your contract **ONLINE**

- Follow the instructions provided with your electronic contract
- Submit payment at <https://www.pge.com/contractpayments>

To complete your contract **BY MAIL**

- Please make check payable to: **PG&E** or **Pacific Gas and Electric**
- Complete, sign and return the enclosed agreement(s), the SACAC form and the customer payment coupon with your payment
- Remit payment and SACAC form to:**  
PG&E CFM/PPC Department  
PO BOX 997340  
Sacramento, CA 95899-7340

### IMPORTANT MESSAGE

Please review the enclosed information and total due. This document needs to be returned with the enclosed agreements.

If you complete your contract **ONLINE**, a copy will be saved to your Customer Connections Online (CCO) account at [pge.com/cco](http://pge.com/cco).

To learn more about PG&E's gas and electric safety initiatives and resources please visit [pge.com/safety](http://pge.com/safety).

**Have Questions?**  
**Please Call 1-800-422-0436**



118358618



**® Pacific Gas and Electric Company  
Agreement to Perform  
Tariff Schedule Related Work**

May 27, 2026

**DISTRIBUTION:**

- Applicant (Original)
- Division (Original)
- ACCTG. SVCS.

**REFERENCES:**

Notification # 118358618  
Contract # 50145245 V1  
R20-PM # 35722675

**City of Morgan Hill, A GOVERNMENT AGENCY (Applicant) has requested PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (PG&E), to perform the tariff schedule related work as located and described in paragraph 3 herein. PG&E agrees to perform the requested work and furnish all necessary labor, equipment, materials and related facilities required therefore, subject to the following conditions:**

1. Whenever part or all of the requested work is to be furnished or performed upon property other than that of Applicant, Applicant shall first procure from such owners all necessary rights-of-way and/or permits in a form satisfactory to PG&E and without cost to it.
2. Applicant shall indemnify and hold harmless PG&E, its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of any person, including but not limited to, employees of PG&E, Applicant or any third party, or for the loss, destruction or damage to property, including, but not limited to property of PG&E, Applicant or any third party, arising out of or in any way connected with the performance of this agreement, however caused, except to the extent caused by the active negligence or willful misconduct of PG&E, its officers, agents and employees. Applicant will, on PG&E's request, defend any suit asserting a claim covered by this indemnity. Applicant will pay all costs that may be incurred by PG&E in enforcing this indemnity, including reasonable attorneys' fees.
3. The location and requested work are described as follows: (Describe in detail the materials and facilities to be furnished and/or work to be performed by PG&E. If more space is required, use other side and attach any necessary drawings as Exhibits A, B, C, etc):

**LOCATION: HALE ROAD, MORGAN HILL**

**DESCRIPTION OF WORK: Rule 20C - Underground existing overhead electric facilities**

Engineering & Administrative Costs		<u>\$72,579.16</u>
Including Applicant Design Value of	<u>\$0.00</u>	
Cost of Additional Applicant Design Plan Checks	(+)	<u>\$0.00</u>
Value of 20C Underground System	(+)	<u>\$10,498.36</u>
Tie-In of 20C by PG&E	(+)	<u>\$152,270.67</u>
PG&E Land Rights Costs	(+)	<u>\$0.00</u>
Inspection Fees	(+)	<u>\$1,381.93</u>
Value of 20C Trench & Excavation	(+)	<u>\$32,803.59</u>
Value of 20C Conduits & Substructures	(+)	<u>\$17,801.44</u>
Rule 20C Trench Permits Obtained by PG&E	(+)	<u>\$966.00</u>
less Salvage & Depreciation for Overhead Facilities	(-)	<u>\$1,597.78</u>
<b>SUB TOTAL</b>	<b>(=)</b>	<b><u>\$275,956.11</u></b>
Including Net Joint Pole Credit Value of	<u>(\$10,747.26)</u>	
plus ITCC @ 24%	(+)	<u>\$66,229.46</u>
plus Cost to Remove Overhead Line by PG&E		<u>\$5,502.96</u>
Value of 20C Trench, Excavation & Conduit for Others (no ITCC)	(+)	<u>\$0.00</u>
<b>SUB TOTAL</b>	<b>(=)</b>	<b><u>\$347,688.53</u></b>
less 20C Underground System Installed by Applicant	(-)	<u>\$0.00</u>
less 20C Trench & Excavation Provided by Applicant	(-)	<u>\$32,803.59</u>
less 20C Conduits & Substructures Installed by Applicant	(-)	<u>\$17,801.44</u>
less Value of Applicant Design Work	(-)	<u>\$0.00</u>
<b>Electric Rule 20C Cash Payment</b>	<b>(=)</b>	<b><u>\$297,083.50</u></b>



118358618

4. Applicant shall pay to PG&E, promptly upon demand by PG&E, as the complete contract price hereunder, the sum of Two hundred ninety-seven thousand eighty-three dollars and fifty-one cents \$297,083.50

Upon completion of requested work, ownership shall vest in:  PG&E  Applicant

Executed this \_\_\_\_\_ day of \_\_\_\_\_

**City of Morgan Hill, A  
GOVERNMENT AGENCY**

Applicant

**PACIFIC GAS & ELECTRIC COMPANY**

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

**Christina Tuner**

Print/Type/Name

By: \_\_\_\_\_ Brandon Tran

**Title:**

**Title:** Service Planning Supervisor

**Mailing Address:** 17575 Peak Ave.  
MORGAN HILL, CA 95037



118358618



## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: June 17, 2026**

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

## **APPROVE PURCHASE OF SOLAR SYSTEMS AT THE AQUATICS CENTER AND POLICE DEPARTMENT FOR UP TO \$1.91 MILLION**

### **RECOMMENDATION(S)**

Authorize the City Manager to purchase the existing solar systems at the Police Department and Morgan Hill Aquatics Center for a purchase price of up to \$1,910,000.

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

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

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

#### **Strategic Priorities 2026-2027**

Fiscal Sustainability

#### **Guiding Documents**

Climate Action Plan

### **REPORT NARRATIVE:**

In July 2011, the City Council authorized the execution of a 20-year Power Purchase Agreement (PPA) with Borrego Solar to receive clean energy at the Police Department and the Aquatics Center without an upfront capital infrastructure investment. Under that agreement, the City committed to purchasing generated solar power at a fixed rate that escalated by 3% annually. Per the original PPA framework, the City retains an ongoing contractual right to buy out the systems prior to expiration based on an independent appraisal of their Fair Market Value (FMV). Purchasing these facilities also allows the City to retain optimal solar rates with PG&E, where constructing new systems would not. Independent professional appraisals were completed on May 5, 2026, by Partner Valuation Advisors to establish the current market value ("As Is" Fee Simple Going Concern) for both systems:

- Police Department Solar System (16200 Vineyard Boulevard): This project features a large-scale solar power system installed across the facility's roof and parking lot carports, utilizing a total of 1,078 solar panels and a centralized power inverter assembly. [Based on its independent appraisal](#), the current market value of the system as an active, operational asset is \$860,000.

- Morgan Hill Aquatics Center Solar System (16200 Condit Road): This project consists of a large parking lot carport solar canopy made up of 1,176 individual solar panels connected to a centralized power inverter assembly. [Based on its independent appraisal](#), the current market value of the system as an active, operational asset is \$1,050,000.

The total combined appraised value of the municipal solar portfolio is \$1.91 million, which serves as the baseline for the proposed City purchase price. Acquiring these systems transitions the City from a third-party PPA consumer to full owner-operators. However, because both systems have been operating since 2012, the central inverters are nearing the end of their projected useful lives. Engineering field inspections noted that system re-engineering will be required post-acquisition, including the procurement of new inverter units. The technical appraisal has fully factored in the required re-engineering and future operational costs into the final valuations.

#### **COMMUNITY ENGAGEMENT:**

Because this transaction constitutes a strictly administrative and financial shift from purchasing solar energy under an established PPA contract to owning the physical generation infrastructure, no physical adjustments to the surrounding community and environment will take place. The existing structures will continue generating power within the exact same footprints they are currently in. Community outreach was performed during the initial 2011 scoping. Since there are no visual changes or expanded footprints proposed, further public community engagement is not proposed for this transactional closing.

#### **ALTERNATIVE ACTIONS:**

The City Council could choose to decline to authorize the purchase and allow the existing PPA terms to continue through their natural expiration on June 1, 2036. Under this option, the City would not pay the \$1.91 million capital costs but remains contractually locked into paying the top utility PPA tier energy rates and not realizing savings of an estimated \$220,000 to \$250,000 annually.

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

**On December 15, 2010**, the City Council reviewed regional vendor bids and selected Borrego Solar for the potential power purchase agreement.

**On July 27, 2011**, the City Council formally authorized the City Manager to sign the 20-year Solar Energy Power Purchase Agreement with Borrego Solar for the Police Department and Aquatics Center sites.

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

The purchase price to buy out the systems will not be more than \$1,910,000. This total matches the fair market value concluded across the independent appraisals (\$860,000 for the Police Department site and \$1,050,000 for the Aquatics Center site). Funding for

these acquisitions has been budgeted in the Capital Improvement Program for the Police Department within Project PF2002 in the Public Facilities Safety Impact Fund (315) and for the Aquatics Center within Project PR1005 in the Quimby Fund (375).

Financially, transitioning to full public ownership brings a substantial long-term fiscal advantage over maintaining standard PPA payments. Over the next 11 years, the appraisal anticipates a positive return on investment of approximately \$600,000-\$800,000. Additionally, with the use of Capital Funds for the purchase, the City will see an immediate savings of approximately \$220,000 increasing annually to approximately \$336,000 annually as PG&E rates increase. The City estimates additional one-time costs for renovation of the systems at \$250,000 to \$450,000, which will be funded within the existing CIP project.

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

Categorical Exemption

Since the solar panels are existing, no changes to the physical environment shall occur. The planned maintenance and management of city facilities falls within the CEQA categorical exemption of Class 1, Existing Facilities.

## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: June 17, 2026**

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

### **APPROVE SEVENTH AMENDMENT TO THE LEASE WITH THE MORGAN HILL UNIFIED SCHOOL DISTRICT FOR TRANSPORTATION YARD FACILITY**

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

Authorize the City Manager to enter into a Seventh Amendment to the lease agreement with the Morgan Hill Unified School District for the transportation yard facility.

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

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

Supporting our Youth, Seniors, and Entire Community

##### **Strategic Priorities 2026-2027**

Fiscal Sustainability

#### **REPORT NARRATIVE:**

The City currently leases approximately 3.4 acres of space to the Morgan Hill Unified School District for use as its Bus Yard. The current lease term expires June 30, 2026. The recommended action would extend this lease for an additional three years. The City and School District have collaborated on planning the future of the Corporation Yard site. Additionally, the District manages the fuel pumps at the site that are also utilized by the City. The proposed amendment would extend the lease an additional three years.

#### **COMMUNITY ENGAGEMENT:**

Not Applicable

This is an agreement between the City and School District. Community engagement has not been sought.

#### **ALTERNATIVE ACTIONS:**

The Council could elect to ask staff to change terms and renegotiate the extension.

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

The Council last extended the agreement February 3, 2021 granting a three-year term with an additional two-year option. The original lease agreement was executed in May 2000, although shared use of the site predates the current lease agreement. The City

Council received the Corporation Yard Space Study on November 4, 2020, supporting long-term planning of the site.

**FISCAL AND RESOURCE IMPACT:**

The lease agreement will generate approximately \$110,000 annually for the General Fund (010).

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

Categorical Exemption

The planned management of existing city facilities falls within the CEQA categorical exemption of Class 1, Existing Facilities. Use of the lease space will be consistent with the use that has occurred in that location for decades.

**SEVENTH AMENDMENT TO LEASE  
BETWEEN THE MORGAN HILL UNIFIED SCHOOL DISTRICT  
AND THE CITY OF MORGAN HILL**

**CORPORATION YARD LEASE**

This Seventh Amendment (“Amendment”) to the Corporation Yard Lease between Morgan Hill Unified School District (“District” or “Tenant”) and the City of Morgan Hill (“City” or “Landlord”), dated May 22, 2000 (“Lease”) is entered into as of \_\_\_\_\_, 2026. Landlord and Tenant may be referred to collectively as the “Parties” in this Agreement.

**RECITALS**

The following recitals are a substantive part of this Amendment:

1. Landlord is the owner of certain real property (the “Property”) described on Exhibit A to the Lease.
2. Pursuant to the Lease, Landlord has leased a portion of the Property (the “Premises”) as described on Exhibit B to the Lease, to Tenant.
3. The Parties entered into that certain First Amendment to the Lease between the Morgan Hill Unified School District and the City of Morgan Hill (“First Amendment”) as of July 1, 2006, extending the term of the Lease to June 30, 2010, amending the payment schedule, and deleting the section regarding rent establishment upon extension.
4. The Parties entered into that certain Second Amendment to the Lease between the Morgan Hill Unified School District and the City of Morgan Hill (“Second Amendment”) as of July 1, 2010, extending the term of the Lease to June 30, 2011, and amending the payment schedule.
5. The Parties entered into that certain Third Amendment to the Lease between the Morgan Hill Unified School District and the City of Morgan Hill (“Third Amendment”) as of July 1, 2011, extending the term of the Lease to June 30, 2016, and amending the payment schedule and the right to enter section.
6. The Parties entered into that certain Fourth Amendment to the Lease between the Morgan Hill Unified School District and the City of Morgan Hill (“Fourth Amendment”) as of July 1, 2016, extending the term of the Lease to June 30, 2021, amending the payment schedule, and adding a maintenance section.
7. The Parties entered into that certain Fifth Amendment to the Lease between the Morgan Hill Unified School District and the City of Morgan Hill (“Fifth Amendment”) as of February 22, 2021, extending the term of the Lease to June 30, 2024.
8. The Parties entered into that certain Sixth Amendment to the Lease between the Morgan Hill Unified School District and the City of Morgan Hill (“Sixth Amendment”) as of April 16, 2024, extending the term of the Lease to June 30, 2026. The Lease and the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment and Sixth Amendment thereto are attached to this Amendment collectively as Exhibit 1.

9. Pursuant to the terms and conditions set forth below, the Parties desire to extend the term of the Lease of the Premises another three (3) years.

**AGREEMENT**

The Parties Mutually Agree as Follows:

1. Section 1.02 {erroneously referred to as Section 1102 in the lease dated May 22, 2000} of the Lease shall be amended in its entirety and replaced with the following provision:

“The term of this Lease shall expire June 30, 2029. On or before January 1, 2029, Tenant may notify Landlord that it wishes to extend the Lease for up to another two years. If Landlord consents to such extension, this Lease will be extended for up to a two-year period upon the same terms and conditions in this Lease as amended, except as jointly modified by the Parties in writing. This Lease may be terminated by Landlord or Tenant with or without cause prior to the expiration of the term of this Lease with at least three hundred sixty-five (365) days’ advance written notice to either Party. In the event of termination, Tenant shall pay Landlord a prorated amount from the beginning of that current year through the end of the termination period.”

2. Section 2.01 of the Lease shall be amended in its entirety and replaced with the following provision:

“Rent shall be paid quarterly as follows

Period	Annual Payment	Quarterly Payment
07/21 - 06/22	\$90,255.00	\$22,563.75
07/22 - 06/23	\$97,810.00	\$24,452.50
07/23 - 06/24	\$105,849.96	\$26,462.49
07/24 - 06/25	\$106,982.56	\$26,745.64
07/25 - 06/26	\$109,443.16	\$27,360.79
07/26 - 06/27	Rate determined by Local Control Funding Formula Statutory cost-of-living adjustment	

Beginning in the fiscal year starting in July 2017, Annual Payment shall be increased annually. The amount of increase shall be the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government. Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year. This percentage change shall be determined using the latest data available as of May 1 of the preceding fiscal year compared with the annual average value of the same deflator for the 12-month period ending in the third quarter of the second preceding fiscal year, using the latest data available as of May 1 of the second preceding fiscal year, as reported by the State Department of Finance. The Parties' intention is to align the

annual increases to the cost-of-living adjustment provided to schools as defined in California Education Code Section 42238.1.

The rent shall be due to Landlord on the first day of the following months: January, April, July, and October, A onetime ten percent (10%) late fee shall apply on any amounts which remain unpaid sixty (60) days from the due date.”

- 3. Section 5.02 of the Lease is hereby amended and replaced in its entirety as follows:

“Section 5.02. Maintenance

The ongoing and routine operations, and the ongoing maintenance (including landscaping, ground maintenance, and custodian services) of the Premises’ facilities, furnishings, and equipment shall be the responsibility of the Tenant, with the exception of the fuel pump/fuel storage system. Tenant is responsible for the recurring and routine maintenance to the fuel pump/fuel storage system. Landlord is solely responsible for major maintenance repairs to the fuel pump/fuel storage system. Landlord is not responsible for major maintenance repairs for any other portion of the Premises’ facilities, furnishings, nor equipment. Major maintenance repairs are characterized as repair projects that represent significant investment with an expenditure criteria not unlike that required for capitalizing an expenditure as a capital asset, normally more than \$5,000.

Where there is a difference of opinion exists as to the nature of the proposed maintenance work (i.e. routine v. major), both Parties will use best efforts to come to an agreement. Absent an agreement, both Parties will agree upon an independent expert to determine the proper expense allocation. The cost of this independent expert will be split equally by the Parties”

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[Signatures on the Next Page]

4. Except as amended by this Agreement, the Lease shall remain in full force and effect.

In WITNESS WHEREOF, the Parties have executed this Amendment as of the date set forth In the first paragraph.

**CITY OF MORGAN HILL**

By: \_\_\_\_\_  
CHRISTINA J. TURNER  
City Manager  
City of Morgan Hill

**MORGAN HILL UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_  
DR. CARMEN GARCIA  
Superintendent  
Morgan Hill Unified School District

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Elisa Tolentino  
City Attorney  
City of Morgan Hill

ATTEST:

By: \_\_\_\_\_  
MICHELLE BIGELOW  
City Clerk  
City of Morgan Hill

**EXHIBIT 1**

**SIXTH AMENDMENT TO LEASE  
BETWEEN THE MORGAN HILL UNIFIED SCHOOL DISTRICT  
AND THE CITY OF MORGAN HILL**

**CORPORATION YARD LEASE**

This Sixth Amendment (“Amendment”) to the Lease between Morgan Hill Unified School District (“District” or “Tenant”) and the City of Morgan Hill (“City” or “Landlord”), dated May 22, 2000 (“Lease”) is entered into as of April 16, 2024. Landlord and Tenant may be referred to collectively as the “Parties” in this Agreement.

**RECITALS**

The following recitals are a substantive part of this Amendment:

1. Landlord is the owner of certain real property ( the “Property”) described on Exhibit A to the Lease.
2. Pursuant to the Lease, Landlord leases to Tenant a portion of the Property (the “Premises”) as described on Exhibit B to the Lease.
3. The Parties entered into that certain First Amendment to the Lease (“First Amendment”) as of July 1, 2006, extending the term of the Lease to June 30, 2010, amending the payment schedule, and deleting the section regarding rent establishment upon extension.
4. The Parties entered into that certain Second Amendment to the Lease (“Second Amendment”) as of July 1, 2010, extending the term of the Lease to June 30, 2011, and amending the payment schedule.
5. The Parties entered into that certain Third Amendment to the Lease (“Third Amendment”) as of July 1, 2011, extending the term of the Lease to June 30, 2016, and amending the payment schedule and the right to enter section.
6. The Parties entered into that certain Fourth Amendment to the Lease (“Fourth Amendment”) as of July 1, 2016, extending the term of the Lease to June 30, 2021, amending the payment schedule, and adding a maintenance section.
7. The Parties entered into that certain Fifth Amendment to the Lease (“Fourth Amendment”) as of February 2, 2021, extending the term of the Lease to June 30, 2024. The Lease and the First, Second, Third, Fourth, and Fifth Amendments thereto are attached to this Amendment collectively as Exhibit 1.
8. Pursuant to the terms and conditions set forth below, the Parties desire to extend the term of the Lease of the Premises another two (2) years.

**AGREEMENT**

The Parties Mutually Agree as Follows:

1. Section 1.02 (erroneously referred to as Section 1102 in the Lease) of the Lease shall be amended in its entirety and replaced with the following provisions:

“The term of this Lease shall expire June 30, 2026. This Lease may be terminated by Landlord or Tenant with or without cause prior to the expiration of the term of this Lease with at least three hundred sixty-five (365) days’ advance written notice to either Party. In the event of termination,

Tenant shall pay Landlord a prorated amount from the beginning of that current year through the end of the termination period.”

- 2. Except as amended by this Amendment, the Lease shall remain in full force and effect.
- 3. 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.

In WITNESS WHEREOF, the Parties have executed this Amendment as of the date set forth in the first paragraph.

CITY OF MORGAN HILL

DocuSigned by:

*Christina Turner*  
\_\_\_\_\_  
Christina Turner  
City Manager

MORGAN HILL UNIFIED SCHOOL DISTRICT

*Dr. Carmen Garcia*  
\_\_\_\_\_  
Dr. Carmen Garcia  
Superintendent

APPROVED AS TO FORM

DocuSigned by:

By: *Donald A. Larkin*  
\_\_\_\_\_  
Donald A. Larkin  
City Attorney

ATTEST

DocuSigned by:

By: *Michelle Bigelow*  
\_\_\_\_\_  
Michelle Bigelow  
City Clerk

**FIFTH AMENDMENT TO LEASE  
BETWEEN THE MORGAN HILL UNIFIED SCHOOL DISTRICT  
AND THE CITY OF MORGAN HILL**

**CORPORATION YARD LEASE**

This Fifth Amendment (“Amendment”) to the Lease between Morgan Hill Unified School District (“District” or “Tenant”) and the City of Morgan Hill (“City” or “Landlord”), dated May 22, 2000 (“Lease”) is entered into as of Feb 22, 2021. Landlord and Tenant may be referred to collectively as the “Parties” in this Agreement.

**RECITALS**

The following recitals are a substantive part of this Amendment:

1. Landlord is the owner of certain real property ( the “Property”) described on Exhibit A to the Lease.
2. Pursuant to the Lease, Landlord has leased a portion of the Property ( the “Premises”) as described on Exhibit B to the Lease to Tenant.
3. The Parties entered into that certain First Amendment to the Lease between the Morgan Hill Unified School District and the City of Morgan Hill (“First Amendment”) as of July 1, 2006, extending the term of the Lease to June 30, 2010, amending the payment schedule, and deleting the section regarding rent establishment upon extension.
4. The Parties entered into that certain Second Amendment to the Lease between the Morgan Hill Unified School District and the City of Morgan Hill (“Second Amendment”) as of July 1, 2010 extending the term of the Lease to June 30, 2011, and amending the payment schedule.
5. The Parties entered into that certain Third Amendment to the Lease between the Morgan Hill Unified School District and the City of Morgan Hill (“Third Amendment”) as of July 1, 2011 extending the term of the Lease to June 30, 2016, and amending the payment schedule and the right to enter section.
6. The Parties entered into that certain Fourth Amendment to the Lease between the Morgan Hill Unified School District and the City of Morgan Hill (“Fourth Amendment”) as of July 1, 2016 extending the term of the Lease to June 30, 2021, amending the payment schedule and adding a maintenance section. The Lease and the First Amendment, Second Amendment, Third Amendment, and Fourth Amendment thereto are attached to this Amendment collectively as Exhibit 1.
6. Pursuant to the terms and conditions set forth below, the Parties desire to extend the term of the Lease of the Premises another three (3) years.

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**AGREEMENT**

The Parties Mutually Agree as Follows:

- 1. Section 1.02 (erroneously referred to as Section 1102 in the Lease) of the Lease shall be amended in its entirety and replaced with the following provisions:

“The term of this Lease shall expire June 30, 2024. On or before January 1, 2024, Tenant may notify Landlord that it wishes to extend the Lease for up to another two years. If Landlord consents to such extension, this Lease will be extended for up to a two-year period upon the same terms and conditions in this Lease as amended, except as jointly modified by the Parties in writing. This Lease may be terminated by Landlord or Tenant with or without cause prior to the expiration of the term of this Lease with at least three hundred sixty-five (365) days’ advance written notice to either Party. In the event of termination, Tenant shall pay Landlord a prorated amount from the beginning of that current year through the end of the termination period.”

- 2. Except as amended by this Amendment, the Lease shall remain in full force and effect.

In WITNESS WHEREOF, the Parties have executed this Amendment as of the date set forth In the first paragraph.

**CITY OF MORGAN HILL**

**MORGAN HILL UNIFIED SCHOOL DISTRICT**

By: <sup>DocuSigned by:</sup> Christina Turner  
6D0198AF546944D...

By: Steve Betando

CHRISTINA J. TURNER  
 City Manager  
 City of Morgan Hill

STEVE BETANDO  
 Superintendent  
 Morgan Hill Unified School District

APPROVED AS TO FORM:

By: <sup>DocuSigned by:</sup> Donald A. Larkin  
11F59A27322A1

DONALD A. LARKIN  
 City Attorney  
 City of Morgan Hill

ATTEST:

By: <sup>DocuSigned by:</sup> Michelle Bicejow  
11F59A27322A1

MICHELLE BICEJOW  
 Deputy City Clerk  
 City of Morgan Hill

126-04-06-005

**FOURTH AMENDMENT TO LEASE  
BETWEEN THE MORGAN HILL UNIFIED SCHOOL DISTRICT  
AND THE CITY OF MORGAN HILL  
CORPORATION YARD LEASE**

This Fourth Amendment ("Amendment") to the Lease between Morgan Hill Unified School District ("District" or "Tenant") and the City of Morgan Hill ("City" or "Landlord"), dated May 22, 2000 ("Lease") is entered into as of July 1, 2016. Landlord and Tenant may be referred to collectively as the "Parties" in this Amendment.

**RECITALS**

The following recitals are a substantive part of this Amendment:

1. Landlord is the owner of certain real property (the "Property") described on Exhibit A to the Lease.
2. Pursuant to the Lease, Landlord has leased a portion of the Property (the "Premises") as described on Exhibit B to the Lease to Tenant.
3. Landlord and Tenant entered into that certain First Amendment to the Lease Between the Morgan Hill Unified School District and the City of Morgan Hill ("First Amendment") as of July 1, 2006, extending the term of the Lease to June 30, 2010, amending the payment schedule, and deleting the section regarding rent establishment upon extension.
4. Landlord and Tenant entered into that certain Second Amendment to the Lease Between the Morgan Hill Unified School District and the City of Morgan Hill ("Second Amendment") as of July 1, 2010 extending the term of the Lease to June 30, 2011, and amending the payment schedule.
5. Landlord and Tenant entered into that certain Third Amendment to the Lease Between the Morgan Hill Unified School District and the City of Morgan Hill ("Third Amendment") as of July 1, 2011 extending the term of the Lease to June 30, 2016, and amending the payment schedule and the right to enter section. The Lease and the First Amendment, Second Amendment, and Third Amendments thereto are attached to this Amendment collectively as Exhibit A.
6. Pursuant to the terms and conditions set forth below, the Parties desire to extend the term of the Lease of the Premises another five (5) years and to make certain further amendments to the Lease.

**AGREEMENT**

The Parties Mutually Agree as Follows:

1. Section 1.02 (erroneously referred to as Section 1102 in the Lease) of the Lease shall be amended in its entirety and replaced with the following provision:  

"The term of this Lease shall expire June 30, 2021. This Lease may be terminated by Landlord or Tenant with or without cause prior to the expiration of the term of this Lease with at least three hundred sixty-five (365) days' advance written notice to either Party. In the event of termination, Tenant shall pay Landlord a prorated amount from the beginning of that current year through the end of the termination period."

2. Section 2.01 of the Lease shall be amended in its entirety and replaced with the following provision:

“Rent shall be paid quarterly as follows

Period	Annual Payment	Quarterly Payment
7/06 - 6/07	\$151,800.00	\$37,950.00
7/07 - 6/10	\$155,000.00	\$38,750.50
7/10 - 6/11	\$155,000.00	\$38,750.50
7/11 - 6/16	\$72,000.00	\$18,000.00
7/16 - 6/17	\$81,900.00	\$20,475.00
7/17 - 6/21	Rate determined by Implicit Price Deflator for State and Local Government Purchases of Goods and Services.	

Beginning in the fiscal year starting in July 2017, Annual Payment shall be increased annually. The amount of increase shall be the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year. This percentage change shall be determined using the latest data available as of May 1 of the preceding fiscal year compared with the annual average value of the same deflator for the 12-month period ending in the third quarter of the second preceding fiscal year, using the latest data available as of May 1 of the second preceding fiscal year, as reported by the State Department of Finance. The Parties' intention is to align the annual increases to the cost of living adjustment provided to schools as defined in California Education Code Section 42238.1.

The rent shall be due to Landlord on the first day of the following months: January, April, July, and October. A onetime ten percent (10%) late fee shall apply on any amounts which remain unpaid sixty (60) days from the due date.”

3. Section 5.02 shall be added to the Lease to include the following provision:

“Section 5.02. Maintenance

The ongoing and routine operations and maintenance (including landscaping, grounds maintenance, and custodial services) of the Premises' facilities, furnishings, and equipment are the responsibility of Tenant. Routine maintenance is that recurring maintenance to properly maintain a system or asset during its useful life, generally of a less costly nature, and not involving a replacement of an entire system due to an age-related failure. Examples of routine maintenance include replacing of filters on HVAC units, replacing light bulbs or ballasts, trimming of trees, maintaining of grass and grounds, replacing irrigation components, and replacing windows, door locks, breakers, or individual parts of any systems not involving a major component which needs to be replaced due to age-related or impending failure.

Landlord is responsible for major maintenance, which includes the major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, underground tanks, wall systems, floor systems, paving, and exterior and interior painting. Characteristically, these projects represent a significant investment with an expenditure criteria not unlike that required for capitalizing an expenditure as a capital asset, normally more than \$5,000.

Where a difference of opinion exists as to the nature of the proposed maintenance work (routine v. major), both Parties will use best efforts to come to an agreement. Absent an agreement, both Parties will agree upon an independent expert to determine the proper expense allocation. The cost of this independent expert will be split equally by the Parties."

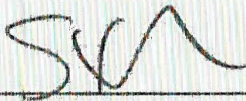
- 4. Except as amended by this Amendment, the Lease shall remain in full force and effect.

The individuals executing this Amendment represent and warrant that they have the legal capacity and authority to do so on behalf of their respective entities.

In WITNESS WHEREOF, the Parties have executed this Amendment as of the effective date set forth above.

**CITY OF MORGAN HILL**

**MORGAN HILL UNIFIED SCHOOL DISTRICT**

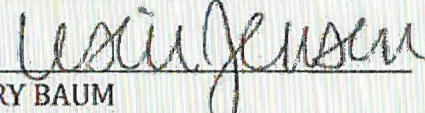
By: 

By: 

STEVE RYMER  
City Manager  
City of Morgan Hill

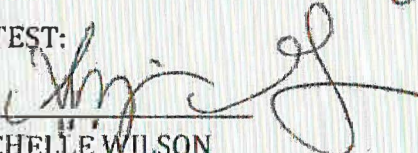
STEVE BETANDO  
Superintendent  
Morgan Hill Unified School District

APPROVED AS TO FORM:

for By:   
GARY BAUM  
Interim City Attorney  
City of Morgan Hill

Resolution No. 16-048

ATTEST:

By:   
MICHELLE WILSON  
Deputy City Clerk  
City of Morgan Hill

# Exhibit A

**THIRD AMENDMENT  
TO  
LEASE  
BETWEEN MORGAN HILL UNIFIED SCHOOL DISTRICT  
AND  
CITY OF MORGAN HILL  
  
CORPORATION YARD LEASE**

This third amendment ("Amendment") to the Lease between Morgan Hill Unified School District and the City of Morgan Hill dated May 22, 2000 ("Lease") is entered into as of July 1, 2011.

**Recitals**

- A. The City of Morgan Hill ("City" or "Landlord") is the owner of certain real property ("Property") described on Exhibit A to the Lease.
- B. Pursuant to the Lease, Landlord has leased a portion of the Property (the "Premises") as described on Exhibit B to the Lease to the Morgan Hill Unified School District ("District" or "Tenant").
- C. The City and the District entered into a First Amendment to the Lease ("First Amendment") as of July 1, 2006, extending the term of the Lease to June 30, 2010 on the same terms and conditions as the Lease.
- D. The City and the District entered into a Second Amendment to the Lease ("Second Amendment") as of July 1, 2010, extending the term of the Lease to June 30, 2011, on the same terms and conditions as the Lease.
- E. Pursuant to the terms and conditions set forth below, the parties desire to extend the term of the Lease of the Premises another year and to make certain further amendments to the Lease.

**Agreement**

- 1. Section 1.02 (erroneously referred to as Section 1102 in the lease dated May 22, 2000) of the Lease shall be amended in its entirety and replaced with the following provision:

"The term of this Lease shall expire June 30, 2016. This Agreement may be terminated by Landlord or Tenant with or without cause prior to the expiration of the term of this Agreement with at least three hundred sixty-five (365) days advance written notice to either party. Tenant shall pay Landlord a prorated amount from the beginning of that current year through the end of the termination period."

- 2. Section 2.01 of the Lease shall be amended in its entirety and replaced with the following provision:

"Rent shall be paid quarterly as follows:

<u>Period</u>	<u>Annual Payment</u>	<u>Quarterly Payment</u>
7/06 - 6/07	\$151,800.00	\$37,950.00
7/07 - 6/10	\$155,000.00	\$38,750.50
7/10 - 6/11	\$155,000.00	\$38,750.50
7/11 - 6/16	\$72,000.00	\$18,000.00

The rent shall be due to the Landlord on the first day of the following months: January, April, July and October. A one-time ten percent (10%) late fee shall apply on any amounts which remain unpaid sixty (60) days from the due date."

- 3. Section 3.04 of the Lease shall be amended in its entirety and replaced with the following provision:

"Landlord reserves the right to enter and inspect the Premises and Property at any time, upon reasonable advance notice to the Tenant. Furthermore, the Landlord retains the right to access the portion of the Property north of the Premises at all times without notice to the Tenant."

- 4. Except as amended by this Amendment, the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth in the first paragraph.

LANDLORD:

TENANT:

City of Morgan Hill

Morgan Hill Unified School District

By: [Signature]  
~~J. Edward Tewes~~ STEVE RYMER  
City Manager

By: [Signature] 8/23/12  
Dr. Wesley Smith  
Superintendent

Approved as to Form:

[Signature] Deputy City Attorney  
for Danny Wan  
City Attorney 02/19/13

ATTEST:

[Signature]  
City Clerk, Deputy

126-04-06-005

**SECOND AMENDMENT  
TO  
LEASE  
BETWEEN MORGAN HILL UNIFIED SCHOOL DISTRICT  
AND  
CITY OF MORGAN HILL  
CORPORATION YARD LEASE**

This second amendment ("Amendment") to the Lease between Morgan Hill Unified School District and the City of Morgan Hill dated May 22, 2000 ("Lease") is entered into as of July 1, 2010.

**Recitals**

- A. The City of Morgan Hill ("City" or "Landlord") is the owner of certain real property ("Property") described on Exhibit A to the Lease.
- B. Pursuant to the Lease, Landlord has leased a portion of the Property (the "Premises") as described on Exhibit B to the Lease to the Morgan Hill Unified School District ("District" or "Tenant").
- C. The City and the District entered into a First Amendment to the Lease ("First Amendment") as of July 1, 2006, extending the term of the Lease to June 30, 2010 on the same terms and conditions as the Lease.
- D. Pursuant to the terms and conditions set forth below, the parties desire to extend the term of the Lease of the Premises another year and to make certain further amendments to the Lease.

**Agreement**

- 1. Section 1.02 of the Lease shall be amended in its entirety and replaced with the following provision:  
  
"The term of this Lease shall expire June 30, 2011."
- 2. Section 2.01 of the Lease shall be amended in its entirety and replaced with the following provision:

\*Rent shall be paid quarterly as follows:

<u>Period</u>	<u>Annual Payment</u>	<u>Quarterly Payment</u>
7/06 - 6/07	\$151,800.00	\$37,950.00
7/07 - 6/10	\$155,000.00	\$38,750.50
7/10 - 6/11	\$155,000.00	\$38,750.50

The rent shall be due to the Landlord on the first day of the following months: January, April, July and October. A one-time ten percent (10%)-late fee shall apply on any amounts which remain unpaid sixty (60) days from the due date.

- Section 2.02 is deleted in its entirety.
- Except as amended by this Amendment, the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth in the first paragraph.

LANDLORD:

TENANT:

City of Morgan Hill

Morgan Hill Unified School District

By: [Signature]  
/J. Edward Tewes  
City Manager

By: [Signature]  
Dr. Wesley Smith  
Superintendent

Approved as to Form:

[Signature]  
Danny Wan  
City Attorney (Resolution # 2/17/10 - Council Approved)

Approved as to Risk:

[Signature]  
Kevin Riper  
Risk Manager

ATTEST:

[Signature]  
City Clerk GERMA TRERKZ

06099

**FIRST AMENDMENT  
TO  
LEASE  
BETWEEN MORGAN HILL UNIFIED SCHOOL DISTRICT  
AND  
CITY OF MORGAN HILL  
CORPORATION YARD LEASE**

This first amendment ("Amendment") to the Lease between Morgan Hill Unified School District and the City of Morgan Hill dated May 22, 2000 ("Lease") is entered into as of July 1, 2006.

**Recitals**

- A. The City of Morgan Hill ("City" or "Landlord") is the owner of certain real property ("Property") described on Exhibit A to the Lease.
- B. Pursuant to the Lease, Landlord has leased a portion of the Property (the "Premises") as described on Exhibit B to the Lease to the Morgan Hill Unified School District ("District" or "Tenant").
- C. The Lease provides that on or before July 1, 2006, Tenant may notify Landlord that it wishes to extend the lease for another one-year period. Tenant has so notified Landlord.
- D. Pursuant to the terms and conditions set forth below, the parties desire to extend the term of the Lease of the Premises and to make certain further amendments to the Lease.

**Agreement**

- 1. Section 1.02 of the Lease shall be amended in its entirety and replaced with the following provision:  
  
"The term of this Lease shall expire June 30, 2010."
- 2. Section 2.01 of the Lease shall be amended in its entirety and replaced with the following provision:

"Rent shall be paid quarterly as follows:

<u>Period</u>	<u>Annual Payment</u>	<u>Quarterly Payment</u>
7/06 - 6/07	\$151,800.00	\$37,950.00
7/07 - 6/10	\$155,000.00	\$38,750.50

The rent shall be due to the Landlord on the first day of the following months: January, April, July and October. A one-time ten percent (10%) late fee shall apply on any amounts which remain unpaid sixty (60) days from the due date.

- Section 2.02 is deleted in its entirety.
- Except as amended by this Amendment, the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth in the first paragraph.

LANDLORD:

City of Morgan Hill

By: [Signature]  
Edward Tewes  
City Manager

TENANT:

Morgan Hill Unified School District

By: [Signature]  
Name:  
Superintendent

Approved as to Form:

[Signature]  
Janet C. Kern  
City Attorney

Approved as to Risk:

[Signature]  
Jack Dilles  
Risk Manager

ATTEST:

[Signature]  
Irma Torrez  
City Clerk

00220

**LEASE  
BETWEEN MORGAN HILL UNIFIED SCHOOL DISTRICT  
AND  
THE CITY OF MORGAN HILL**

**PREAMBLE AND RECITALS**

THIS LEASE ("Lease") is entered into on this 22nd day of May 2000, by and between the City of Morgan Hill ("Landlord") and the Morgan Hill Unified School District ("Tenant").

- A. Whereas, Landlord is the owner of certain real property ("Property") in the county of Santa Clara, State of California, described on Exhibit "A" which is attached and made a part of this lease. Landlord desires to lease a portion of that Property to Tenant, which portion of the Property shall be referred to in this lease as "the Premises." The Premises consist of approximately 3.42 acres with a 9,900 square foot building, a parking lot and underground storage tanks located at the Transportation Services Building, 105 Edes Court, Morgan Hill, California. The Premises are shown on Exhibit "B", attached hereto and incorporated herein.
- B. Whereas, the City and District formed the Corporation Yard Commission, a joint powers authority, in 1975. In addition, in May 1975, the City and District entered into a lease agreement whereby the City leased a portion of the Corporation Yard to the District. That lease has been extended on at least one occasion.
- C. Whereas, Tenant desires to enter into a successor lease to lease the Premises for use as a bus barn for fueling of gasoline and diesel fuel, bus and vehicle maintenance, parking and washing.

**ARTICLE 1  
LEASE OF PREMISES AND TERM OF LEASE**

**Section 1.01. Agreement to Lease.**

Landlord hereby agrees to lease the Premises to Tenant, and Tenant agrees to lease the Premises from Landlord, on the terms and conditions set forth in this lease

Tenant acknowledges that Landlord has made no representation or warranty regarding the condition of the Premises or the Property. The City has no knowledge of any hazardous condition on or under the property other than that which is the subject of Morgan Hill Unified School District v. Minter & Fahy Construction Company, Inc., Santa Clara County Superior Court, Case No. CV 772368.

**Section 1.02. Term of Lease**

The term of this Lease shall be for a period of seven years commencing on the effective date set forth above. However, by July 1 of any year Tenant may serve notice of its intent to terminate the lease effective January 1 of the next year. On or before July 1 in the year 2006, Tenant may notify Landlord that it wishes to extend the lease for another one-year period. If Landlord consents to such extension, this Lease will be extended for a one-year period upon the same terms and conditions in this document, except as jointly modified by the parties in writing. The rent for any additional year lease period shall be the fair market rental value at the beginning of the extension as determined by Landlord and Tenant. Should Landlord not consent to such extension, and desire to rent the Premises to a third party, Landlord must offer Tenant a first right of refusal to rent the Premises on the same terms and conditions as Landlord is willing to rent the Premises to a third party. Tenant shall have thirty (30) days from the date of notification by Landlord of its intention to rent to a third party and of the acceptable terms and conditions to exercise the right of first refusal by notifying Landlord in writing of its intent to accept the terms and conditions set forth by Landlord.

**Section 1.03. No Partnership or Joint Venture.**

For the purpose of this Lease, nothing in this Lease shall be construed to render the Landlord and Tenant in any way or for any purpose a partner, joint venturer, or associate in any relationship with the other, other than that of Landlord and Tenant, nor shall this lease be construed to authorize either to act as agent for the other.

**ARTICLE 2  
RENT**

**Section 2.01. Payments**

Within ten (10) days from execution of the Lease by all Parties, Tenant shall pay Landlord a pro-rated amount from the date of execution to December 31, 2000, based upon \$45,000 per year rent, for the first year's rent. Thereafter, rent shall be paid quarterly as follows:

<u>Year</u>	<u>Annual Payment</u>	<u>Quarterly Payment</u>
2001	\$ 62,800.00	\$15,700.00
2002	\$ 80,600.00	\$20,150.00
2003	\$ 98,400.00	\$24,600.00
2004	\$116,200.00	\$29,050.00
2005	\$134,000.00	\$33,550.00
2006	\$151,800.00	\$37,950.00

The rent shall be due to the Landlord on the first day of the following months: January, April, July and October. A one-time ten-percent (10%) penalty shall apply on any amounts which remain unpaid sixty (60) days from the due date.

**Section 2.02. Rent Establishment upon Extension.**

Should this lease be extended pursuant to Section 1.02 above, the rental shall be set at the fair market value rental ("FMV"). If the parties cannot mutually agree upon the FMV, it shall be established by an independent appraisal by an appraiser mutually agreed upon by the parties.

**ARTICLE 3  
USE OF PREMISES**

**Section 3.01. Permitted Use.**

Tenant shall use the Property and Premises solely for the purpose of a bus barn, including fueling of gasoline and diesel fuel only, bus and vehicle maintenance, parking and washing. Tenant shall not use or permit the Property and Premises to be used for any other purpose(s) without Landlord's written prior consent. Any use by or for the benefit of a private third party must have the Landlord's prior written consent, and Tenant shall indemnify, defend, and hold harmless Landlord from any damages arising out of such use. Landlord acknowledges that Tenant has, from time to time, allowed other governmental entities to use the fueling stations and maintenance operations. Landlord agrees that such use may continue, however, Tenant shall timely notify the Landlord of the identify of such entities, and shall indemnify, defend and hold harmless Landlord from any damages arising out of such use.

**Section 3.02. Compliance with Laws and Payment of Fees.**

Tenant shall, at Tenant's own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, both federal and state and county or municipal, whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of the Premises or any portion of the Premises, the Tenant shall procure and maintain it throughout the term of this lease.

**Section 3.03. Use of Hazardous Materials.**

Tenant shall not cause or permit any Hazardous material, as defined below, to be generated, brought onto, used, stored, or disposed of in or about the Premises or the Property by the Tenant or its agents, employees, contractors, or invitees, except for such substances that are required in the ordinary course of Tenant's use as defined in Section 3.01 above, or as otherwise approved by Landlord, which consent shall not be reasonably withheld. Tenant shall use, store and dispose of all such Hazardous material in strict compliance with all applicable statutes, ordinances, and regulations that relate to public health, safety and protection of the environment. Tenant shall comply with all environmental laws in effect during the term of this Lease. Landlord acknowledges the pre-existing hazardous materials condition referred to in Section 1.01, and this section shall not apply to this pre-existing condition except as such condition is unknown to City as of date of execution of this lease.

**Section 3.03.02. Notice of Release or Investigation.**

If, during the Lease term (including any extensions), Tenant becomes aware of (a) any actual or threatened release of any hazardous material on, under, or about the Premises or Property which may result in administrative or court action, or (b) any inquiry, investigation, proceeding, or claim by any governmental agency or other person regarding the presence of hazardous material on, under, or about the Premises or the Property, Tenant shall give landlord written notice of the release or investigation within five (5) days after learning of it and shall simultaneously furnish to Landlord copies of any claims, notice of violation, reports, or other writings received by Tenant that concern the release or investigation. Tenant agrees and acknowledges that it bears the responsibility of determining whether a particular actual or threatened release meets the criteria for reporting such release to Landlord, and agrees to assume all liability in connection with making such determination.

**Section 3.03.02. Remediation Obligations.**

If the presence of any hazardous material brought onto the Premises or the Property by Tenant or Tenant's employees, agents, contractors, or invitees results in contamination, Tenant shall promptly take all necessary actions to remove or remediate such hazardous materials, at Tenant's sole expense, and shall return the Premises or Property to the condition that existed before the introduction of such hazardous materials. Tenant shall first obtain Landlord's approval of the proposed removal or remedial action, which approval shall not be unreasonably withheld. This provision does not limit the indemnification agreement set forth above. Landlord acknowledges the pre-existing hazardous material condition referred to in Section 1.01, and this section shall not apply to this pre-existing condition except as such condition is unknown to City as of date of execution of this Lease. Tenant agrees and acknowledges that it bears the responsibility of determining whether a particular actual or threatened release results in "contamination," and agrees to assume all liability in connection with making such determination.

Section 3.03.03. Definition of "Hazardous Material(s)."

"Hazardous material(s)" means any hazardous or toxic substance, material, or waste of any concentration that exceeds state or federal maximum concentrations or action levels as determined by the appropriate oversight committee, or that is or becomes regulated by the federal, state or any local government authority, including as the term is defined in CERCLA, RCRA, any federal, state or local governmental definition, petroleum products, radioactive materials, asbestos in any form or condition, MTBEs, PCBs and substances or compounds containing PCBs.

Section 3.04. Right to Enter and Inspect.

Landlord reserves the right to enter and inspect the Premises and Property at any time, upon reasonable advance notice to Tenant.

**ARTICLE 4  
IMPROVEMENTS**

Section 4.01. Improvements.

Exhibit "C" contains a list of existing improvements to the Property that shall be considered Tenant's at the end of the Lease and a list of improvements that shall be considered Landlord's at the end of the Lease. Tenant may make improvements only with the prior written consent of the Landlord, and only those improvements, which are consistent with the uses, stated in Section 3.01 above. Any improvements Tenant makes to the Property after the effective date of this Lease that are fixtures (e.g., those items affixed to the land by roots, or imbedded in the land, such as a building or permanently attached to such items by means of cement, plaster, nails, bolts or screws) shall be considered Landlord's, unless Landlord and Tenant agree otherwise in writing. Any improvements that Tenant makes to the Property after the effective date of this Lease that are not fixtures shall at Tenant's option prior to the end of the Lease, be considered Tenant's and may be removed by Tenant within sixty (60) days of the end of the Lease at Tenant's cost; provided however, that if Tenant does not remove these improvements within sixty (60) days of the end of the lease, the improvements shall become the property of Landlord.

**ARTICLE 5  
UTILITIES, SAFE AND CLEAN CONDITIONS  
AND APPLICATION OF INSURANCE PROCEEDS**

**Section 5.01. Utilities, Safe and Clean Conditions and Application of Insurance Proceeds**

Tenant shall pay or cause to be paid, and hold Landlord and the property of Landlord including the Premises free and harmless from, all charges for the furnishing of gas, water, electricity, telephone service, and other public utilities, including garbage and trash collection and custodial services and any other such services to the Premises during the term of this Lease. Payment for utilities used by Tenant at the Premises shall be the responsibility of Tenant.

Tenant shall control the utilities for the Premises. At all times during the term of this Lease Tenant shall, at Tenant's sole cost and expense, keep and maintain the Premises and all improvements to the Premises in a safe and clean condition. Landlord shall have reasonable access to the Premises during business hours and emergencies for inspection of the Property. Any and all insurance proceeds that become payable at any time during the term of this Lease because of damage to or destruction of any improvements on the Premises shall be paid to Tenant and to Landlord, and applied by Landlord, toward the cost of repairing and restoring the damaged or destroyed improvements.

**ARTICLE 6  
INDEMNITY AND INSURANCE**

**Section 6.01. Indemnity Agreement.**

Tenant agrees to indemnify, defend, and hold harmless Landlord for any and all claims for liability or other claims for damages or claims for compensation, including but not limited to, any and all claims of liability for personal injury, death, contract claims and the like arising out of the negligent acts of omission or commission or willful act of Tenant, its agents, representatives, assigns or employees which occur during the term of this Lease, including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

- a. The death or injury of any person, including any person who is an officer, employee, assign or agent of Tenant, or by reason of the damage to or destruction of any property, including property owned by Tenant or by any person who is an employee or agent of Tenant, while that person or property is in or on the Premises or in any way connected with the Premises or with any of the improvements or personal property on the Premises;

- b. The death or injury of any person, including any person who is an officer, employee, assign or agent of Tenant, or by reason of the damage to or destruction of any property, including property owned by Tenant or any person who is an employee or agent of Tenant, caused or allegedly caused by either (1) the condition of the Premises or some building or improvement on the Premises, or (2) some act or omission on the Premises of Tenant or any person in, on, or about the Premises with the permission and consent of Tenant;
- c. Any work performed on the Premises or materials furnished to the Premises at the instance or request of Tenant or any person or entity acting for or on behalf of Tenant; or
- d. Tenant's failure to perform any provision of this Lease or to comply with any requirement of law or any requirement imposed on Tenant or the Premises by any duly authorized governmental agency or political subdivision.

Tenant shall not be responsible for willful or negligent acts of omission or commission leading to personal injury or other liability to the extent caused by Landlord, its agents, representatives, employees or assigns during the term of this Lease. However, any such liability shall be assessed on a proportionate fault basis between Landlord and Tenant.

Landlord agrees to indemnify, defend, and hold harmless Tenant for any and all claims for liability or other claims for damages or claims for compensation, including but not limited to, any and all claims of liability for personal injury, death, contract claims and the like solely arising out of the negligent acts of omission or commission or willful act of Landlord, its agents, representatives, assigns or employees which occur during the term of this Lease, including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

- a. The death or injury of any person, including any person who is an officer, employee, assign or agent of Landlord or by reason of the damage to or destruction of any property, including property owned by Landlord or by any person who is an employee or agent of Landlord, while that person or property is in or on the Premises or in any way connected with the Premises or with any of the improvements or personal property on the Premises;
- b. The death or injury of any person, including any person who is an officer, employee, assign or agent of Landlord, or by reason of the damage to or destruction of any property, including property owned by Landlord or any person who is an employee or agent of Landlord, caused or allegedly caused by either (1) the condition of the Premises or some building or improvement on the Premises or (2) some act or omission on the Premises of Landlord or any or any person in, on, or about the Premises with the permission and consent of Landlord;

- c. Any work performed on the Premises or materials furnished to the Premises at the instance or request of Landlord or any person or entity acting for or on behalf of Landlord; or
- d. Landlord's failure to perform any provision of this Lease or to comply with any requirement of law or any requirement imposed on Landlord or the Premises by any duly authorized governmental agency or political subdivision, except as otherwise stated in this Lease.

Landlord shall not be responsible for willful or negligent acts of omission or commission leading to personal injury or other liability to the extent caused by Tenant, its agents, representatives, employees or assigns during the term of this Lease.

**Section 6.02. Liability Insurance.**

Tenant shall obtain a separate policy of insurance, subject to Landlord's reasonable approval, for the diesel and underground storage tanks, regardless of location, including, but not limited to, above and below ground tanks, product delivery systems, pumps, lines, dispensers, and all apparatus and appurtenant thereto, which shall operate prospectively only and which Tenant shall maintain for the duration of the Lease. Tenant shall pay all premiums; Landlord shall pay nothing for such policy or premiums or make any payments pursuant thereto.

- a. \$2,000,000 for injury to or death of one person and, subject to that limitation for the injury or death of one person, of not less than \$1,000,000 for injury to or death of two or more persons as a result of any one accident or incident; and
- b. \$2,000,000 for damages to or destruction of any property.

This insurance shall operate prospectively only. It shall not cover any events occurring prior to the effective date of this Lease, nor shall it affect the rights, duties and obligations of Landlord and Tenant with respect to any litigation concerning events occurring prior to the effective date of this Lease. This Lease cannot be used for the purpose of exonerating or establishing liability for either Landlord or Tenant for events occurring prior to the effective date of this Lease.

**Section 6.03. Deposit of Insurance with Landlord.**

Tenant shall, within 10 days after the execution of this Lease and promptly thereafter when any such policy is replaced, rewritten, or renewed, deliver to Landlord a true and correct copy of each insurance policy required by this Article or a certificate executed by the insurance company or companies or their authorized agent evidencing that policy or policies.

**Section 6.04. Notice of Cancellation of Insurance.**

Each insurance policy required under this Article shall contain a provision that it cannot be canceled for any reason unless at least 30 days prior written notice of the cancellation is given to Landlord in the manner required by this Lease for service of notices on Landlord by Tenant. Landlord, its officers, employees, agents and representatives, shall be listed as co-insureds on all insurance Tenant is required to maintain pursuant to this Lease.

**Section 6.05. No Effect on Events, Obligations, Rights, Duties or Litigation Existing Prior to Effective Date of this Lease.**

Nothing in this Lease shall affect the rights, duties and obligations of Landlord and Tenant regarding any events that occurred prior to the effective date of this Lease. No provision of this Lease shall affect the rights, duties and obligations of Landlord and Tenant with respect to any litigation concerning events occurring prior to the effective date of this Lease or be used for the purpose of exonerating or establishing liability for either Landlord or Tenant.

**ARTICLE 7  
ASSIGNMENT AND SUBLEASING**

**Section 7.01. No Assignment without Landlord's Consent.**

Tenant may not assign this Lease or any interest in this Lease without the prior written consent of Landlord.

**ARTICLE 8  
DEFAULT AND REMEDIES**

**Section 8.01. Termination.**

In the event of a Tenant default under this Lease, Landlord may terminate this Lease by sixty (60) days written notice to Tenant. All covenants and terms contained in this Lease are declared to be conditions to this Lease. Should Tenant fail to perform any covenant, condition, or term contained in this Lease and the default not be cured within sixty (60) business days after written notice of the default is served on Tenant by Landlord or Landlord's representative or assignee of Landlord, then Tenant shall be in default under this Lease.

**ARTICLE 9  
RECORDS**

**Section 9.01. Records.**

Tenant shall maintain accurate, timely, and complete records sufficient to demonstrate it has complied with all its obligations under this Lease. The parties agree that the standards set forth in the audit report prepared by Dames & Moore, as modified by operation of statute or other regulation, regarding record maintenance on the fueling operations shall be sufficient to meet the requirements of this paragraph regarding the fueling operations. Tenant shall allow Landlord access to such records upon reasonable notice. Landlord shall have the right to perform an audit on such records.

**ARTICLE 10  
MISCELLANEOUS**

**Section 10.01. Notices to Landlord.**

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to Landlord shall be in writing and shall be deemed duly served and given when personally delivered or sent via certified mail to the City Clerk of the City of Morgan Hill, 17555 Peak Avenue, Morgan Hill, California 95037.

**Section 10.02. Notices to Tenant.**

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to Tenant by Landlord shall be in writing and shall be deemed duly served and given when personally delivered to Tenant, any managing employee of Tenant, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, addressed to Tenant at Morgan Hill Unified School District, 15600 Concord Circle, Morgan Hill, California 95037, Attn: Director of Fiscal Services.

**Section 10.03. Governing Law and Interpretation.**

This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision or holding concerning this Lease arises. Unless the context otherwise requires, the term "day" shall refer to calendar days. Subtitles are for convenience only and shall not be words of limitation regarding any provision of this Lease. This Lease shall be deemed jointly drafted and reviewed by the parties. There shall be no presumption against the drafter of this Lease. Both parties shall be deemed to have participated in the drafting of this Lease.

Section 10.04. Binding on Heirs and Successors.

Subject to the restriction of assignment, this Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing in this section shall be construed as a consent by Landlord to any assignment of this Lease or any interest in the Lease by Tenant.

Section 10.05. Partial Invalidity.

If any provision of this Lease is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

Section 10.06. Sole and Only Agreement.

This Lease, together with exhibits hereto, constitutes the sole and only agreement between Landlord and Tenant respecting the Premises and the leasing of the Premises to Tenant and the Lease terms set forth in this Lease, and correctly sets forth the obligations of Landlord and Tenant to each other as of its effective date. Any agreements or representations respecting the Premises, their leasing to Tenant by Landlord, or any other matter discussed in this Lease not expressly set forth in this instrument are null and void.

EXECUTION

This Agreement is executed on this 22<sup>nd</sup> day of May, 2000, at Morgan Hill, California.

LANDLORD:

TENANT:

City of Morgan Hill

Morgan Hill Unified School District

By: [Signature]

By: [Signature]

Its: City Manager

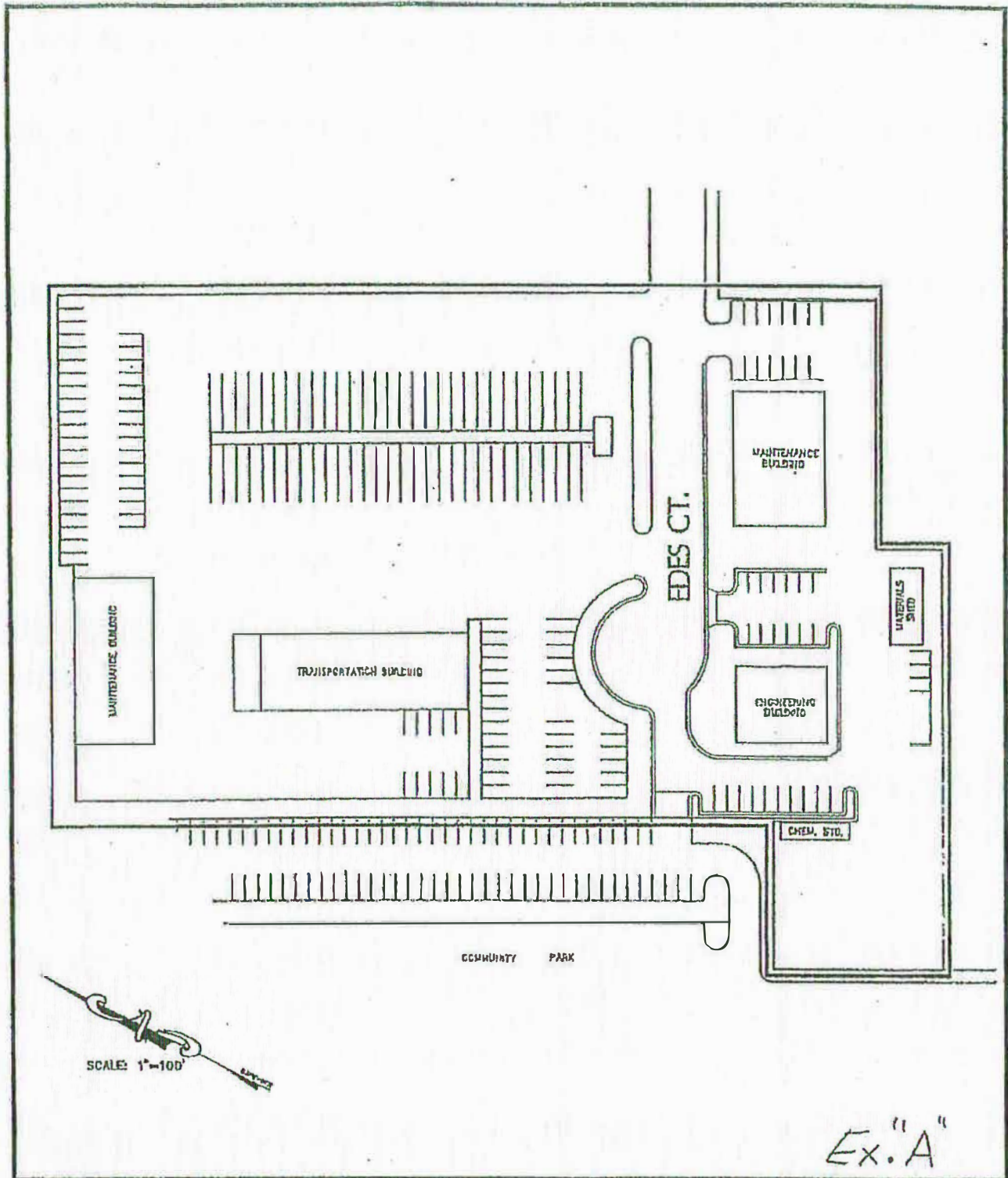
Its: Superintendent

APPROVED AS TO FORM:

ATTEST:

[Signature]  
Helene L. Leichter, Interim City Attorney

[Signature]  
Irma Torrez, City Clerk



**City of Morgan Hill**  
Public Works Department

**CITY CORP. YARD PROPERTY**

D:\R-11\PROJ\H\0\NO\BUSPLAT3.DWG

Date: 3/15/00

Drwn by: J.A.H.

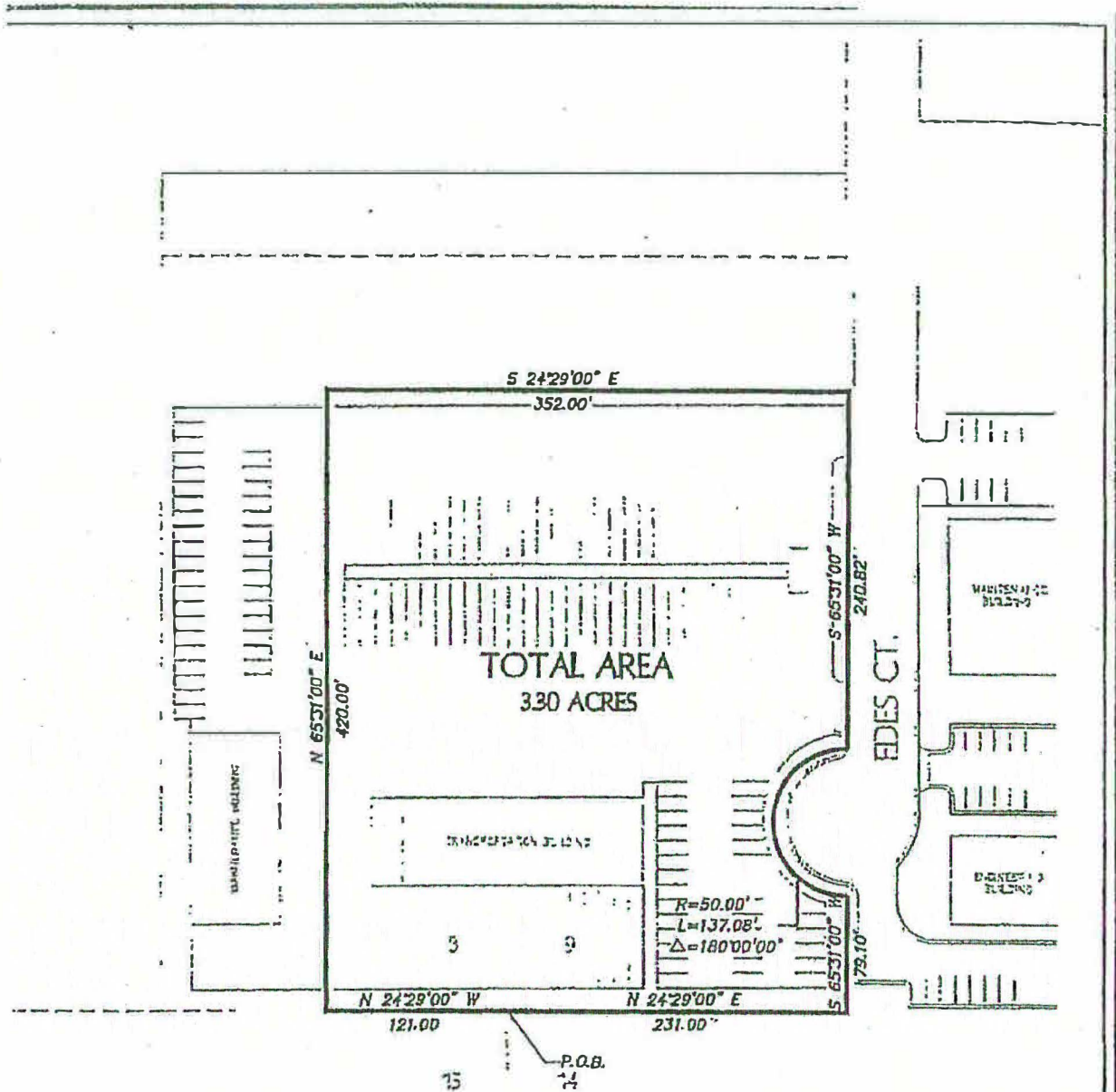
Chkd by: J.A.

## Exhibit "B"

### Boundary Description to Accompany Lease Agreement

Being a portion of lots 8 and 9, as delineated upon that certain map entitled "Catherine Dunne Ranch Map No. 3", which map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, Book H of Maps at page 65, and more particularly described as follows:

BEGINNING at a point of common intersection of lots 8, 9, 14, and 15 of said Catherine Dunne Ranch Map No. 3; thence along the southwesterly line of said lot 8, North 24° 29' 00" West 121.00 feet; thence North 65° 31' 00" East 420.00 feet; thence South 24° 29' 00" East 352.00 feet; thence South 65° 31' 00" West 240.82 feet; thence southeasterly along the arc of a circular curve to the right but not tangent thereto, with a radius of 50.00 feet, through a central angle of 180° 00' 00" for an arc length of 157.08 feet; thence leaving said curve but not tangent thereto South 65° 31' 00" West 79.10 feet; thence North 24° 29' 00" West 231.00 feet returning to said point of beginning, and containing 3.30 acres of land, more or less.



CATHERINE DUNNE RANCH MAP No. 3  
BOOK H OF MAPS, PAGE 63

SCALE: 1"=100'



EXHIBIT "B"  
PLAT TO ACCOMPANY BOUNDARY DESCRIPTION

Date: 10/28/99	Drwn by: J.A.H.	Chkd by: B.W.
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R-14\PROJ\H\DWG\BUS\PLAT.DWG

EXHIBIT "C"

**REMOVAL OF MORGAN HILL UNIFIED SCHOOL DISTRICT  
TRANSPORTATION PROPERTY**

**June 16, 1999**

The following preliminary list highlights equipment that would be removed from the Corporation Yard Maintenance Facility (CYMF) prior to the facility reverting to the City of Morgan Hill:

- Bus wash rack
- Tire racks and shelves
- Tire changer, bus coats hit 5000
- Tire changer auto FMC 76000
- Tire safety rack
- Wheel balance FMC 5800
- Tire spreader Branic (bus)
- Snap on wheel balance (bus)
- Stock tires
- All bus and automotive parts and supplies, belts, filters, etc.
- Bulk oil tank and barrels
- Upholstery and shelving
- Benches and tables
- Part washer
- Fork lift
- Hydraulic 30 ton jack
- Shop tool box
- Drill press
- Mohawk lift LMF-12 12,000 LB lift
- Sun Computer MCS4000 (scope)
- Sun Smog Inspector
- Bolts and nuts crib and shelves
- Sun Alt Tester #1600
- OTC 10 ton hydraulic shop press
- Rockwell lathe
- Hunter electronic balance
- Baldor grinder #f170 serial
- Baldor grinder #f1577
- Sioux Valve grinder #580
- Ammco auto brake lathe #7900
- Ammco bus brake lathe #5000
- J&T Ble drum lift
- Refrigerator, Signature frostless 22
- Water cooler Elkay
- Microwave ovens
- Book shelves
- Exhaust system
- Steam cleaner
- Four ship containers
- Security cameras
- Exhaust blowers

**BOARD OF EDUCATION  
MORGAN HILL UNIFIED SCHOOL DISTRICT**

May 22, 2000

<b>Topic:</b>	Approve corporation yard lease for the transportation yard
<b>Prepared by:</b>	Bonnie Branco, Assistant Superintendent of Business Services
<b>Presented by:</b>	Bonnie Branco, Assistant Superintendent of Business Services
<b>Type of Item:</b>	Action

Over the course of the last several months, the Corporation Yard Commission has met to prepare and review a draft lease for the proposal of maintaining the transportation yard on the 3.42 acres where the yard currently resides. Although the District took action to extend the lease on March 31, 1990, the current lease has been extended by the District until the year May 7, 2002, the details of any extension were not enumerated.

The new draft lease specifies that the transportation department will remain on this property for an additional seven years commencing on the effective date this contract is approved by the Board. This seven-year lease may be extended annually on a year-to-year basis with the City and the District in agreement on the same terms and conditions stated in this lease agreement, or as jointly modified by both parties in writing. If the District chooses to terminate this agreement, notification must be given to the City of Morgan Hill by July 1 of its intent to terminate the lease effective January 1 of the following year.

The City of Morgan Hill City Council approved this lease on April 5, 2000. The final draft was presented for Board discussion at the Board meeting of May 8, 2000 and is returning for approval at the Board meeting of May 22, 2000. The contract will be dated to coincide with the Board adoption date.

**RECOMMENDED ACTION:**

Approve corporation yard lease for the transportation yard

**ADDITIONAL INFORMATION:**

Attached: Draft of corporation yard lease with exhibits

Available: Yes

BB:st  
000522 Corporation Yard lease action

**Item Number 414**



**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

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**Wednesday, June 3, 2026**

**6:00 p.m**

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

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**CALL TO ORDER**

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

**ROLL CALL ATTENDANCE**

City Clerk Bigelow called the roll.

<b>PRESENT</b>	Mark Turner, Marilyn Librers, Soraida Iwanaga, Yvonne Martinez Beltran, Miriam Vega
<b>ABSENT</b>	None

**DECLARATION OF POSTING AGENDA**

City Clerk Bigelow declared the posting of the agenda.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

**RECOGNITIONS**

Morgan Hill Toros 12U

## **CITY COUNCIL REPORTS**

Council Member Iwanaga reported attending a Sister Cities Committee meeting, where updates were provided on ongoing activities and initiatives. She also participated in a South County Disaster Airlift Team (DART) event at the San Martin Airport, learning about regional emergency response coordination among neighboring communities and airports. Additionally, she attended a South County Regional Wastewater Authority meeting and toured the wastewater treatment facility, noting the extensive infrastructure, expertise, and operations required to provide recycled water services. She also shared that she will attend an upcoming Upper Llagas Creek Flood Protection Project Committee meeting to receive updates on the project's progress.

## **OTHER REPORTS**

Council Member Martinez Beltran recognized the 10-year anniversary of raising the Pride flag and provided an update regarding the proposed U.S. Immigration and Customs Enforcement (ICE) facility in South County. She reported on ongoing efforts over the past year and a half with state, county, and local leaders involving community outreach, resident education, and regional coordination.

Mayor Turner reported attending a VTA Subcommittee meeting, the Oakwood School graduation, and the Voices School end-of-year celebration. He also shared volunteering at the Morgan Hill Mushroom Festival, participated in the Mayor for a Day program with a student at City Hall, and attended a Santa Clara County Local Agency Formation Commission (LAFCO) meeting.

## **CITY MANAGER'S REPORT**

City Manager Turner reported on a community workshop hosted by the Santa Clara County Local Agency Formation Commission (LAFCO) and shared that LAFCO has embarked on a countywide review of water and wastewater services. She also shared information about the upcoming Youth Action Council (YAC) leadership program for teens and recognized the recent graduation of participants from the Renaissance Entrepreneurship Program. She shared that the City will continue its partnership with the Renaissance Entrepreneurship Center for another year, offering business development, financial literacy, youth entrepreneurship, and access to capital programs.

## **CITY ATTORNEY'S REPORT**

None.

## **PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA**

Public comment opened at 6:12 p.m.

Armando Benavides was called to speak.

With no further requests to speak, public comment closed.

## **ADOPTION OF AGENDA**

### **MOTION:**

Adopting the agenda removing item 7.

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

**CONSENT CALENDAR**

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

**MOTION:**

Approving consent calendar items 1 through 5 and 9.

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

**1. ACCEPT 2025 PAVEMENT REHABILITATION PROJECT**

Recommendation:

1. Accept as complete the 2025 Pavement Rehabilitation Project;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

**2. APPROVE A CONSULTANT AGREEMENT WITH ADVANCED INTEGRATION**

**& CONTROLS IN THE AMOUNT OF \$277,920 FOR SCADA HMI APPLICATION UPGRADES**

Recommendation:

Award and authorize the City Manager to execute a Consultant Agreement with Advanced Integration & Controls, in the not to exceed amount of \$277,920 for SCADA HMI Application Upgrades.

**3. APPROVE A FOURTH AMENDMENT TO AGREEMENT WITH AKEL ENGINEERING FOR ON-CALL WATER AND WASTEWATER SERVICES TO INCREASE THE NOT TO EXCEED AMOUNT BY \$60,000**

Recommendation:

Approve and authorize the City Manager to execute a fourth amendment to the agreement with Akel Engineering Group to increase the not to exceed amount by \$60,000, for a contract total of \$438,750.

**4. APPROVE THE 2025 ANNUAL CONTROLLED EQUIPMENT USE REPORT**

Recommendation:

Approve the 2025 Annual Military Equipment Use Report and the continued use of the controlled equipment contained in the report.

**5. APPROVE THE MAY 6, 2026 CITY COUNCIL AND THE MAY 20, 2026 CITY COUNCIL MEETING MINUTES**

Recommendation:

Approve the May 6, 2026 and the May 20, 2026 City Council Meeting Minutes.

**7. APPROVE UPDATED REIMBURSEMENT AGREEMENT WITH THE LUMBERYARD DEVELOPER FOR COMPLETION OF TENANT IMPROVEMENTS AT THE FUTURE CITY-OWNED NON-PROFIT CENTER BUILDING**

Recommendation:

Authorize the City Manager to execute and administer an updated reimbursement agreement with the MH Lumberyard 49, LLC. for the design and construction of tenant improvements at the future City-owned office space at 17020 Depot Street.

Item removed from the agenda.

**9. AWARD POLICE AND PUBLIC SERVICES DEPARTMENTS FLEET SERVICE AGREEMENT TO FRANK'S AUTO SERVICE**

Recommendation:

1. Award Fleet Services Agreement to Frank's Auto Service for a total not to exceed amount of \$300,000; and

2. Authorize the City Manager to execute the Agreement.

**ITEMS PULLED FOR DISCUSSION**

**6. APPROVE TRANSFER OF PROPERTY TO VALLEY WATER FOR FLOOD PROTECTION PROJECT**

Recommendation:

Authorize the City Manager to execute a grant deed and any other documents necessary to transfer the City owned property (APN 767-05-049) for flood protection purposes.

City Manager Turner provided a report. Public Services Director Ghione answered questions.

Public comment opened at 6:21 p.m. With no requests to speak, public comment closed.

**MOTION:**

Approving the recommended action.

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

**8. AWARD TOW AGREEMENT WITH DICK'S COMMUNITY TOWING AND TRANSPORT FOR POLICE-GENERATED TOW SERVICES**

Recommendation:

1. Award Tow Agreement with Dick's Community Towing and Transport for Police-Generated Tow Services; and
2. Authorize the City Manager to execute the Agreement.

City Manager Turner provided the report. Police Captain Ramirez answered questions.

Public comment opened at 6:26 p.m. With no requests to speak, public comment

closed.

**MOTION:**

Approving the recommended actions.

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

**10. AWARD STREET LIGHTING AND TRAFFIC SIGNAL MAINTENANCE SERVICE AGREEMENT**

Recommendation:

1. Award an agreement to Cal-West Lighting and Signal Maintenance, Inc. in the amount of \$1,000,000 to provide street lighting and traffic signal maintenance and repair services; and
2. Authorize the City Manager to execute and administer said agreement.

City Manager Turner provided a report. Public Services Director Ghione answered questions.

Public comment opened at 6:34 p.m. With no requests to speak, public comment closed.

**MOTION:**

Approving the recommended actions.

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

**11. RECEIVE MONTHLY BUDGET UPDATE AND APRIL 2026 FINANCIAL AND INVESTMENT REPORTS**

Recommendation:  
Receive and file reports.

City Manager Turner provided a report.

Public comment opened at 6:35 p.m. With no requests to speak, public comment closed.

**MOTION:**  
Approving the recommended actions.

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

**OTHER BUSINESS**

**12. RECEIVE A REPORT ON CITY OF MORGAN HILL VACANCIES, AND RECRUITMENT AND RETENTION EFFORTS**

Recommendation:  
Receive the informational report on City of Morgan Hill Vacancies, and Recruitment and Retention Efforts Pursuant to Government Code Section 3502.3 (AB 2561).

Human Resources Director Horta provided a report and presentation.

Public comment opened at 6:43 p.m. With no requests to speak, public comment closed.

Report Received.

**PUBLIC HEARINGS**

**13. ADOPT RESOLUTION ORDERING ANNUAL ASSESSMENTS AND RELATED ACTIONS FOR CITY OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1 (DISTRICT)**

Recommendation:

1. Open and close the public hearing; and
2. Adopt resolution confirming Fiscal Year (FY) 2026-27 annual assessments and ordering the levy of assessments for the District.

Council Member Iwanaga stepped down and recused herself from the dais due to a conflict of interest.

Maintenance Manager Russell provided a report.

The public hearing opened at 6:45 p.m. With no requests to speak, the public hearing closed.

**MOTION:**

Approving the recommended action.

<b>RESULT:</b>	Passed
<b>MOVER:</b>	Council Member Vega
<b>SECONDER:</b>	Council Member Martinez Beltran
<b>AYES:</b>	Mayor Turner, Mayor Pro Tem Librers, Council Member Martinez Beltran, Council Member Vega
<b>NAYS:</b>	None
<b>ABSTAIN:</b>	Council Member Soraida Iwanaga
<b>ABSENT:</b>	None

The meeting recessed at 6:46 p.m. and reconvened at 6:50 p.m.

14. **ADOPT THE FISCAL YEAR (FY) 2026-27 AND 2027-28 OPERATING BUDGET, FY 2026-27 THROUGH 2031-32 CAPITAL IMPROVEMENT PROGRAM BUDGET, ADOPT FY 2026-27 APPROPRIATIONS LIMIT, AUTHORIZE THE ALLOCATION OF GENERAL FUND BUDGET SAVINGS TO EXCESS ERAF RESERVES; DELEGATE AUTHORITY TO THE CITY MANAGER TO PURCHASE CITYWIDE COMPUTER REPLACEMENTS INCLUDED IN THE ADOPTED BUDGET, AND APPROVE MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEE GROUP SALARY SCHEDULES**

Recommendation:

1. Open/Close Public Hearing;
2. Adopt resolution to:
  - a. Adopt the FY 2026-27 and 2027-28 Operating Budget;
  - b. Adopt the FY 2026-27 through 2031-32 Capital Improvement Program

- Budget;
- c. Adopt the 2026-27 Appropriations Limit and Appropriations Limit Adjustment Factors;
- 3. Authorize the allocation of General Fund Budget Savings to Excess Educational Revenue Augmentation Fund (ERAF) reserves;
- 4. Delegate authority to the City Manager to purchase citywide computer replacements included in the Adopted Budget; and
- 5. Approve the Management, Professional, and Confidential Employee Group salary schedules.

City Manager Turner provided a report and presentation. Finance Director Nguyen, Budget Manager Delgado, Police Chief Palsgrove, and Public Services Director Ghione answered questions.

The public hearing opened at 7:17 p.m.  
 Doug Muirhead was called to speak.  
 With no further requests to speak, the public hearing was closed.

**MOTION:**

Approving the recommended actions.

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

**15. CONDUCT PUBLIC HEARING FOR INPUT ON THE 2025 URBAN WATER MANAGEMENT PLAN (UWMP) AND ADOPTION OF THE UWMP AND THE WATER SHORTAGE CONTINGENCY PLAN (WSCP)**

Recommendation:

1. Conduct a public hearing to receive input on the 2025 Urban Water Management Plan;
2. Adopt a Resolution approving the 2025 Urban Water Management Plan and authorize its submittal to the Department of Water Resources; and
3. Adopt a Resolution approving the 2025 Water Shortage Contingency Plan and authorize its submittal to the Department of Water Resources.

Deputy Director for Utilities Services Sylvain provided a report and a

presentation. Tony Akel of Akel Engineering answered questions.

The public hearing opened at 7:52 p.m. The following people were called to speak:

Doug Muirhead

Armando Benavides

With no further requests to speak, the public hearing was closed.

**MOTION:**

Approving the recommended actions.

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

**OTHER BUSINESS**

**16. APPROVE LEADERSHIP MORGAN HILL CLASS OF 2026 PROJECT PROPOSAL**

Recommendation:

1. Approve the proposed Leadership Morgan Hill Class of 2026 (Class) Project to create a historical trail in partnership with the Morgan Hill Historical Society; and
2. Direct City staff to coordinate with the Class on the final implementation of the Project.

Public Services Director Ghione provided an introduction to the item. Heather Gallegos and Anja Hamilton of the 2026 Leadership Morgan Hill Class presented their class project.

Public comment opened at 8:17 p.m. With no requests to speak, public comment closed.

**MOTION:**

Approving the recommended action.

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

**17. ADOPT POLICY REGARDING DISRUPTION OF TELEPHONIC, AUDIO/VISUAL, OR INTERNET SERVICE DURING CITY COUNCIL MEETINGS**

Recommendation:

Adopt the City Council Policy regarding disruption of telephonic, audio/visual, or internet service during City Council meetings in compliance with Government Code section 54953.4.

City Clerk Bigelow provided a report.

Public comment opened at 8:27 p.m. With no requests to speak, public comment closed.

**MOTION:**

Approving the recommended action.

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

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

Recommendation:

Determine if the majority of the City Council wants the following items agendized

at a future meeting for discussion:

1. Establish a Formal Policy for Intergovernmental Agency and Organizational Briefings; and
2. Evaluate Banning Class 2 E-bikes Operated by Minors.

City Manager Turner introduced the item.

Mayor Turner shared his concerns regarding Type 2 e-bikes and requested a future discussion on potentially banning the use of Type 2 e-bikes by minors under the age of 18. Council agreed to bring the topic back for further discussion.

Council Member Martinez Beltran requested a discussion of intergovernmental and other government agency presentations at City Council meetings. The Council did not agree to bring the topic back for discussion.

Public comment opened at 8:49 p.m.  
Joe Baranowski (Zoom) was called to speak.  
With no further requests to speak, public comment closed.

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

Council Member Martinez Beltran requested a discussion to review zoning code as it relates to environmental challenges.

#### **ADJOURNMENT**

There being no further business, Mayor Turner adjourned the meeting at 8:55 p.m.

#### **Minutes Prepared by:**

Michelle Bigelow, City Clerk

## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: June 17, 2026**

PREPARED BY:

Inga Alonzo, Management Analyst

APPROVED BY: City Manager

### **APPROVE THIRD AMENDMENT TO ON-CALL REPAIR CONTRACT WITH GOLDEN BAY CONSTRUCTION FOR A NEW TOTAL COMPENSATION UP TO \$1,200,000**

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

Authorize the City Manager to execute a third amendment to the on-call water and sewer repair contract with Golden Bay Construction with compensation up to \$1,200,000.

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

##### **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

##### **Strategic Priorities 2026-2027**

Fiscal Sustainability

##### **Guiding Documents**

Storm Drain Master Plan

Water System Master Plan

Wastewater System Master Plan

#### **REPORT NARRATIVE:**

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

Shortly after executing the agreement, the City utilized Golden Bay Construction to replace a sewer main beneath Main Avenue. CCTV inspections had identified significant deterioration in the sewer line between Main Avenue and the railroad tracks, requiring repair or replacement. The on-call contract allowed the City to complete the work ahead of a scheduled pavement project, avoiding the need to disturb newly

installed pavement in the future. During construction, additional deficiencies were discovered in service lines connected to the main, requiring supplemental work. The project was completed in October 2023 at a total cost of approximately \$295,000, leaving approximately \$105,000 available under the contract.

At the same time, the City continued to address infrastructure damage resulting from the severe storms that occurred in early 2023. By October 2023, one particularly challenging repair remained unresolved: a damaged sewer main impacted by a major hillside landslide. For approximately five months, City staff had been unable to secure a contractor willing to undertake the work due to difficult site access and challenging conditions. Staff contacted all City on-call contractors, as well as several specialized contractors, seeking assistance. Golden Bay Construction ultimately confirmed its ability to perform the work. Given the approaching rainy season and the potential risk to public infrastructure, staff determined the situation constituted an emergency and authorized Golden Bay to proceed.

On November 15, 2023, the City Council approved an increase to the Golden Bay Construction contract, raising the not-to-exceed amount to \$750,000. The intent was to complete the landslide repair project while retaining some capacity under the on-call agreement for future needs. At the time the staff report was prepared, restoration work associated with the landslide repair had not yet been completed, and staff estimated the remaining work would cost approximately \$350,000. However, restoration efforts proved significantly more extensive than anticipated due to substantial damage to private roadways that provided access to the project site. As a result, total project costs reached approximately \$480,000. A portion of these costs was later offset by approximately \$275,000 in reimbursement from the Federal Emergency Management Agency (FEMA) and the California Governor's Office of Emergency Services (Cal OES) for eligible storm-related repair expenses. Following completion of the work, the contract balance was fully exhausted. Consequently, on January 17, 2024, the City Council approved a second contract increase, raising the not-to-exceed amount to \$950,000 to replenish funds for the remainder of the original agreement term, which is scheduled to expire on June 30, 2026.

The agreement currently authorizes the City Manager to extend the contract for one additional year, through June 30, 2027. However, only \$15,234 remains available under the agreement. Staff is recommending a contract increase to ensure sufficient funding remains available for emergency repairs and other unforeseen infrastructure needs during the extension period. Golden Bay Construction has consistently demonstrated responsiveness and availability for emergency work and was the only contractor willing to undertake the complex landslide repair project. The company has also provided competitive on-call pricing. As with all on-call work, staff will continue to solicit estimates and quotes from the City's pool of qualified on-call contractors whenever practicable.

Accordingly, staff recommends increasing the Golden Bay Construction contract authority to \$1,200,000. This increase will allow the City to continue utilizing the agreement through the one-year extension period and maintain adequate resources to respond to emergency and urgent infrastructure repair needs.

**COMMUNITY ENGAGEMENT:**

Not Applicable

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

**ALTERNATIVE ACTIONS:**

The Council could choose not to approve the third amendment and have the City do a new bid for this work but this is not recommended as this would likely result in increased pricing due to current inflation.

**PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

The Council previously approved the initial on-call contract with Golden Bay Construction on August 23, 2023, amended the contract on November 15, 2023, and approved the Second Amendment on January 17, 2024.

**FISCAL AND RESOURCE IMPACT:**

Emergency on call work is funded through various City infrastructure funds. Funding for Water System and Wastewater work would be funded through Water and Sewer Enterprise funds. In the past, some of the funds expended on emergency repairs due to the noted landslides were reimbursed through FEMA.

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

Categorical Exemption

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

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

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

**RECITALS**

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of September 8, 2023, for services for a maximum compensation of Four Hundred Thousand Dollars (\$400,000.00) pursuant to the action by Morgan Hill City Council taken on August 23, 2023, ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of November 26, 2023, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to Seven Hundred Fifty Thousand Dollars (\$750,000.00). The First Amendment to Agreement was entered pursuant to the action by Morgan Hill City Council taken on November 15, 2023.
4. The CITY and SERVICE PROVIDER entered into a "Second Amendment to Agreement" made as of January 26, 2024, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to Nine Hundred Fifty Thousand Dollars (\$950,000.00). The Second Amendment to Agreement was entered pursuant to the action by Morgan Hill City Council taken on January 17, 2023. The MAINTENANCE SERVICE AGREEMENT, and the First, and the Second Amendments, thereto are 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 amended, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:
  - A. In the Second Amendment to Agreement, Paragraph 1 of the Recitals shall be amended to correctly reflect that the Agreement was entered into pursuant to the action of the Morgan Hill City Council taken on January 17, 2024, and not January 17, 2023.
  - B. Paragraph 2 shall be amended to reflect the extended term of the Agreement with an updated termination date of June 30, 2027.
  - C. Paragraph 4.1 shall be amended to reflect the increased total compensation that shall not exceed ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00).
  - D. Paragraph 5 shall be amended to include the following subsection:

“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.”

E. 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 anyone (1)

calendar day or more than forty (40) hours per calendar week, except if such workers are paid overtime under Labor Code Section 1815.”

F. 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).”

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.

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5. **Conflicts.** In the event of a conflict between the terms and provisions of this Third Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT or any earlier amendment, the terms of this Third 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:

**GOLDEN BAY CONSTRUCTION, INC.**

\_\_\_\_\_  
Elisa Tolentino, City Attorney

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

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

Title:  Johnny Zanette - President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 5/19/2026

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

Title: Brent Zanette - Secretary

Print Name and Title of Signer.

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

Date: 5/19/2026

\_\_\_\_\_  
451401

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

\_\_\_\_\_  
1000002870

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

Expiration Date(s) 1/31/2028

Expiration Date(s) 06/30/2028

Seal:

128-04-23-065

EXHIBIT 1

SECOND AMENDMENT TO AGREEMENT  
GOLDEN BAY CONSTRUCTION, INC.

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on 1/26/2024 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and GOLDEN BAY CONSTRUCTION, INC., a California Corporation ("SERVICE PROVIDER"), hereinafter referred to collectively as the "Parties".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on January, 17, 2023.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of September 8, 2023, for services for a maximum compensation of Four Hundred Thousand Dollars (\$400,000.00) ("SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of November 26, 2023, under which the maximum compensation under the SERVICE AGREEMENT, as amended, was increased to Seven Hundred Fifty Thousand Dollars (\$750,000.00). The SERVICE AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"4.1. Amount. Compensation under this Agreement shall not exceed NINE HUNDRED FIFTY THOUSAND DOLLARS (\$950,000.00) and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER, during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the initial term of this Agreement."

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

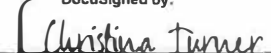
TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

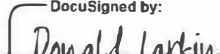
**ATTEST:**

DocuSigned by:  
  
 Michelle Bigelow, City Clerk  
 Date: 1/26/2024

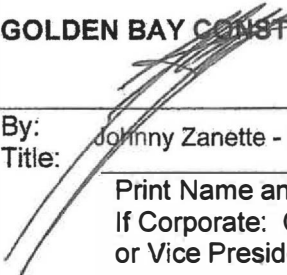
**CITY OF MORGAN HILL**

DocuSigned by:  
  
 Christina Turner, City Manager  
 Date: 1/26/2024

**APPROVED AS TO FORM:**

DocuSigned by:  
  
 Donald Larkin, City Attorney  
 Date: 1/25/2024

**GOLDEN BAY CONSTRUCTION, INC.**

By:   
 Title: Johnny Zanette - President  
 Print Name and Title of Signer.  
 If Corporate: Chairman, President,  
 or Vice President  
 Date: 1/11/2024


By:   
 Title: Brent Zanette - Secretary  
 Print Name and Title of Signer.  
 If Corporate: Secretary, Assistant  
 Secretary, Chief Financial Officer, or  
 Assistant Treasurer  
 Date: 1/11/2024

EXHIBIT 1

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

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

**RECITALS**

The following recitals are a substantive part of this Agreement:

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

**AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"4.1. Amount. Compensation under this Agreement shall not exceed SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00) and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the initial term of this Agreement.

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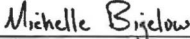
2. **Electronic Signatures.** Unless otherwise prohibited by law or CITY policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of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

3. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the SERVICE AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

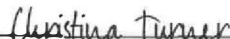
TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

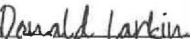
ATTEST:

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

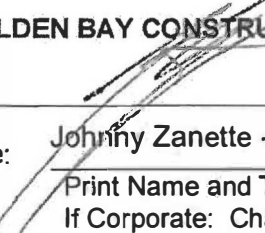
CITY OF MORGAN HILL

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

APPROVED AS TO FORM:

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

**GOLDEN BAY CONSTRUCTION, INC.**

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

Date: 11/10/2023

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

Date: 11/10/2023

EXHIBIT 1

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

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on August, 23, 2023.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2026, at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be on-call water and sewer repairs as further described in Exhibit A.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
  - 4.1. **Amount.** \$400,000. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Four Hundred Thousand dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the initial term of this Agreement.
  - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

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

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

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

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

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

**8.1. Insurance Types and Amounts.**

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

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

**8.1.5. Professional Liability.**

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

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

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

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

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

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

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

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

8.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

10. Compliance with Law.

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

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

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

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

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

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

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

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

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

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

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

Address of SERVICE PROVIDER is as follows:

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

Address of CITY is as follows:

Utilities Division	with a copy to:
City of Morgan Hill	City Clerk
100 Edes St.,	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

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

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

17. **Maintenance of Records.**

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

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

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

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

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

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

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

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

22. **Defense and Indemnification.**

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

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

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

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

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

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

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

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

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

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

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

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*[Signatures on Next Page]*

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

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

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

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

**ATTEST:**

DocuSigned by:  
  
 Michelle Bigelow  
 City Clerk/Deputy City Clerk

Michelle Bigelow  
 Print Name

Date: 9/8/2023

**APPROVED AS TO FORM:**

DocuSigned by:  
  
 Donald A. Larkin  
 City At

Donald A. Larkin  
 Print Name

Date: 9/6/2023

**CITY OF MORGAN HILL**

DocuSigned by:  
  
 Christina J. Turner  
 City Manager

Christina J. Turner  
 Print Name

Date: 9/8/2023

Golden Bay Construction, Inc.

By:   
 Johnny Zanette - President  
 Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President  
 Date: 8/15/2023

By:   
 Brent Zanette - Secretary

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

Date: 8/15/2023

451401  
 Contractor's License Number(s) (if applicable)

Expiration Date(s) 1/31/2024

Seal:

1000002870  
 Contractor's DIR Registration Number(s) (if applicable)

Expiration Date(s) 6/30/2025

## **EXHIBIT A SCOPE OF SERVICES**

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

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

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

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

### **City Responsibilities**

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

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

### Contractor's Responsibilities

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

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

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

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

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

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

## Repair Standards

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

## Materials and Supplies

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

## Disposal of Materials

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

## Response Schedule

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

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

## Physical Location of Underground Utilities

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

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

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

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

### **Protection of Existing Facilities**

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

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

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

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

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

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

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

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

**Restoration of Pavement:**

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

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

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

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

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

**Facility Access**

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

## Water Quality Protection and Stormwater Quality

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

## Trench Excavation

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

## Underground Facilities

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

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

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

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

## Working Hours

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

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

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

### **Noise Abatement**

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

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

### **Warranty and Scheduled Maintenance**

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

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

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

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

**EXHIBIT B  
 SCHEDULE OF COMPENSATION RATES**

**On-Call Services for Water and Sewer Repairs**

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

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

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Mobilization and Demobilization

7 % (Fill In)

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**4. OVERHEAD AND PROFIT**

---

Overhead and Profit

20 % (Fill In)

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**5. MATERIALS MARKUP**

---

Materials Markup - Cannot exceed 25%

15 % (Fill In)

---

**6. SUBCONTRACTOR MARKUP**

---

Subcontractor Markup

15 % (Fill In)

---

**EXHIBIT C  
SCHEDULE OF PERFORMANCE**

**This is an on-call as needed agreement.**

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

## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: June 17, 2026**

PREPARED BY:

Mariah Dabel, Public Services Administrative Manager

APPROVED BY: City Manager

### **AUTHORIZE CITY MANAGER TO EXECUTE FIRST AMENDMENT TO PROPERTY USE AGREEMENT WITH NEW CINGULAR WIRELESS FOR CELL SITE AT 2275 ROLLING HILL DRIVE**

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

Authorize the City Manager to execute the First Amendment to New Cingular Wireless PCS's Property Use Agreement.

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

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

Maintaining and Enhancing Infrastructure

##### **Strategic Priorities 2026-2027**

Fiscal Sustainability

#### **REPORT NARRATIVE:**

The purpose of this report is to request City Council's authorization for the City Manager to execute the First Amendment with New Cingular Wireless PCS for the Property Use Agreement at 2275 Rolling Hills Drive. The City of Morgan Hill routinely has allowed cellular installations at the City's communications and tank facilities. Currently, New Cingular Wireless PCS (dba AT&T Wireless) has a cell tower at 2275 Rolling Hills Drive adjacent to the utilities tank equipment operated by the City of Morgan Hill. The cell tower installation was first approved in 2013.

New Cingular's current agreement for the site expires on July 2, 2028. With the end of the agreement approaching, New Cingular approached the City to ask for an extension. The following deal points are proposed: an initial 5-year term with up to four 5-year extensions resulting in a new expiration date of July 2, 2053 and continuation of payments increasing 3.5% annually.

With a time extension, New Cingular will have stability at the site and can invest in improvements that will maintain and enhance telecommunications services in the community. As the proposed amendment will increase City revenues and maintain services, staff recommends approval of the attached First Amendment.

#### **COMMUNITY ENGAGEMENT:**

This report serves to inform the community of the recommended contract amendment.

**ALTERNATIVE ACTIONS:**

The Council could decline to approve the Amendment and provide direction to staff on alternative negotiation parameters or direction on decommissioning the site as a cell tower location. Decommissioning the site would result in a loss of cellular service to the Morgan Hill community and a loss of revenue to the City.

**PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

The City's agreement with New Cingular for initial installation of the telecommunications equipment was approved by the City Council in 2013. The revenue is included in the City's five-year forecast. A very similar amendment providing a time extension at a different location (El Toro Mountain) was approved by the City Council in 2018.

**FISCAL AND RESOURCE IMPACT:**

The City's revenue from the property use agreement is \$60,442 in FY 2025-26. This income is credited to the City's Fund 650 Water Operations and helps pay for services, offsetting service fees for water utility customers. With this amendment extending the term, the City's revenue would increase by 3.5% annually. By the end of the proposed term of the agreement, annual revenue will exceed \$153,000.

The resources to negotiate and manage cellular tower property use agreements are included in the work plan of the Public Services Department.

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

Not a Project

This Amendment is an administrative action that is not a project under the CEQA Guidelines. Any additional facilities located on the site will need to obtain a Conditional Use Permit and would engage in the CEQA process at that time.

Market: San Francisco / Sac / Reno  
Cell Site Number: CCL00750  
Cell Site Name: MCKEAN ROAD 2  
Fixed Asset Number: 10151482

**FIRST AMENDMENT TO INSTALLATION AND PROPERTY USE AGREEMENT BETWEEN  
THE CITY OF MORGAN HILL AND  
NEW CINGULAR WIRELESS PCS, LLC.**

THIS FIRST AMENDMENT TO INSTALLATION AND PROPERTY USE AGREEMENT (“**Amendment**”) dated as of the latter signature date below (the “**Effective Date**”) is by and between City of Morgan Hill, a municipal corporation having a mailing address at 17575 Peak Avenue, Morgan Hill, CA 95037 (“**City**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, duly authorized to do business in California and will remain so during the term of this Agreement, having a mailing address at 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 (“**Company**”).

WHEREAS, City and Company entered into an Installation and Property Use Agreement dated July 3, 2013, whereby City leased to Company certain Premises (“**Premises**”), therein described, that are a portion of the Property (“**Property**”) located at 2275 Rolling Hills Drive, Morgan Hill, CA 95037 (the “**Agreement**”); and

WHEREAS, the Term of the Agreement will expire on July 2, 2028, and the parties mutually desire to renew the Agreement, memorialize such renewal period and modify the Agreement in certain other respects, all on the terms and conditions contained herein; and

WHEREAS, City and Company desire to amend the Agreement to modify the notice section thereof; and

WHEREAS, City and Company desire to amend the Agreement to permit Company to add, modify and/or replace equipment in order to be in compliance with any current or future

federal, state or local mandated application, including but not limited to emergency 911 communication services; and

WHEREAS, City and Company, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Company agree as follows:

1. **Extension Term.** At the end of the final Extension Term presently set forth in the Agreement, the Term will automatically renew for five (5) separate consecutive additional periods of five (5) years each (each being defined as a “**Extension Term**”) upon the same terms and conditions of the Agreement, unless Company notifies City in writing of Company’s intention not to renew the Agreement at least sixty (60) days prior to the expiration of the existing Term.

2. **Emergency 911 Service.** In the future, without the payment of additional rent, or any other consideration, and at a location mutually acceptable to City and Company, City agrees that Company may add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services.

3. **Acknowledgement.** City acknowledges that: 1) this Amendment is entered into of the City’s free will and volition; 2) City has read and understands this Amendment and the underlying Agreement and, prior to execution of this Amendment, was free to consult with counsel of its choosing regarding City’s decision to enter into this Amendment and to have counsel review the terms and conditions of this Amendment; 3) City has been advised and is informed that should City not enter into this Amendment, the underlying Agreement between City and Company, including any termination or non-renewal provision therein, would remain in full force and effect.

4. **Notices.** Section 15 of the Agreement is hereby deleted in its entirety and replaced with the following:

**NOTICES.** All notices, requests, payments of rent, demands, and other communications required or permitted hereunder shall be given as follows:

For Notices of Default to Company:

- a) To Company's Lease Administration Department at [NoticeIntake@att.com](mailto:NoticeIntake@att.com);  
and
- b) To Company's Law Department via First Class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid:

New Cingular Wireless PCS, LLC

Attn.: Legal Dept – Network Operations

Re: Cell Site #: CCL00750; Cell Site Name: MCKEAN ROAD 2 (CA)

Fixed Asset #: 10151482

208 S. Akard Street  
Dallas, TX 75202-4206

For Notices of Default to City:

- a) To City at

Mariah Dabel

City of Morgan Hill

17575 Peak Avenue,

Morgan Hill, CA 95037

[mariah.dabel@morganhill.ca.gov](mailto:mariah.dabel@morganhill.ca.gov);

and

- b) To City's Office of the City Attorney via First Class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid:

City Attorney's Office

City of Morgan Hill

17575 Peak Avenue,  
Morgan Hill, CA 95037  
cityattorney@morganhill.ca.gov

All other Notices will be sent:

- a) To Company's Lease Administration Department at [NoticeIntake@att.com](mailto:NoticeIntake@att.com);  
and
- b) To City at [mariah.dabel@morganhill.ca.gov](mailto:mariah.dabel@morganhill.ca.gov)

Notices by email will be effective on the first calendar day after it was sent unless the sender receives an automated message that the email has not been delivered. Electronic mail shall be sent with a read receipt, but a read receipt shall not be required to establish that notice was given and received. All other Notices shall be effective when received unless returned undelivered. Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other party hereto as provided herein.

5. Section 24 is hereby deleted in its entirety and replaced its entirety with the following:

“COMPANY 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.*). COMPANY 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).”

6. Exhibit F of the Agreement is hereby deleted in its entirety and replaced with the revised Exhibit F attached hereto.

7. **Charges.** All charges payable under the Agreement such as utilities and taxes shall be billed by City within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by City and shall not be payable by Company. The foregoing shall not apply to annual rent which is due and payable without a requirement that it be billed by City. The provisions of this subsection shall survive the termination or expiration of the Agreement.

8. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this Amendment, the terms of this Amendment shall control. Except as expressly set forth in this Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this Amendment.

9. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

10. **Public Record.** The City, as a public agency, is subject to the disclosure requirements of the California Public Records Act ("CPRA"). This Agreement, including COMPANY's rates and fees, is a public record under the California Public Records Act. If COMPANY has proprietary information contained in these documents, and COMPANY wishes to claim that such information falls within one or more CPRA exemptions, COMPANY must clearly mark such information "Confidential and Proprietary," and identify the specific lines containing the information. In the event of a request for such information, the CITY will make reasonable efforts to provide notice to COMPANY prior to such disclosure.

[NO MORE TEXT ON THIS PAGE - SIGNATURES TO FOLLOW ON NEXT PAGE]

**IN WITNESS WHEREOF**, the parties have caused this Amendment to be effective as of the last date written below.

**CITY:**

City of Morgan Hill,  
a municipal corporation

**COMPANY:**

New Cingular Wireless PCS, LLC,  
a Delaware limited liability company

By: AT&T Mobility Corporation

It's: Manager

By: [NOT FOR EXECUTION]

By: [NOT FOR EXECUTION]

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

**APPROVED TO FORM**

\_\_\_\_\_

Print Name: Elisa Tolentino

It's: City Attorney

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

**ATTEST**

\_\_\_\_\_

Print Name: Michelle Bigelow

It's: City Clerk

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

## EXHIBIT F

### 1. INSURANCE.

COMPANY shall procure and maintain for the duration of the Agreement , insurance against claims for injuries to persons or damages to property, including the PROPERTY, which may arise from, or in connection with, the performance of the work hereunder by COMPANY, its agents, representatives, employees or subcontractors.

#### A. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

Insurance Services Office (ISO) "occurrence" form CG 00 01, including

1. Explosion, Collapse & Underground ("X, C,U") coverage.
2. Insurance Services Office form number CA 00 01 covering Business Automobile Liability, code 1 "Any Auto" (including without limitation "owned autos," hired autos," and "non-owned autos.")
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.
4. "All-risk" or "Causes of Loss - Special Form" property insurance covering all risks of loss to any improvements or betterments installed or constructed by COMPANY on the PROPERTY, including without limitation the ANTENNA FACILITY, which may be self-insurance provided by COMPANY or a parent entity of COMPANY for such property insurance.

#### B. Minimum Limits of Insurance.

COMPANY shall maintain limits of at least:

1. Commercial General Liability: \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$1,000,000 products and completed operations aggregate for bodily injury, personal injury, and property damage. The general aggregate limit shall apply separately to this project/location, or the general aggregate limit shall be doubled.
2. Automobile Liability: \$1,000,000 each accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$100,000 per accident or disease.
4. Property Insurance: Full replacement cost with no co-insurance penalty provision or COMPANY's self-insurance program described in Section I(A)(4) above.

#### C. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to, and approved by, the CITY. At the option of the CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officials, employees, agents and

contractors; or COMPANY shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY; or a financial guarantee as directed by the CITY hereunder.

The parties to this AGREEMENT acknowledge and agree that at some point in the future COMPANY may determine that it is in COMPANY's best interests to move to a self-insurance program for other insurance in addition to its currently self-insured property insurance listed in Sections I(A)(4) and I(B)(4) above. COMPANY shall timely and fully coordinate with CITY if COMPANY opts to move to a self-insurance program in the future and shall in that case allow CITY a reasonable opportunity and period of time: (1) to perform reasonable due diligence to confirm that the criteria set forth in Section D.1.e. set forth below would be met; and (2) to review such program in advance of making any such change. CITY reserves the right to require COMPANY to maintain the scope of insurance set forth in this EXHIBIT F, rather than move to a self-insurance program if, in the CITY'S determination, a proposed self-insurance program would not adequately meet the criteria set forth in Section D.1.e. herein below.

D. Other Insurance Provisions.

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverage(s)

- a. The City of Morgan Hill, its officers, employees, agents, and contractors are to be covered and endorsed as additional insured(s) as respects: Liability arising out of activities performed by or on behalf of, COMPANY; products and completed operations of COMPANY; premises owned, leased or used by COMPANY; and automobiles owned, leased, hired or borrowed by COMPANY. Additional insured status shall: (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by COMPANY, its employees, agents or independent contractors; and (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of CITY, its officers, employees, agents or contractors or where such coverage is prohibited by law, or to claims arising out of the sole negligence of CITY, its employees, agents, or independent contractors. The coverage shall contain no other special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors. The Commercial General Liability shall be endorsed using ISO endorsement form CG 20 10 or CG 20 26 (or equivalent) for ongoing operations and CG 20 37 (or equivalent) for completed operations.
- b. COMPANY's required insurance coverage shall allow and be endorsed primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of COMPANY's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies by COMPANY shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

- d. Coverage shall state that COMPANY's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. As provided for in Section C hereinabove, if COMPANY moves to a self-insurance program in the manner described in Section C hereinabove, and includes CITY as an additional insured, COMPANY shall: (i) maintain sufficient capital reserves as approved annually by Ernst & Young or any successor auditing firm; (ii) comply with applicable laws, including the timely filing of required government documents; (iii) ensure that COMPANY or any parent company providing such insurance maintains a net worth of at least \$500,000,000 throughout the term of this AGREEMENT; and (iv) use an independent third party administrator to manage all claims.

In the event that COMPANY elects, under and in the manner provided for in this EXHIBIT F, to self-insure its obligation to include CITY as an additional insured, the following provisions apply: CITY shall (i) promptly and no later than thirty (30) days after notice thereof provide COMPANY with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide COMPANY with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) not settle any such claim, demand, lawsuit, or the like without the prior written consent of COMPANY; and (iii) fully cooperate with COMPANY in the defense of the claim, demand, lawsuit, or the like.

## 2. All Coverage(s)

Each insurance policy required by this AGREEMENT shall provide and be endorsed with a waiver of subrogation in favor of the CITY, its officers, employees, agents, or contractors.

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY. If a carrier will not provide the required notice, the COMPANY shall provide written notice to the CITY of a suspension, voidance, cancellation, or reduction in limits no later than ten (10) business days before such event.

### D. Acceptability of Insurers.

Insurance is to be placed with insurers rated at least A-VII by AM Best.

### E. Verification Of Coverage.

COMPANY shall furnish CITY with certificates of insurance and with endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

///

CITY OF MORGAN HILL  
Risk Manager  
17575 Peak Avenue  
Morgan Hill, California 95112-5509

F. Subcontractors.

COMPANY shall obtain separate certificates and endorsements for each subcontractor in accordance with the requirements herein.

EXHIBIT 1

Market: San Francisco, Sacramento (South Bay) \_\_\_\_\_  
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Cell Site Name: McKean Rd 2  
Fixed Asset Number: 10151482 \_\_\_\_\_

**INSTALLATION AND PROPERTY USE AGREEMENT BETWEEN THE CITY OF  
MORGAN HILL AND**

**NEW CINGULAR WIRELESS PCS, LLC.**

This INSTALLATION AND PROPERTY USE AGREEMENT (the "AGREEMENT") is made and entered into by and between the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive NE, Suite 13-F, West Tower, Atlanta, GA 303244 ("COMPANY"), upon and as of the latter of the signature dates of CITY and COMPANY set forth below on the signature page of the parties to this AGREEMENT ("EFFECTIVE DATE") for the specified purposes set forth herein.

**RECITALS**

**WHEREAS**, CITY is the owner of that certain real property located at 2275 Rolling Hills Drive, Morgan Hill, California, more particularly described on the "PROPERTY Description," attached hereto as Exhibit A and incorporated herein by this reference ("PROPERTY"); and

**WHEREAS**, COMPANY desires to construct, install, maintain and operate at no cost to CITY certain telecommunications facilities and appurtenant structures on PROPERTY owned by CITY to provide its services, which services are more particularly described in Exhibit B, attached hereto and incorporated herein, ("SERVICES") in and around CITY; and

**WHEREAS**, in order to provide SERVICES, COMPANY desires to obtain from CITY and CITY desires to grant to COMPANY the right to use certain portions of the PROPERTY, which portions are further described in Exhibit C (the "LICENSED AREA"), which is attached hereto and incorporated herein, for the purposes of installing, maintaining and operating a telecommunication facility and associated equipment to provide SERVICES, which telecommunication facility and associated equipment are more particularly described on the "ANTENNA FACILITY Description" attached hereto as Exhibit D and incorporated herein ("ANTENNA FACILITY"); and

**WHEREAS**, CITY desires to have the SERVICES available in CITY in accordance with the terms and conditions contained in this AGREEMENT.

**NOW, THEREFORE**, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**SECTION 1.            RIGHT TO USE CITY PROPERTY.**

A.    Right to Use.    CITY hereby authorizes COMPANY the right to (1) use the LICENSED AREA on an exclusive basis, for the purpose of installing, maintaining and operating the ANTENNA FACILITY to provide SERVICES and for no other purpose; and (2) use the LICENSED AREA including the right of COMPANY to install and operate transmission cables from the equipment shelters or cabinets to the antennas, electric lines from the main feed on the Property to the equipment shelters or cabinets and communication lines from the Property's main entry point to the equipment shelter or cabinet.

B.    Access.

1.    At all times throughout the term of this AGREEMENT, at no additional charge to COMPANY, and in accordance with the provision of Section 1(B)(2), (3) & (4) below, COMPANY and its employees, agents, and subcontractors, will have pedestrian and vehicular access ("**Access**") to and over the PROPERTY, from an open and improved public road, to the LICENSED AREA, for the installation, maintenance and operation of the ANTENNA FACILITY and any utilities serving the LICENSED AREA between the hours of 6:00 a.m. and 7:00 p.m. Monday - Saturday. CITY agrees to provide to COMPANY such codes, keys and other instruments necessary for such Access at no additional cost to COMPANY.

Notwithstanding the foregoing, all such activities shall be performed in compliance with Section 5. A below including without limitation all applicable City of Morgan Hill laws and building codes including those regulating days of the week and hours of the day during which construction and repairs may be performed.

2.    COMPANY will be given reasonable access to the LICENSED AREA between the hours of 6:00 a.m. and 7:00 p.m. to repair, maintain or remove the ANTENNA FACILITY, provided COMPANY provides CITY with at least one (1) day prior written notice of the times that COMPANY will need access to the LICENSED AREA and at least forty-eight (48) hours' actual prior oral notice to CITY of the times that COMPANY will need access to any other portion of the PROPERTY. The CITY's Public Works Director (hereinafter "PROPERTY MANAGER") shall be CITY's contact for these purposes, unless CITY otherwise indicates to COMPANY in writing.

3.    If an emergency repair of the ANTENNA FACILITY is necessary, COMPANY shall be allowed reasonable access to the LICENSED AREA during additional hours, provided COMPANY provides CITY with at least one (1) hour prior oral notice of the times that COMPANY will need access to that portion of the LICENSED AREA. For purposes of providing the advance oral notice set forth in this Section, CITY shall provide COMPANY with the telephone number

of the PROPERTY MANAGER, which telephone number shall permit contact with the PROPERTY MANAGER, or his/her designate, twenty-four (24) hours per day. For the purposes of this section, an emergency repair of the ANTENNA FACILITY is defined as a circumstance during which the ANTENNA FACILITY is not functioning.

4. COMPANY shall allow a representative of the CITY to observe any construction, installation, repair, maintenance or removal work performed at the LICENSED AREA or any other portion of the PROPERTY.

C. Relocation and Removal.

1. If CITY determines it is necessary to relocate all or a portion of the ANTENNA FACILITY, CITY will have the right, subject to the following provisions of this Section, and exercisable at any time after the INITIAL TERM, but exercisable only one (1) time during the term of this AGREEMENT, and only after providing COMPANY with not less than twelve (12) months' prior written notice, to relocate the ANTENNA FACILITY, or any part thereof, to an alternate location (the "**Relocation Premises**") on CITY's PROPERTY; provided, however, that: (i) one hundred percent (100%) of all reasonable costs and expenses associated with or arising out of such relocation (including costs associated with any required zoning approvals and other governmental approvals and costs for any tests, surveys, reports, and studies of the Relocation Premises) shall be paid by CITY by reimbursing COMPANY within thirty (30) days of CITY'S receipt of a written invoice from COMPANY; (ii) such relocation will be performed exclusively by COMPANY or its agents; (iii) such relocation will not unreasonably result in any interruption of the communications service of COMPANY on CITY's PROPERTY; and (iv) such relocation will not impair, or in any manner alter, the quality of communications service provided by COMPANY on and from CITY's PROPERTY. CITY will exercise its relocation right by delivering written notice pursuant to the terms of this AGREEMENT to COMPANY. In the notice, CITY will identify the proposed Relocation Premises on CITY's PROPERTY to which COMPANY may relocate the ANTENNA FACILITY. CITY and COMPANY hereby agree that a survey (prepared at the sole cost and expense of CITY) of the Relocation Premises (including the access and utility easements) will supplement Exhibit A hereto and become a part hereof, and the Relocation Premises shall be considered the Premises for all purposes hereunder after said relocation.

2. If in COMPANY's reasonable judgment no suitable Relocation Premises can be found, CITY may not exercise its relocation right described in this Section and CITY may not relocate or cause the relocation of the ANTENNA FACILITY; provided, however, that if CITY is exercising its relocation right described in this Section in order for CITY to comply with then-currently applicable governmental laws, rules, statutes and regulations, and in COMPANY's reasonable judgment no suitable Relocation Premises can be found, COMPANY shall have the right to terminate this AGREEMENT upon written notice to CITY, without penalty or further obligation.

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D. Title to the ANTENNA FACILITY.

Title to the ANTENNA FACILITY, subject to the terms of this AGREEMENT, shall be and remain with COMPANY while the ANTENNA FACILITY is installed and maintained at the PROPERTY. CITY waives any and all lien rights it may have, statutory or otherwise, concerning the ANTENNA FACILITY or any portion thereof.

E. Title to Improvements to the PROPERTY.

Notwithstanding Section 1.D above, title to the improvements to the PROPERTY, or LICENSED AREA required for approval for the placement of the ANTENNA FACILITY, including buildings or other structures placed thereon by the City, shall be and remain with CITY. Title to all equipment installed for purposes of operating and providing wireless communications services pursuant to this AGREEMENT shall be and remain with COMPANY.

Notwithstanding any of the foregoing, improvements installed at the PROPERTY by COMPANY for the provision of SERVICE shall be for the exclusive use of, and under the exclusive control of COMPANY, subject to the provisions in Section 1G and Section 7 throughout the term of this AGREEMENT.

F. No Warranties of Suitability of PROPERTY.

It is COMPANY's election to install and maintain the ANTENNA FACILITY at the PROPERTY and COMPANY does so solely at its own risk. CITY makes no representations or warranties regarding the suitability, condition or fitness of the PROPERTY for the installation, maintenance or use of the ANTENNA FACILITY.

G. Right of CITY Access.

CITY reserves, and COMPANY agrees to, the right of CITY, its authorized officers, employees, agents or contractors, to enter into and access the LICENSED AREA and the PROPERTY at any time. CITY agrees to provide COMPANY with at least forty-eight (48) hours' prior oral notice of CITY's plan to access the LICENSED AREA. For purposes of providing the oral notice set forth in this Section, COMPANY shall provide PROPERTY MANAGER with a current telephone number of an appropriate COMPANY representative. Without limiting the foregoing, CITY and COMPANY agree that CITY has reserved its rights to and may: (1) inspect the PROPERTY, LICENSED AREA and ANTENNA FACILITY for COMPANY's compliance with the terms of this AGREEMENT; (2) make repairs, alterations or additions to the PROPERTY or LICENSED AREA or maintain or use the PROPERTY in any manner not prohibited by the terms of this AGREEMENT, all without a claim by COMPANY for any loss of occupation or use of, or any abatement of, the USE CHARGE for use of the LICENSED AREA.

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**SECTION 2.            TERM.**

A.    Initial Term.

The term of this AGREEMENT shall commence on the EFFECTIVE DATE set forth above, and shall continue for five (5) years ("INITIAL TERM"), expiring at 11:59 p.m. on the fifth anniversary of said EFFECTIVE DATE ("EXPIRATION DATE"), unless earlier terminated as pursuant to the terms of this AGREEMENT.

B.    Option to Extend.

This AGREEMENT will automatically renew for two (2) additional five (5) year terms beyond the INITIAL TERM described herein on the same terms, covenants and conditions that are contained in this AGREEMENT (each an "Extension Term") unless either party notifies the other in writing of its intention not to renew this AGREEMENT at least ninety (90) days prior to the expiration of the existing term and subject to CITY's and COMPANY's other termination rights set forth in this AGREEMENT.

CITY shall increase the USE CHARGE in the manner provided in Section 3B below.

**SECTION 3.            USE CHARGE.**

A.    Charge and Payment.

Commencing upon the date upon which COMPANY starts work to construct or install the ANTENNA FACILITY on the PROPERTY ("USE CHARGE COMMENCEMENT"), COMPANY shall pay CITY the sum of forty thousand dollars (\$40,000) per year calculated in accordance with the CITY's Rate Schedule as shown in Exhibit E, which is subject to annual adjustment by CITY as provided below ("USE CHARGE"). The USE CHARGE shall be due and payable from COMPANY to CITY, and COMPANY shall pay such USE CHARGE, in full on the USE CHARGE COMMENCEMENT date and then on each anniversary of the USE CHARGE COMMENCEMENT date ("Anniversary Date") without offset, in advance. COMPANY shall make all payments to CITY at the following address:

City of Morgan Hill  
Finance Department  
17575 Peak Avenue  
Morgan Hill, California 95037

Initial payment by COMPANY for adjustments made for addition of antennae, pursuant to Exhibit E shall be due and payable at the address set forth above on the USE CHARGE COMMENCEMENT date. If CITY approves placement of said additional antennae on the ANTENNA FACILITIES, payment shall be prorated to reflect the remainder of the year of the term ("Term Year"). CITY shall reimburse COMPANY for Adjustments reflecting removal of antenna(e) no later than sixty (60) days after CITY is

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notified by COMPANY in writing of the completion of such removal. Adjustments to reflect removal of antenna(e) shall be prorated to reflect the portion of the Term Year remaining after CITY receives said written notice of such removal. Any partial Term Year or INITIAL TERM or Extension Term shall be prorated.

**B. Adjustment of USE CHARGE.**

1. Beginning in year two (2) of the INITIAL TERM, and each year thereafter, including throughout any Extension Term exercised, the annual USE CHARGE will increase by three and a half percent (3 ½%) over the USE CHARGE paid during the previous year. COMPANY may choose to pay for all five (5) years of the INITIAL TERM or an Extension Term in advance and in that case the USE CHARGE shall be the rate in effect for the first year of that particular term less a twenty percent (20%) discount. However, if COMPANY paid in advance for all five (5) years of the Initial Term or an Extension Term, then beginning in year one of any subsequent Extension Term exercised, the USE CHARGE will increase by three and a half percent (3 ½%) for each year of the previous Initial Term or Extension Term. (Therefore, if the previous Initial Term or Extension Term, whichever is applicable, was for five (5) years and COMPANY paid for the five (5) years in advance, the Use Charge for the first year of any subsequent Extension Term would increase by  $3.5\% \times 5 = 17.5\%$ .)

**C. Penalty for Delinquent Payment.**

If COMPANY fails to pay to CITY within ten (10) days after the due date any USE CHARGE payment hereunder, then, thereafter, COMPANY shall owe and pay to CITY along with its delinquent USE CHARGE payment, and in addition to the unpaid USE CHARGE payment, an amount equal to five percent (5%) of the past due USE CHARGE amount, which late charge payment is mutually agreed to by CITY and COMPANY as an incentive for timely payment and in recognition of the additional costs to CITY to track and service delinquent payments.

**SECTION 4.            RIGHT TO USE APPLICABLE ONLY TO PROPERTY.**

This AGREEMENT shall not be construed to permit construction, installation, maintenance or use of an antenna facility on any property other than the ANTENNA FACILITY on the LICENSED AREA of the PROPERTY.

**SECTION 5.            COMPLIANCE WITH APPLICABLE LAW AND APPROVALS.**

**A. Facility to be Constructed in Accordance with Law.**

COMPANY shall construct, install, operate, maintain and remove the ANTENNA FACILITY in accordance with all applicable federal, state and local governmental laws, rules and regulations now in existence or as hereafter enacted or amended. Without limiting the foregoing, COMPANY shall obtain, maintain and fully comply with any and all permits or approvals required from CITY.

**B. Utility User's Tax.**

COMPANY acknowledges and agrees that CITY does not currently require users of communications services such as the SERVICES to pay to CITY a utility users' tax. However, without limiting the other provisions of this SECTION, should the CITY ever institute such a tax, COMPANY agrees that COMPANY shall collect from the users of the SERVICES and remit to CITY said utility users' tax all in the manner described in, and in compliance with, the CITY's requirements.

**C. Licensing and Authorization.**

COMPANY represents and warrants for the benefit of CITY that COMPANY holds and maintains in good standing, or will hold and maintain in a timely fashion, all requisite licenses and other approvals under federal, state and local laws and regulations to undertake all of the actions and to provide the SERVICES set forth in this AGREEMENT and, more specifically and without limiting the foregoing, that COMPANY is licensed by the Federal Communications Commission ("FCC") to operate the ANTENNA FACILITIES and provide the SERVICES, and COMPANY agrees to provide documentation evidencing such licensing and authorization within thirty (30) days of receiving a request by CITY for such documentation, but in no event shall City make a request more than once annually. Notwithstanding any CITY request for such documentation, COMPANY shall maintain in full force and effect at all times during any term of this AGREEMENT all requisite licenses and approvals from the FCC, as well as any other applicable governmental entity, needed to operate the ANTENNA FACILITY and/or to provide the SERVICES and shall conduct any and all activities under this AGREEMENT in full and timely conformance with such FCC licenses and approvals.

**SECTION 6.            MAINTENANCE AND REPAIR.**

A. COMPANY shall maintain and repair the ANTENNA FACILITY, at no cost to CITY (except as specifically provided otherwise in this AGREEMENT) and to CITY's reasonable satisfaction, any and all damage to the PROPERTY or the LICENSED AREA that may result from any operation, maintenance, relocation or removal of the ANTENNA FACILITY or COMPANY's exercise of any of the rights and privileges hereby granted, including, without limitation, damage to any walls, floors, ceilings, doors, roads, gates, water tanks and equipment, fences or electrical system in the PROPERTY or the LICENSED AREA. Upon removal of the ANTENNA FACILITY, or any portion thereof, or the termination of this AGREEMENT, COMPANY shall restore the affected areas of the PROPERTY to at least as good condition and repair as before COMPANY's use thereof, except for reasonable wear and tear and loss by casualty or other causes beyond COMPANY'S control excepted. Notwithstanding the foregoing, COMPANY will not be responsible for the replacement of any trees, shrubs or other vegetation, nor will COMPANY be required to remove from the LICENSED AREA or the PROPERTY any structural steel or any foundations to a depth of more than one (1) foot below grade or underground utilities. The provisions of this Section shall survive termination of this AGREEMENT.

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B. COMPANY agrees to and shall: (1) keep the ANTENNA FACILITY and the LICENSED AREA in a safe, neat, clean and orderly condition at all times; (2) not cause rubbish, garbage or debris to accumulate or remain on or around the ANTENNA FACILITY, LICENSED AREA or PROPERTY at any time; (3) not commit, suffer or allow any acts to be done at or around the ANTENNA FACILITY, LICENSED AREA or PROPERTY in violation of any law, regulation, permit or rule; and, (4) not use or allow the use of the ANTENNA FACILITY, LICENSED AREA or PROPERTY for any illegal or immoral purpose.

C. COMPANY shall install utility tape 12 inches below ground to mark cabling located outside the LICENSED AREA and identify the antenna with ownership markings.

D. Prior to any installation COMPANY shall submit plans and specifications to the CITY for approval of any proposed cable runs. In addition, the COMPANY must provide to CITY a set of as-builts after installation that shows the precise location of cable runs, as well as other details.

E. Should the COMPANY, in the CITY'S reasonable judgment, fail to maintain the ANTENNA FACILITY and PROPERTY to the above standards, then following COMPANY'S receipt of written notice of such failure (which receipt shall be deemed to be two (2) business days following the date of a notice sent to COMPANY in full accordance with the provisions of Section 15 of this AGREEMENT) and COMPANY'S continued failure to correct such maintenance of the ANTENNA FACILITY and the PROPERTY within thirty (30) days of such receipt, CITY may enter upon the PROPERTY and effectuate such acts as it deems necessary to comply with such standards. Any costs incurred by the CITY will be payable by the COMPANY within thirty (30) days of receipt of an itemized bill therefor.

F. CITY will maintain and repair the PROPERTY and Access thereto and all areas of the LICENSED AREA where COMPANY does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements.

## **SECTION 7.           TERMINATION.**

### **A.   Termination with Cause.**

Except as otherwise provided in this AGREEMENT, CITY or COMPANY shall have the right to terminate this AGREEMENT immediately (i) if the other party fails to cure a material breach of any term or condition hereof, within thirty (30) days after notice to the other party of such breach has been received (which receipt shall be deemed to be two (2) business days following the date of a notice sent to COMPANY in full accordance with the provisions of Section 15 of this AGREEMENT); or (ii) if said cure cannot be reasonably be completed within thirty (30) days, curative actions have not commenced within said thirty (30) days and thereafter diligently prosecuted to

completion; or (iii) if COMPANY's operation is reasonably deemed by CITY to endanger or pose a threat to the public health, safety or welfare, including, without limitation, and as an example, if operation of the ANTENNA FACILITY adversely interferes with, or otherwise adversely affects CITY communications or operations and such threat or danger cannot reasonably be cured in accordance with the provisions of Section 7.A.1.i and Section 7.A.1.ii above; (iv) if CITY is mandated by law, a court order or decision, or the federal, state or local government to take certain actions that will cause or require the removal of the ANTENNA FACILITY from the LICENSED AREA; or (v) upon 12 months' prior written notice if the removal of the ANTENNA FACILITY from the LICENSED AREA is needed to accommodate the construction, installation, operation, repair or maintenance of any improvement desired by CITY.

**B. Termination - General.**

1. This AGREEMENT may be terminated by COMPANY upon receipt of written notice by CITY (which receipt shall be deemed to be two (2) business days following the date of a notice sent to CITY in full accordance with the provisions of Section 15 of this AGREEMENT), if COMPANY is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the ANTENNA FACILITY as now or hereafter intended by COMPANY; or if COMPANY determines, in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable. Notwithstanding the foregoing, COMPANY will use commercially reasonable efforts to obtain the necessary government approvals, licenses or permits in a reasonable and timely manner;
2. This AGREEMENT may be terminated by COMPANY, upon receipt of written notice by CITY (which receipt shall be deemed to be two (2) business days following the date of a notice sent to CITY in full accordance with the provisions of Section 15 of this AGREEMENT), if COMPANY determines, in its sole discretion, due to the title report results or survey results, that the condition of the LICENSED AREA is unsatisfactory for COMPANY's intended uses;
3. This AGREEMENT may be terminated by COMPANY upon receipt of written notice by CITY (which receipt shall be deemed to be two (2) business days following the date of a notice sent to CITY in full accordance with the provisions of Section 15 of this AGREEMENT) for any reason or no reason, at any time prior to commencement of construction by COMPANY; or
4. This AGREEMENT may be terminated by COMPANY upon receipt by CITY (which receipt shall be deemed to be two (2) business days following the date of a notice sent to CITY in full accordance with the provisions of Section 15 of this AGREEMENT) of at least sixty (60) days' prior written notice from COMPANY for any reason or no reason.

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C. Removal of Facility Upon Termination.

COMPANY shall remove the ANTENNA FACILITY and repair and restore the affected areas of the LICENSED AREA and the PROPERTY prior to the expiration of this AGREEMENT. If this AGREEMENT is terminated by either party earlier than the expiration of the term, COMPANY shall promptly remove the ANTENNA FACILITY and repair and restore the affected areas of the LICENSED AREA and the PROPERTY to its condition at the commencement of this AGREEMENT, reasonable wear and tear and loss by casualty or other causes beyond COMPANY'S control excepted. Notwithstanding the foregoing, COMPANY will not be responsible for the replacement of any trees, shrubs or other vegetation or removal of underground utilities on or under the LICENSED AREA, except if damaged by COMPANY. COMPANY will remove footings, foundations, and concrete to a depth of up to one (1) foot below grade no later than one hundred twenty (120) days after notice of termination. Removal of the ANTENNA FACILITY shall be at COMPANY'S sole cost and expense, except as specifically provided otherwise in this AGREEMENT. Should the COMPANY, or its successor in interest or assign, in the CITY'S sole but reasonable judgment, fail to remove, repair or restore, CITY may enter upon the PROPERTY and effectuate such acts as it reasonably deems necessary to comply with such standards. Any costs incurred by the CITY will be payable by the COMPANY within thirty (30) days of receipt (which receipt shall be deemed to be two (2) business days following the date of a notice sent to COMPANY in full accordance with the provisions of Section 15 of this AGREEMENT) of an itemized bill therefor. The obligation of COMPANY to pay CITY for such costs shall survive termination of this AGREEMENT.

D. Prorated Use Charge Reimbursement.

In the event of the early termination of this AGREEMENT, CITY will reimburse COMPANY the unused portion of the USE CHARGE after proration and proper computation.

**SECTION 8. NO LIABILITY.**

A. Liability.

CITY, its agents, officers, employees or contractors, shall not be liable for any damage from any cause whatsoever to the ANTENNA FACILITY, specifically including, without limitation, damage, if any, resulting from CITY'S maintenance operations adjacent to the ANTENNA FACILITY or from vandalism or unauthorized use of the ANTENNA FACILITY, except to the extent such damage is caused by the negligence or willful misconduct of CITY, its agents, officers, employees or contractors.

B. Security.

COMPANY shall take reasonable precautions against damage to or unauthorized use of the ANTENNA FACILITY and LICENSED AREA. CITY shall not be liable for any

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vandalism or other damage that may occur to the ANTENNA FACILITY or in the LICENSED AREA or any unauthorized use of the ANTENNA FACILITY or LICENSED AREA except as provided in Section 8.A., above.

**SECTION 9. PLANS AND SPECIFICATIONS; PERMITS.**

A. CITY shall have the right of prior review and approval of all Plans and Specifications and shall have the right to inspect the ANTENNA FACILITY and LICENSED AREA at any time during and after installation to ensure compliance with such Plans and Specifications upon forty-eight (48) hours prior notice to COMPANY. COMPANY shall not commence installation or alteration of the ANTENNA FACILITY, or any portion thereof, until CITY has first approved the Plans and Specifications and COMPANY has obtained all applicable permits. Approval of Plans, Specifications and Permits shall not release COMPANY from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the Plans, Specifications and/or Permits. COMPANY shall be responsible for notifying CITY and all other relevant parties promptly upon discovery of such omissions and/or errors. CITY will not unreasonably withhold, condition or delay its approval of the Plans and Specifications. If the CITY has not approved such Plans and Specifications within thirty (30) days of receipt, such Plans and Specifications shall be deemed approved to the extent allowed by law. The Plans and Specifications for the original ANTENNA FACILITY, as provided to the City on December 2, 2011, are deemed approved.

B. COMPANY agrees to and shall perform any work in furtherance of the Plans, Specifications and Permits at COMPANY's sole expense and in accordance with and in a manner CITY is satisfied conforms to Plans, Specifications and Permits as may be approved by CITY in furtherance of this AGREEMENT. CITY will provide COMPANY an official notice, signed by the City Manager, if CITY is not satisfied that work completed by the COMPANY conforms to Plans, Specifications and Permits approved by the CITY.

C. COMPANY will submit four (4) sets of such Plans and Specifications to the CITY at the address set forth for Notices in Section 15 herein, which CITY shall use for description and acceptance of the ANTENNA FACILITY. COMPANY shall supply the CITY any additional information it may reasonably request before approving the Plans and Specifications in a format which is reasonably acceptable to the CITY.

D. COMPANY shall apply for and obtain all applicable permits as are required by CITY to perform the work described in this AGREEMENT and shall comply with all of the terms and conditions set forth in such permits, including, without limitation, allowing CITY personnel to inspect the installation of the ANTENNA FACILITY on the LICENSED AREA or PROPERTY. COMPANY shall arrange for, obtain and bear costs of all: permits (including without limitation any fees as required by any federal, state or local law, statute, ordinance, rule or regulation); plan check and inspection fees; licenses; environmental impact reports; site preparation; surface treatment and relocation of any facilities on the LICENSED AREA or PROPERTY, as necessary or

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required for health or safety in the construction or alteration of the LICENSED AREA, and as a result of COMPANY'S work on the LICENSED AREA or PROPERTY. As a condition of this AGREEMENT, COMPANY agrees to perform the covenants and conditions contained in any permit issued or to be issued to COMPANY by CITY'S Chief Engineer or his designees.

E. COMPANY shall not commence physical installation of the ANTENNA FACILITY before approval of Plans and Specifications pursuant to Subsection 9.A, and obtaining approval of all applicable permits pursuant to Subsection 9.D. Approval of Plans and Specifications by CITY Departments shall not release COMPANY from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in Plans and Specifications. COMPANY agrees to perform any work at COMPANY'S sole cost and at COMPANY'S sole expense and in accordance with and in a manner CITY is satisfied conforms to Plans and Specifications as may be approved by CITY in furtherance of this AGREEMENT.

#### **SECTION 10. INDEMNIFICATION.**

COMPANY shall protect, defend, indemnify, and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising from or related to any damage, injury or loss caused by, or resulting from, the installation, maintenance, operation or use of the ANTENNA FACILITY, the provision of SERVICES, or resulting in any way from COMPANY'S occupation or use of the PROPERTY or the LICENSED AREA, including, without limitation, that which is due, in whole or in part, to the willful misconduct or negligent acts (active or passive) or omissions by COMPANY, its officers, employees, consultants or agents. COMPANY'S obligation to indemnify and hold harmless excludes only such claim, loss or liability that is due to the negligence or willful misconduct of CITY and/or its officers, employees, consultants or agents. All of COMPANY'S obligations under this SECTION are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this AGREEMENT.

CITY shall protect, defend, indemnify and hold harmless COMPANY, its officers, employees and agents from and against any claim, loss or liability arising from or related to any damage, injury or loss caused by, or resulting from, CITY'S installation, maintenance, operation or use of the PROPERTY, the provision of CITY'S services, or resulting in any way from CITY'S occupation or use of the Property including without limitation, that which is due, in whole or in part, to the willful misconduct or negligent acts (active or passive) or omissions of CITY and/or its officers, employees, consultants or agents. CITY'S obligation to indemnify and hold harmless excludes only such claim, loss or liability that is due to the negligence or willful misconduct of COMPANY and/or its officers, employees, consultants or agents. All of CITY'S obligations under this SECTION are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this AGREEMENT.

**SECTION 11.            TAXES.**

A.     COMPANY shall pay before delinquency any and all taxes, assessments, licenses, fees and other public charges which may be levied, assessed or imposed upon any of COMPANY's interests herein, upon COMPANY's businesses, upon COMPANY for the privilege of conducting business, or upon any property of COMPANY at the PROPERTY. COMPANY is advised that this AGREEMENT may, but is not intended to, create a possessory interest in the LICENSED AREA, for which COMPANY may be subject to payment of possessory interest taxes therefore, for which CITY shall not be liable. Payment of any possessory interest tax shall not reduce in any way any charges or other fees required to be paid by COMPANY hereunder.

B.     COMPANY shall not permit or suffer any liens to be imposed upon the PROPERTY or any portion thereof, without promptly discharging the same, provided, however, that COMPANY may, if it so desires, contest the legality of same following prior written notice to CITY. In the event of a contest of a lien, COMPANY shall provide a bond in an amount and in a form reasonably acceptable to CITY immediately following request therefor by CITY.

**SECTION 12.            INSURANCE.**

A.     COMPANY, at COMPANY's own expense throughout the Term of this AGREEMENT, as extended, shall comply with the insurance requirements attached hereto as Exhibit F and incorporated by reference herein. The procuring of the policy or policies of insurance required by Exhibit F shall neither be construed to limit COMPANY's liability hereunder nor to fulfill the indemnification provisions and requirements of this AGREEMENT. Notwithstanding the policy or policies of insurance, COMPANY shall be obligated for the full and total amount of any damage, injury or loss caused by its negligence or willful misconduct arising out of this AGREEMENT or COMPANY's use of the PROPERTY or the LICENSED AREA.

B.     COMPANY shall deposit with CITY, on or before the EFFECTIVE DATE, certificates of insurance and the required endorsements in forms reasonably satisfactory to CITY, indicating compliance with the insurance provisions of this AGREEMENT. COMPANY shall keep the insurance in effect, and the certificates evidencing the insurance on deposit with CITY, during the Term of the AGREEMENT and as the same may be extended.

**SECTION 13.            FREQUENCY INTERFERENCE.**

A.     COMPANY will not cause, permit or allow the installation, operation, maintenance or use of the ANTENNA FACILITIES or any other equipment installed pursuant to this AGREEMENT to interfere with: (1) any CITY use of the PROPERTY except that the foregoing shall not hinder or restrict COMPANY'S normal use of the LICENSED AREA as contemplated by this AGREEMENT and provided in Section 1; (2), CITY equipment used at the PROPERTY except that the foregoing shall not hinder

or restrict COMPANY'S normal use of the LICENSED AREA as contemplated by this AGREEMENT and provided in Section 1; (3) CITY communications provided that the CITY communications operate and continue to operate within the applicable frequencies and in accordance with all applicable laws and regulations; and/or (4) or any pre-existing third party uses of the PROPERTY, including uses of communications equipment, which uses were authorized or planned by CITY prior to the execution of this AGREEMENT, provided that the third party communications users operate and continue to operate within the applicable frequencies and in accordance with all applicable laws and regulations. COMPANY shall immediately provide, in writing, to the CITY at the address set forth for notices in Section 15 herein, the frequencies utilized in the operation of the ANTENNA FACILITIES. COMPANY shall also provide the CITY, at the same address, with written notice of any intended changes in those frequencies, a description of those frequencies and the dates that those frequency changes are anticipated to occur, at least thirty (30) days prior to the date that those frequency changes are anticipated to occur. COMPANY shall not begin any work on the PROPERTY pursuant to this AGREEMENT until these frequencies have been approved in writing by CITY's Public Works Director or any other person that may be designated to make such approval by CITY's City Manager, which approval shall not be unreasonably withheld, conditioned or delayed.

B. Provided that the existing communications users (including the City) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations, COMPANY shall ensure that its use of the ANTENNA FACILITY does not interfere with any communication transmissions from the PROPERTY, including, if applicable and without limitation, the CITY's public safety transmissions, police and fire communications, CITY's internal or external communications, or communications by CITY's tenants or contractors.

C. If COMPANY's construction, installation, maintenance, operation, use or removal of the ANTENNA FACILITY violates this Section 13, COMPANY shall, within forty-eight (48) hours after receipt of written notice of such violation from CITY, eliminate such violation or interference. In the event any such violation or interference does not cease within the aforementioned cure period, COMPANY shall cease all operations which are suspected of causing such violation or interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected.

D. Notwithstanding anything contained to the contrary herein, CITY will not use, nor will CITY permit its employees, tenants, licensees, invitees, agents or independent contractors to use, any portion of the PROPERTY in any way which interferes with the ANTENNA FACILITY, the operations of COMPANY or the rights of COMPANY under this AGREEMENT. CITY will cause such interference to cease within forty-eight (48) hours after receipt of written notice of interference from COMPANY. In the event any such interference does not cease within the aforementioned cure period, CITY shall cease all operations which are suspected of causing interference (except for

intermittent testing to determine the cause of such interference) until the interference has been corrected.

E. COMPANY shall use its best efforts to operate its communications equipment in a manner that is consistent with all applicable frequencies assigned to it by the Federal Communications Commission ("FCC"), if any, and, in any event, shall at all times operate in compliance with all applicable FCC rules and regulations.

#### **SECTION 14.      EMERGENCY.**

A. Notwithstanding Section 13, COMPANY agrees that in the event that an "emergency situation" (as defined below) occurs, and there are frequency interferences between CITY's communication equipment and that of COMPANY, CITY shall have the right to immediately shut off any power to the LICENSED AREA, and any equipment of COMPANY's located on the PROPERTY. CITY shall provide COMPANY immediate oral notice of the interference and power shut down and shall restore power as soon as reasonably possible once the frequency interference problem creating the emergency situation has been corrected. For purposes of this Section, CITY shall provide oral notice to AT&T Mobility Network Triage Center at 800-638-2822, Option #9 of COMPANY at the telephone number provided by COMPANY to PROJECT MANAGER. Except to the extent caused by the gross negligence or intentional acts or omissions of CITY and/or its agents, employees, and/or contractors, if an emergency situation occurs, and there are frequency interferences between CITY'S communication equipment and that of COMPANY, and as a result CITY shuts off power to the LICENSED AREA and any equipment of COMPANY's located on the PROPERTY, COMPANY agrees not to hold CITY responsible or liable for and shall protect, defend, indemnify and hold CITY harmless pursuant to SECTION 10 for any damage, loss, claim or liability of any nature suffered as a result of the loss of the use of, or of the power outage to, the LICENSED AREA or communication facilities on the LICENSED AREA at PROPERTY, including without limitation losses arising out of the inability to use facilities on the LICENSED AREA, including without limitation the ANTENNA FACILITY, and/or the inability of third parties to receive SERVICES, including SERVICES, from facilities located on the LICENSED AREA. At the CITY'S discretion, COMPANY agrees to install a master power "cut-off" switch on their equipment for the purpose of assisting CITY in such an emergency.

B. Unless otherwise specifically provided in a notice of termination of this AGREEMENT, CITY's exercise of the right to shut off any power to the ANTENNA FACILITY pursuant to this SECTION is not intended to constitute a termination of this AGREEMENT by either party. COMPANY and CITY shall meet after the CITY determines that an emergency situation has ended to establish the time and manner in which power shall be restored to the ANTENNA FACILITY.

C. For the purposes of this section, CITY shall have the sole discretion to determine what constitutes an "emergency situation" pursuant to this Section. These

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situations shall be limited to situations in which public safety or public utility communications are interrupted.

**SECTION 15.      NOTICES.**

Except as otherwise specifically set forth and allowed under this AGREEMENT, all written notices, requests and demands herein required will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when property sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

To CITY:                      City Manager  
   City of Morgan Hill  
   17575 Peak Avenue  
   Morgan Hill, CA 95037

With a copy to:              Office of the City Attorney  
   City of Morgan Hill  
   17575 Peak Avenue  
   Morgan Hill, CA 95037

To COMPANY:                      New Cingular Wireless PCS, LLC  
   Attn: Network Real Estate Administration  
   Re: Cell Site #: CC0750  
   Cell Site Name: McKean Rd 2 (CA)  
   Fixed Asset #: 10151482  
   575 Morosgo Drive NE  
   Suite 13-F, West Tower  
   Atlanta, GA 30324

With a copy to AT&T Legal Department:

If sent via registered or certified mail to:

New Cingular Wireless PCS, LLC  
AT&T Legal Department – Network Operations  
Attn: Network Counsel  
Re: Cell Site #:CC0750;  
Cell Site Name: McKean Rd 2 (CA)  
Fixed Asset #: 10151482  
208 S. Akard Street  
Dallas, TX 75202-4206

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If sent via nationally recognized overnight courier to:

New Cingular Wireless PCS, LLC  
AT&T Legal Department – Network Operations  
Attn: Network Counsel  
Re: Cell Site #:CC0750  
Cell Site Name: McKean Rd 2 (CA)  
Fixed Asset #: 10151482  
208 S. Akard Street  
Dallas, TX 75202-4206

The copy sent to the AT&T Legal Department or to the Office of the City Attorney is an administrative step which alone does not constitute legal notice. Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

**SECTION 16.           RIGHT TO USE SUBORDINATE.**

The right to use the PROPERTY(excluding the LICENSED AREA) herein granted by CITY to COMPANY, and all rights and privileges hereunder, are and shall be subordinate to the rights of CITY and to other existing tenants to use and occupy, and to any occupancy by them of, the PROPERTY (excluding the LICENSED AREA.)

**SECTION 17.           ASSIGNMENT.**

COMPANY shall not voluntarily or by operation of law, assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of COMPANY's interest in this AGREEMENT or in the LICENSED AREA, without CITY's prior written consent, which will not be unreasonably withheld, delayed or conditioned; provided, however, COMPANY shall have the right to sublease or assign its rights under this AGREEMENT to any of its subsidiaries, affiliates or successor legal entities or to any entity acquiring substantially all of the assets of COMPANY.

**SECTION 18.           GOVERNING LAW.**

This AGREEMENT shall be construed by, and in accordance with, the laws of the State of California.

**SECTION 19.           NO INTEREST IN PROPERTY.**

Nothing herein shall be deemed to create a lease or easement of any property, or to grant any interest in the PROPERTY, other than a real property license to use the LICENSED AREA, terminable as set forth herein.

Market: San Francisco, Sacramento (South Bay) \_\_\_\_\_  
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**SECTION 20.           INSPECTION.**

The LICENSED AREA shall be at all times under control of the CITY, whose officials, employees and agents shall have the right to enter the LICENSED AREA, and all portions thereof on forty-eight (48) hours advance oral notice, for purposes of inspection (and other purposes contemplated by this AGREEMENT) at all times during the period covered by this AGREEMENT.

**SECTION 21.           UTILITIES.**

COMPANY shall be solely responsible for ensuring that the LICENSED AREA has adequate electrical power and any other utility service necessary or useful to operation of the ANTENNA FACILITY. CITY is not obligated to make electricity or other utilities available if there is an interruption in such service to the LICENSED AREA or to the PROPERTY. COMPANY shall not do, nor shall it permit anything to be done, which may interfere with the effectiveness or accessibility of the utility, heating, ventilation, diesel exhaust or air conditioning systems or portions thereof of the PROPERTY.

CITY grants to any company providing utility or similar services, including electric power and telecommunications, to COMPANY a license over the Property, from an open and improved public road to the LICENSED AREA, and upon the LICENSED AREA, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such companies may from time to time require in order to provide such services to the LICENSED AREA.

**SECTION 22.           NOT AGENT OF CITY.**

Neither anything in this AGREEMENT nor any acts of COMPANY shall authorize COMPANY or any of its employees, agents or contractors to act as agent, contractor, joint venture or employee of CITY for any purpose.

**SECTION 23.           RESERVATION OF RIGHTS.**

COMPANY understands, acknowledges and agrees that any and all authorizations granted to COMPANY under this AGREEMENT shall remain subject to all prior and continuing regulatory and proprietary rights and powers of CITY to regulate, govern and use CITY property, as well as any existing encumbrances, deeds, covenants, restrictions, easements, dedications and other claims of title that may affect CITY property. CITY and COMPANY agree that nothing contained in, or contemplated by, this AGREEMENT is intended to confer, convey, create or grant to COMPANY any perpetual interest in any CITY property or in any of CITY's public rights of way.

**SECTION 24. CONFLICT OF INTEREST.**

COMPANY shall avoid all conflict of interest or the appearance of conflict of interest in the performance of this AGREEMENT.

**SECTION 25. ENVIRONMENTAL**

A. CITY represents and warrants that to the best of its knowledge: (i) the PROPERTY, as of the date of this AGREEMENT, is free of hazardous substances, including asbestos-containing materials and lead paint, and (ii) the PROPERTY has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Except for emergency back-up power supplies and cleaning solvents commonly used in telecommunication operations, COMPANY represents and warrants that COMPANY shall not bring any hazardous substances, including asbestos-containing materials and lead paint, onto any portion of the PROPERTY. CITY and COMPANY agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the PROPERTY.

B. CITY and COMPANY agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("**Claims**"), to the extent arising from that party's breach of its obligations or representations under Section 25. CITY agrees to hold harmless and indemnify COMPANY from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of CITY for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the PROPERTY with hazardous substances prior to the EFFECTIVE DATE of this AGREEMENT or from such contamination caused by the acts or omissions of CITY during the term. COMPANY agrees to hold harmless and indemnify CITY from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of COMPANY for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto the PROPERTY by COMPANY.

C. The indemnifications of this Section 25 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of PROPERTY conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Section 25 will survive the expiration or termination of this AGREEMENT.

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D. In the event COMPANY becomes aware of any hazardous materials or substances on the PROPERTY, or any environmental, health or safety condition or matter relating to the PROPERTY, that, in COMPANY's sole determination, renders the condition of the LICENSED AREA or PROPERTY unsuitable for COMPANY's use, or if COMPANY believes that the licensing or continued licensing of the LICENSED AREA would expose COMPANY to undue risks of liability to a government agency or third party, COMPANY will have the right, in addition to any other rights it may have at law or in equity, to terminate this AGREEMENT upon written notice to CITY.

**SECTION 26. MISCELLANEOUS.**

A. Whenever the singular number is used in this AGREEMENT and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.

B. If there be more than one (1) entity designated in, or signatory to, this AGREEMENT, the obligations hereunder imposed upon COMPANY shall be joint and several; and the term COMPANY as used herein shall refer to each and every of said signatory parties, severally as well as jointly.

C. This instrument contains all of the agreements and conditions entered into and made by and between the parties and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in interest.

D. Time is, and shall be, of the essence for each term and provision of this AGREEMENT.

E. Each and every term, condition, covenant and provision of this AGREEMENT is and shall be deemed to be a material part of the consideration for CITY's entry into this AGREEMENT and any breach hereof by COMPANY shall be deemed to be a material breach. Each term and provision of this AGREEMENT performable by COMPANY shall be construed to be both a covenant and a condition.

F. The headings of the several paragraphs and sections of this AGREEMENT are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this AGREEMENT and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

G. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either CITY or COMPANY in its respective rights and

obligations contained in the valid covenants, conditions and provisions of this AGREEMENT.

H. All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this AGREEMENT as if set forth fully herein.

I. This AGREEMENT shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either party.

J. Days, unless otherwise specified, shall mean calendar days.

K. Whenever in this AGREEMENT the approval or consent of a party is required, such approval or consent must be in advance, shall be in writing, and shall be executed by a person having the express authority to grant such approval or consent unless the terms of this AGREEMENT specifically allow an oral approval or consent of a party.

L. This AGREEMENT may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

M. The parties each agree that all activities undertaken and services provided pursuant to this AGREEMENT by that party shall be undertaken and provided by or on behalf of that party only in a manner that fully comports with all applicable laws.

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Market: San Francisco, Sacramento (South Bay) \_\_\_\_\_  
Cell Site Number: CC0750  
Cell Site Name: McKean Rd 2  
Fixed Asset Number: 10151482 \_\_\_\_\_

**SECTION 27. MEMORANDUM/SHORT FORM LICENSE.**


Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum or Short Form of License in the form attached as Exhibit G (the "Memorandum"). Either party may record this Memorandum or Short Form License at any time during the term, in its absolute discretion; provided, however, that the recording party shall provide the other party to this AGREEMENT with a true, accurate and conformed copy of the recorded Memorandum within five (5) business days of its recordation. Thereafter during the term of this AGREEMENT, either party will, at any time upon thirty (30) business days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum or Short Form of License.

**IN WITNESS WHEREOF**, the parties have executed this AGREEMENT as of the EFFECTIVE DATE.


ATTEST:

  
\_\_\_\_\_  
City Clerk  
Date: 7/3/13

THE CITY OF MORGAN HILL

  
\_\_\_\_\_  
City Manager  
Date: 7/3/13

APPROVED:

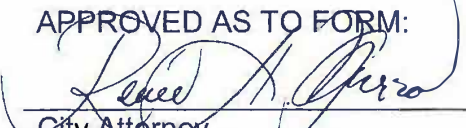
  
\_\_\_\_\_  
Risk Manager  
Date: 7.3.2013

"COMPANY"  
New Cingular Wireless PCS, LLC,  
a Delaware limited liability  
company

BY; AT&T Mobility Corporation  
Its: Manager

  
\_\_\_\_\_  
By: Michael Guibord  
Date: 7-2-13 Director  
Title: Construction & Engineering

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney  
Date: 7.3.2013

Market: San Francisco, Sacramento (South Bay) \_\_\_\_\_  
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## **EXHIBIT A**

### PROPERTY DESCRIPTION

Location: 2275 Rolling Hills Drive, Morgan Hill, CA

The Property is legally described as: (See next page attached hereto and incorporated herein.)

Market: San Francisco, Sacramento (South Bay) \_\_\_\_\_  
Cell Site Number: CC0750  
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Fixed Asset Number: 10151482 \_\_\_\_\_

### LEGAL DESCRIPTION

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

PARCEL 1:

BEGINNING AT THE EASTERLY TERMINUS OF THE LINE COMMON TO LOTS 101 AND 102, BEING A POINT IN THE CENTERLINE OF LLAGAS AVENUE AS SAID LOTS AND AVENUE ARE SHOWN ON THE MAP ENTITLED, "MORGAN HILL RANCH MAP NO. 3", AND RECORDED IN BOOK G OF MAPS, PAGES 20 AND 21, SANTA CLARA COUNTY RECORDS, THENCE ALONG SAID COMMON LOT LINE THE FOLLOWING COURSES AND DISTANCES: NORTH 73° 00' 00" WEST, 61.38 FEET; SOUTH 84° 32' 10" WEST, 859.53 FEET; NORTH 68° 57' 14" WEST, 1040.59 FEET; NORTH 59° 19' 11" WEST 534.04 FEET; NORTH 61° 14' 26" WEST, 347.00; TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE FROM SAID TRUE POINT OF BEGINNING, CONTINUING ALONG THE LAST MENTIONED LOT LINE, NORTH 61° 14' 26" WEST, 70.00 FEET; THENCE LEAVING SAID COMMON LOT LINE, NORTH 28° 45' 34" EAST, 60.00 FEET; THENCE SOUTH 61° 14' 26" EAST, 70.00 FEET; THENCE SOUTH 28° 45' 34" WEST, 60.00' TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT, FOR THE PURPOSE OF INGRESS AND EGRESS, AND THE INSTALLATION AND MAINTENANCE OF WATER PIPELINES AND APPURTENANCES THERETO, APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 HEREIN DESCRIBED, OVER THE FOLLOWING DESCRIBED PARCEL OF LAND:

BEGINNING AT THE EASTERLY TERMINUS OF THE LINE COMMON TO LOTS 101 AND 102, BEING A POINT IN THE CENTERLINE OF LLAGAS AVENUE AS SAID LOTS AND AVENUE ARE SHOWN ON THE MAP ENTITLED, "MORGAN HILL RANCH MAP NO. 3", AND RECORDED IN BOOK G OF MAPS PAGES 20 AND 21, SANTA CLARA COUNTY RECORDS, THENCE ALONG SAID COMMON LOT LINE THE FOLLOWING COURSES AND DISTANCES; NORTH 73° 00' 00" WEST, 61.38 FEET; SOUTH 84° 32' 10" WEST, 859.53 FEET; NORTH 68° 57' 14" WEST, 1040.59 FEET; NORTH 59° 19' 11" WEST, 534.04 FEET; NORTH 61° 14' 26" WEST, 60.00 FEET; TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE LEAVING SAID TRUE POINT OF BEGINNING, CONTINUING ALONG THE LAST MENTIONED LOT LINE NORTH 61° 14' 26" WEST, 368.55 FEET; THENCE LEAVING SAID COMMON LOT LINE ALONG THE FOLLOWING COURSES AND DISTANCES; NORTH 61° 14' 26" WEST, 95.00 FEET; NORTH 27° 16' 00" EAST, 55.00 FEET; NORTH 88° 46' 00" EAST, 166.50 FEET; SOUTH 47° 28' 11" EAST, 328.66 FEET; SOUTH 27° 16' 00" WEST 60.00 FEET; TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL OF LAND.

BEGINNING AT THE EASTERLY TERMINUS OF THE LINE COMMON TO LOTS 101 AND 102, BEING A POINT IN THE CENTERLINE OF LLAGAS AVENUE AS SAID LOTS AND AVENUE ARE SHOWN ON THE MAP ENTITLED, "MORGAN HILL RANCH MAP NO. 3" AND RECORDED IN BOOK G OF MAPS, PAGES 20 AND 21, SANTA CLARA COUNTY RECORDS; THENCE ALONG SAID COMMON LOT LINE THE FOLLOWING COURSES AND DISTANCES: NORTH 73° 00' 00" WEST, 61.38 FEET; SOUTH 84° 32' 10" WEST, 859.53 FEET; NORTH 68° 57' 14" WEST, 1040.59 FEET; NORTH 59° 19' 11" WEST 534.04 FEET; NORTH 61° 14' 26" WEST, 417 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL TO BE DESCRIBED; THENCE FROM SAID TRUE POINT OF BEGINNING NORTH 61° 14' 26" WEST, 50 FEET; THENCE NORTH 28° 45' 34" EAST, 30 FEET; THENCE SOUTH 61° 14' 26" EAST, 50 FEET; THENCE SOUTH 28° 45' 34" WEST, 30 FEET TO THE TRUE POINT OF BEGINNING.

APN: 764-02-011

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Cell Site Name: McKean Rd 2  
Fixed Asset Number: 10151482 \_\_\_\_\_

## **EXHIBIT B**

### DESCRIPTION OF THE SERVICES

Company shall provide services in connection with its federally licensed communications business including, but not limited to, two-way radio signal transmission and reception in its licensed frequencies disclosed to City per Section 13.A above, and in the manner permitted under its licensure by the Federal Communications Commission and the California Public Utilities Commission.

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## EXHIBIT C

### DESCRIPTION OF LICENSED AREA

The LICENSED AREA includes both the concrete pad/equipment cabinet area and the monopole antenna. This includes at least 12 antennas and at least 240 square feet of ground space as shown and described in detail on Exhibit C-1, attached hereto and incorporated herein by reference.



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## EXHIBIT D

### ANTENNA FACILITY

Telecommunications facilities including, without limitation, a new 50' tall monopole with 12 antennas, as shown on the attached Exhibit D-1, attached hereto and incorporated herein by reference.



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 Cell Site Name: McKean Rd 2  
 Fixed Asset Number: 10151482 \_\_\_\_\_

**EXHIBIT E**

1.2 RATE SCHEDULE

**CHARGES FOR ATTACHMENT OF TELECOMMUNICATION ANTENNAS/EQUIPMENT TO CITY OF MORGAN HILL OWNED PROPERTIES\***

\*

12 to 14 antennae <b>and/or</b> fenced area containing equipment or cabinet is less than 270 square feet	\$40,000 per annum
15 to 18 antennae <b>and/or</b> fenced area containing equipment or cabinet is 270 to 499 square feet	\$48,000 per annum
19 or more antennae <b>and/or</b> fenced area containing equipment or cabinet is 500+ square feet but not more than 24 antennas and 2000 square feet	\$56,000 per annum
Requests for facilities containing more than 24 antennae and/or foundation/surface area containing equipment in excess of 2000 square feet shall be reviewed and priced on a case-by-case basis	

•Licensees which choose to pay for 5 years upon the Use Charge Commencement shall be charged the above rates less a 20% discount without any applicable annual increases. Notwithstanding anything to the contrary contained herein, the Use Charge shall be prorated for any partial portion of the 5 years (if this payment option is elected by COMPANY) or any partial year or month occurring after the commencement of the Use Charge. Nothing contained in this Exhibit E shall require, or shall be construed to require, CITY to approve any additional antenna beyond the ANTENNA FACILITY.

## EXHIBIT F

### 1. INSURANCE.

COMPANY shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to PROPERTY, which may arise from, or in connection with, the performance of the work hereunder by COMPANY, its agents, representatives, employees or subcontractors.

#### A. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

Insurance Services Office form number GL 0002 covering commercial General Liability and Insurance Services Office form number GL 0404 covering Broad Form Commercial General Liability; or insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001), including, X, C, U.

1. Explosion, Collapse & Underground coverage.
2. Insurance Services Office form number CA 0001 (Ed. 12/90) covering Automobile Liability, code 1 "any auto" (including without limitation "hired autos" and "non-owned autos.")
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.
4. "All-risk" or "Causes of Loss – Special Form" property insurance covering all risks of loss to any improvements or betterments installed or constructed by COMPANY on the PROPERTY, including without limitation the ANTENNA FACILITY, which may be self-insurance provided by COMPANY or a parent entity of COMPANY for such property insurance.

#### B. Minimum Limits of Insurance.

COMPANY shall maintain limits of at least:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$100,000 per accident.

4. Property Insurance: Full replacement cost with no co-insurance penalty provision or COMPANY's self insurance program described in Section 1(A)(4) above.

C. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to, and approved by, the CITY. At the option of the CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officials, employees, agents and contractors; or COMPANY shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY.

The parties to this AGREEMENT acknowledge and agree that at some point in the future COMPANY may determine that it is in COMPANY's best interests to move to a self-insurance program for other insurance in addition to its currently self-insured property insurance listed in Sections 1(A)(4) and 1(B)(4) above.. COMPANY shall timely and fully coordinate with CITY if COMPANY opts to move to a self insurance program in the future and shall in that case allow CITY a reasonable opportunity and period of time: (1) to perform reasonable due diligence to confirm that the criteria set forth in Section D.1.e set forth below would be met; and (2) to review such program in advance of making any such change. CITY reserves the right to require COMPANY to maintain the scope of insurance set forth in this EXHIBIT F, rather than move to a self-insurance program if, in the CITY'S determination a proposed self insurance program would not adequately meet the criteria set forth in Section D.1.e herein below.

D. Other Insurance Provisions.

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverage(s)

a. The City of Morgan Hill, its officers, employees, agents and contractors are to be covered as additional insured(s) as respects: Liability arising out of activities performed by or on behalf of, COMPANY; products and completed operations of COMPANY; premises owned, leased or used by COMPANY; and automobiles owned, leased, hired or borrowed by COMPANY. Additional insured status shall: (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by COMPANY, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of CITY, its officers, employees, agents or contractors or

Market: San Francisco, Sacramento (South Bay) \_\_\_\_\_  
Cell Site Number: CC0750  
Cell Site Name: McKean Rd 2  
Fixed Asset Number: 10151482 \_\_\_\_\_

where such coverage is prohibited by law, or to claims arising out of the gross negligence of CITY, its employees, agents or independent contractors; (iii) not exceed COMPANY's indemnification obligation under this AGREEMENT, if any. The coverage shall contain no other special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

b. COMPANY's required insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of COMPANY's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by COMPANY shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

d. Coverage shall state that COMPANY's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. As provided for in Section C hereinabove, if COMPANY moves to a self-insurance program in the manner described in Section C hereinabove, and includes CITY as an additional insured, COMPANY shall: (i) maintain sufficient capital reserves as approved annually by Ernst & Young or any successor auditing firm; (ii) comply with applicable laws, including the timely filing of required government documents; (iii) ensure that COMPANY or any parent company providing such insurance maintains a net worth of at least \$500,000,000 throughout the term of this AGREEMENT; and (iv) use an independent third party administrator to manage all claims.

In the event that COMPANY elects, under and in the manner provided for in this EXHIBIT F, to self-insure its obligation to include CITY as an additional insured, the following provisions apply: CITY shall (i) promptly and no later than thirty (30) days after notice thereof provide COMPANY with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide COMPANY with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) not settle any such claim, demand, lawsuit, or the like without the prior written consent of COMPANY; and (iii) fully cooperate with COMPANY in the defense of the claim, demand, lawsuit, or the like.

Market: San Francisco, Sacramento (South Bay) \_\_\_\_\_  
Cell Site Number: CC0750  
Cell Site Name: McKean Rd 2  
Fixed Asset Number: 10151482 \_\_\_\_\_

2. All Coverage(s)

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY.

E. Acceptability of Insurers.

Insurance is to be placed with insurers rated at least A-VII by AM Best..

F. Verification of Coverage.

COMPANY shall furnish CITY with certificates of insurance and with endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

CITY OF MORGAN HILL  
Risk Manager  
17555 Peak Avenue  
Morgan Hill, California 95112-5509

G. Subcontractors.

COMPANY shall include all subcontractors as insured(s) under its policies or shall obtain separate certificates and endorsements for each subcontractor.

Market: San Francisco, Sacramento (South Bay) \_\_\_\_\_  
Cell Site Number: CC0750  
Cell Site Name: McKean Rd 2  
Fixed Asset Number: 10151482 \_\_\_\_\_

## EXHIBIT G

### **When Recorded Return to:**

New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
575 Morosgo Drive NE, 13F, West Tower  
Atlanta, GA 30324

APN: 764 02 011

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(Space Above This Line For Recorder's Use Only)

Cell Site #: CC0750

Cell Site Name: McKean Rd 2

Fixed Asset #: 10151582

State: California

County: Santa Clara

## MEMORANDUM OF LICENSE

This Memorandum of License is entered into, effective on the latest signature date below, by and between City of Morgan Hill, a municipal corporation, having a mailing address of 17575 Peak Avenue, Morgan Hill, CA 95037 (hereinafter referred to as "**City**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive NE, 13F, West Tower, Atlanta, GA 30324 (hereinafter referred to as "**Company**").

1. City and Company entered into a certain Installation and Property Use Agreement ("**Agreement**") on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing are set forth in the Agreement.
2. The initial term will be five (5) years ("**Initial Term**") commencing on the Effective Date, which is the last signature date on the signature page of the Agreement, with two (2) successive five (5) year options to renew.
3. The portion of the land being licensed to Company (the "**Licensed**") is described in **Exhibit 1** annexed hereto.
4. This Memorandum of License is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of License and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

Market: San Francisco, Sacramento (South Bay) \_\_\_\_\_  
Cell Site Number: CC0750  
Cell Site Name: McKean Rd 2  
Fixed Asset Number: 10151482 \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have executed this Memorandum of License as of the day and year written below.

**CITY:**

City of Morgan Hill,  
a municipal corporation

**COMPANY:**

New Cingular Wireless PCS, LLC,  
a Delaware limited liability company

By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_  
Print Name:  
Its: City Clerk  
Date:

By: \_\_\_\_\_  
Print Name:  
Its:  
Date:

**Prepared by:**  
**Busch Law Firm**  
**22525 SE 64<sup>th</sup> Place, Suite 288**  
**Issaquah, WA 98027**



Market: San Francisco, Sacramento (South Bay) \_\_\_\_\_  
Cell Site Number: CC0750  
Cell Site Name: McKean Rd 2  
Fixed Asset Number: 10151482 \_\_\_\_\_

**COMPANY ACKNOWLEDGEMENT**

STATE OF CALIFORNIA                    )  
  )  
COUNTY OF \_\_\_\_\_                )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Name \_\_\_\_\_  
(typed or printed)

(Seal)

Market: San Francisco, Sacramento (South Bay) \_\_\_\_\_  
Cell Site Number: CC0750  
Cell Site Name: McKean Rd 2  
Fixed Asset Number: 10151482 \_\_\_\_\_

EXHIBIT 1

**DESCRIPTION OF LICENSED AREA**

Page 1 of 3

to the Memorandum of License dated \_\_\_\_\_, 201\_\_, by and between City of Morgan Hill, a municipal corporation, as City, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Company.

The License Area is described and/or depicted as follows:

Property Legal Description: See next page attached hereto and incorporated herein by reference.

Market: San Francisco, Sacramento (South Bay) \_\_\_\_\_  
Cell Site Number: CC0750  
Cell Site Name: McKean Rd 2  
Fixed Asset Number: 10151482 \_\_\_\_\_

### LEGAL DESCRIPTION

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

PARCEL 1:

BEGINNING AT THE EASTERLY TERMINUS OF THE LINE COMMON TO LOTS 101 AND 102, BEING A POINT IN THE CENTERLINE OF LLAGAS AVENUE AS SAID LOTS AND AVENUE ARE SHOWN ON THE MAP ENTITLED, "MORGAN HILL RANCH MAP NO. 3", AND RECORDED IN BOOK G OF MAPS, PAGES 20 AND 21, SANTA CLARA COUNTY RECORDS, THENCE ALONG SAID COMMON LOT LINE THE FOLLOWING COURSES AND DISTANCES: NORTH 73° 00' 00" WEST, 61.38 FEET; SOUTH 84° 32' 10" WEST, 859.53 FEET; NORTH 68° 57' 14" WEST, 1040.59 FEET; NORTH 59° 19' 11" WEST 534.04 FEET; NORTH 61° 14' 26" WEST, 347.00; TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE FROM SAID TRUE POINT OF BEGINNING, CONTINUING ALONG THE LAST MENTIONED LOT LINE, NORTH 61° 14' 26" WEST, 70.00 FEET; THENCE LEAVING SAID COMMON LOT LINE, NORTH 28° 45' 34" EAST, 60.00 FEET; THENCE SOUTH 61° 14' 26" EAST, 70.00 FEET; THENCE SOUTH 28° 45' 34" WEST, 60.00' TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT, FOR THE PURPOSE OF INGRESS AND EGRESS, AND THE INSTALLATION AND MAINTENANCE OF WATER PIPELINES AND APPURTENANCES THERETO, APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 HEREIN DESCRIBED, OVER THE FOLLOWING DESCRIBED PARCEL OF LAND:

BEGINNING AT THE EASTERLY TERMINUS OF THE LINE COMMON TO LOTS 101 AND 102, BEING A POINT IN THE CENTERLINE OF LLAGAS AVENUE AS SAID LOTS AND AVENUE ARE SHOWN ON THE MAP ENTITLED, "MORGAN HILL RANCH MAP NO. 3", AND RECORDED IN BOOK G OF MAPS PAGES 20 AND 21, SANTA CLARA COUNTY RECORDS, THENCE ALONG SAID COMMON LOT LINE THE FOLLOWING COURSES AND DISTANCES; NORTH 73° 00' 00" WEST, 61.38 FEET; SOUTH 84° 32' 10" WEST, 859.53 FEET; NORTH 68° 57' 14" WEST, 1040.59 FEET; NORTH 59° 19' 11" WEST, 534.04 FEET; NORTH 61° 14' 26" WEST, 60.00 FEET; TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE LEAVING SAID TRUE POINT OF BEGINNING, CONTINUING ALONG THE LAST MENTIONED LOT LINE NORTH 61° 14' 26" WEST, 368.55 FEET; THENCE LEAVING SAID COMMON LOT LINE ALONG THE FOLLOWING COURSES AND DISTANCES; NORTH 61° 14' 26" WEST, 95.00 FEET; NORTH 27° 16' 00" EAST, 55.00 FEET; NORTH 88° 46' 00" EAST, 166.50 FEET; SOUTH 47° 28' 11" EAST, 328.66 FEET; SOUTH 27° 16' 00" WEST 60.00 FEET; TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL OF LAND.

BEGINNING AT THE EASTERLY TERMINUS OF THE LINE COMMON TO LOTS 101 AND 102, BEING A POINT IN THE CENTERLINE OF LLAGAS AVENUE AS SAID LOTS AND AVENUE ARE SHOWN ON THE MAP ENTITLED, "MORGAN HILL RANCH MAP NO. 3" AND RECORDED IN BOOK G OF MAPS, PAGES 20 AND 21, SANTA CLARA COUNTY RECORDS; THENCE ALONG SAID COMMON LOT LINE THE FOLLOWING COURSES AND DISTANCES: NORTH 73° 00' 00" WEST, 61.38 FEET; SOUTH 84° 32' 10" WEST, 859.53 FEET; NORTH 68° 57' 14" WEST, 1040.59 FEET; NORTH 59° 19' 11" WEST 534.04 FEET; NORTH 61° 14' 26" WEST, 417 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL TO BE DESCRIBED; THENCE FROM SAID TRUE POINT OF BEGINNING NORTH 61° 14' 26" WEST, 50 FEET; THENCE NORTH 28° 45' 34" EAST, 30 FEET; THENCE SOUTH 61° 14' 26" EAST, 50 FEET; THENCE SOUTH 28° 45' 34" WEST, 30 FEET TO THE TRUE POINT OF BEGINNING.

APN: 764-02-011







**ADDITIONAL REMARKS SCHEDULE**

<b>AGENCY</b> Marsh USA Inc.		<b>NAMED INSURED</b> New Cingular Wireless PCS, LLC One AT&T Plaza 208 South Akard, Room 2731 Dallas, TX 75202	
<b>POLICY NUMBER</b>		<b>EFFECTIVE DATE:</b>	
<b>CARRIER</b>	<b>NAIC CODE</b>		

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER: 25      FORM TITLE: Certificate of Liability Insurance**

Coverage evidenced applies to Subsidiaries of AT&T Inc., EXCLUDING Pacific Bell Telephone Company, Nevada Bell Telephone Company, Southwestern Bell Telephone Company, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., The Southern New England Telephone Company and BellSouth Telecommunications, LLC, WITH THE EXCEPTION OF Workers' Compensation.

## **IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### **NOTICE OF CANCELLATION TO CERTIFICATE HOLDERS**

This endorsement modifies the notice of cancellation of insurance provided hereunder by adding the following:

- A.** In the event this policy is cancelled for any permissible reason, other than for nonpayment of premium, we shall endeavor to provide advance written notice of cancellation to certificate holders set out in the schedule on file with the Company, after notifying the first Named Insured of such cancellation. Notice of cancellation to certificate holders may be made by any commercially reasonable means, including mail, electronic mail, facsimile transmission or courier service.
- B.** This advance written notification of a cancellation of coverage is intended as a courtesy only. Our failure to provide such advance written notification will not extend the policy cancellation date, nor negate cancellation of the policy.

All other terms and conditions of this policy remain unchanged.

## **IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### **NOTICE OF CANCELLATION TO CERTIFICATE HOLDERS**

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- A.** In the event this policy is cancelled for any permissible reason, other than for nonpayment of premium, we shall endeavor to provide advance written notice of cancellation to certificate holders set out in the schedule on file with the Company, after notifying the first Named Insured of such cancellation. Notice of cancellation to certificate holders may be made by any commercially reasonable means, including mail, electronic mail, facsimile transmission or courier service.
- B.** This advance written notification of a cancellation of coverage is intended as a courtesy only. Our failure to provide such advance written notification will not extend the policy cancellation date, nor negate cancellation of the policy.

All other terms and conditions of this policy remain unchanged.

## **IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY**

### **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY**

#### **NOTICE OF CANCELATION TO CERTIFICATE HOLDERS**

This endorsement modifies the notice of cancellation of insurance provided hereunder by adding the following:

- A.** In the event this policy is canceled for any permissible reason, other than for nonpayment of premium, we shall endeavor to provide advance written notice of cancellation to certificate holders set out in the schedule on file with the Company, after notifying the Insured first named in item 1 of the Information Page of such cancellation. Notice of cancellation to certificate holders may be made by any commercially reasonable means, including mail, electronic mail, facsimile transmission or courier service.
- B.** This advance written notification of a cancellation of coverage is intended as a courtesy only. Our failure to provide such advance written notification will not extend the policy cancellation date, nor negate cancellation of the policy.

All other terms and conditions of this policy remain unchanged.

**IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED WHERE REQUIRED  
UNDER CONTRACT OR AGREEMENT**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

Paragraph 2. of **SECTION II - WHO IS AN INSURED** is amended to include any person or organization for whom you have agreed under contract or agreement to provide insurance. However, the insurance provided shall not exceed the scope of coverage or limits of this policy. Notwithstanding the foregoing sentence, in no event shall the insurance provided exceed the scope of coverage or limits required by said contract or agreement.

Where required by contract, we will consider our policy to be primary under any other insurance maintained by the additional insured for injury or damage covered by this endorsement and that their policy will be noncontributing with this insurance.

CA 739 003 0609

MWTB 21932 AT&T Inc. 06/01/2013 - 06/01/2014

**IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**INSURANCE PRIMARY AS TO CERTAIN ADDITIONAL INSURED**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

**SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance, c. is amended by the addition of the following sentence:**

The insurance afforded under this policy to an additional insured will apply as primary insurance for such additional insured where so required under an agreement executed prior to the date of accident. We will not ask any insurer that has issued other insurance to such additional insured to contribute to the settlement of "loss" arising out of such accident. In no event shall the insurance provided exceed the scope of coverage or limits required by said contract or agreement.

All other terms and conditions remain unchanged.

**IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED AMENDMENT - PRIMARY AND NON-CONTRIBUTORY**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

As respects any person(s) or organization(s) included as an additional insured and with whom you have agreed in a written contract, agreement or permit to provide primary insurance on a non-contributory basis, this insurance will be primary to and non-contributing with any other insurance available to such person(s) or organization(s). In no event shall the insurance provided exceed the scope of coverage or limits required by said contract or agreement.

GL 739 042 0612

**MWZY 60244 AT&T Inc. 06/01/2013 - 06/01/2014**

**IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED WHERE REQUIRED  
UNDER CONTRACT OR AGREEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Paragraph 2. of **SECTION II - WHO IS AN INSURED** is amended to include any person or organization for whom you have agreed under contract or agreement to provide insurance. However, the insurance provided shall not exceed the scope of coverage or limits of this policy. Notwithstanding the foregoing sentence, in no event shall the insurance provided exceed the scope of coverage or limits required by said contract or agreement.

Where required by contract, we will consider our policy to be primary under any other insurance maintained by the additional insured for injury or damage covered by this endorsement and that their policy will be noncontributing with this insurance.

GL 739 006a 0609

MWZY 60244 AT&T inc 06/01/2013 - 06/01/2014

## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: June 17, 2026**

PREPARED BY:

Cynthia Iwanaga, Management Analyst

APPROVED BY: City Manager

## **AWARD ON-CALL PLUMBING MAINTENANCE SERVICE AGREEMENTS**

### **RECOMMENDATION(S)**

1. Award maintenance service agreements to Burr Plumbing and Pumping, Inc. and Stephen Ciari Plumbing & Heating, Inc. in the not-to-exceed amount of \$100,000 each to provide on-call plumbing maintenance and repair services; and
2. Authorize the City Manager to execute and administer said agreements.

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

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

Maintaining and Enhancing Infrastructure

#### **Strategic Priorities 2026-2027**

Fiscal Sustainability

### **REPORT NARRATIVE:**

The purpose of this report is to provide the City Council with an opportunity to award agreements to two plumbing contractors for on-call plumbing services in the not-to-exceed amount of \$100,000 each during the initial two-year term and to authorize the City Manager to execute and administer the agreements.

The City has contracted for plumbing 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. All contractors are required to be licensed plumbing C-36 contractors by the California Contractors State Licensing Board (CSLB).

The City's current on-call plumbing agreements expire on June 30, 2026. The new agreements are proposed with an initial two-year term with authorization for the City Manager to execute three (3) consecutive one-year extensions, and the ability to increase the not-to-exceed amount to allow for annual price increases up to 5% of the prior year's pricing. The initial two-year term would be from July 1, 2026 to June 30, 2028.

A Request for Proposals (RFP) for on-call plumbing maintenance and repair services was released on March 30, 2026. In soliciting for proposals, the City advertised in the Morgan Hill Times on March 27, 2026. Bids were posted on the City website, Public Purchase online plan room service, and at four builders exchanges, including the Builders Exchange of Santa Clara County, San Francisco Builders Exchange, Bay Area Builders Exchange, and Central Coast Builders Association. Lastly, the RFP was posted on the Dodge and Data Analytics and the Bid Net websites, whose subscribers include contractors as well as national builders' exchanges. Contractors registered on the City's informal bidders' list with the required CSLB license C-36 (plumbing contractor) were also notified of the RFP opportunity via email. A non-mandatory pre-proposal virtual meeting was held on April 16, 2026.

Four proposals were received by the April 28, 2026 due date. A team of evaluators from the Public Services Department Maintenance Division independently evaluated and scored the proposals based on the contractors' narrative, which included qualifications, experience and references. The proposals were evaluated using a "Best Value" methodology in which contractors meeting the minimum threshold score of 30 out of 40 points in their Qualifications, Experience, and References narrative were then scored based upon their cost proposals. Of the four proposals submitted, three (3) scored the minimum 30 points to advance to the scoring of cost proposal pricing. Up to 60 points were available for cost proposals. A complete scoring summary is attached to this report (Attachment 1).

The recommended contractors were selected based on the total points scored by the three proposals that received 30 or more points for their qualifications and the corresponding points for their on-call plumbing maintenance services cost proposals. Based upon the scoring criteria, Burr Plumbing and Pumping, Inc. scored the highest with 89.7 points and Stephen Ciari Plumbing & Heating, Inc. scored the second highest with 82.1 points. Below is a scoring summary of the three proposals:

<b>Contractor</b>	<b>Total Points</b>
Burr Plumbing and Pumping, Inc.	89.7
Stephen Ciari Plumbing & Heating, Inc.	82.1
Silicon Valley Mechanical, Inc.	78.6

Burr Plumbing and Pumping, Inc. has been in business for over 25 years and has provided on-call plumbing services to the City of Morgan Hill since 2015. They have also provided plumbing services to other local jurisdictions including the County of Santa Clara, City of San Jose, City of Cupertino, and Valley Transportation Authority (VTA).

Stephen Ciari Plumbing & Heating, Inc. has been in business since 1972. In 2022, they completed a boiler replacement project at the Community and Cultural Center (CCC) and in 2023, they completed a second project at the CCC to replace a heat exchanger. They have also provided plumbing services to other local jurisdictions, including the City of San Jose, County of Santa Clara Facilities & Fleet, and San Jose Unified School District.

Staff recommends entering into agreements with Burr Plumbing and Pumping, Inc. and Stephen Ciari Plumbing & Heating, Inc. to provide on-call plumbing services to City facilities in the amount of \$100,000 each in the initial two-year term (Attachments 2 & 3). The scope of work will include maintenance and repairs to be performed on an as-needed basis and pre-approved by City maintenance staff. Staff believes having an agreement with more than one plumbing contractor is necessary to ensure adequate coverage for on-call plumbing services and recommends awarding agreements to both firms.

The RFP document can be viewed via this link: [Plumbing RFP](#)

#### **COMMUNITY ENGAGEMENT:**

Inform

As on-call plumbing maintenance and repair is a routine and standard service provided at City facilities, no community engagement was completed for these agreements. Staff will post signage informing the public of any plumbing maintenance repairs that affect the use of City facilities. If the plumbing repairs will occur over several days, a general notice will be posted on the City website and via social media channels informing residents of any disruptions to services at City facilities.

#### **ALTERNATIVE ACTIONS:**

An alternative action would be to approve an agreement with only one firm. Doing so would limit the City's options when repairs are needed and may result in a decrease in public services.

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

Although the City Council has not previously taken action on these two agreements, the City Council has previously awarded on-call plumbing maintenance service agreements on November 11, 2015 and June 26, 2019.

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

If approved the total funding authorization for each agreement would be \$100,000 in the initial two-year term. The total not-to-exceed amount in each agreement has been set at \$100,000 to ensure the contract maximum amount does not restrict the City's capability to obtain needed repairs in a timely manner, and to limit service disruptions and public safety concerns. The City Manager would have authority to extend the agreements and increase the maximum compensation for three one-year terms, at a level that would allow for cost increases of up to 5% above the immediate prior year's pricing. The plumbing maintenance and repair costs are included in the building maintenance

budgets for City facilities and parks.

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

**Categorical Exemption**

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

City of Morgan Hill: 2026 On-Call Plumbing Maintenance RFP Scoring Matrix

						NARRATIVE SCORING						
						1	2	3	4			
NARRATIVE						Points Available	Burr Plumbing and Pumping	Century Commercial Service*	Ciari Plumbing & Heating	Silicon Valley Mechanical		
Previous Experience providing a superior level of on-call plumbing services at like-sized facilities w/similar scopes of work						15.0	14.3	10.0	10.3	10.7		
Assessment of Work Quality, Performance and Working Relationships with Clients that indicate high levels of satisfaction and effectiveness						10.0	9.3	7.0	7.7	8.7		
Qualifications of Staff to be assigned to provide on-call plumbing services						5.0	4.3	2.7	4.0	3.0		
Organized Communication Systems and reporting capabilities that demonstrate efficiency and effectiveness						10.0	8.7	5.7	8.7	8.7		
<b>SUBTOTAL- NARRATIVE POINTS</b>						<b>40.0</b>	<b>36.7</b>	<b>25.3</b>	<b>30.7</b>	<b>31.0</b>		

\*Century Commercial did not score minimum 30 pts

COST PROPOSAL						COST PROPOSAL SCORING						
						1	2	3	4			
Item	Price from Lowest Bidder	Burr Plumbing and Pumping	Century Commercial Service*	Ciari Plumbing & Heating	Silicon Valley Mechanical	Points Available	Burr Plumbing and Pumping	Century Commercial Service*	Ciari Plumbing & Heating	Silicon Valley Mechanical		
Laborer Shop Rate	104.98	150.00		104.98	120.00	15.0	10.5		15.0	13.1		
Apprentice Shop Rate	95.00	95.00		140.48	155.00	15.0	15.0		10.1	9.2		
Journeyman Shop Rate	173.47	200.00		173.47	190.00	15.0	13.0		15.0	13.7		
Laborer Overtime Rate	157.47	170.00		157.47	180.00	2.5	2.3		2.5	2.2		
Apprentice Overtime Rate	105.00	105.00		210.72	232.50	2.5	2.5		1.2	1.1		
Journeyman Overtime Rate	250.00	250.00		260.21	285.00	2.5	2.5		2.4	2.2		
Laborer Rate -Sat, Sun, Hol	180.00	190.00		209.96	180.00	2.5	2.4		2.1	2.5		
Apprentice Rate - Sat, Sun, Hol	105.00	105.00		280.96	232.50	2.5	2.5		0.9	1.1		
Journeyman Rate- Sat, Sun, Hol	285.00	300.00		346.94	285.00	2.5	2.4		2.1	2.5		
<b>SUBTOTAL-PRICING POINTS</b>						<b>60.0</b>	<b>53.1</b>	<b>-</b>	<b>51.4</b>	<b>47.6</b>		

<b>GRAND TOTAL</b>						<b>100.0</b>	<b>89.7</b>		<b>82.1</b>	<b>78.6</b>		
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Line Item point score is lowest bidder's rate divided by each Contractor's rate times the number of points available for that line item. For example, Burr Plumbing's Labor Shop Rate points = 104.38/150.00 X 15 points = 10.5 points

1 2 3

**MAINTENANCE SERVICE AGREEMENT**  
**Burr Plumbing and Pumping, Inc.**

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2028 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 plumbing 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](mailto:riskmgmt@morganhill.ca.gov) or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

10. **Compliance with Law.**

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

10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite.

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.

- 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 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).

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:

Burr Plumbing & Pumping, Inc.  
1645 Almaden Road  
San Jose, CA 95125

Address of CITY is as follows:

Keri Russell, Maint. Mgrn.	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. **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.

26. **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.

27. **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.

28. **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.

29. **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.

30. **Counterpart Signatures.** This Agreement may be signed in multiple counterparts, which shall, when executed by all the parties, constitute a single binding agreement.

Signatures on the following page.

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

\_\_\_\_\_  
City Clerk/Deputy City Clerk

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

Michelle Bigelow  
Print Name

Christina J. Turner  
Print Name

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

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

APPROVED AS TO FORM:

BURR PLUMBING & PUMPING, INC.

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

By: 

By: Elisa Tolentino  
Print Name

Erik Burr / President  
Print Name and Title of Signer.  
If Corporate: Chairman, President or Vice President

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

Date: 5-22-26

By: 

Kevin Burr - VP  
Print Name and Title of Signer.  
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 5/22/26

730349  
Contractor's License Number(s) (if applicable)

100016323  
Contractor's DIR Registration Number(s) (if applicable)

Expiration Date(s) 12/31/2026

Expiration Date(s) 06/30/2028

## **EXHIBIT A SCOPE OF SERVICES**

**Service Provider will provide full-service, on-call plumbing maintenance and repair services and administer the duties and responsibilities in compliance with all applicable laws, regulations, policies and procedures.**

**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 plumbing maintenance and repair work at various City facilities (see Attachment A -Municipal Facility Locations).**

**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, piping, and testing plumbing service and plumbing systems and components. Systems include, but are not limited to domestic water, heating, cooling, hot water systems, conditioned water systems, pool water systems, sanitary sewer and storm systems as well as all related components required for municipal buildings and facilities. Services will include, but not be limited to installing and repairing piping, fixtures and maintenance for commodes, urinals, drinking fountains, pools, water spray features, heating and air conditioning systems as well as additional plumbing related issues as they arise and the services necessary to insure safe, well maintained influent, effluent and closed loop systems for City employees and the public. The scope and number of projects and tasks are unknown at the time of contract execution.**

**The Service Provider shall leave work areas free of all dirt, litter, lubricants, or other materials utilized to perform plumbing maintenance.**

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

**The Service Provider 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 Service Provider shall be within four (4) hours of all requests.**

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

**2-1 SCOPE OF SERVICE The Service Provider shall provide full-service on-call plumbing maintenance and repair services to City Facilities as outlined in this agreement. Service Provider shall retain professional personnel who have successfully and competently provided municipal facility plumbing maintenance and repair services on projects of similar scope and complexity. It shall be the Service Provider's responsibility to effectively repair and maintain, to the satisfaction of the City representative, all aspects of plumbing 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 Service Provider's plumbing 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 Service Provider's responsibility to provide an appropriate level of staffing and provide appropriate tools and vehicles necessary to support all facility plumbing maintenance and repair functions during hours of operation and for response after normal working hours. Service Provider 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, 2026 through June 30, 2028. The City, at its option, may renew this agreement for up to three (3), one-year periods, beginning on July 1, 2028. This option will be exercised only if the Service Provider has demonstrated superior performance in provision of On-Call Plumbing Maintenance and Repair Services to the City.

Rates in the Cost Proposal apply to the period of July 1, 2026 to June 30, 2028. Attached as Exhibit B - Schedule of Compensation.

**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 11:30 a.m. to 6:30 p.m. (summer season only).
- 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.
- Council Chamber 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.
- El Toro Youth Center is open Monday-Friday 2:00 p.m. – 6:00 p.m.
- The Friendly Inn is open Monday-Saturday 8:00 a.m. to 10:00 p.m.
- The Outdoor Sports Complex – coordinate hours with Maintenance Manager, Keri Russell or other designated City representative
- 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.
- El Toro Fire Station is open Monday-Friday 8:00 a.m. – 5:30 p.m.
- Dunne Hill Fire Station is open Monday-Friday 8:00 a.m. – 5:30 p.m.
- Butterfield Fire Station is open Monday-Friday 8:00 a.m. – 5:30 p.m.

**2-5 SERVICE AVAILABILITY** The Service Provider shall have trouble-call service available on a twenty-four (24) hours a day, seven (7) days a week basis with a response time not to exceed the following:

**EMERGENCIES..... two (2) hour response time**  
**NON-EMERGENCIES..... four (4) hour response time**

Time to respond shall start when the City calls the problem into Service Provider's designated emergency phone number. Additionally, the Service Provider 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.

**2-6 TROUBLE-CALL/REPAIR SERVICE** Should the City request the Service Provider to make unscheduled, emergency plumbing system repairs, the City shall be responsible for labor and travel costs associated therewith. These costs are listed in the attached Exhibit B. Rates shall be firm for the term of the agreement. The City reserves the right to contract with others for trouble calls and repairs.

**2-7 BILLABLE WORK** The Service Provider 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 Service Provider shall provide a staffing level to perform on-call plumbing 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 plumbing maintenance at all times. The Service Provider shall possess and maintain a C-36 Plumbing license by the State of California Contractors Licensing Board (CSLB) through the term of the agreement. All personnel performing work under this agreement shall possess and maintain a state journeyman certification and be directly employed and supervised by the Service Provider. Any assigned apprentice or laborer shall work directly under the supervision of a qualified journeyman. The Service Provider shall provide management and technical supervision through competent supervisors as required. The Service Provider 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 Attachment A below).

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

**2-11 PARTS AND MATERIALS** The Service Provider shall furnish all parts and materials necessary for properly maintaining and repairing plumbing systems in City buildings. Mark-up on parts and materials may not exceed 10% of Service Provider'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 plumbing systems to ensure compliance with the agreement's 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 Service Provider 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 Service Provider's payment.

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

**2-14 SAFETY & SECURITY** The Service Provider and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way. These laws include the Occupational Safety and Health Act of 1970 and rules and regulations issued pursuant thereto, and City's safety regulations as amended from time to time. Service Provider shall be fully responsible for the safety of its and its Subcontractors' employees, agents and

**2-15 FINGERPRINTING (Live Scan State of California Criminal Records Check):**  
All Service Provider's 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 must be completed at an authorized Live Scan State of California Criminal Records Check location. Available Live Scan locations can be found on the California DOJ website at:

<https://oag.ca.gov/fingerprints/locations>

The DOJ fee is \$32.00 and the FBI fee is \$17.00, payable at the time of the appointment. Please note additional rolling or service fees may be charged by the Live Scan provider. The City will provide the required Live Scan form. The Service Provider 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).

**ATTACHMENT A  
MUNICIPAL FACILITY LOCATIONS**

<b>BUILDING/FACILITY</b>	<b>ADDRESS</b>	<b>SQUARE FOOTAGE</b>
<b>Aquatics Center</b>	<b>16200 Condit Road</b>	<b>5,294</b>
<b>Centennial Recreation Center</b>	<b>171 West Edmundson Ave</b>	<b>57,759</b>
<b>City Hall</b>	<b>17575 Peak Ave</b>	<b>13,900</b>
<b>The Villas</b>	<b>535 Alkire Avenue</b>	<b>4,500</b>
<b>Community and Cultural Center, and Community Playhouse</b>	<b>17000 and 17090 Monterey Road</b>	<b>20,500; 5,000</b>
<b>Community Garden</b>	<b>15690 Railroad Avenue</b>	
<b>Council Chamber Building</b>	<b>17555 Peak Avenue</b>	<b>12,104</b>
<b>Outdoor Sports Center</b>	<b>16500 Condit Road</b>	<b>2,800</b>
<b>Police Department</b>	<b>16200 Vineyard Boulevard</b>	<b>43,286</b>
<b>Public Works Corporation Yard</b>	<b>100 Edes Court</b>	<b>4,583</b>
<b>Butterfield Fire Station</b>	<b>17285 Butterfield Blvd.</b>	<b>4,500</b>
<b>Dunne Hill Fire Station</b>	<b>2100 East Dunne Avenue</b>	
<b>El Toro Fire Station</b>	<b>18300 Old Monterey Road</b>	
<b>All other parks and City-owned properties</b>		

**EXHIBIT B  
SCHEDULE OF COMPENSATION RATES**

**The total amount of this agreement is \$100,000 (\$50,000 per year) for the initial two-year term from July 1, 2026 to June 30, 2028.**

**\*\*\*Please see attached rate sheet which includes hourly rates.**

**EXHIBIT B  
SCHEDULE OF COMPENSATION RATES**

7/1/2026-6/30/2028

COMPANY NAME: BURR PLUMBING & PUMPING, INC.

~~XXXXXXXXXX~~  
Attachment A

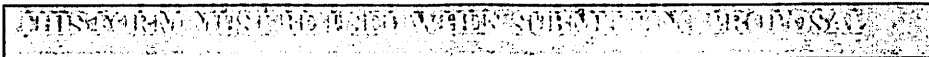
**COST PROPOSAL SCHEDULE**

**ON-CALL PLUMBING MAINTENANCE SERVICE FEES  
INCLUDING TRAVEL TIME**

60 points possible

Bid Item	Description of Bid Item	Hourly Rate	Comments
1	Laborer Shop Rate for Plumbing Maintenance Services- (Monday-Friday 8:00 a.m. to 5:00 p.m.)	\$ 150.00	
2	Apprentice Shop Rate for Plumbing Maintenance Services - (Monday-Friday 8:00 a.m. to 5:00 p.m.)	\$ 95.00	period 1-4
3	Journeyman Shop Rate for Plumbing Maintenance Services - (Monday-Friday 8:00 a.m. to 5:00 p.m.)	\$ 200.00	
4	Laborer Overtime Rate for Plumbing Maintenance Services- (Monday-Friday 5:00 p.m. to 8:00 a.m.)	\$ 170.00	
5	Apprentice Overtime Rate for Plumbing Maintenance Services- (Monday-Friday 5:00 p.m. to 8:00 a.m.)	\$ 105.00	period 1-4
6	Journeyman Overtime Rate for Plumbing Maintenance Services- (Monday-Friday 5:00 p.m. to 8:00 a.m.)	\$ 250.00	
7	Laborer Rate for Saturday, Sunday & Holidays	\$ 190.00	
8	Apprentice Rate for Saturday, Sunday & Holidays	\$ 105.00	period 1-4
9	Journeyman Rate for Saturday, Sunday & Holidays	\$ 300.00	

Note: Quantities cannot be pre-determined, but shall be on an "as needed" basis. Mark-up on permits, 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.



**EXHIBIT C  
SCHEDULE OF PERFORMANCE**

**Work is to be schedule with City of Morgan Hill Maintenance Manager or other designated City staff.**

**MAINTENANCE SERVICE AGREEMENT**  
**Stephen Ciari Plumbing & Heating, Inc.**

**THIS AGREEMENT** is entered into and becomes effective on \_\_\_\_\_ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Stephen Ciari Plumbing & Heating, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2028 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 plumbing 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. **Because** the performance of SERVICE PROVIDER'S work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, SERVICE PROVIDER shall procure and maintain Pollution Liability covering the SERVICE PROVIDER'S liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.5. Professional Liability.
- 8.1.5.1. If the performance of SERVICE PROVIDER'S work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), SERVICE PROVIDER shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if SERVICE PROVIDER maintains a claims-made policy, SERVICE PROVIDER shall provide written evidence of such insurance to CITY for at least five (5) years after the completion of work performed under this Agreement.
- 8.1.5.2. If the performance of SERVICE PROVIDER'S work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers, hardware engineers, or other systems consultants), SERVICE PROVIDER shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 8.1.6. Sexual Abuse/Molestation Liability (SML): If the performance of SERVICE PROVIDER'S work or service under this Agreement involves contact with minors, SERVICE PROVIDER shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) two hundred thousand dollars (\$200,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.2. Endorsements. SERVICE PROVIDER shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:
- 8.2.1. General Liability and pollution liability (when pollution liability applies).
- 8.2.1.1. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds on a form at least as broad as ISO Form CG 20 10 for ongoing operations.
- 8.2.1.2. "Waiver of Rights of Subrogation" - The insurer waives the right of subrogation against the City of Morgan Hill and CITY'S elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and
- 8.2.1.3. "Primary and Non-Contributing" - Insurance shall be endorsed to be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 01.
- 8.2.2. Workers Compensation.
- If the performance of SERVICE PROVIDER'S work or service under this Agreement involves access to or activity on any property or premises owned or occupied by the CITY, including, but not limited to, SERVICE PROVIDER'S presence during site visits and meetings, then insurer waives the right of subrogation against the City of Morgan Hill and the CITY'S elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.
- 8.3. Qualification of Insurers. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.
- 8.4. Certificates. SERVICE PROVIDER shall furnish CITY with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, SERVICE PROVIDER shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to SERVICE PROVIDER'S agreement with CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. A "material change" is a change that results in non-compliance with any insurance requirements in this section 8. Certificates, including renewal certificates, may be mailed electronically to [riskmgmt@morganhill.ca.gov](mailto:riskmgmt@morganhill.ca.gov) or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

10. **Compliance with Law.**

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

10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite.

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.

- 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 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).

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:

Stephen Ciari Plumbing & Heating, Inc.  
1054 Elm Street  
San Jose, CA 95126

Address of CITY is as follows:

Keri Russell, Maint. Mgrn.	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. **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.

26. **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.

27. **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.

28. **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.

29. **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.

30. **Counterpart Signatures.** This Agreement may be signed in multiple counterparts, which shall, when executed by all the parties, constitute a single binding agreement.

Signatures on the following page.

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

\_\_\_\_\_  
City Clerk/Deputy City Clerk

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

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

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

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

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


APPROVED AS TO FORM:

STEPHEN CIARI PLUMBING & HEATING INC.

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

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

\_\_\_\_\_  
By: Elisa Tolentino  
Print Name

\_\_\_\_\_  
  
Jacob Ciari - V Pres  
Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

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

Date: \_\_\_\_\_  
 5/28/26

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

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

\_\_\_\_\_  
Stephen Ciari - Pres  
Print Name and Title of Signer.

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

Date: \_\_\_\_\_  
5/28/26

\_\_\_\_\_  
828351  
Contractor's License Number(s) (if applicable)

\_\_\_\_\_  
100003021  
Contractor's DIR Registration Number(s) (if applicable)

\_\_\_\_\_  
Expiration Date(s) 12/31/2027

\_\_\_\_\_  
Expiration Date(s) 06/30/2028

## **EXHIBIT A SCOPE OF SERVICES**

**Service Provider will provide full-service, on-call plumbing maintenance and repair services and administer the duties and responsibilities in compliance with all applicable laws, regulations, policies and procedures.**

**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 plumbing maintenance and repair work at various City facilities (see Attachment A -Municipal Facility Locations).**

**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, piping, and testing plumbing service and plumbing systems and components. Systems include, but are not limited to domestic water, heating, cooling, hot water systems, conditioned water systems, pool water systems, sanitary sewer and storm systems as well as all related components required for municipal buildings and facilities. Services will include, but not be limited to installing and repairing piping, fixtures and maintenance for commodes, urinals, drinking fountains, pools, water spray features, heating and air conditioning systems as well as additional plumbing related issues as they arise and the services necessary to insure safe, well maintained influent, effluent and closed loop systems for City employees and the public. The scope and number of projects and tasks are unknown at the time of contract execution.**

**The Service Provider shall leave work areas free of all dirt, litter, lubricants, or other materials utilized to perform plumbing maintenance.**

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

**The Service Provider 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 Service Provider shall be within four (4) hours of all requests.**

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

**2-1 SCOPE OF SERVICE The Service Provider shall provide full-service on-call plumbing maintenance and repair services to City Facilities as outlined in this agreement. Service Provider shall retain professional personnel who have successfully and competently provided municipal facility plumbing maintenance and repair services on projects of similar scope and complexity. It shall be the Service Provider's responsibility to effectively repair and maintain, to the satisfaction of the City representative, all aspects of plumbing 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 Service Provider's plumbing 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 Service Provider’s responsibility to provide an appropriate level of staffing and provide appropriate tools and vehicles necessary to support all facility plumbing maintenance and repair functions during hours of operation and for response after normal working hours. Service Provider 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, 2026 through June 30, 2028. The City, at its option, may renew this agreement for up to three (3), one-year periods, beginning on July 1, 2028. This option will be exercised only if the Service Provider has demonstrated superior performance in provision of On-Call Plumbing Maintenance and Repair Services to the City.

Rates in the Cost Proposal apply to the period of July 1, 2026 to June 30, 2028. Attached as Exhibit B - Schedule of Compensation.

**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 11:30 a.m. to 6:30 p.m. (summer season only).
- 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.
- Council Chamber 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.
- El Toro Youth Center is open Monday-Friday 2:00 p.m. – 6:00 p.m.
- The Friendly Inn is open Monday-Saturday 8:00 a.m. to 10:00 p.m.
- The Outdoor Sports Complex – coordinate hours with Maintenance Manager, Keri Russell or other designated City representative
- 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.
- El Toro Fire Station is open Monday-Friday 8:00 a.m. – 5:30 p.m.
- Dunne Hill Fire Station is open Monday-Friday 8:00 a.m. – 5:30 p.m.
- Butterfield Fire Station is open Monday-Friday 8:00 a.m. – 5:30 p.m.

**2-5 SERVICE AVAILABILITY** The Service Provider shall have trouble-call service available on a twenty-four (24) hours a day, seven (7) days a week basis with a response time not to exceed the following:

**EMERGENCIES..... two (2) hour response time**  
**NON-EMERGENCIES..... four (4) hour response time**

Time to respond shall start when the City calls the problem into Service Provider's designated emergency phone number. Additionally, the Service Provider 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.

**2-6 TROUBLE-CALL/REPAIR SERVICE** Should the City request the Service Provider to make unscheduled, emergency plumbing system repairs, the City shall be responsible for labor and travel costs associated therewith. These costs are listed in the attached Exhibit B. Rates shall be firm for the term of the agreement. The City reserves the right to contract with others for trouble calls and repairs.

**2-7 BILLABLE WORK** The Service Provider 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 Service Provider shall provide a staffing level to perform on-call plumbing 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 plumbing maintenance at all times. The Service Provider shall possess and maintain a C-36 Plumbing license by the State of California Contractors Licensing Board (CSLB) through the term of the agreement. All personnel performing work under this agreement shall possess and maintain a state journeyman certification and be directly employed and supervised by the Service Provider. Any assigned apprentice or laborer shall work directly under the supervision of a qualified journeyman. The Service Provider shall provide management and technical supervision through competent supervisors as required. The Service Provider 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 Attachment A below).

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

**2-11 PARTS AND MATERIALS** The Service Provider shall furnish all parts and materials necessary for properly maintaining and repairing plumbing systems in City buildings. Mark-up on parts and materials may not exceed 10% of Service Provider'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 plumbing systems to ensure compliance with the agreement's 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 Service Provider 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 Service Provider's payment.

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

**2-14 SAFETY & SECURITY** The Service Provider and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way. These laws include the Occupational Safety and Health Act of 1970 and rules and regulations issued pursuant thereto, and City's safety regulations as amended from time to time. Service Provider shall be fully responsible for the safety of its and its Subcontractors' employees, agents and

**2-15 FINGERPRINTING (Live Scan State of California Criminal Records Check):** All Service Provider's 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 must be completed at an authorized Live Scan State of California Criminal Records Check location. Available Live Scan locations can be found on the California DOJ website at:

<https://oag.ca.gov/fingerprints/locations>

The DOJ fee is \$32.00 and the FBI fee is \$17.00, payable at the time of the appointment. Please note additional rolling or service fees may be charged by the Live Scan provider. The City will provide the required Live Scan form. The Service Provider 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).

**ATTACHMENT A  
MUNICIPAL FACILITY LOCATIONS**

<b>BUILDING/FACILITY</b>	<b>ADDRESS</b>	<b>SQUARE FOOTAGE</b>
Aquatics Center	16200 Condit Road	5,294
Centennial Recreation Center	171 West Edmundson Ave	57,759
City Hall	17575 Peak Ave	13,900
The Villas	535 Alkire Avenue	4,500
Community and Cultural Center, and Community Playhouse	17000 and 17090 Monterey Road	20,500; 5,000
Community Garden	15690 Railroad Avenue	
Council Chamber Building	17555 Peak Avenue	12,104
Outdoor Sports Center	16500 Condit Road	2,800
Police Department	16200 Vineyard Boulevard	43,286
Public Works Corporation Yard	100 Edes Court	4,583
Butterfield Fire Station	17285 Butterfield Blvd.	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**

The total amount of this agreement is \$100,000 (\$50,000 per year) for the initial two-year term from July 1, 2026 to June 30, 2028.

\*\*\*Please see attached rate sheet which includes hourly rates.

**EXHIBIT B  
SCHEDULE OF COMPENSATION RATES**

7/1/2026 to 6/30/2028

COMPANY NAME: Stephen Ciari Plumbing & Heating, Inc.

~~Attachment A~~

**COST PROPOSAL SCHEDULE**

**ON-CALL PLUMBING MAINTENANCE SERVICE FEES  
INCLUDING TRAVEL TIME**

*60 points possible*

<b>Bid Item</b>	<b>Description of Bid Item</b>	<b>Hourly Rate</b>	<b>Comments</b>
1	<b>Laborer Shop Rate</b> for Plumbing Maintenance Services-- (Monday-Friday 8:00 a.m. to 5:00 p.m.)	\$ 104.98	Regular Time
2	<b>Apprentice Shop Rate</b> for Plumbing Maintenance Services -- (Monday-Friday 8:00 a.m. to 5:00 p.m.)	\$ 140.48	Regular Time
3	<b>Journeyman Shop Rate</b> for Plumbing Maintenance Services - (Monday-Friday 8:00 a.m. to 5:00 p.m.)	\$173.47	Regular Time
4	<b>Laborer Overtime Rate</b> for Plumbing Maintenance Services- (Monday-Friday 5:00 p.m. to 8:00 a.m.)	\$157.47	Overtime
5	<b>Apprentice Overtime Rate</b> for Plumbing Maintenance Services-- (Monday-Friday 5:00 p.m. to 8:00 a.m.)	\$ 210.72	Overtime
6	<b>Journeyman Overtime Rate</b> for Plumbing Maintenance Services- (Monday-Friday 5:00 p.m. to 8:00 a.m.)	\$ 260.21	Overtime
7	<b>Laborer Rate for Saturday, Sunday &amp; Holidays</b>	\$ 209.96	Double Time
8	<b>Apprentice Rate for Saturday, Sunday &amp; Holidays</b>	\$ 280.96	Double Time
9	<b>Journeyman Rate for Saturday, Sunday &amp; Holidays</b>	\$346.94	Double Time

Note: Quantities cannot be pre-determined, but shall be on an "as needed" basis. **Mark-up on permits, 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.

**THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL**

**EXHIBIT C  
SCHEDULE OF PERFORMANCE**

**Work is to be schedule with City of Morgan Hill Maintenance Manager or other designated City staff.**

## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: June 17, 2026**

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

### **ADOPT RESOLUTION OF INTENTION AND INTRODUCTION OF ORDINANCE TO AMEND THE CONTRACT BETWEEN THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS) AND THE CITY OF MORGAN HILL TO PROVIDE FOR EMPLOYEES SHARING ADDITIONAL COSTS UNDER GOVERNMENT CODE SECTION 20516 (EMPLOYEES SHARING ADDITIONAL COSTS)**

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

1. Adopt Resolution of Intention of the City Council of the City of Morgan Hill stating its intent to amend the contract between the California Public Employees' Retirement System (CalPERS) and the City of Morgan Hill in order to provide for employees sharing additional cost under Government Code Section 20516 (Employees Sharing Additional Cost);
2. Open/close the public hearing;
3. Waive the first and second reading of the ordinance amending the City's contract with CalPERS; and
4. Introduce ordinance.

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

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

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

##### **Strategic Priorities 2026-2027**

Fiscal Sustainability

#### **REPORT NARRATIVE:**

In the most recent negotiations between the City and its represented labor units, the City Council approved a resolution for the Management, Professional, and Confidential employee group that includes provisions for employees to continue paying a reduced employee share of the employer's pension contribution. While the Council has already approved these provisions through the employee group resolution, approval of this pension contract amendment is an administrative step required by the California Public

Employees' Retirement System (CalPERS) for unrepresented employees to ensure the proper accounting and reporting of employee and employer contributions.

Similar to the American Federation of State, County and Municipal Employees (AFSCME) and Community Service Officers' Association (CSOA) bargaining units, the agreed-upon cost-sharing arrangement applies to all unrepresented employees, including both Classic and California Public Employees' Pension Reform Act (PEPRA) members, as well as both Safety and Miscellaneous classifications. The employee cost-sharing rate will be 1.12% effective with the payroll period beginning December 20, 2026.

The first step in the process is for the City Council to adopt a Resolution of Intention and conduct the first reading of the ordinance amending the City's contract with CalPERS. An amendment to the contract that changes employee contribution rates requires a secret ballot election among the affected employees. This election must occur after adoption of the Resolution of Intention and before adoption of the final ordinance. The ordinance will return to the City Council for a second reading and adoption on August 19, 2026. The contract amendment will become effective 30 days after adoption of the ordinance and will apply beginning with the payroll period starting December 20, 2026.

Although the employee cost-sharing arrangement was previously approved by the City Council as part of the adopted management resolution on December 17, 2025, CalPERS requires this additional administrative action to formally amend the City's pension contract. The amendment will not change the employee cost-sharing rate; rather, it will ensure that employee contributions are properly credited by CalPERS and that the pension contract is consistent with the City's currently adopted compensation provisions.

#### **COMMUNITY ENGAGEMENT:**

Inform

Public notice was published in the local newspaper on June 5, 2026, informing the community of the proposed amendment of CalPERS contract.

#### **ALTERNATIVE ACTIONS:**

Not Applicable.

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

On December 17, 2025, the City Council approved the current Management, Professional, and Confidential Employees Resolution and corresponding salary schedules, which reduce employees' sharing of the employer CalPERS contribution by 2.00% effective December 21, 2025, by an additional 3.00% effective December 20, 2026, and by a further 1.12% effective December 19, 2027.

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

The reduction in the employee sharing of the employer's CalPERS cost has been incorporated into the City budget.

**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 OF INTENTION  
TO APPROVE AN AMENDMENT TO CONTRACT  
BETWEEN THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
AND THE  
CITY COUNCIL  
CITY OF MORGAN HILL**

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

To provide Section 20516 (Employees Sharing Additional Cost) of a reduction of 5% for local miscellaneous members in the Unrepresented Management group, and;

to provide 1.120% for classic local safety members in the Unrepresented Management Safety group.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

By: \_\_\_\_\_  
Presiding Officer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date adopted and approved

**ORDINANCE NO. \_\_\_\_\_, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF MORGAN HILL AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA DOES ORDAIN AS FOLLOWS:**

**SECTION 1:** That an amendment to the contract between the City of Morgan Hill and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit, and by such reference made a part hereof as though herein set out in full.

**SECTION 2:** The City Manager or his designee is authorized, empowered, and directed to execute said amendment for and on behalf of the City of Morgan Hill.

**SECTION 3:** Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its passage and adoption. The City Clerk is hereby directed to publish in full or summary this ordinance pursuant to §36933 of the Government Code in a newspaper of general circulation in the City of Morgan Hill.

The foregoing ordinance was introduced and the title thereof read at a regular meeting of the City Council of the City of Morgan Hill held on the     day of     2026, and was finally adopted at a regular meeting of said Council on the     day of     2026, and said ordinance was duly passed and adopted in accordance with law.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at the regular meeting held on the \_\_\_<sup>th</sup> day of \_\_\_\_\_, 2026 by the following vote:

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

**APPROVED:**

\_\_\_\_\_  
**MARK TURNER, MAYOR**

**ATTEST:**

**DATE:**

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

Effective:

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. \_\_\_\_\_, New Series, adopted by the City Council of the City of Morgan Hill, California at the meeting held on this \_\_\_\_\_ day of \_\_\_\_\_, 2026 and has been published pursuant to Government Code.

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

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

\_\_\_\_\_  
**Michelle Bigelow, City Clerk**



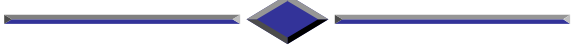
## EXHIBIT

California  
Public Employees' Retirement System



# AMENDMENT TO CONTRACT

Between the  
Board of Administration  
California Public Employees' Retirement System  
and the  
City Council  
City of Morgan Hill



The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective March 1, 1964, and witnessed January 8, 1964, and as amended effective June 1, 1972, May 1, 1976, January 1, 1977, December 17, 1981, August 1, 1982, August 16, 1983, July 1, 1988, January 7, 1990, April 29, 1990, August 17, 1991, June 21, 1997, April 17, 1999, February 20, 2000, July 1, 2002, June 18, 2006, April 19, 2000, June 26, 2022, and May 25, 2024, which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 17 are hereby stricken from said contract as executed, effective May 25, 2024, and hereby replaced by the following paragraphs numbered 1 through 17 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age shall mean age 55 for classic local miscellaneous members, age 62 for new local miscellaneous members, age 50 for classic local safety members, and age 57 for new local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after March 1, 1964, making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorney fees that may arise as a result of any of the following:
  - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
  - (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas.
  - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
  - a. Local Fire Fighters (herein referred to as local safety members);
  - b. Local Police Officers (herein referred to as local safety members);

- c. Employees other than local safety members (herein referred to as local miscellaneous members).
5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:

### **NO ADDITIONAL EXCLUSIONS**

6. The percentage of final compensation to be provided for each year of credited prior and current service for classic local miscellaneous members in employment before and not on or after June 18, 2006, shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service prior to September 30, 1975, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
7. The percentage of final compensation to be provided for each year of credited prior and current service for classic local miscellaneous members in employment on or after June 18, 2006, shall be determined in accordance with Section 21354.4 of said Retirement Law, subject to the reduction provided therein for service prior to September 30, 1975, termination of Social Security, for members whose service has been included in Federal Social Security (2.5% at age 55 Full and Modified).
8. The percentage of final compensation to be provided for each year of credited prior and current service as a new local miscellaneous member shall be determined in accordance with Section 7522.20 of said Retirement Law (2% at age 62 Full and Modified).
9. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local fire member shall be determined in accordance with Section 21362 of said Retirement Law (2% at age 50 Full).
10. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local police member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
11. The percentage of final compensation to be provided for each year of credited prior and current service as a new local safety member shall be determined in accordance with Section 7522.25(d) of said Retirement Law (2.7% at age 57 Full).

12. Public Agency elected and elects to be subject to the following optional provisions:
- a. Section 21574 (Fourth Level of 1959 Survivor Benefits).
  - b. Section 20903 (Two Years Additional Service Credit) for local miscellaneous members only.
  - c. Section 20042 (One-Year Final Compensation) for classic members only.
  - d. Section 20965 (Credit for Unused Sick Leave).
  - e. Section 21024 (Military Service Credit as Public Service) for local miscellaneous members and local police members.
  - f. Section 20516 (Employees Sharing Additional Cost):

From and after April 19, 2020, 3.604% for local miscellaneous members in the Morgan Hill Police Officers' Association, Community Service Officers' Association and American Federation of State, County, and Municipal Employees; 6.120% for classic local safety members in the Morgan Hill Police Officers' Association; and 1.329% for new local safety members in the Morgan Hill Police Officers' Association.

From and after April 19, 2020, and until June 26, 2022, 3.604% for local miscellaneous members in the Unrepresented Management group.

From and after June 26, 2022, and until the effective date of this amendment to contract 6.12% for local miscellaneous members in the Unrepresented Management group.

From and after the effective date of this amendment to contract, 1.12% for local miscellaneous members in the Unrepresented Management group.

From and after the effective date of this amendment to contract, 1.12% for classic local safety members in the Unrepresented Management Safety group.

The portion of the employer's contribution that the member agrees to contribute from his or her compensation, over and above the member's normal contribution ("Cost Sharing Percentage"), shall not exceed the Employer Normal Cost Rate, as that rate is defined in the CalPERS Actuarial Valuation for the relevant fiscal year. If the Cost Sharing Percentage will exceed the relevant Employer Normal Cost Rate, the Cost Sharing Percentage shall automatically be reduced to an amount equal to, and not to exceed, the Employer Normal Cost Rate for the relevant fiscal year.

13. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on August 16, 1983. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
14. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
15. Public Agency shall also contribute to said Retirement System as follows:
  - a. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
  - b. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
16. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

17. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BOARD OF ADMINISTRATION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL  
CITY OF MORGAN HILL

BY \_\_\_\_\_  
MELODY BENAVIDES, CHIEF  
PENSION CONTRACTS AND PREFUNDING  
PROGRAMS DIVISION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY \_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
Witness Date

Attest:

\_\_\_\_\_  
Clerk