



Regular Meeting Agenda

City Council

Rich Constantine - Mayor
Yvonne Martinez Beltran - Mayor Pro Tem
Larry Carr - Council Member
John McKay - Council Member
Rene Spring - Council Member

Wednesday, August 5, 2020 7:00 p.m.

Virtual Meeting

Link to join the meeting can be found below

MEETING GUIDELINES

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. We will address the Order in the following ways:

Members of the public may NOT physically attend meetings at the Morgan Hill City Council Chamber.

The City Council Meeting will be live-streamed on Channel 17 and on the City's website. Those members of the public wishing to participate remotely may do so via the electronic meeting at: <https://bit.ly/08052020CCMeeting> or by calling in to: (669) 900-9128, then enter the meeting id: 850 5492 5039.

Public comment for City Council meetings will be accepted via email to ccpubliccomment@morganhill.ca.gov <<mailto:ccpubliccomment@morganhill.ca.gov>>. Members of the public participating in the electronic meeting wishing to speak may do so during public comment.

The City Council has adopted a policy that regular meetings shall not continue beyond 11:00 p.m. unless extended by a majority of the City Council.

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow

PRESENTATIONS

YAC Presentation
<https://www.youtube.com/watch?v=PDMori2vfks>

New and Retired Teammates

PROCLAMATIONS

Centennial Celebration of Women's Right to Vote and Women's Equality Week

RECOGNITIONS

Learning and Loving Center

Chaplain David Whitaker

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

PUBLIC COMMENT

Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the City Council is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. AMEND CONFLICT OF INTEREST CODE REPORTING CATEGORIES

Recommendation:

Adopt resolution amending the list of positions subject to the City's Conflict of Interest Code.

2. ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS - VALENCIA PHASE (PH) 1 TRACT 10312 & VALENCIA PH 2 TRACT 10433

Recommendation:

1. Accept the Subdivision Public Improvements for Valencia PH 1 – Tract 10312;
2. Accept the Subdivision Public Improvements for Valencia PH 2 – Tract 10433;
3. Authorize the City Engineer to sign the Notices of Completion; and
4. Direct the City Clerk to file the Notices of Completion with the County Recorder's Office.

3. APPROVE ENGINEERING RELATED SERVICE AGREEMENTS FOR DESIGN PROFESSIONALS FOR ON-CALL PROJECT MANAGEMENT & INSPECTION, ON-CALL ENGINEERING PLAN REVIEW & TECHNICAL SUPPORT SERVICES, AND ON-CALL MAP REVIEW & CITY SURVEYOR SERVICES

Recommendation:

Approve and authorize the City Manager to execute and administer four agreements with contingencies to be specifically authorized by the City Manager:

1. CSG Consultants, Inc. in the amount of \$784,000, with a \$235,200 contingency, for a total contract amount not to exceed \$1,019,200 to provide On-Call Project Management & Inspection Services for various Capital Improvement Program Projects; On-Call Engineering Plan Review & Technical Support Services, and On-Call Map Review & City Surveyor Services for Land Development Engineering;
2. Mott MacDonald Group, Inc. in the amount of \$200,000, with a \$60,000 contingency, for a total contract amount not to exceed \$260,000 to provide On-Call Project Management & Inspection Services for various Capital Improvement Program Projects;
3. Harris & Associates, Inc. in the amount of \$220,000, with a \$66,000 contingency, for a total contract amount not to exceed \$286,000 to provide On-Call Engineering Plan Review & Technical Support Services for Land Development Engineering; and
4. Associated Engineering Surveying Services, Inc. DBA Hanna-Brunetti, in the amount of \$58,000, with a \$17,400 contingency, for a total contract amount not to exceed \$75,400 to provide On-Call Map Review & City Surveyor Services for Land Development Engineering.

4. APPROVE A FIVE-YEAR CONTRACT WITH CENTRALSQUARE FOR TRAKIT PERMITTING SYSTEM

Recommendation:

Approve and authorize the City Manager to execute and administer a five-year contract with CentralSquare Solutions for the purchase of maintenance service, technical support, and software updates for the City's permit tracking software system (TRAKiT) for a not to exceed amount of \$525,197.

5. APPROVE THE JULY 22, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

6. APPROVE THE JULY 24, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

7. APPROVE UPDATE TO SUSTAINABLE MORGAN HILL DOCUMENT

Recommendation:

Review and approve the COVID-19 and equity statement added to the City Council's Sustainable Morgan Hill document.

OTHER BUSINESS

8. CONSIDER REQUEST TO IMPLEMENT GOVERNMENT CODE SECTION 65915(D)(2)(A) FOR ONE CONCESSION UNDER 14.04.090 TO WAIVE PROVISIONS OF CHAPTER 14.04 FOR A MARKET RATE HOUSING DEVELOPMENT PROJECT (SR2020-0020 HALF-DIVIDEND (CROSSWINDS))

Recommendation:

Adopt resolution denying the request for a concession under Government Code Section 65915(d)(2)(A) to waive the requirement to distribute Below Market Rate (BMR) units throughout the project.

Estimated Time: 90 Minutes

9. APPROVAL OF SECOND EMPLOYMENT AGREEMENTS FOR THE CITY MANAGER AND THE CITY ATTORNEY

Recommendation:

1. Approve the Second Employment Agreement with City Attorney Donald Larkin;
2. Approve the Second Employment Agreement with City Manager Christina Turner; and
3. Authorize the Mayor to execute the agreements and any related agreements.

Estimated Time: 15 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

SUSTAINABLE MORGAN HILL



VISION

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

Choose Morgan Hill

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

City Council Ongoing Priorities

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

2020-2021 Strategic Priorities

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



CITY COUNCIL STAFF REPORT

MEETING DATE: August 5, 2020

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

AMEND CONFLICT OF INTEREST CODE REPORTING CATEGORIES

RECOMMENDATION(S)

Adopt resolution amending the list of positions subject to the City's Conflict of Interest Code.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

The Political Reform Act requires every local government agency to review its Conflict of Interest Code (Code) biennially (even years) to determine if it is accurate or must be amended. The review has been conducted by the Leadership Team including the City Attorney and Deputy City Clerk. Based on said review, staff recommends that the City Council adopt the resolution (Attachment 1) amending the Code to update the reporting categories. The categories to be deleted are shown as ~~strike-outs~~ and the categories that have been added or amended are shown as **underscore/bold**.

Staff has identified the recommended changes below to the Code to comply with Government Code Section 87306 to update the reporting categories and to comport with the current employee classifications:

1. Add the following reporting categories:
 - a. Battalion Chief
 - b. EMS Chief
 - c. Principal Planner
 - d. Assistant to the City Manager
2. Remove the following reporting categories:
 - a. Deputy City Attorney
 - b. Economic Development Coordinator
 - c. Building Manager
 - d. Community Services Director
 - e. Engineering and Utilities Director
 - f. General Plan Update Committee
 - g. Assistant City Manager for Administrative Services
 - h. Accounting Manager

- i. Senior Human Resources Analyst
- 3. The following titles have been amended:
 - a. Communications & Engagement Manager to Communications & Engagement Director
 - b. Code Enforcement Officer to Code Compliance Officer
 - c. Management Analyst to Financial Policy Analyst
 - d. Information Services Manager to Information Technology Director

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community about the amendments to the City's Conflict of Interest Code.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City's Conflict of Interest Code is required to be reviewed biennially. It was last reviewed and approved on October 17, 2018.

FISCAL AND RESOURCE IMPACT:

There are no fiscal or resource impacts associated with this action.

CEQA (California Environmental Quality Act):

Not a project. Administrative activities of governments that do not result in direct physical changes in the environment do not qualify as a project for purposes of CEQA.

LINKS/ATTACHMENTS:

- 1. Reso 20-XX

RESOLUTION NO. 20-0XX**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING RESOLUTION NO. 18-080 PERTAINING TO THE CITY'S CONFLICT OF INTEREST CODE BY AMENDING EXHIBIT A (DESIGNATED POSITIONS) TO REFLECT CURRENT CITY POSITION(S) AND DISCLOSURE CATEGORIES**

WHEREAS, pursuant to Government Code 87300, Resolution No. 1827 was adopted on September 21, 1983, and subsequently amended by various resolutions; and

WHEREAS, the Political Reform Act requires every local government agency to review its Conflict of Interest Code biennially or as deemed appropriate; and

WHEREAS, the Fair Political Practices Commission has adopted Title 2 of the California Code of Regulations § 18730, which contains the terms of a standard model conflict of interest, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments to the Political Reform Act; and

WHEREAS, a review has been conducted and a determination has been reached that certain amendments are required to update the Code and maintain its accuracy as outlined in Exhibit A – Persons Subject to the Conflict of Interest Code; and

WHEREAS, the Mayor, Council Members, City Manager, City Attorney, City Treasurer, and Planning Commission are not listed in the City's Conflict of Interest Code as they are governed by § 87200 of the Government Code.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF MORGAN HILL adopts the attached Exhibit A – Persons Subject to the Conflict of Interest Code; and Exhibit B – Conflict of Interest Code for the City of Morgan Hill.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 5th day of August 2020 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.20-0XX, adopted by the City Council at the meeting held on August 5, 2020.

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

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

Persons Subject to the Conflict of Interest Code

Listed below are the designated positions in the local agency that are required to file Disclosure Statements.

Category 1 is defined as:

A designated employee, board member, and commissioner must report all interests in real property having a direct or indirect relationship to, and which may foreseeably be affected by, the official duties and responsibilities of each such designated position.

Category 2 is defined as:

A designated employee, board member, and commissioner in this category must report all investments having a direct or indirect relationship to, and which may foreseeably be affected by, the official duties and responsibilities of each such designated position.

Category 3 is defined as:

A designated employee, board member, and commissioner in this category must report income and business entities in which he or she is a director, officer, partner, trustee, and employee or holds any position of management having a direct or indirect relationship to, and which may foreseeably be affected by, the official duties and responsibilities of each such designated position.

Persons Subject to the Conflict of Interest Code	Disclosure Category
Administrative Services	
Assistant City Manager for Administrative Services	1,2,3
Finance Director	1,2,3
Human Resources Director	1,2,3
Budget Manager	1,2,3
Council Services & Records Manager	1,2,3
Accounting Manager	1,2,3
Senior Human Resources Analyst	1,2,3
City Attorney's Office	
Assistant City Attorney	1,2,3
Deputy City Attorney	1,2,3
City Clerk	1,2,3
City Manager's Office	
Communications & Engagement Manager <u>Director</u>	<u>1,2,3</u>
<u>Assistant to the City Manager</u>	<u>1,2,3</u>
Development Services	
Assistant City Manager for Development Services	1,2,3
Development Services Director	1,2,3
Economic Development Director	1,2,3
Economic Development Manager	1,2,3
Economic Development Coordinator	1,2,3
<u>Principal Planner</u>	<u>1,2,3</u>

Housing Manager	1,2,3
Building Official	1,2,3
Building Manager	1,2,3+
Building Inspector Supervisor	1,2,3
Code Enforcement <u>Compliance</u> Officer	
	1,2,3
Senior Planner	1,2,3
Fire Department	
Fire Chief	1,2,3
Assistant Fire Chief	1,2,3
Fire Marshal	1,2,3
Battalion Chief	1,2,3
EMS Chief	1,2,3
Police Department	
Chief of Police	1,2,3
Police Captain	1,2,3
Information Services Manager <u>Technology Director</u>	
	1,2,3
Police Support Services Manager	1,2,3
Public Services	
Public Services Director	1,2,3
Community Services	
Community Services Director	1,2,3
Program Administrator	1,2,3
Recreation Manager	1,2,3
Community Services Supervisor	1,2,3
Older Adult Services Supervisor	1,2,3
Maintenance Manager	1,2,3
Maintenance Coordinator	1,2,3
Management <u>Financial Policy</u> Analyst	
	1,2,3
Engineering and Utilities	
Engineering and Utilities Director	1,2,3
Deputy Director for Engineering/City Engineer	1,2,3
Deputy Director for Utility Services	1,2,3
Utility Systems Manager	1,2,3
Senior Project Manager	1,2,3
Senior Civil Engineer	1,2,3
Assistant/Associate Engineer	1,2,3
Successor Agency to the Morgan Hill Redevelopment Agency Board Members	1,2,3
Morgan Hill Financing Authority Board Members	1,2,3
Morgan Hill Wastewater Facilities Financing Corporation Board Members	1,2,3
Library, Culture & Arts Commissioners	1,2,3
Parks and Recreation Commissioners	1,2,3
General Plan Update Committee	1,2,3

Parking Authority of the City of Morgan Hill	1,2,3
Consultants*	1,2,3

**Consultants shall be included in the list of designated employees and shall disclose pursuant to Category 1, 2, and 3, based on the scope of work performed for the City of Morgan Hill, in consultation with the City Attorney.*

EXHIBIT B

CONFLICT OF INTEREST CODE FOR THE CITY OF MORGAN HILL

The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, Title 2, California Code of Regulations, Section 18730, which contains the terms of a standard conflict of interest code which can be incorporated by reference, and that may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of Title 2, California Code of Regulations Section 18730, and any amendments to it duly adopted by the Fair Political Practices Commission, are hereby incorporated by reference. These terms, along with the attached Appendix which designates officials and employees subject to the code and disclosure categories, constitute the Conflict of Interest Code of the City of Morgan Hill.

Pursuant to Section 4 of the Standard Code, designated employees, boards, and commissioners shall file statements of economic interests with the City of Morgan Hill - City Clerk. The City Clerk is to retain these statements. Upon receipt of the statements of the members of the City Council, City Manager, City Attorney, City Treasurer, and members of the Planning Commission; the City Clerk of the City of Morgan Hill shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission.



CITY COUNCIL STAFF REPORT

MEETING DATE: August 5, 2020

PREPARED BY: Mario Jimenez, Associate Engineer
APPROVED BY: City Manager

ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS - VALENCIA PHASE (PH) 1 TRACT 10312 & VALENCIA PH 2 TRACT 10433

RECOMMENDATION(S)

1. Accept the Subdivision Public Improvements for Valencia PH 1 – Tract 10312;
2. Accept the Subdivision Public Improvements for Valencia PH 2 – Tract 10433;
3. Authorize the City Engineer to sign the Notices of Completion; and
4. Direct the City Clerk to file the Notices of Completion with the County Recorder's Office.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment and Preserving
Open Space and Agricultural Land

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Valencia PH 1 – Tract 10312 is a 41-lot subdivision located on the north west corner of Butterfield Boulevard and East Central Avenue (Attachment 1). The subdivision improvements have been completed in accordance with the requirements of the Subdivision Improvements Agreement between the City of Morgan Hill and MH Valencia 2015 Inc., a California Corporation, dated September 28, 2016.

Valencia PH 2 – Tract 10433 is a 43-lot subdivision located northwest of Calle Valencia and Butterfield Boulevard intersection (Attachment 2). The subdivision improvements have been completed in accordance with the requirements of the Subdivision Improvements Agreement between the City of Morgan Hill and MH Valencia 2015 Inc., a California Corporation, dated June 19, 2018.

To date, the City has accepted a total of 128.48 miles of publicly maintained streets.

The Streets and street lengths to be accepted as part of the developments are as follows:

Subdivision	Street	Street Lengths
Valencia PH 1	Calle Granada	0.16

	Calle Valencia	0.03
	Calle Mazatan	0.01
Valencia PH 2	Calle Granada	0.09
	Calle Del Rey	0.12

Staff recommends City Council accept the improvement, authorize City Engineer to sign the Notices of Completion, and direct the City Clerk to file the said notices with the County recorder's office (Attachment 3 and 4).

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the project acceptance.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved the Final Map, and Subdivision Improvements Agreement for Valencia PH 1 – Tract 10312, on March 23, 2016.

The City Council approved the Final Map, and Subdivision Improvements Agreement for Valencia PH 2 – Tract 10433, on June 6, 2018.

FISCAL AND RESOURCE IMPACT:

Staff time for this project was paid by the developer's land development fees. The value of the public Improvements being accepted for Valencia PH 1 is \$979,337 and for Valencia PH 2 is \$883,840.

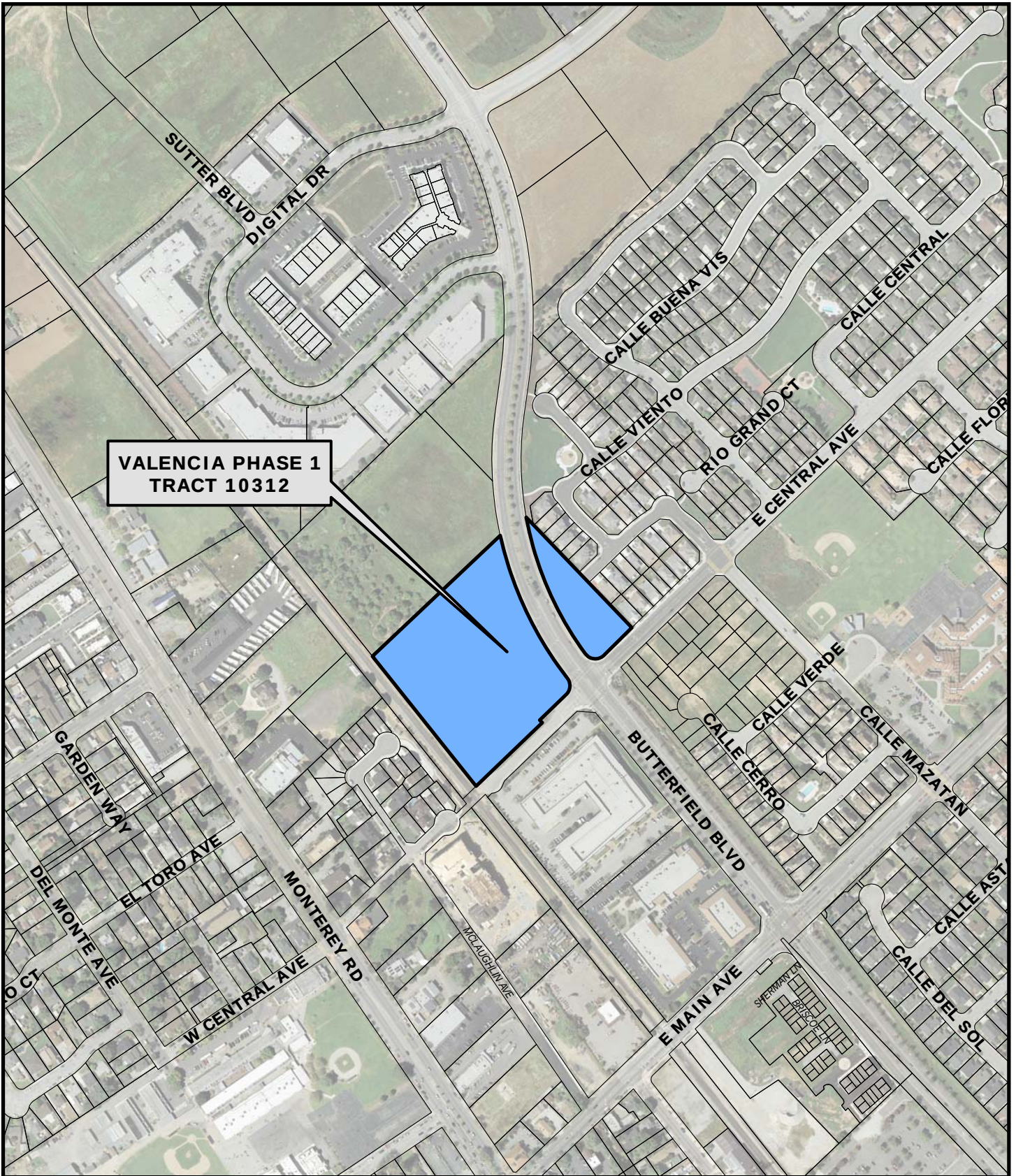
CEQA (California Environmental Quality Act):

Categorical Exemption.

Section 15332 of the State CEQA Guidelines – Infill Development Projects.

LINKS/ATTACHMENTS:

1. Site Map - Valencia Phase 1 Tract 10312
2. Site Map - Valencia Phase 2 Tract 10433
3. Notice of Completion - Valencia PH 1 - tract 10312
4. Notice of Completion - Valencia PH 2 - tract 10433



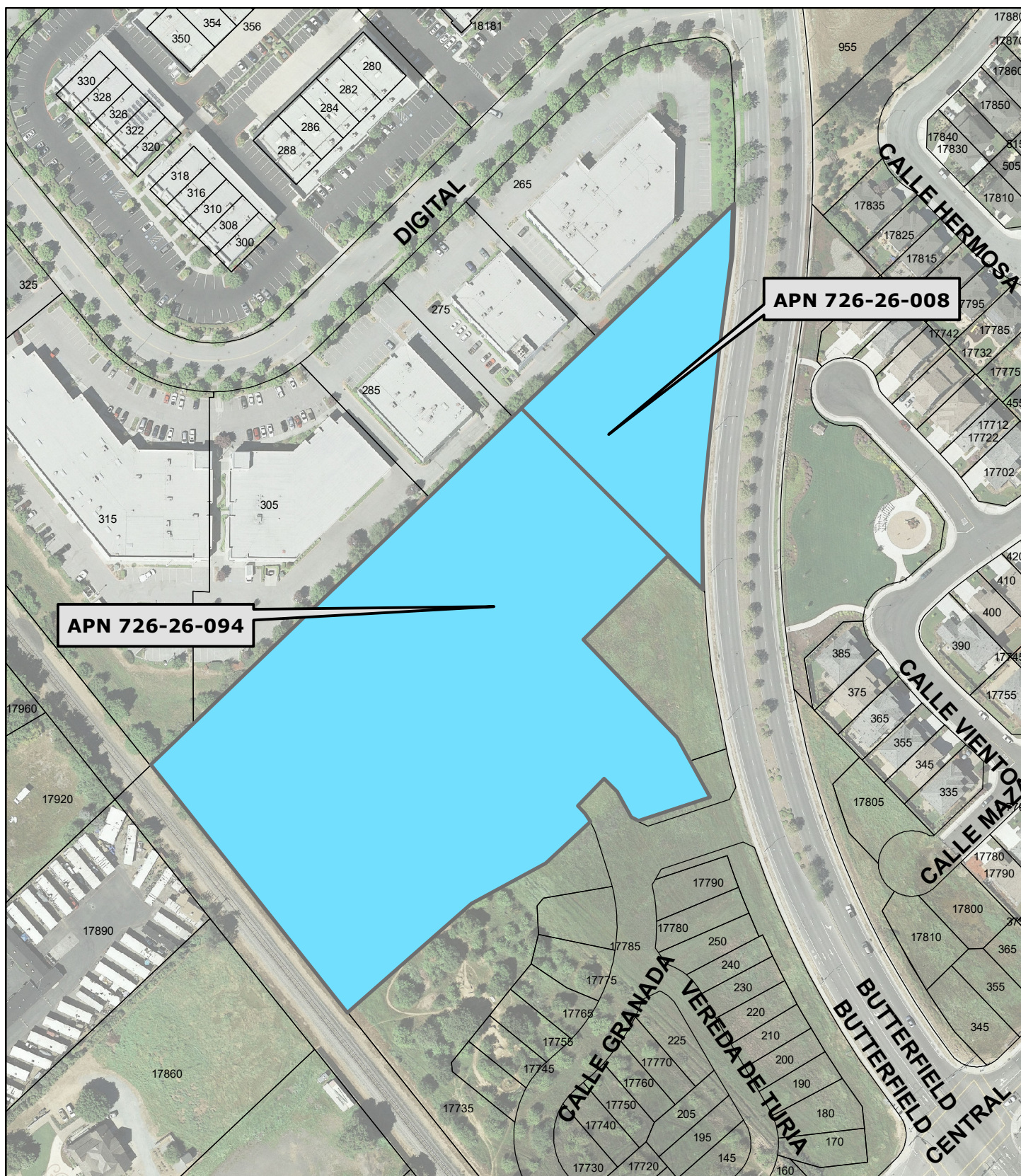
CITY OF MORGAN HILL
Engineering Division
Development Services Department

G:\R-14\Proj\GIS\John\Charlie_ValenciaPhase1.mxd

SITE MAP VALENCIA PHASE 1 TRACT 10312

0 150 300 600 900 1,200
Feet





CITY OF MORGAN HILL
Engineering Division
Development Services Department

Document Path: G:\R-14\PROJ\GIS\StaffReport_SiteMaps\Valencia Phase 2.mxd

SITE MAP
Valencia Phase 2 Development
APN 726-26-094, APN 726-26-008



200 100 0 200 Feet

Record at the Request of
and When Recorded Mail to:

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

Record at No Fee Pursuant to
Government Code Section 27383

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN, pursuant to Civil Code Section 9204, that:

- 1) On **September 28, 2016**, the City of Morgan Hill, a Municipal Corporation, entered into a contract with **MH Valencia 2015 Inc., A California Corporation** for the **Valencia PH 1 - Tract No. 10312** subdivision project located on the northwest corner of Butterfield Boulevard and Central Avenue Morgan Hill, California.
- 2) The owner of the subdivision public improvements is the City of Morgan Hill, a Municipal Corporation, located at 17575 Peak Avenue, Morgan Hill, CA 95037
- 3) The contractor is **MH Valencia 2015 Inc., A California Corporation**.
- 4) The surety is **The Developers Surety and Indemnity Company**.
- 5) The project was completed on **July 1, 2020** and accepted by the City Council of the City of Morgan Hill on **August 5, 2020**.

CITY OF MORGAN HILL, a Municipal Corporation

By _____
Scott Creer
City Engineer

I, the undersigned, declare that I am the City Engineer for the City of Morgan Hill. I have read the forgoing Notice of Completion and know and understand the contents thereof and that the facts stated therein are true and correct. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, at Morgan Hill, California.

Scott Creer
City Engineer

Record at the Request of
and When Recorded Mail to:

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

Record at No Fee Pursuant to
Government Code Section 27383

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN, pursuant to Civil Code Section 9204, that:

- 1) On **June 19, 2018**, the City of Morgan Hill, a Municipal Corporation, entered into a contract with **MH Valencia 2015 Inc., A California Corporation** for the **Valencia PH 2 – Tract No. 10433** subdivision project located on the northwest corner of Butterfield Boulevard and Central Avenue Morgan Hill, California. .
- 2) The owner of the subdivision public improvements is the City of Morgan Hill, a Municipal Corporation, located at 17575 Peak Avenue, Morgan Hill, CA 95037
- 3) The contractor is **MH Valencia 2015 Inc., A California Corporation**.
- 4) The surety is **The Developers Surety and Indemnity Company**.
- 5) The project was completed on **July 1, 2020** and accepted by the City Council of the City of Morgan Hill on **August 5, 2020**.

CITY OF MORGAN HILL, a Municipal Corporation

By _____
Scott Creer
City Engineer

I, the undersigned, declare that I am the City Engineer for the City of Morgan Hill. I have read the forgoing Notice of Completion and know and understand the contents thereof and that the facts stated therein are true and correct. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, at Morgan Hill, California.

Scott Creer
City Engineer



CITY COUNCIL STAFF REPORT

MEETING DATE: August 5, 2020

PREPARED BY: Yat Cho, Senior Project Manager
APPROVED BY: City Manager

APPROVE ENGINEERING RELATED SERVICE AGREEMENTS FOR DESIGN PROFESSIONALS FOR ON-CALL PROJECT MANAGEMENT & INSPECTION, ON-CALL ENGINEERING PLAN REVIEW & TECHNICAL SUPPORT SERVICES, AND ON-CALL MAP REVIEW & CITY SURVEYOR SERVICES

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer four agreements with contingencies to be specifically authorized by the City Manager:

1. CSG Consultants, Inc. in the amount of \$784,000, with a \$235,200 contingency, for a total contract amount not to exceed \$1,019,200 to provide On-Call Project Management & Inspection Services for various Capital Improvement Program Projects; On-Call Engineering Plan Review & Technical Support Services, and On-Call Map Review & City Surveyor Services for Land Development Engineering;
2. Mott MacDonald Group, Inc. in the amount of \$200,000, with a \$60,000 contingency, for a total contract amount not to exceed \$260,000 to provide On-Call Project Management & Inspection Services for various Capital Improvement Program Projects;
3. Harris & Associates, Inc. in the amount of \$220,000, with a \$66,000 contingency, for a total contract amount not to exceed \$286,000 to provide On-Call Engineering Plan Review & Technical Support Services for Land Development Engineering; and
4. Associated Engineering Surveying Services, Inc. DBA Hanna-Brunetti, in the amount of \$58,000, with a \$17,400 contingency, for a total contract amount not to exceed \$75,400 to provide On-Call Map Review & City Surveyor Services for Land Development Engineering.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

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

2020-2021 Strategic Priorities

Financial Sustainability

GUIDING DOCUMENTS

Economic Blueprint
Sewer System Master Plan
Water System Master Plan

REPORT NARRATIVE:

Staff augmentation services are a critical need for the City's Engineering functions. The City uses consultants in line with the sustainable budget strategy to ensure required workload is accomplished as an alternative to bringing on additional staff. This approach allows for on-call services that can be used as needed to support the Engineering functions in the implementation of the City's Capital Improvement Program (CIP), supporting review of new development in Land Development Engineering, and in supporting our Utilities and Maintenance Operations. Using consultants in this manner also allows the City to receive very specialized services that could not be achieved through internal staff. The consultant services the City staff are recommending are outlined in the sections below.

On-Call Services for CIP Engineering

On June 17, 2020, the City Council adopted the FY2020-21 through FY2025-26 Capital Improvement Program. Within the newly adopted CIP, there are several projects of varying complexity that are scheduled to be under construction at the same time. Given the current engineering staffing levels, it is anticipated that there will be a need for outside project management and inspection service support to ensure that construction standards are maintained along with proper project oversight.

On April 23, 2020, staff sent out a Request for Qualifications (RFQ) for project management and inspection support services on an as-needed basis for the CIP. The RFQ was also posted on the City's website. Seven proposals were received by the May 11, 2020 due date.

The proposals were evaluated by a three-member selection committee using three evaluation criteria: Qualifications, Key Resources, and Understanding of the City's Needs. A three-member evaluation panel rated each firm's proposal.

On-Call Services for Land Development Engineering

For the past several years, the City has contracted with consultants to assist staff with land development engineering review, stormwater and floodplain management program support, and map review. Consultant services will continue to be needed for Fiscal Years (FY) 2020-21 and 2021-2022 for on-going development reviews (especially given the accelerated permit processing timeline required by California Senate Bill 330 (SB 330)), stormwater program, and floodplain management program activities.

On May 19, 2020, staff issued a RFQ for two service categories: On-Call Engineering Plan Review & Technical Support Services and On-Call Map Review & City Surveyor Services.

The objective of the RFQ was to establish two separate on-call lists, with a maximum of four pre-qualified and experienced firms per list, for plan review & technical support and map review & City Surveyor services. The two on-call lists will be valid for three years.

There were five firms that submitted their qualifications by the due date of July 2, 2020 for both the On-Call Engineering Plan Review & Technical Support Services and for the On-Call Map Review & City Surveyor Services.

The proposals were evaluated by a four-member selection committee using five evaluation criteria: Overall Proposal, Qualifications & Experience, Range of Services, and Understanding of Services & Approach.

Staff Recommendations

After a thorough evaluation by the selection committees, staff is recommending the following top-ranking firms be included in the two on-call lists:

CIP Engineering and Inspection Services	
1	CSG Consultants, Inc.
2	Mott MacDonald Group, Inc.

Engineering Plan Review & Technical Support Services	
1	CSG Consultants, Inc.
2	Harris & Associates, Inc.
3	MNS Engineers, Inc.
4	Ruggeri-Jensen-Azar

Map Review & City Surveyor Services	
1	CSG Consultants, Inc.
2	Hanna-Brunetti
3	MNS Engineers, Inc.

In addition to scoring the highest, the firms outlined above all have conducted work with the City in the past and demonstrated quality performance. The agreements with MNS Engineers, Inc. and Ruggeri-Jensen-Azar, are not being recommended for Council approval as the contract amounts for each of these firms will not exceed \$60,000. Therefore, these two agreements will be processed within the City Manager authority.

In addition to the standard consultant agreements for the four consultants (CSG Consultants, Inc., Mott MacDonald Group, Inc., Harris & Associates, Inc., and Hanna-Brunetti), staff is also recommending City Council approval of additional compensation (or contingency amount) not to exceed 30% of the total compensation for each consultant. The additional compensation is considered contingency to provide flexibility for CIP and Land Development Engineering staff to cover unexpected work or additional work to be assigned to a consultant which exceeds the approved contract amount during the initial term of the agreement. The additional compensation will be applied to

each of the consultant agreements and will only be authorized as needed and if the total budgeted amount is not exceeded. Staff would return to Council for an augmented budget should the consultant costs exceed the anticipated overall budget amount.

Staff is recommending the following contract amounts for Council approval:

Consultant Name	Initial Contract Amount	Contingency Amount	Total Contract Amount
1. CSG Consultants, Inc.			
On-Call Services for CIP Engineering and Utilities	\$400,000	\$120,000	\$520,000
On-Call Engineering Plan Review & Technical Support Services for Land Development Engineering	\$340,000	\$102,000	\$442,000
On-Call Map Review & City Surveyor Services for Land Development Engineering	\$44,000	\$13,200	\$57,200
Totals	\$784,000	\$235,200	\$1,019,200
2. Mott MacDonald Group, Inc. On-Call Services for CIP Engineering and Utilities	\$200,000	\$60,000	\$260,000
3. Harris & Associates, Inc. On-Call Engineering Plan Review & Technical Support Services for Land Development Engineering	\$220,000	\$66,000	\$286,000
4. Hanna-Brunetti On-Call Map Review & City Surveyor Services for Land Development Engineering	\$58,000	\$17,400	\$75,400

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the four recommended contract approvals for City Engineering Consultants and to provide a summary of the two, separate RFQ selection results.

The CIP Engineering and Inspection RFQ issued on April 23, 2020 was posted on the City's website until the RFQ due date of May 11, 2020. A separate solicitation email was sent to three engineering consultants. The RFQ issued for Land Development Engineering on May 19, 2020, was posted on the same date in Public Purchase and on the City's website until the RFQ due date of July 2, 2020. A separate solicitation email was sent to several engineering consultants that have done work in the City of Morgan Hill.

ALTERNATIVE ACTIONS:

The Council may wish to provide alternate direction on soliciting consultant services for the City Engineering related functions. Alternate direction may include the City Council having staff solicit new consultant proposals or approving a limited number of proposals. These alternative actions are not recommended and may delay the review/approval of both CIP projects and land development projects and delay the completion of certain stormwater program tasks. These delays could result in fines or lawsuits against the City should the staff be unable to meet required State mandates.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 17, 2020, the City Council approved the FY 2020-21 & FY 2021-22 Operating Budget and the FY2020-21 through FY2025-26 CIP Budget Document providing funding for consultant services.

FISCAL AND RESOURCE IMPACT:

The funding for the agreements for on-call services to CIP Engineering and Utilities will come from various capital improvement projects and operating funds included in the adopted Budget. The funding for the agreements for on-call services to Land Development Engineering will come from the Community Development Fund 206.

CEQA (California Environmental Quality Act):

Not a project.

Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment are exempted from environmental review under Section 15061(b)(3) of the State CEQA Guidelines. The agreements are covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Each project in the adopted CIP shall be reviewed individually under CEQA.

LINKS/ATTACHMENTS:

1. CSG Consultants Agreement
2. Hanna-Brunetti Agreement
3. Harris & Associates Agreement
4. Mott MacDonald Group Agreement

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS CSG CONSULTANTS, 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 CSG CONSULTANTS, INC. a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2022 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of two years. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be: a) On-Call Project Management and Inspection Services for Capital Improvement Program (CIP); b) On-Call Engineering Plan Review & Technical Support Services for Land Development Engineering; and c) On-Call Map Review & City Surveyor Services for Land Development Engineering as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$784,000. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Seven Hundred Eighty Four Thousand dollars, except as provided in Section 4.1.1 "Additional Compensation", and shall be billed based on the rate and basis set forth in **Exhibits A and B**. If the City Manager extends the term of this Agreement for up to two years pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation for two years of service during the initial term of this Agreement, notwithstanding the Additional Compensation set forth in Section 4.1.1 below.
 - 4.1.1. **Additional Compensation.** Additional compensation during the initial term of this Agreement that exceeds the compensation amount listed in Section 4.1 of this Agreement may be approved by the City Manager through a written amendment so long as City Council has appropriated sufficient funds therefor. The City Manager shall have the authority to approve additional compensation in an amount not to exceed thirty percent (30%) of the total compensation amount listed in Section 4.1 of this Agreement, for a combined total maximum compensation amount of \$1,019,200.

- 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

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

7. **Insurance Requirements.** CONSULTANT shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of CONSULTANT, including its subcontractors, employees and agents, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by

this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or “umbrella” policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by City. CONSULTANT further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days’ notice provided to CONSULTANT, at any time as deemed necessary to protect the interests of the CITY.

7.1. Insurance Types and Amounts.

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

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

7.1.5. Professional Liability.

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

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

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

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

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

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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

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

7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

9.2. Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable

federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

CSG CONSULTANTS, INC.
3150 Almaden Expressway #255
San Jose, CA 95118

Address of CITY is as follows:

Yat Cho, Senior Project Manager	with a copy to:
<u>and</u>	City Clerk
Maria Angeles, Senior Civil Engineer	City of Morgan Hill
City of Morgan Hill	17575 Peak Avenue
17575 Peak Avenue	Morgan Hill, CA
Morgan Hill, CA 95037	95037

14. **Licenses, Permits and Fees.** CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.
15. **CONSULTANT'S Proposal.** If applicable, this Agreement shall include CONSULTANT'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
16. **Maintenance of Records.**
 - 16.1. **Maintenance.** CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then CONSULTANT shall retain said records until such action is resolved.

- 16.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 16.3. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
17. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
18. **Time of Essence.** Time is of the essence in the performance of this Agreement.
19. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
20. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
21. **Defense and Indemnification.**
- 21.1. **Defense and Indemnification for Design Professional Services.** Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM") to the extent of CONSULTANT'S proportionate percentage of fault.

- 21.2. Defense and Indemnification for Non-Design Professional Services. For all services performed under this agreement not covered by Section 21.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 21.3. Exceptions. CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence or willful misconduct of the CITY.
- 21.4. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 21.5. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 21.6. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.
22. Entire Agreement; Modification; Conflicting Provisions. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.
23. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

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

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

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

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

[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Bigelow

 Christina J. Turner

 Print Name

 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

CSG CONSULTANTS, INC.

 City Attorney

By: _____

 Donald A. Larkin

 Cyrus Kianpour, President

 Print Name

 Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: _____
 July 22, 2020

 Dave Gottlieb

By: _____

 Dave Gottlieb, Chief Financial Officer

 Print Name and Title of Signer.

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

Date: _____
 July 22, 2020

EXHIBIT A SCOPE OF SERVICES

A. On-Call Project Management and Inspection Services for Capital Improvement Program (CIP)

Under the direct supervision of a Capital Improvement Program (CIP) Project Engineer Staff, the CONSULTANT will provide the On-Call Project Management & Inspection Services for an initial term of two years (Fiscal Year 2020-21 and FY 2021-22) with a Total Compensation of \$400,000 during the initial term of this Agreement.

The following are the types of tasks that are included in the CONSULTANT'S scope of services:

- Provide a primary representative to coordinate on services provided by the CONSULTANT to the CITY
- Provide cost estimates to the CITY based on requests for consultant services
- Provide a schedule of rates for the provision of staff within various capacities for the CITY
- Provide the following as requested for specific projects:
 - o Recommend project delivery methods that meet the City's goals
 - o Initiate and implement RFP processes for all necessary professional service contracts required to deliver projects
- Provide a construction inspector to inspect projects and document activities and as-built infrastructure
- Provide the necessary office space, administrative and technical support, phones, computers, supplies, and vehicles necessary to independently manage the construction
- Solicit engineering, special inspection (if necessary), and testing services through an RFP process approved by the CIP Engineering Representative
- Initiate meetings with stakeholders during planning, design, and construction of projects to discuss projects, inform about impacts, and to alter design and construction methods, where practical, to address stakeholder concerns
- Prepare construction bid packages conforming to the City's standard specifications and policies
- Oversee bidding process and coordinate with City Clerk's office for official bid openings
- Address RFP and bidding questions
- Serve as primary contact representing CITY for any design or construction questions from public
- Maintain records of projects and minutes of meetings
- Prepare Staff Reports and attend City Council meetings for the following milestones for each project. (Be prepared to address the City Council to describe process or award recommendation)
 - o Award of engineering, inspection, and testing contracts after RFP process
 - o Award of construction contracts
 - o Approval of change orders for construction projects (when necessary)
 - o Acceptance of construction contracts
- Perform Project Management duties, including progress payment evaluation, field dispute resolution, and on-site project monitoring
- Prepare status reports of all ongoing activities for the CIP Engineering Representative

- Prepare status reports of all ongoing activities for the CIP Engineering Representative
- Support the processing of invoices and pay requests for the CIP Engineering Representative's approval and signature
- Prepare and submit detailed cost accounting documentation for activities and for third-party services and construction contracts.
- Regularly inform the designated CIP Project Engineer on the status of projects

B. On-Call Engineering Plan Review & Technical Support Services for Land Development Engineering

Under the direct supervision of a Land Development Engineering staff, the CONSULTANT will provide On-Call Engineering Plan Review & Technical Support Services for an initial term of two years (Fiscal Year 2020-21 and FY 2021-22) with a Total Compensation of \$340,000 during the initial term of this Agreement.

The following are the types of tasks that are included in the CONSULTANT'S scope of services:

- Standard and Expedited engineering plan review of improvement plans for conformance with adopted City standards, approved conditions of approval, and/or accepted industry practice
- Review storm drain and/or sanitary sewer hydraulic calculations for conformance with City standards and/or accepted industry practice
- Review the civil engineering and site planning aspects of tentative maps and other land development applications for conformance with City standards as part of the City's entitlement process
- Review of Post-Construction Stormwater Runoff Management Plans (SWRMPs) and Stormwater Control Plans submitted by private development projects; inspections and other program management functions to comply with the City's National Pollutant Discharge Elimination System (NPDES) permit requirements
- Prepare flood studies, review floodplain proposals, Flood Program management support, and other related functions as needed
- Transportation/traffic engineering-related services
- Other general engineering services as needed

C. On-Call Map Review & City Surveyor Services for Land Development Engineering

Under the direct supervision of a Land Development Engineering staff, the CONSULTANT will provide Map Review & City Surveyor Services for an initial term of two years (Fiscal Year 2020-21 and FY 2021-22) with a Total Compensation of \$44,000 during the initial term of this Agreement.

The following are the types of tasks that are included in the CONSULTANT'S scope of services:

- Review of tract maps and parcel maps for conformance with the Subdivision Map Act. Provide stamp and signature on maps and other documents, as necessary, as the

Acting City Surveyor.

- Review of land surveying aspects of tentative maps for conformance with City standards as part of the City's entitlement process
- Review of lot line adjustments, certificates of compliance, easement plat maps, legal descriptions, and closure calculations for technical accuracy
- Traditional topographic surveys to determine locations and elevations of existing improvements, structures, and topographic features
- Develop legal descriptions and plat maps, and other survey-related tasks as needed

EXHIBIT B SCHEDULE OF COMPENSATION RATES

CSG services for all three service types (On-Call Project Management and Inspection Services for Capital Improvement Program (CIP), On-Call Engineering Plan Review & Technical Support Services for Land Development Engineering, and On-Call Map Review & City Surveyor Services for Land Development Engineering) will be billed on a time-and-materials basis according to the Standard Rates shown below.

Engineering Trainee	\$ 60
Administrative Assistant	\$ 80
Analyst	\$130
Engineering Designer/CASp Inspection & Consultation	\$140
Construction Inspector	\$145
Senior Analyst	\$155
Assistant Resident Engineer	\$170
Assistant Engineer	\$145
Associate Engineer	\$170
Senior Construction Inspector	\$155
Senior Engineer	\$200
Senior Land Surveyor	\$200
Resident Engineer	\$200
Structure Representative	\$200
Senior Structural Engineer	\$220
Senior Project Manager	\$220
Principal Engineer	\$230
Senior Principal Engineer	\$250
Two-Person Survey Crew	\$330
Sustainability Program Analyst	\$130
Sustainability Program Senior Analyst	\$155
Sustainability Program Manager	\$185

Traffic Engineering Support Services from CSG's Subconsultant, Pinnacle Traffic Engineering, will be billed on a time-and-materials basis according to the following Standard Rates:

Principal Engineer	\$225
Associate Engineer	\$160
AutoCAD Technician	\$120
Administrative Support	\$ 60

All hourly rates include overhead costs including, but not limited to, salaries, benefits, Workers Compensation Insurance, travel and office expenses. CSG will coordinate the pickup and return of plans to and from CSG offices. Overtime work will be billed at 1.5x the hourly rates indicated in the table above. On each anniversary of the contract start date, CSG will initiate a rate increase based on change in CPI for the applicable region. CSG will mail an invoice every month for services rendered during the previous month.

EXHIBIT C
SCHEDULE OF PERFORMANCE

CONSULTANT'S services will be on an as needed, on-call basis for all three service types (On-Call Project Management and Inspection Services for Capital Improvement Program (CIP), On-Call Engineering Plan Review & Technical Support Services for Land Development Engineering, and On-Call Map Review & City Surveyor Services for Land Development Engineering).

**EXHIBIT D
THIRD PARTY DATA USE AGREEMENT**

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

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS HANNA-BRUNETTI

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Associated Engineering Surveying Services, Inc, DBA Hanna-Brunetti, 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, 2022 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of two years. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be On-Call Map Review & City Surveyor Services for Land Development Engineering as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$58,000. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Fifty Eight Thousand dollars, except as provided in Section 4.1.1 "Additional Compensation", and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to two years pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation for two years of service during the initial term of this Agreement, notwithstanding the Additional Compensation set forth in Section 4.1.1 below.
 - 4.1.1. **Additional Compensation.** Additional compensation during the initial term of this Agreement that exceeds the compensation amount listed in Section 4.1 of this Agreement may be approved by the City Manager through a written amendment so long as City Council has appropriated sufficient funds therefor. The City Manager shall have the authority to approve additional compensation in an amount not to exceed thirty percent (30%) of the total compensation amount listed in Section 4.1 of this Agreement, for a combined total maximum compensation amount of \$75,400.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by

CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

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

7. **Insurance Requirements.** CONSULTANT shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of CONSULTANT, including its subcontractors, employees and agents, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. Any

deductibles or self-insured retentions must be declared to and approved by City. CONSULTANT further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to CONSULTANT, at any time as deemed necessary to protect the interests of the CITY.

7.1. Insurance Types and Amounts.

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

7.1.5. Professional Liability.

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

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

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

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

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

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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

- 7.3. **Qualification of Insurers.** All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.
- 7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

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

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

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

HANNA-BRUNETTI
7651 Egleberry Street
Gilroy, CA 95020-5122

Address of CITY is as follows:

Maria Angeles
Senior Civil Engineer
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

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

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

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

16. **Maintenance of Records.**

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

16.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of

public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

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

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

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

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

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

21. **Defense and Indemnification.**

21.1. **Defense and Indemnification for Design Professional Services.** Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM") to the extent of CONSULTANT'S proportionate percentage of fault.

21.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 21.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and

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

- 21.3. Exceptions. CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence or willful misconduct of the CITY.
- 21.4. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 21.5. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 21.6. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

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

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

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

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

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

[Signatures on Next Page]

27. **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:

HANNA-BRUNETTI

 City Attorney

By:

 Donald A. Larkin
 Print Name

Amanda Musy-Verdel, President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: 7/28/2020

By:

JOHN K. KING

Print Name and Title of Signer.

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

Date: 7-28-20

EXHIBIT A SCOPE OF SERVICES

Under the direct supervision of a Land Development Engineering staff, the CONSULTANT will provide On-Call Map Review & City Surveyor Services for an initial term of two years (Fiscal Year 2020-21 and FY 2021-22).

The following are the types of tasks that are included in the CONSULTANT'S scope of services:

- Review of tract maps and parcel maps for conformance with the Subdivision Map Act.
- Provide stamp and signature on maps and other documents, as necessary, as the Acting City Surveyor.
- Review of land surveying aspects of tentative maps for conformance with City standards as part of the City's entitlement process
- Review of lot line adjustments, certificates of compliance, easement plat maps, legal descriptions, and closure calculations for technical accuracy
- Traditional topographic surveys to determine locations and elevations of existing improvements, structures, and topographic features
- Develop legal descriptions and plat maps, and other survey-related tasks as needed

EXHIBIT B SCHEDULE OF COMPENSATION RATES

CONSULTANT'S services will be billed on a time-and-materials basis according to the Standard Hourly Rates shown below effective July 1, 2020 – June 30, 2021.

OFFICE AND PROFESSIONAL

Principal Engineer	\$190
Associate Engineer/Project Manager	\$170
Project Engineer	\$155
Surveyor	\$190
Design Engineer	\$135
Assistant Surveyor	\$130
Junior Civil Engineer	\$115
Technician	\$115
Inspector	\$127
Draftsperson	\$110
Clerical	\$74

FIELD

One-Person Survey Crew	\$200
Two-Person Survey Crew	\$235
Three-Person Survey Crew	\$280

MISCELLANEOUS EXPENSE SCHEDULE

Computer/data processing services	\$93.50 per hour
Transportation	\$0.575 per mile
Reprographics, prints and materials	Cost + 20%
In-House – 24"x36" Prints	\$3.00 per print
Xerox – 8"x11"	\$0.39 per page
Outside Delivery Service	Cost + 15%
Equipment Rentals	Cost + 15%

The rates and fees for all services performed subsequent to the above effective date shall be adjusted to reflect increased operating, overhead and inflationary costs.

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

CONSULTANT'S services will be on an as needed, on-call basis.

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS HARRIS & ASSOCIATES, 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 HARRIS & ASSOCIATES, INC. a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.

2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2022 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of two years. Any such extension shall be in writing and signed by both Parties to this Agreement.

3. **Scope of Service.** The services to be performed by CONSULTANT shall be On-Call Engineering Plan Review & Technical Support Services for Land Development Engineering as further described in **Exhibit A**.

4. **Compensation.** CONSULTANT shall be compensated as follows:

4.1. **Amount.** \$220,000. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred Twenty Thousand dollars, except as provided in Section 4.1.1 "Additional Compensation", and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to two years pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation for two years of service during the initial term of this Agreement, notwithstanding the Additional Compensation set forth in Section 4.1.1 below.

4.1.1. **Additional Compensation.** Additional compensation during the initial term of this Agreement that exceeds the compensation amount listed in Section 4.1 of this Agreement may be approved by the City Manager through a written amendment so long as City Council has appropriated sufficient funds therefor. The City Manager shall have the authority to approve additional compensation in an amount not to exceed thirty percent (30%) of the total compensation amount listed in Section 4.1 of this Agreement, for a combined total maximum compensation amount of \$286,000.

4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by

CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

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

7. **Insurance Requirements.** CONSULTANT shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of CONSULTANT, including its subcontractors, employees and agents, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella"

policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by City. CONSULTANT further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to CONSULTANT, at any time as deemed necessary to protect the interests of the CITY. If such modification results in additional cost to the CONSULTANT and the CITY requires CONSULTANT to obtain the additional coverage, the CITY and CONSULTANT will negotiate the additional cost of the insurance.

7.1. Insurance Types and Amounts.

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

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

7.1.5. Professional Liability.

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

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

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

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

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

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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

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

7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

9.2. Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable

federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

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

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

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

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

HARRIS & ASSOCIATES, INC.
450 Lincoln Avenue, Suite 103
Salinas, CA 93901

Address of CITY is as follows:

Maria Angeles
Senior Civil Engineer
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

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

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

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

16. **Maintenance of Records.**

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

- 16.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 16.3. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement. Any modifications made by the City or any agents of the City, to any of the CONSULTANT's work products or any partial use or reuse of these work products without the express written consent of the CONSULTANT will be at the CITY'S sole risk and without liability to the CONSULTANT.
17. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
18. **Time of Essence.** Time is of the essence in the performance of this Agreement. CONSULTANT shall not be responsible for delays caused by circumstances beyond its reasonable sole control.
19. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
20. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
21. **Defense and Indemnification.**
- 21.1. **Defense and Indemnification for Design Professional Services.** Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT,

and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM") to the extent of CONSULTANT'S proportionate percentage of fault.

- 21.2. Defense and Indemnification for Non-Design Professional Services. For all services performed under this agreement not covered by Section 21.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
 - 21.3. Exceptions. CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence or willful misconduct of the CITY or any of the INDEMNITEES.
 - 21.4. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
 - 21.5. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
 - 21.6. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.
22. Entire Agreement; Modification; Conflicting Provisions. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.

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

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

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

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

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

[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Bigelow

 Christina J. Turner

 Print Name

 Print Name

Date: _____

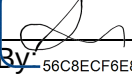
Date: _____

APPROVED AS TO FORM:

HARRIS & ASSOCIATES, INC.

 City Attorney

DocuSigned by:

By:  56C8ECF6E8BE4D6...

 Donald A. Larkin

 CFO

 Print Name

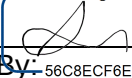
 Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: 7/30/2020

DocuSigned by:

By:  56C8ECF6E8BE4D6...

 CFO

 Print Name and Title of Signer.

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

Date: 7/30/2020

EXHIBIT A SCOPE OF SERVICES

Under the direct supervision of a Land Development Engineering staff, the CONSULTANT will provide On-Call Engineering Plan Review & Technical Support Services for an initial term of two years (Fiscal Year 2020-21 and FY 2021-22).

The following are the types of tasks that are included in the CONSULTANT'S scope of services:

- Standard and Expedited engineering plan review of improvement plans for conformance with adopted City standards, approved conditions of approval, and/or accepted industry practice
- Review storm drain and/or sanitary sewer hydraulic calculations for conformance with City standards and/or accepted industry practice
- Review the civil engineering and site planning aspects of tentative maps and other land development applications for conformance with City standards as part of the City's entitlement process
- Review of Post-Construction Stormwater Runoff Management Plans (SWRMPs) and Stormwater Control Plans submitted by private development projects; inspections and other program management functions to comply with the City's National Pollutant Discharge Elimination System (NPDES) permit requirements
- Prepare flood studies, review floodplain proposals, Flood Program management support, and other related functions as needed
- Transportation/traffic engineering-related services
- Other general engineering services as needed

EXHIBIT B SCHEDULE OF COMPENSATION RATES

CONSULTANT'S services will be billed on a time-and-materials basis according to the Standard Rates shown below effective July 2, 2020 – June 30, 2022.

	Hourly Rates		
	2020	2021	2022
Principal-in-Charge	\$260	\$270	\$280
Senior Project Manager	\$210	\$220	\$230
Project Manager	\$190	\$200	\$210
Assistant Project Manager	\$160	\$170	\$180
Traffic Engineer	\$230	\$240	\$250
Senior Project Engineer	\$160	\$170	\$180
Project Engineer	\$140	\$150	\$160
Design Engineer	\$125	\$135	\$145

Note: Rates are subject to adjustment due to promotions during the effective period of this schedule. Hourly rates include most direct costs such as travel, equipment, computers, communications and reproduction (except large plan sets).

EXHIBIT C SCHEDULE OF PERFORMANCE

CONSULTANT'S services will be on an as needed, on-call basis.

Attachment: Harris & Associates Agreement [Revision 2] (2784 : Approve Service Agreements for Design Professionals for Various On-Call

EXHIBIT D
Third Party Data Use Agreement

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

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS MOTT MACDONALD GROUP

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Mott MacDonald Group, 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, 2022 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of two years. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be on-call project management & inspection services as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$200,000. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Two-Hundred-Thousand-dollars, except as provided in Section 4.1.1 "Additional Compensation", of this Agreement, and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to two years pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation for two years of service during the initial term of this Agreement, notwithstanding the Additional Compensation set forth in Section 4.1.1 below.
 - 4.1.1. **Additional Compensation.** Additional compensation during the initial term of this Agreement that exceeds the compensation amount listed in Section 4.1 of this Agreement may be approved by the City Manager through a written amendment so long as City Council has appropriated sufficient funds therefor. The City Manager shall have the authority to approve additional compensation in an amount not to exceed thirty percent (30%) of the total compensation amount listed in Section 4.1 of this Agreement, for a combined total maximum compensation amount of \$260,000.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by

CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

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

7.1. Insurance Types and Amounts.

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

amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CONSULTANT maintains a claims-made policy, CONSULTANT shall provide written evidence of such insurance to the CITY for at least four (4) years after the completion of work performed under this Agreement.

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

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

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

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

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

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

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

- 7.4. **Certificates.** In the event of a claim or legal action against the CITY and in the event the CITY is seeking indemnification from CONSULTANT, then the CITY may request copies of the CONSULTANT's insurance policy(ies) that would be responding to such claim or legal action. CONSULTANT shall furnish CITY of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

Mott MacDonald Group
2077 Gateway Place Suite 550
San Jose, CA 95110

Address of CITY is as follows:

Yat Cho	with a copy to:
Senior Project Manager	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

14. **Licenses, Permits and Fees.** CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.
15. **CONSULTANT'S Proposal.** If applicable, this Agreement shall include CONSULTANT'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
16. **Maintenance of Records.**
- 16.1. **Maintenance.** CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then CONSULTANT shall retain said records until such action is resolved.
- 16.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject,

at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

- 16.3. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall upon CONSULTANT's receipt of payment for all work performed under this Agreement be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
17. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; and (2) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
18. **Time of Essence.** Time is a material condition in the performance of this Agreement.
19. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
20. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
21. **Defense and Indemnification.**
- 21.1. **Defense and Indemnification for Design Professional Services.** Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM") to the extent of CONSULTANT'S proportionate percentage of fault.
- 21.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 21.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and

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

- 21.3. Exceptions. CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence or willful misconduct of the CITY.
- 21.4. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 21.5. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 21.6. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.
22. **Entire Agreement: Modification: Conflicting Provisions.** This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.
23. **Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.
24. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

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

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

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

[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Bigelow

 Christina J. Turner

 Print Name

 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

Mott MacDonald Group

 City Attorney

 By: 

 Donald A. Larkin

 Senior Vice President

 Print Name

 Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: July 24, 2020

 By:

 Print Name and Title of Signer.

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

Date: _____

EXHIBIT A SCOPE OF SERVICE

Under the direct supervision of a Capital Improvement Program (CIP) Project Engineer Staff, the CONSULTANT will provide the On-Call Project Management & Inspection Services for a two-year period (Fiscal Year 2020-21 and FY 2021-22).

The following are the types of tasks that are included in the CONSULTANT'S scope of services

Project Management Team Scope of Services and Responsibility:

- Provide a primary representative to coordinate on services provided by the consultant to the City
- Provide cost estimates to the City based on requests for consultant services
- Provide a schedule of rates for the provision of staff within various capacities for the City
- Provide the following as requested for specific projects:
 - Recommend project delivery methods that meet the City's goals
 - Initiate and implement RFP processes for all necessary professional service contracts required to deliver projects
- Provide a construction inspector to inspect projects and document activities and as-built infrastructure
- Provide the necessary office space, administrative and technical support, phones, computers, supplies, and vehicles necessary to independently manage the Construction
- Solicit engineering, special inspection (if necessary), and testing services through an RFP process approved by the Engineering Representative
- Initiate meetings with stakeholders during planning, design, and construction of projects to discuss projects, inform about impacts, and to alter design and construction methods, where practical, to address stakeholder concerns
- Prepare construction bid packages conforming to the City's standard specifications and policies
- Oversee bidding process and coordinate with City Clerk's office for official bid openings
- Address RFP and bidding questions
- Serve as primary contact representing City for any design or construction questions from public
- Maintain records of projects and minutes of meetings
- Prepare Staff reports and attend City Council meetings for the following milestones for each project. (Be prepared to address the City Council to describe process or award recommendation)
 - Award of engineering, inspection, and testing contracts after RFP process
 - Award of construction contracts
 - Approval of change orders for construction projects (when necessary)
 - Acceptance of construction contracts
- Perform Project Management duties, including progress payment evaluation, field dispute resolution, and on-site project monitoring
- Prepare status reports of all ongoing activities for the Engineering Representative
- Prepare status reports of all ongoing activities for the Engineering Representative
- Support the processing of invoices and pay requests for the Engineering Representative's approval and signature
- Prepare and submit detailed cost accounting documentation for activities and for third-party services and construction contracts.
- Regularly inform the designated City Project Manager on the status of projects

EXHIBIT B SCHEDULE OF COMPENSATION RATES

Category	Billable Rate		
	2020	2021	2022
EXECUTIVE	\$ 374.00	\$ 389.00	\$ 405.00
PRINCIPAL PROJECT MANAGER	\$ 325.00	\$ 338.00	\$ 352.00
PRINCIPAL ENGINEER	\$ 300.00	\$ 312.00	\$ 324.00
SENIOR PROJECT MANAGER	\$ 248.00	\$ 258.00	\$ 268.00
PROJECT MANAGER	\$ 194.00	\$ 202.00	\$ 210.00
SENIOR PROJECT ENGINEER	\$ 210.00	\$ 218.00	\$ 227.00
ENGINEER V/Project Engineer	\$ 159.00	\$ 165.00	\$ 172.00
ENGINEER IV/Design Engineer	\$ 149.00	\$ 155.00	\$ 161.00
ENGINEER III	\$ 126.00	\$ 131.00	\$ 136.00
ENGINEER II	\$ 114.00	\$ 119.00	\$ 124.00
ENGINEER I	\$ 109.00	\$ 113.00	\$ 118.00
INTERNS	\$ 67.00	\$ 70.00	\$ 73.00
SENIOR INSPECTOR	\$ 219.00	\$ 228.00	\$ 237.00
INSPECTOR	\$ 130.00	\$ 135.00	\$ 140.00
SENIOR CADD/BIM	\$ 197.00	\$ 205.00	\$ 213.00
CADD/BIM V	\$ 157.00	\$ 163.00	\$ 170.00
CADD/BIM IV	\$ 127.00	\$ 132.00	\$ 137.00
PRINCIPAL PROJECT CONTROLS	\$ 283.00	\$ 294.00	\$ 306.00
SENIOR PROJECT CONTROLS	\$ 242.00	\$ 252.00	\$ 262.00
PROJECT CONTROLS	\$ 160.00	\$ 166.00	\$ 173.00
SENIOR DOCUMENT CONTROLS/CONTRACT ADMINISTRATORS	\$ 168.00	\$ 175.00	\$ 182.00
DOCUMENT CONTROLS/CONTRACT ADMINISTRATORS	\$ 118.00	\$ 123.00	\$ 128.00
SENIOR PROJECT ACCOUNTANT	\$ 163.00	\$ 170.00	\$ 177.00
PROJECT ACCOUNTANT	\$ 113.00	\$ 118.00	\$ 123.00
SENIOR ADMINISTRATIVE ASSISTANT	\$ 142.00	\$ 148.00	\$ 154.00
ADMINISTRATIVE ASSISTANT	\$ 102.00	\$ 106.00	\$ 110.00

Note: Rates for inspectors may need to be adjusted to meet prevailing wage requirements depending on the task order being performed.

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

CONSULTANT'S services will be on an as needed, on-call basis.



CITY COUNCIL STAFF REPORT

MEETING DATE: August 5, 2020

PREPARED BY: Gina Paolini, Interim Principal Planner
APPROVED BY: City Manager

APPROVE A FIVE-YEAR CONTRACT WITH CENTRALSQUARE FOR TRAKIT PERMITTING SYSTEM

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer a five-year contract with CentralSquare Solutions for the purchase of maintenance service, technical support, and software updates for the City's permit tracking software system (TRAKiT) for a not to exceed amount of \$525,197.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure
Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Community Engagement and Messaging

REPORT NARRATIVE:

The City Council approved the purchase of a permit tracking software system from CRW Systems and the associated costs for implementation of the system on April 15, 2015. The initial contract with CRW for maintenance service, technical support, and software updates was for five years, which expired April 2020. A new five-year contract has been proposed for the permit tracking software system with CentralSquare Solutions, who has acquired the software system.

Staff recommends that the Council approve the contract and authorize the City Manager to execute the contract.

COMMUNITY ENGAGEMENT: Not Applicable

Approval of the contract is transparent to the public and no specific community engagement is warranted.

ALTERNATIVE ACTIONS:

The Council could decline to approve the contract which would prevent the City from continuing to use the permit tracking software system.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved the purchase and implementation of the permit tracking software system, along with the maintenance service, technical support, and software updates on April 15, 2015.

FISCAL AND RESOURCE IMPACT:

The annual costs for the five-year term are as follows:

Term	Covered Period	Fees
Year 1	May 1, 2020-April 30, 2021	\$ 95,046
Year 2	May 1, 2021-April 30, 2022	\$ 99,800
Year 3	May 1, 2022-April 30, 2023	\$ 104,790
Year 4	May 1, 2023-April 30, 2024	\$ 110,030
Year 5	May 1, 2024-April 30, 2025	\$ 115,531

The annual fees are included in the adopted biennial budget for Fiscal Years 2020-21 and 2021-22 within the Development Service Fund (206). Future annual fees will be subject to budgetary appropriations.

CEQA (California Environmental Quality Act):

This action authorizes an administrative activity which will not directly or indirectly lead to changes in the physical environment and it is, therefore, not a project under CEQA.

LINKS/ATTACHMENTS:

1. Morgan Hill CentralSquare Solutions Agreement and Support 2020 Rev 7.20.20 for countersign

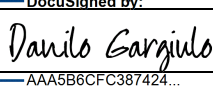
CentralSquare Solutions Agreement

This CentralSquare Solutions Agreement (the "**Agreement**"), effective as of the latest date shown on the signature block below (the "**Effective Date**"), is entered into between **CentralSquare Technologies, LLC**, a Delaware Limited Liability Company with its principal place of business in Lake Mary, FL ("**CentralSquare**") and the **City of Morgan Hill, CA** ("**Customer**"), together with CentralSquare, the "**Parties**", and each, a "**Party**".

WHEREAS, CentralSquare licenses and gives access to certain software applications ("**Solutions**") to its customers and also provides maintenance, support, migration, installation and other professional services; and

WHEREAS, Customer desires to license and/or gain access to certain Solutions and receive professional services described herein, and CentralSquare desires to grant and provide Customer license and access to such offerings as well as to support them with professional services, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by the signatures of their duly authorized representative below, the Parties intending to be legally bound, agree to all of the following provisions and exhibits of this Agreement:

CentralSquare Technologies, LLC	City of Morgan Hill
1000 Business Center Dr. Lake Mary, FL 32746	17575 Peak Ave. Morgan Hill, CA 95037
By: 	By:
Print Name: Danilo Gargiulo	Print Name:
Print Title: SVP Business Transformation, PA	Print Title:
Date Signed: 7/20/2020	Date Signed:

1. **Solution: TRAKit PA**

2. **Term.**

- 2.1. **Initial Term.** The Initial Term of this Agreement commences as of the May 1, 2020 and will continue in effect for five (5) years from such date unless terminated earlier pursuant to any of the Agreement's express provisions (the "**Initial Term**").
- 2.2. **Renewal Term.** This Agreement will automatically renew for additional successive one (1) year terms unless earlier terminated pursuant to any of the Agreement's provisions (a "**Renewal Term**" and, collectively, with the Initial Term, the "**Term**").
- 2.3. **Non-Renewal.** Either party may elect to end renewal of the contract by issuing a notice of non-renewal, in writing, to the other party six (6) months prior to the expiration of the current contract term.

3. **Fees.** In consideration of the rights and services granted by CentralSquare to Customer under this Agreement, Customer shall make payments to CentralSquare pursuant to the amounts and payment terms outlined in Exhibit 1 (the "**Project Cost Summary**").

4. **Definitions.** Capitalized terms not otherwise defined in this Agreement have the meanings set forth below:

- 4.1. "**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory or other, whether at law, in equity, or otherwise.
- 4.2. "**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person.
- 4.3. "**Authorized User**" means Customer's employees, consultants, contractors, and agents who are authorized by Customer to access and use the Solutions under the rights granted to Customer pursuant to this Agreement, and for whom access to the Solutions has been purchased.
- 4.4. "**Baseline**" means the version of a Solution updated to the particular time in question through CentralSquare's warranty services and maintenance, but without any other modification whatsoever.

- 4.5. **"Component System"** means any one of the Solutions identified in Exhibit 1, including all copies of Source Code, Object Code and all related specifications, Documentation, technical information, and all corrections, modifications, additions, development work, improvements and enhancements to and all Intellectual Property Rights for such Component System.
- 4.6. **"Customer Data"** means information, data, and content, in any form or medium, collected, downloaded, or otherwise received, directly or indirectly from Customer, an Authorized User or end-users by or through the Solutions, provided the data is not personally identifiable and not identifiable to Customer.
- 4.7. **"Custom Modification"** means a change that CentralSquare has made at Customer's request to any Component System in accordance with a CentralSquare-generated specification, but without any other changes whatsoever by any Person.
- 4.8. **"Customer Systems"** means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated by Customer or through the use of third-party services.
- 4.9. **"Defect"** means a material deviation between the Baseline Solution and its Documentation, for which Defect Customer has given CentralSquare enough information to enable CentralSquare to replicate the deviation on a computer configuration that is both comparable to the Customer Systems and that is under CentralSquare's control. Further, with regard to each Custom Modification, Defect means a material deviation between the Custom Modification and the CentralSquare generated specification and documentation for such Custom Modification, and for which Defect Customer has given CentralSquare enough information to enable CentralSquare to replicate the deviation on a computer configuration that is both comparable to the Customer Systems and that is under CentralSquare's control.
- 4.10. **"Documentation"** means any manuals, instructions, or other documents or materials that CentralSquare provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of the Solutions, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.
- 4.11. **"Enhancements"** means general release (as opposed to custom) changes to a Baseline Component System or Custom Modification which increase the functionality of the Baseline Component System or Custom Modification in question.
- 4.12. **"Harmful Code"** means any software, hardware, device or other technology, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Customer or any Authorized User from accessing or using the Solutions as intended by this Agreement.
- 4.13. **"Intellectual Property Rights"** means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- 4.14. **"Maintenance"** means optimization, error correction, modifications, and updates to CentralSquare Systems to correct any known Defects and improve performance. Maintenance will be provided for each Component System, the hours and details of which are described in Exhibit 2 (**"Support Standards"**).
- 4.15. **"New Releases"** means new editions of a Baseline Component System or Custom Modification.
- 4.16. **"Person"** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.
- 4.17. **"Personal Information"** means any information that does or can identify a specific individual or by or from which a specific individual may be identified, contacted, or located. Personal Information includes all "nonpublic personal information" as defined under the Gramm-Leach-Bliley Act, "protected health information" as defined under the Health and Insurance Portability and Accountability Act of 1996, "Personal Data" as defined in the EU General Data Protection Regulation (GDPR 2018), "Personal Information" as defined under the Children's Online Privacy Protection Act of 1998, and all rules and regulations issued under any of the foregoing.
- 4.18. **"Professional Services"** means installation, implementation, development work, training or consulting services including custom modification programming, support relating to custom modifications, on-site support services, assistance with data transfers, system restarts and reinstallations provided by CentralSquare.

- 4.19. "**Representatives**" means, with respect to a Party, that Party's employees, officers, directors, agents, subcontractors, and legal advisors.
- 4.20. "**CentralSquare Personnel**" means all individuals involved in the performance of Support Services and Professional Services as employees, agents, Subcontractors or independent contractors of CentralSquare.
- 4.21. "**Solutions**" means the Component Systems, Documentation, Custom Modifications, development work, CentralSquare Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, provided or used by CentralSquare or any Subcontractor in connection with Professional Services or Support Services rendered under this Agreement.
- 4.22. "**CentralSquare Systems**" means the information technology infrastructure used by or on behalf of CentralSquare to deliver Solutions, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by CentralSquare or through the use of third-party services.
- 4.23. "**Support Services**" means Maintenance, Enhancements, implementation of New Releases, and general support efforts to respond to incidents reported by Customer in accordance with the detailed Support Standards outlined in Exhibit 2.
- 4.24. "**Third-Party Materials**" means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, related services, equipment, or components of or relating to the Solutions that are not proprietary to CentralSquare.

5. License, Access & Services and Audit.

- 5.1. License Grant. Subject to and conditioned on the payment of Fees and compliance with all other terms and conditions of this Agreement, CentralSquare hereby grants to Customer a non-exclusive, non-sublicensable, and non-transferable license to the current version of the Solution(s) outlined in Exhibit 1 at the time of this Agreement's execution.
- 5.2. Access and Scope of Use. Subject to and conditioned on Customer and their Authorized Users' compliance with the terms and conditions of this Agreement, CentralSquare hereby grants Customer a non-exclusive, non-transferable right to access and use the Solutions, solely by Authorized Users. Such use is limited to Customer's internal use. CentralSquare shall deliver to Customer the initial copies of the Solutions outlined in Exhibit 1 by (a) electronic delivery, by posting it on CentralSquare's network for downloading, or similar suitable electronic file transfer method, or (b) physical shipment, such as on a disc or other suitable media transfer method. Physical shipment is on FOB- CentralSquare's shipping point, and electronic delivery is deemed effective at the time CentralSquare provides Customer with access to download the Solutions. The date of such delivery shall be referred to as the "**Delivery Date**."
- 5.3. Documentation License. CentralSquare hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Solutions.
- 5.4. Audit. Customer shall maintain for a reasonable period of time, but not less than three (3) years after expiration or termination of this Agreement, the systems, books, and records necessary to accurately reflect compliance with software licenses and the use thereof under this Agreement. Upon request, Customer shall permit CentralSquare and its directors, officers, employees, and agents to have on-site access at Customer's premises (or remote access as the case may be) during normal business hours to such systems, books, and records for the purpose of verifying such licensed use the performance of such obligations and amounts. Customer shall render reasonable cooperation to CentralSquare as requested. If as a result of any audit or inspection CentralSquare substantiates a deficiency or non-compliance, Customer shall promptly reimburse CentralSquare for all its costs and expenses incurred to conduct such audit or inspection and be required to pay for any delinquencies in compliance with software licenses.
- 5.5. Service and System Control. Except as otherwise expressly provided in this Agreement:
- 5.5.1. CentralSquare has and will retain sole control over the operation, provision, maintenance, and management of the Solutions; and
- 5.5.2. Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for access to and use of the Solutions by any Person by or through the Customer Systems or other means

controlled by Customer or any Authorized User, including any reports or results obtained from any use of the Solutions, and conclusions, decisions, or actions based on such use.

- 5.6. Limitations. Customer must provide CentralSquare with such facilities, equipment and support as are reasonably necessary for CentralSquare to perform its obligations under this Agreement, including, if required by CentralSquare, remote access to the Customer Systems. CentralSquare is not responsible or liable for any delay or failure of performance caused in whole or in part by any Customer delay or Customer's failure to perform any obligations under this Agreement.
- 5.7. Exceptions. CentralSquare has no obligation to provide Support Services relating to any Defect with the Solutions that, in whole or in part, arise out of or result from any of the following:
 - 5.7.1. software, or media on which provided, that is modified or damaged by Customer or third-party;
 - 5.7.2. any operation or use of, or other activity relating to, the Solutions other than as specified in the Documentation, including any incorporation, or combination, operation or use of the Solutions in or with, any technology (software, hardware, firmware, system, or network) or service not specified for Customer's use in the Documentation;
 - 5.7.3. any negligence, abuse, misapplication, or misuse of the Solution other than by CentralSquare personnel, including any Customer use of the Solution other than as specified in the Documentation or expressly authorized in writing by CentralSquare;
 - 5.7.4. any Customer's failure to promptly install any New Releases that CentralSquare has previously made available to Customer;
 - 5.7.5. the operation of, or access to, Customer's or a third-party's system, materials or network;
 - 5.7.6. any relocation of the Solution other than by CentralSquare personnel;
 - 5.7.7. any beta software, software that CentralSquare makes available for testing or demonstration purposes, temporary software modules, or software for which CentralSquare does not receive a fee;
 - 5.7.8. any breach of or noncompliance with any provision of this Agreement by Customer or any of its Representatives or any Force Majeure Event (including abnormal physical or electrical stress).
- 5.8. Reservation of Rights. Except for the specified rights outlined in this Section, nothing in this Agreement grants any right, title, or interest in or to any Intellectual Property Rights in or relating to the Support Services, Professional Services, Solutions, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in the Solutions, and the Third-Party Materials are and will remain with CentralSquare and the respective rights holders.
- 5.9. Changes. CentralSquare reserves the right, in its sole discretion, to make any changes to the Support Services and Solutions that it deems necessary or useful to: (a) maintain or enhance the quality or delivery of CentralSquare's services to its customers, the competitive strength of or market for CentralSquare's services, or the Support Services' cost efficiency or performance; or (b) to comply with applicable law. Without limiting the foregoing, either Party may, at any time during the Term, request in writing changes to particular Support Services, Professional Services or their product suite of Solutions. The parties shall evaluate and, if agreed, implement all such requested changes. No requested changes will be effective unless and until memorialized in either a CentralSquare issued Add-On Quote signed by the Customer, or a written change order or amendment to this agreement signed by both parties.
- 5.10. Subcontractors. CentralSquare may from time to time in its discretion engage third parties to perform Professional Services or Support Services (each, a "**Subcontractor**").
- 5.11. Security Measures. The Solution may contain technological measures designed to prevent unauthorized or illegal use of the Solution. Customer acknowledges and agrees that: (a) CentralSquare may use these and other lawful measures to verify compliance with the terms of this Agreement and enforce CentralSquare's rights, including all Intellectual Property Rights, in and to the Solution; (b) CentralSquare may deny any individual access to and/or use of the Solution if CentralSquare, in its reasonable discretion, believes that person's use of the Solution would violate any provision of this Agreement, regardless of whether Customer designated that person as an Authorized User; and (c) CentralSquare may collect, maintain, process, use and disclose technical, diagnostic and related non-identifiable data gathered periodically which may lead to improvements in the performance and security of the Solutions.

- 6. Use Restrictions.** Customer shall not, and shall not permit any other Person to, access or use the Solutions except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:
- 6.1. copy, modify, or create derivative works or improvements of the Solutions, or rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Solutions to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;
 - 6.2. reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Solutions, in whole or in part;
 - 6.3. bypass or breach any security device or protection used by Solutions or access or use the Solutions other than by an Authorized User through the use of his or her own then valid access;
 - 6.4. input, upload, transmit, or otherwise provide to or through the CentralSquare Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;
 - 6.5. damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the CentralSquare Systems, or CentralSquare 's provision of services to any third-party, in whole or in part;
 - 6.6. remove, delete, alter, or obscure any trademarks, Specifications, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Documentation or Solutions, including any copy thereof;
 - 6.7. access or use the Solutions in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third-party, or that violates any applicable law;
 - 6.8. access or use the Solutions for purposes of competitive analysis of the Solutions, the development, provision, or use of a competing software service or product or any other purpose that is to CentralSquare 's detriment or commercial disadvantage or otherwise access or use the Solutions beyond the scope of the authorization granted under this Section.
- 7. Customer Obligations.**
- 7.1. Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain, and operate in good repair all Customer Systems on or through which the Solutions are accessed or used; (b) provide CentralSquare Personnel with such access to Customer's premises and Customer Systems as is necessary for CentralSquare to perform the Support Services in accordance with the Support Standards and Specifications; and (c) provide all cooperation as CentralSquare may reasonably request to enable CentralSquare to exercise its rights and perform its obligations under and in connection with this Agreement.
 - 7.2. Effect of Customer Failure or Delay. CentralSquare is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement.
 - 7.3. Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section 6, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Solutions and permanently erasing from their systems and destroying any data to which any of them gained unauthorized access); and (b) notify CentralSquare of any such actual or threatened activity.
- 8. Professional Services.**
- 8.1. Compliance with Customer Policies. While CentralSquare Personnel are performing services at Customer's site, CentralSquare will ensure that such personnel comply with Customer's reasonable security procedures and site policies that are generally applicable to Customer's other suppliers providing similar services and that have been provided to CentralSquare in writing or in advance. Customer shall promptly reimburse CentralSquare for any out-of-pocket costs incurred in complying with such procedures and policies.
 - 8.2. Contributed Material. In the process of CentralSquare 's performing Professional Services, Customer may, from time to time, provide CentralSquare with designs, plans, or specifications, improvements, works or other material for inclusion in, or making modifications to, the Solutions, the Documentation or any other deliverables ("**Contributed Material**"). Customer grants to CentralSquare a nonexclusive, irrevocable, perpetual, transferable right, without the payment of any royalties or other compensation of

any kind and without the right of attribution, for CentralSquare, CentralSquare's Affiliates and CentralSquare's licensees to make, use, sell and create derivative works of the Contributed Material.

9. Confidentiality. Confidential Information. Each Party possesses certain non-public proprietary information, which has economic value and is protected with reasonable safeguards to maintain its secrecy ("**Confidential Information**"). Confidential Information may include, but is not limited to any financial data, business and other plans, specifications, equipment designs, electronic configurations, design information, product architecture algorithms, quality assurance plans, inventions (whether or not the subject of pending patent applications), ideas, discoveries, formulae, models, requirements, standards, trade and manufacturing secrets, drawings, samples, devices, demonstrations, technical information, as well as any and all intellectual and industrial property rights contained therein or in relation thereto. CentralSquare shall own the copyrights, trade secrets, patent rights and other proprietary rights in and may use without restriction knowledge, information, ideas, methods, know-how, and copyrightable expression learned or acquired. Confidential Information will be disclosed either: (i) in writing and conspicuously marked with a restrictive legend identifying it as being a Party's Confidential Information; or (ii) orally or visually and identified at the time of disclosure as Confidential Information and subsequently confirmed in writing by the disclosing Party within fifteen (15) days after such disclosure specifically identifying that portion of information that is Confidential Information. Customer shall not sell, transfer, publish, disclose or otherwise make available any portion of the Software or its associated documentation to others. Customer shall use its reasonable best efforts to cooperate with and assist CentralSquare in identifying and preventing any unauthorized use, copying or disclosure of the Software or any portion thereof or any of the algorithms or logic contained therein or any other deliverables.

9.1. Compelled Disclosures. If either Party or any of its Representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by law, that Party shall: (a) promptly, and prior to such disclosure, notify the other Party in writing of such requirement so that they can seek a protective order or other remedy or waive its rights under Section .3; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

9.2. Upon expiration or termination of this Agreement, or upon demand by CentralSquare, Customer shall (i) return to CentralSquare all copies of CentralSquare's Confidential Information in Customer's possession or under CentralSquare's control, or (ii) destroy all copies of CentralSquare's Confidential Information in Customer's possession and so certify such destruction to CentralSquare in writing. Notwithstanding the foregoing, Customer may retain data or records in electronic form containing Confidential Information for the purposes of backup, recovery, contingency planning, or business continuity planning, so long as such data or records, to the extent not permanently deleted or overwritten in the ordinary course of business, are not accessible in the ordinary course of business and are not accessed except as required by Customer only for backup, recovery, contingency planning, or business continuity purposes.

10. Security.

10.1. CentralSquare will implement commercially reasonable administrative, technical and physical safeguards designed to ensure the security and confidentiality of Customer Data, protect against any anticipated threats or hazards to the security or integrity of Customer Data, and protect against unauthorized access or use of Customer Data. CentralSquare will review and test such safeguards on no less than an annual basis.

10.2. Customer shall maintain, in connection with the operation or use of the Solutions, adequate technical and procedural access controls and system security requirements and devices, necessary for data privacy, confidentiality, integrity, authorization, authentication and non-repudiation and virus detection and eradication.

10.3. To the extent that Authorized Users are permitted to have access to the Solutions, Customer shall maintain agreements with such Authorized Users that adequately protect the confidentiality and Intellectual Property Rights of CentralSquare in the Solutions and Documentation, and disclaim any liability or responsibility of CentralSquare with respect to such Authorized Users.

11. Personal Data. If CentralSquare processes or otherwise has access to any personal data or personal information on Customer's behalf when performing CentralSquare's obligations under this Agreement, then:

- 11.1. Customer shall be the data controller (where “**data controller**” means an entity which alone or jointly with others determines purposes for which and the manner in which any personal data are, or are to be, processed) and CentralSquare shall be a data processor (where “**data processor**” means an entity which processes the data only on behalf of the data controller and not for any purposes of its own);
- 11.2. Customer shall ensure that it has obtained all necessary consents and it is entitled to transfer the relevant personal data or personal information to CentralSquare so that CentralSquare may lawfully use, process and transfer the personal data and personal information in accordance with this Agreement on Customer’s behalf, which may include CentralSquare processing and transferring the relevant personal data or personal information outside the country where Customer and the Authorized Users are located in order for CentralSquare to provide the Solutions and perform its other obligations under this Agreement; and
- 11.3. CentralSquare shall process personal data and information only in accordance with lawful and reasonable written instructions given by Customer and as set out in and in accordance with the terms of this Agreement; and
- 11.4. each Party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the personal data and personal information or its accidental loss, destruction or damage so that, having regard to the state of technological development and the cost of implementing any measures, the measures taken ensure a level of security appropriate to the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction or damage in relation to the personal data and personal information and the nature of the personal data and personal information being protected. If necessary, the parties will cooperate to document these measures taken.

12. Representations and Warranties.

- 12.1. **LIMITED WARRANTY.** CentralSquare warrants that it owns or otherwise has the rights in the Software and has the right to license the Software as described in this Agreement. CentralSquare further warrants and represents that the CentralSquare Software does not contain any “back door”, “time bomb”, “Trojan horse”, “worm”, “drop dead device” or other program routine or hardware device inserted and intended by CentralSquare to provide a means of unauthorized access to, or a means of disabling or erasing any computer program or data, or otherwise disabling the CentralSquare Software. Nothing herein shall be deemed to constitute a warranty against viruses. The provisions of section and its subsections below, shall constitute the agreement of the Parties with respect to viruses. Customer’s sole remedy with respect to the foregoing warranty shall be to receive an Update to the CentralSquare Software that does not contain any of the above-described routines or devices.
- 12.2. **DISCLAIMER OF WARRANTY. EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH ABOVE, CENTRALSQUARE MAKES NO WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, WITH REGARD TO THE SOLUTIONS, PROFESSIONAL SERVICES, SUPPORT SERVICES, AND/OR ANY OTHER MATTER RELATING TO THIS AGREEMENT, AND THAT CENTRALSQUARE DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHER, INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE, AND SPECIFICALLY DISCLAIMS IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. FURTHER, CENTRALSQUARE EXPRESSLY DOES NOT WARRANT THAT A SOLUTION, ANY CUSTOM MODIFICATION OR ANY IMPROVEMENTS WILL BE USABLE BY CUSTOMER IF THE SOLUTION OR CUSTOM MODIFICATION HAS BEEN MODIFIED BY ANYONE OTHER THAN CENTRALSQUARE PERSONNEL, OR WILL BE ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION OR WILL BE COMPATIBLE WITH ANY HARDWARE OR SOFTWARE TO THE EXTENT EXPRESSLY SET FORTH IN THE DOCUMENTATION. ALL THIRD-PARTY MATERIALS ARE PROVIDED “AS-IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER. THIS AGREEMENT DOES NOT AMEND, OR MODIFY CENTRALSQUARE’S WARRANTY UNDER ANY AGREEMENT OR ANY CONDITIONS, LIMITATIONS, OR RESTRICTIONS THEREOF.**
13. **Notices.** All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when delivered personally, sent by United States registered or certified mail, return receipt requested; transmitted by facsimile or email confirmed by United States first class mail, or sent by overnight courier. Notices must be sent to a Party at its address shown below, or to such other place as the Party may subsequently designate for its receipt of notices in writing by the other Party.

If to CentralSquare : **CentralSquare**
1000 Business Center Dr.
Lake Mary, FL 32746
Phone: 407-304-3235 email: info@CentralSquare.com
Attention: Senior Counsel / Contracts Department

If to Customer: **City of Morgan Hill**
17575 Peak Ave.
Morgan Hill, CA 95037
Phone: * _____ email: * _____
Attention: * _____

14. Force Majeure. Neither Party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unavailability of Equipment, software, or services from suppliers, default of a subcontractor or vendor to the Party if such default arises out of causes beyond the reasonable control of such subcontractor or vendor, the acts or omissions of the other Party, or its officers, directors, employees, agents, contractors, or elected officials, and/or other occurrences beyond the Party's reasonable control ("Excusable Delay" hereunder). In the event of such Excusable Delay, performance shall be extended on a day for day basis or as otherwise reasonably necessary to compensate for such delay.

15. Indemnification.

15.1. CentralSquare Indemnification. CentralSquare shall indemnify, defend, and hold harmless Customer from any and all claims, lawsuits or liability, including attorneys' fees and costs, allegedly arising out of, in connection with, or incident to any loss, damage or injury to persons or property or arising solely from a wrongful or negligent act, error or omission of CentralSquare, its employees, agents, contractors, or any subcontractor as a result of CentralSquare's or any subcontractor's performance pursuant to this Agreement; however, CentralSquare shall not be required to indemnify Customer for any claims or actions caused to the extent of the negligence or wrongful act of Customer, its employees, agents, or contractors. Notwithstanding anything to the contrary in the foregoing, if a claim, lawsuit or liability results from or is contributed to by the actions or omissions of Customer, or its employees, agents or contractors, CentralSquare's obligations under this provision shall be reduced to the extent of such actions or omissions based upon the principle of comparative fault.

15.2. Customer Indemnification. Customer shall indemnify, defend, and hold harmless CentralSquare from any and all claims, lawsuits or liability, including attorneys' fees and costs, allegedly arising out of, in connection with, or incident to any loss, damage or injury to persons or property or arising solely from a wrongful or negligent act, error or omission of Customer, its employees, agents, contractors, or any subcontractor as a result of Customer's or any subcontractor's performance pursuant to this Agreement; however, Customer shall not be required to indemnify CentralSquare for any claims or actions caused to the extent of the negligence or wrongful act of CentralSquare, its employees, agents, or contractors. Notwithstanding anything to the contrary in the foregoing, if a claim, lawsuit or liability results from or is contributed to by the actions or omissions of CentralSquare, or its employees, agents or contractors, Customer's obligations under this provision shall be reduced to the extent of such actions or omissions based upon the principle of comparative fault.

15.3. Sole Remedy. THIS SECTION SETS FORTH CUSTOMER'S SOLE REMEDIES AND CENTRALSQUARE'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES AND SOLUTIONS OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD-PARTY.

16. Termination. This Agreement may be terminated:

16.1. For cause by either Party, effective on written notice to the other Party, if the other Party materially breaches this Agreement and: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach.

16.2. For lack of payment by written notice to Customer, if Customer's failure to pay amounts due under this Agreement has continued more than ninety (90) days after delivery of written notice of non-payment.

17. Effect of Termination or Expiration. On the expiration or earlier termination of this Agreement:

17.1. Upon the expiration or earlier termination of this Agreement, each Party shall continue to hold such Confidential Information in confidence pursuant to Section 9; and

17.2. Upon the expiration of this Agreement, each Party shall pay to the other all amounts accrued prior to and through the date of termination of this Agreement.

18. Assignment. Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld; provided however, that in the event of a merger or acquisition of all or substantially all of CentralSquare's assets, CentralSquare may assign this Agreement to an entity ready, willing and able to perform CentralSquare's executory obligations hereunder, as evidenced by an express written assumption of the obligations hereunder by the assignee.

19. Dispute Resolution. Any dispute, controversy or claim arising out of or relating to this Agreement, including the breach, termination, or validity thereof, shall be resolved by final and binding arbitration.

19.1. Exclusive Dispute Resolution Mechanism. The Parties agree to resolve any dispute, controversy, or claim arising out of or relating to this Agreement (each, a "Dispute"), exclusively under the provisions of this Section. Either Party may seek interim or provisional relief in any court of competent jurisdiction if necessary, to protect the rights or property of that Party pending the appointment of the arbitrator or pending the arbitrator's determination of the merits of the dispute.

19.2. Good Faith Negotiations. The Parties agree to send written notice to the other Party of any Dispute ("Dispute Notice"). After the other Party receives the Dispute Notice, the parties agree to undertake good faith negotiation between themselves to resolve the Dispute.. Each Party shall be responsible for its associated travel costs. The parties agree to attend no fewer than three negotiation sessions attended Vice Presidents of each Party (or employees of equivalent or superior position).

19.3. Escalation to Mediation. If the Parties cannot resolve any Dispute during the good faith negotiations either Party may initiate mediation under Section 19.4.

19.4. Mediation. Subject to Sections 19.2 and 19.3, the Parties may escalate a Dispute to a mutually agreed to mediator. Parties agree to act in good faith in selecting a neutral mediator and in scheduling the mediation proceedings. The parties agree to use commercially reasonable efforts in participating in the mediation. The parties agree the mediator's fees and expenses, and the mediator's costs incidental to the mediation will be shared equally between the parties. The parties shall bear their own fees, expenses, and costs.

19.5. Confidential Mediation. The Parties further agree all written or oral offers, promises, conduct, and statements made in the course of the mediation are confidential, privileged, and inadmissible for any purpose in any litigation, arbitration or other proceeding involving the Parties. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

19.6. Litigation or Arbitration as a Final Resort. If the Parties cannot resolve a Dispute through mediation, then once an impasse is issued by the mediator either Party may commence binding arbitration in accordance with the provisions of regarding choice of law and arbitration.

19.7. Arbitration. The Parties agree that any dispute, controversy, or claim arising out of or related to the Employee's employment with the Company or termination of employment, this Agreement, or any alleged breach of this Agreement shall be governed by the Federal Arbitration Act (FAA) and submitted to and decided by binding arbitration to be held in Florida. Parties agree to hold the deliberations in such arbitration confidential.

19.8. Arbitration Procedure. The Parties agree arbitration must be commenced by delivering a notice of arbitration to the other Party. The Notice must set out the nature of the claim(s), and the relief requested. Within thirty (30) days of the receipt of the notice, the receiving Party shall deliver an answer, any counterclaim(s), and relief requested. Arbitration shall be heard by a single arbitrator. Each Party shall pay its own costs of arbitration. The Parties shall confer in good faith to attempt to agree upon a suitable arbitrator, and if unable to do so, they will select an arbitrator from the American Arbitration Association's employment arbitration panel for the area. The arbitrator shall decide the procedures in the arbitration after consultation with the Parties. The arbitrator will have the power to grant any provisional or final remedy or relief it deems appropriate, including conservatory measures and an award of attorneys' fees.

The decision of the arbitrator shall be final and binding upon the Parties hereto. The Parties agree that judgment may be entered upon the award by any court having jurisdiction.

- 20. Waiver/Severability.** The failure of any Party to enforce any of the provisions hereof will not be construed to be a waiver of the right of such Party thereafter to enforce such provisions. If any provision of this Agreement is found to be unenforceable, that provision will be enforced to the maximum extent possible, and the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.
- 21. LIABILITY.** NOTWITHSTANDING ANY PROVISION WITHIN THIS AGREEMENT TO THE CONTRARY, AND REGARDLESS OF THE NUMBER OF LOSSES, WHETHER IN CONTRACT, EQUITY, STATUTE, TORT, NEGLIGENCE, OR OTHERWISE:
- 21.1. NEITHER PARTY SHALL HAVE LIABILITY TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, LIQUIDATED, OR CONSEQUENTIAL DAMAGES OF ANY KIND, AND NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR LOSSES OF PROFIT, REVENUE, INCOME, BUSINESS, ANTICIPATED SAVINGS, DATA, REPUTATION, AND MORE GENERALLY, ANY LOSSES OF AN ECONOMIC OR FINANCIAL NATURE, REGARDLESS OF WHETHER SUCH LOSSES MAY BE DEEMED AS CONSEQUENTIAL OR ARISING DIRECTLY AND NATURALLY FROM THE INCIDENT GIVING RISE TO THE CLAIM, AND REGARDLESS OF WHETHER SUCH LOSSES ARE FORESEEABLE OR WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES; AND
- 21.2. CENTRALSQUARE'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT(S) ACTUALLY PAID BY CUSTOMER TO CENTRALSQUARE HEREUNDER FOR THE LAST TWELVE MONTHS.
- 22. Third-Party Materials.** CentralSquare may from time to time, in its discretion engage third parties to perform services, provide software, or provide equipment. Customer acknowledges and agrees CentralSquare provides front-line support services for third parties, but these third parties assume all responsibility and liability in connection with the third-party software, equipment, or related services. CentralSquare is not authorized to make any representations or warranties that are binding upon the third-party or to engage in any other acts that are binding upon the third-party, excepting specifically that CentralSquare is authorized to represent third-party fees in the Agreement and to accept payment of such amounts from Customer on behalf of the third-party for as long as such third-party authorizes CentralSquare to do so. As a condition precedent to installing or accessing any third-party Materials, Customer may be required to execute a click-through, shrink-wrap End User License Agreement (EULA) or similar agreement provided by the Third-Party Materials provider. All third-party materials are provided "as-is" and any representation or warranty concerning them is strictly between Customer and the third-party.
- 23. Entire Agreement.** This Agreement, and any Exhibits specifically incorporated therein by reference, constitutes the entire agreement between the Parties with respect to the subject matter. These documents supersede and merge all previous and contemporaneous proposals of sale, communications, representations, understandings and agreements, whether oral or written, between the Parties with respect to the subject hereof. This Agreement may not be modified except by a writing subscribed to by authorized representatives of both Parties.
- 24. No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person any legal or equitable right, benefit, or remedy of any nature under or by reason of this Agreement.
- 25. Counterparts.** This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. This Amendment shall be considered properly executed by a Party if executed by that Party and transmitted by facsimile or other electronic means including, without limitation, DocuSign, Tagged Image Format Files (TIFF), or Portable Document Format (PDF).
- 26. Material Adverse Change.** If any Law, Regulatory Approval, applicable standard, process, OEM requirement is changed or comes into force after the Effective Date, including but not limited to PCI standards (collectively, a "Material Adverse Change"), which is not explicitly addressed within this Agreement and results in *significant extra* costs for either Party in relation to the performance of this Agreement, both Parties shall promptly meet, discuss in good faith, and agree upon reducing the technical, operational, and/or commercial impact of such Material Adverse Change.
- 27. Cooperative Purchases.** This Contract may be used by other government agencies. CentralSquare has agreed to offer similar services to other agencies under the same terms and conditions as stated herein except that the compensation may be negotiated between CentralSquare and other agencies based on the specific

revenue expectations, agency reimbursed costs, and other agency requirements. The Customer will in no way whatsoever incur any liability in relation to specifications, delivery, payment, or any other aspect of purchases by such agencies.

28. Non-Appropriation. 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 CentralSquare 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.

29. Order of Precedence.

29.1. In the event of any conflict or inconsistency between this Agreement, the Exhibits, or any purchase order, then the following priority shall prevail:

29.1.1. The main body of this Agreement and any associated amendments or change orders.

29.1.2. The attached Exhibits to this Agreement.

29.1.3. Purchase Orders placed with CentralSquare in accordance with this Agreement.

Customer's purchase terms and conditions or CentralSquare's sales terms and conditions are not applicable and shall have no force and effect, whether referenced or not in any document in relation to this Agreement.

29.2. Incorporated Exhibits to this Agreement:

Exhibit 1 – Project Cost Summary (Annual Access Fees)

Exhibit 2 - Maintenance & Support Standards

Exhibit 3 – Travel Expense Guidelines

**EXHIBIT 1****Project Cost Summary – Annual Access Fees**

Term	Due Date	Covered Period	Access Fees
Year 1	May 1, 2020	May 1, 2020 - July 31, 2020	\$ 23,761.50
Year 1	August 1, 2020	August 1, 2020 - October 31, 2020	\$ 23,761.50
Year 1	November 1, 2020	November 1, 2020 - January 31, 2021	\$ 23,761.50
Year 1	February 1, 2021	February 1, 2021 - April 30, 2021	\$ 23,761.50
Year 2	May 1, 2021	May 1, 2021 - July 31, 2021	\$ 24,950.00
Year 2	August 1, 2021	August 1, 2021 - October 31, 2021	\$ 24,950.00
Year 2	November 1, 2021	November 1, 2021 - January 31, 2022	\$ 24,950.00
Year 2	February 1, 2022	February 1, 2022 - April 30, 2022	\$ 24,950.00
Year 3	May 1, 2022	May 1, 2022 - July 31, 2022	\$ 26,197.50
Year 3	August 1, 2022	August 1, 2022 - October 31, 2022	\$ 26,197.50
Year 3	November 1, 2022	November 1, 2022 - January 31, 2023	\$ 26,197.50
Year 3	February 1, 2023	February 1, 2023 - April 30, 2023	\$ 26,197.50
Year 4	May 1, 2023	May 1, 2023 - July 31, 2023	\$ 27,507.38
Year 4	August 1, 2023	August 1, 2023 - October 31, 2023	\$ 27,507.38
Year 4	November 1, 2023	November 1, 2023 - January 31, 2024	\$ 27,507.38
Year 4	February 1, 2024	February 1, 2024 - April 30, 2024	\$ 27,507.38
Year 5	May 1, 2024	May 1, 2024 - July 31, 2024	\$ 28,882.75
Year 5	August 1, 2024	August 1, 2024 - October 31, 2024	\$ 28,882.75
Year 5	November 1, 2024	November 1, 2024 - January 31, 2025	\$ 28,882.75
Year 5	February 1, 2025	February 1, 2025 - April 30, 2025	\$ 28,882.75

COVERED SOFTWARE MODULES

1. TRAKiT Software Modules including:
 - a. ProjectTRAK
 - b. PermitTRAK
 - c. CodeTRAK
 - d. LicenseTRAK
 - e. CRM TRAK
 - f. AECTRAK
 - g. GeoTRAK
 - h. Reporting
2. TRAKiT GIS(Advanced Level)
3. eTRAKiT
4. iTRAKiT
5. eMarkup (5 Users)
6. Enhancements/customizations including:
 - a. Laserfiche integration
 - b. Tyler INCODE Cashiering integration

Note: Pricing for Professional Services is a good faith estimate based on the information available to CentralSquare at the time of execution of this Agreement. The total amount that Customer may pay for these services can vary based on the actual number of hours required to complete the services. If required, additional services will be provided on a time and materials basis at hourly rates equal to CentralSquare's then-current list price rates for the services at issue.

PAYMENT TERMS:RECURRING FEES

- a. The Annual Access Fee is paid quarterly and is due as listed above.

ANCILLARY FEES

- b. Reimbursement of travel and living expenses will be governed by Exhibit 3 ("**Travel Expense Guidelines**") attached hereto and will be invoiced monthly in arrears and due within thirty (30) days from date of invoice.
- c. Customer is responsible for paying all taxes relating to this Agreement. Applicable tax amounts (if any) are not included in the fees set forth in this Agreement. If Customer is exempt from the payment of any such taxes, Customer must provide CentralSquare valid proof of exemption; otherwise, CentralSquare will invoice Customer and Customer will pay to CentralSquare all such tax amounts.
- d. If Customer fails to make any payment when due, then CentralSquare may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly, or, if lower, the highest rate permitted under applicable law; and If such failure continues for 90 days following written notice thereof, CentralSquare may suspend performance or access until past due amounts have been paid.



EXHIBIT 2

Support Standards (CLOUD/ASP)**1. CentralSquare Cloud Security Program**

- 1.1. Access & Continuity. Logical access restrictions include VLAN data segregation, extensive deny-by-default access control lists, and Multi-Factor authentication required for System Administration. Business continuity is prioritized via daily encrypted backup stored offsite, virtual tape backup technology to counter loss of physical media, and full replication to disaster recovery site, with redundancy and availability through multiple carriers.
- 1.2. Security & Monitoring. SSL and IPSEC VPN with 256 bit encryption, web application firewalls, multi-layered infrastructure model with recorded internal and external CCTV, card access control, best of breed HVAC/fire suppression/physical security, and backed by 24-7 x 365 monitoring by a staffed operations facility for: Intrusion detection & prevention, DDOS mitigation, and automated network incident creation and escalation.
- 1.3. Testing, Audits & Compliance. third-party internal, external, perimeter vulnerability and penetration testing. Centrally managed patching, OS hardening program, and endpoint protection on all servers. Industry standard compliance includes annual completion of: SSAE18/ISAE Data Center Audit, SSAE18 Operations Audit, PCI-DSS Compliance Audit, Vulnerability Testing & CVSS Audit, and Control Self-Assessment Audit.

**2. Service Level Commitments**

- 2.1. Target. In each Service Period, the target for availability of the Solutions is 99.9% ("Availability Target"). "Service Period" means 24 hours per day Monday through Sunday each calendar month that Customer receives the Solutions, excluding Sundays between 12:00 AM and 12:00 PM Eastern Time for scheduled maintenance. During this time, Customers may experience intermittent interruptions. CentralSquare will make commercially reasonable efforts to minimize the frequency and duration of these interruptions and CentralSquare will notify the Customer if the entire maintenance window will be required.
- 2.2. Support Terms. Beginning on the Execution Date and continuing for twelve (12) months thereafter ("Initial Support Term"), CentralSquare shall provide the ongoing Support Services described herein for the corresponding Fees outlined in Exhibit 1. Upon expiration of the Initial Support Term, ongoing Support Services shall automatically renew, with customer paying for additional annual support periods, each a ("Renewal Support Term"). This renewal will continue until termination of this Agreement provided that, CentralSquare shall not give notice of termination if it would be effective prior to a period equal to two times the Agreement's Initial Term.

2.3. **Measurement.** Service availability is measured as the total time that the Solutions are available during each Service Period for access by Customer ("**Service Availability**"). Service Availability measurement shall be applied to the production environment, and the points of measurement for all monitoring shall be the servers and the Internet connections at CentralSquare's hosted environment. CentralSquare has technology monitoring, measuring, and recording Service Availability. The Customer, at their discretion, may also employ monitoring tools, not to override CentralSquare's measurements for the purposes of calculating Service Availability. Additionally, the use must be:

2.3.1.1. mutually agreed upon by CentralSquare and the Customer.

2.3.1.2. paid, installed and maintained by the Customer.

2.3.1.3. non-invasive and may not reside on CentralSquare's systems.

2.4. **Calculation.** Service Availability for a given month shall be calculated using the following calculation:

2.4.1. The total number of minutes which the service was NOT available in a given month shall be subtracted from the total number of minutes available in the given month. The resulting figure is divided by the total number of minutes available in the given month.

2.4.2. Service Availability Targets are subject to change due to the variance of the number of days in a month.

2.4.3. The total number of minutes which the service was NOT available in a given month shall exclude minutes associated with scheduled or emergency maintenance.

2.5. **Remedy.** If the Service Period target measurement is not met then the Customer shall be entitled to a credit calculated as follows:

Service Availability in the relevant Service Period	Percentage Reduction in Monthly Fee for the Subsequent Service Period
Less than 99.9% but greater than or equal to 99.0%	5%
Less than 99.0% but greater than or equal to 95.0%	10%
Less than 95%	20%

2.6. If not directly reported by CentralSquare, Credit entitlement must be requested by the Customer within sixty (60) days of the failed Target. Customer shall not be entitled to offset any monthly Solutions fee payments, nor withhold fee payments, on account of a pending credit. Customer shall not be eligible for credits for any period where Customer is more than thirty (30) days past due on their account. CentralSquare will provide reporting, showing performance and service levels.

3. Server Performance & Capacity.

3.1. CentralSquare shall provide sufficient server capacity for the duration of this hosting Agreement to meet the reasonable performance requirements for the number of concurrent system users provided for in this Agreement. If the Customer requests, at some later date, to add additional Solutions, increase user licenses, increase storage or processing requirements, and/or request additional environments, these requests will be evaluated and if additional resources are required to support modifications, additional fees may apply.

3.2. "In-network" is defined as any point between which the data packet enters the CentralSquare environment and subsequently departs the CentralSquare environment. Any point of communications outside of the CentralSquare protected network environment shall be deemed as "out-of-network." CentralSquare is not responsible for Internet connectivity and/or performance out-of-network.

4. System Maintenance.

4.1. **Solutions maintenance and upgrades.** CentralSquare will provide all hosted systems and network maintenance as deemed appropriate and necessary by CentralSquare. Maintenance and upgrades will be scheduled in advance with the Customer's primary contact if they fall outside of the designated hours set aside for this function of Sundays from 12:00AM to 12:00 PM.

4.2. **Hardware maintenance and upgrades.** Hardware maintenance and upgrades will be performed outside of the Customer's standard business hours of operation and the Customer will be notified prior to the upgrade.

4.3. **Emergency maintenance.** Emergency situations will be handled on a case-by-case basis in such a manner as to cause the least possible disruption to overall system operations and availability without negatively affecting system stability and integrity. CentralSquare will attempt to notify the Customer promptly, however if no contact can be made, CentralSquare management may deem it necessary to move forward with the emergency maintenance.

- 5. Incident Response.** Incidents are defined as interruptions to existing service and can range in priority from urgent to low depending on the impact to the Customer. CentralSquare will make commercially reasonable efforts to respond to Solutions incidents for live production systems using the following guidelines:

Priority Level	Impact	Description	Performance Target	Minimum Performance Goal %
1	Urgent	An Incident that results in loss of Customer connectivity to all of the Solutions or results in loss, corruption or damage to Customer's Data.	CentralSquare will respond within 1 hour of the issue being reported.	95%
2	Critical	An Incident that has an adverse material impact on the performance of the Solutions or materially restricts Customer's day-to-day operations.	CentralSquare will respond within 2 hours of the issue being reported.	95%
3	Non-Critical	An Incident that does not result in a failure of the Solutions but a fault exists that restricts the Customer's use of the Solutions.	CentralSquare will respond within 4 hours of the issue being reported.	95%
4	Minor	An Incident that does not affect or which has minimal adverse impact on the use of the Solutions.	CentralSquare will respond within 24 hours of the issue being reported.	95%

5.1. Measurement. CentralSquare shall track and report on response and resolution time for application and hosting support issues identified by the Customer.

- 6. Disaster Recovery.** CentralSquare provides disaster recovery services for Solutions. The costs for these disaster recovery services are included in the monthly fees. In the event that a disaster renders the Customer's data center inaccessible or rendered non-functional, CentralSquare will provide the ability to connect to the appropriate data center using software provided by CentralSquare. This will allow the Customer to connect to their systems from a remote site to the previously identified critical functions, however functionality may be diminished due to lack of access to hardware and/or software located in the Customer's facilities.
- 7. Exceptions.** CentralSquare shall not be responsible for failure to carry out its service and maintenance obligations under this Agreement if the failure is caused by adverse impact due to:
- 7.1. defectiveness of the Customer's environment, Customer's systems, or due to Customer corrupt, incomplete, or inaccurate data reported to the Solutions, or documented Defect.
 - 7.2. denial of reasonable access to Customer's system or premises preventing CentralSquare from addressing the issue.
 - 7.3. material changes made to the usage of the Solutions by Customer where CentralSquare has not agreed to such changes in advance and in writing or the modification or alteration, in any way, by Customer or its subcontractors, of communications links necessary to the proper performance of the Solutions.
 - 7.4. a force majeure event, or the negligence, intentional acts, or omissions of Customer or its agents.
- 8. Incident Resolution.** Actual response times and resolutions may vary due to issue complexity and priority. For critical impact level and above, CentralSquare provides a continuous resolution effort until the issue is resolved.
- 9. Service Requests.** Service requests are new requests that will take less than 8 hours to accomplish. For new requests that require additional time, CentralSquare will prioritize these requests, and determine if extra time is needed to order equipment or software.
- 10. Non-Production Environments.** CentralSquare will make commercially reasonable efforts to provide non-production environment(s) during Customer business hours. Non-production environments are not included under the metrics or service credit schedules discussed in this Exhibit.
- 10.1. Maintenance. All forms of maintenance to be performed on non-production environments will follow the exact structure and schedules outlined above in Section 3 for regular System Maintenance.
 - 10.2. Incidents and service requests. Non-production environment incidents are considered priority 3 or 4, dictated by circumstances and will be prioritized and scheduled similar to production service requests.

11. Responsibility Summary Matrix.

Responsibility Summary Matrix		
Description	CentralSquare Responsibility	Customer Responsibility
ASP Server Hardware management	X	
ASP Server File system management	X	
ASP Server OS upgrades and maintenance	X	
ASP Database product upgrades and maintenance	X	
ASP third-party product upgrades and maintenance	X	
Application Update Installation		
Request to install application updates		X
Installation of application updates	X	
ASP Backup Management	X	
Data and or File restoration		
Request to restore data and or files		X
Restoration of data and or files	X	
Network		
ASP Network up to and including the router at CentralSquare 's location	X	
ASP Router at Customer's location	X	
Customer's network up to the router at Customer's location		X
Customer Workstations		X
System Performance	X	X
Add/Change users		
User add/change requests		X
User add/change implementation for System Access	X	
User add/change implementation for Solutions		X
Add/Change Printers		
Printer add/change requests		X
Printer add/change implementation on ASP network	X	
Printer add/change implementation for Solutions		X
Disaster Recovery	X	
Password Management	X	X
Application Management		
Application Configuration		X
Application Security Management		X
Accuracy and Control of Data		X
Security		
Intrusion and Penetration Testing	X	

- 12. Virtual Private Network (VPN) Concentrator.** If Customer's desired system configuration requires the use of a VPN concentrator, including router, this will be provided by CentralSquare . It will reside at Customer's location but is, and shall remain the property of CentralSquare .
- 13. Customer Cooperation.** Customer may be asked to perform problem determination activities as suggested by CentralSquare . Problem determination activities may include capturing error messages, documenting steps taken and collecting configuration information. Customer may also be requested to perform resolution activities including, for example, modification of processes. Customer agrees to cooperate with such requests, if reasonable.
- 14. Training.** Outside the scope of training services purchased, if any, Customer is responsible for the training and organization of its staff in the operation of the Solutions.
- 15. Development Work.** The Support Standards do not include development work either (i) on software not licensed from CentralSquare or (ii) development work for enhancements or features that are outside the documented functionality of the Solutions, except such work as may be specifically purchased and outlined in Exhibit 1. CentralSquare retains all Intellectual Property Rights in development work performed and Customer may request consulting and development work from CentralSquare as a separate billable service.

16. Telephone Support & Support Portal

- 16.1. Hours. CentralSquare shall provide to Customer, Monday through Friday, 8:00 A.M. to 5:00 P.M. Customer's Local Time within the continental United States, excluding holidays ("5x9"). CentralSquare shall provide to Customer, during the Support Hours, commercially reasonable efforts in solving errors reported by the Customer as well as making available an online support portal. Customer shall provide to CentralSquare reasonably detailed documentation and explanation, together with underlying data, to substantiate errors and to assist CentralSquare in its efforts to diagnose, reproduce and correct the error. This support shall be provided by CentralSquare at Customer location(s) if and when CentralSquare and Customer agree that on-site services are necessary to diagnose or resolve the problem. If a reported error did not, in fact, exist or was not attributable to a defect in the Solutions or an act or omission of CentralSquare, then Customer shall pay for CentralSquare's investigation and related services at CentralSquare's standard professional services rates. Customer must provide CentralSquare with such facilities, equipment and support as are reasonably necessary for CentralSquare to perform its obligations under this Agreement, including remote access to the Specified Configuration
- 16.2. Releases. Customer shall promptly install and/or use any Release provided by CentralSquare to avoid or mitigate a performance problem or infringement claim. All modifications, revisions and updates to the Solutions shall be furnished by means of new Releases of the Solutions and shall be accompanied by updates to the Documentation whenever CentralSquare determines, in its sole discretion, that such updates are necessary.
- 16.3. Case Number. Measured from the moment a Case number is created. As used herein a "Case number" is created when a) a CentralSquare support representative has been directly contacted by Customer either by phone, in person, or through CentralSquare's online support portal, and b) when CentralSquare's support representative assigns a case number and conveys that case number to the Customer.

**EXHIBIT 3****Travel Expense Guidelines**

CentralSquare will adhere to the following guidelines when incurring travel expenses:

All arrangements for travel are to be made through the CentralSquare Corporate Travel Agent unless other arrangements have been made with the Customer and are documented in writing.

AIR TRAVEL – CentralSquare will use the least expensive class of service available with a minimum of seven (7) day, maximum of thirty (30) day, advance purchase. Upon request, CentralSquare shall provide the travel itinerary as the receipt for reimbursement of the airfare and any fees. Fees not listed on the itinerary will require a receipt for reimbursement.

Trips fewer than 250 miles round are considered local. Unless a flight has been otherwise approved by the Customer, Customer will reimburse the current IRS approved mileage rate for all local trips.

LODGING – CentralSquare will use the most reasonable accommodations possible, dependent on the city. All movies, and phone/internet charges are not reimbursable.

RENTAL CAR – Compact or Intermediate cars will be required unless there are three or more CentralSquare employees sharing the car in which case the use of a full size car is authorized. Gas is reimbursable however; pre-paid gas purchases will not be authorized and all rental cars are to be returned with a full tank of gas. Upon request, receipts for car rental and gas purchases will be submitted to Customer. CentralSquare shall decline all rental car insurance offered by the car rental agency as staff members will be covered under the CentralSquare auto insurance policy. Fines for traffic violations are not reimbursable expenses.

OTHER TRANSPORTATION – CentralSquare staff members are expected to use the most economical means for traveling to and from the airport (Airport bus, hotel shuttle service). Airport taxi or mileage for the employee's personal vehicle (per IRS mileage guidelines) are reimbursable if necessary. Upon request, receipt(s) for the taxi will be submitted to Customer. Proof of mileage may be required and may be documented by a readily available electronic mapping service. The mileage rate will be the then-current IRS mileage guideline rate (subject to change with any change in IRS guidelines).

OTHER BUSINESS EXPENSES – Parking at the airport is reimbursable. Tolls to and from the airport and while traveling at the Customer site are reimbursable. Tipping on cab fare exceeding 15% is not reimbursable. Porter tips are reimbursable, not exceeding \$1.00 per bag. Laundry is reimbursable when travel includes a weekend day or Company Holiday and the hotel stay is four nights or more. Laundry charges must be incurred during the trip and the limit is one shirt and one pair of pants/skirt per day. With the exception of tips, receipts shall be provided to Customer upon request for all of the aforementioned items.

MEALS – Standard per Diem. Subject to change due to cost of living.

DRAFT



Meeting Minutes Joint Successor Agency/City Council

Rich Constantine - Mayor
Yvonne Martinez Beltran - Mayor Pro Tem
Larry Carr - Council Member
John McKay - Council Member
Rene Spring - Council Member

Wednesday, July 22, 2020 5:30 pm

Virtual Meeting
Link to join the meeting can be found below

MEETING GUIDELINES

The City Council Meeting will be live-streamed on Channel 17 and on the City's website. Those members of the public wishing to participate remotely may do so via the electronic meeting at: <https://bit.ly/072220CCMeeting> or by calling in to: (669) 900-9128, then enter the meeting id: 891 0495 7472.

SPECIAL/REGULAR MEETING

A special meeting of the City Council was called at 5:30 pm for the purpose of conducting a workshop.

5:30 p.m. Workshop

7:00 p.m. Regular Joint Successor Agency/City Council Meeting

SPECIAL MEETING

5:30 pm. Workshop

CALL TO ORDER

Mayor Constantine called the Special-Regular City Council and Successor Agency meetings to order at 5:31 pm.

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	Remote	
Yvonne Martinez Beltran	Mayor Pro Tem	Remote	
Larry Carr	Council Member	Remote	
John McKay	Council Member	Remote	
Rene Spring	Council Member	Remote	

DECLARATION OF POSTING AGENDA

Deputy City Clerk Michelle Bigelow declared the posting of the agenda.

WORKSHOP

POLICE POLICIES AND PRACTICES WORKSHOP

Recommendation:

Review and discuss Police policies and practices.

City Manager Christina Turner and City Attorney Donald Larkin introduced the workshop. Police Chief Shane Palsgrove provided the presentation.

The public comment opened at 6:40 pm. The following people were called to speak:

Steve Betando
 Claudia Rossi
 Russ Keller
 Reymundo Armendariz
 Chuck Bergoff
 Val
 Marissa
 Brian Faircloth
 Brian Sullivan
 Brittney Sherman
 Nikki Carpendale
 Doug Muirhead
 Yvonne
 Caitlin Jachimowicz

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

RESULT:	NO ACTION TAKEN
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The meeting recessed at 7:03 pm.

The meeting reconvened at 7:08 pm.

REGULAR MEETING

7:00 pm.

CITY MANAGER'S REPORT

City Manager Christina Turner shared that tomorrow night, Thursday, July 23rd at 5:30 pm, we will hold the next town hall meeting. The focus will be a general COVID update, City programs that are in place, and to take general questions from the public. Additionally, on Friday starting at 9:00 am, we will be holding the Annual City Council Mid-Year Goal Review workshop. She announced that the County is

Minutes Acceptance: Minutes of Jul 22, 2020 5:30 PM (CONSENT CALENDAR)

exploring placing a county-wide sales tax on the ballot. It would be a five year, from 2021-2025, 5/8 cent retail sales tax due to COVID economic impacts. The County is having a special meeting no later than August 6th to determine whether or not that will be placed on the ballot.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin reported out from the July 15, 2020 closed session. The Council met on three closed sessions of which there was no reportable action.

PUBLIC COMMENT

The public comment opened at 7:14 pm. The following people were called to speak:

Miguel Jimenez

Joe Baranowski

Brian Faircloth

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

PUBLIC COMMENT SUPPLEMENT

ADOPTION OF AGENDA

MOTION:

Adopting the agenda moving item 12 after item 7.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Yvonne Martinez Beltran, Mayor Pro Tem
SECONDER:	Larry Carr, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

SUCCESSOR AGENCY MEETING

CONSENT CALENDAR

- 1. ADOPT SUPPLEMENTAL RESOLUTION TO RESOLUTION NO. SA20-001
RESOLUTION AUTHORIZING THE SALE AND ISSUANCE OF REFUNDING BONDS TO
REFINANCE AT LOWER INTEREST RATES CERTAIN OUTSTANDING BONDS
PREVIOUSLY ISSUED BY THE SUCCESSOR AGENCY**

Recommendation:

Adopt supplemental resolution authorizing the issuance of refunding bonds previously authorized by the Successor Agency to be issued as tax-exempt bonds.

MOTION:

Approving the Successor Agency consent calendar.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Rene Spring, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

CITY COUNCIL MEETING

CONSENT CALENDAR

MOTION:

Approving City Council consent calendar items 2 through 5.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Yvonne Martinez Beltran, Mayor Pro Tem
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

2. APPROVE AGREEMENT WITH SCHAAF & WHEELER FOR COMPLETION OF THE TRASH COMPLIANCE STRATEGY

Recommendation:

1. Approve and authorize the City Manager to execute and administer an agreement with Schaaf & Wheeler for a not to exceed amount of \$86,729 for completion of the Trash Compliance Strategy;
2. Approve and authorize the City Manager to execute and administer the cost sharing agreement in the amount of \$49,789, with the City of Gilroy subject to the review and approval of the City Attorney for Gilroy's portion of the Trash Compliance Strategy; and
3. Adopt resolution amending the adopted Fiscal Year 2020-21 budget to recognize \$49,789 as reimbursement revenue and appropriate \$36,729 from the Drainage Fund (304) (NonAB1600) for the Trash Compliance Strategy project.

3. APPROVE EXEMPTION TO STREET TREE MASTER PLAN FOR FOUR TREES ON THE SOUTHEAST CORNER OF MONTEREY ROAD AND FIRST STREET

Recommendation:

Approve an exemption to the Street Tree Master Plan for the installation of four Olive trees to replace four Black Locust trees by an adjacent business on the southeast corner of Monterey Road and First Street.

4. APPROVE THE JULY 15, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

5. APPOINTMENTS TO THE LIBRARY, CULTURE, AND ARTS COMMISSION AND THE PARKS AND RECREATION COMMISSION

Recommendation:

1. Appoint Paul Lake, Emily Borchers, and Patrice Lyn to serve on the Library Culture, and Arts Commission to fill vacancies with terms ending April 1, 2022; and
2. Appoint Richard Scott, David Lovato, and John Moniz to serve on the Parks and Recreation Commission to fill vacancies with terms ending April 1, 2024.

6. ITEM PULLED FOR DISCUSSION

ITEM PULLED FOR DISCUSSION

6. RECEIVE UPDATE ON DOWNTOWN BUSINESSES USE OF PUBLIC SPACE

Recommendation:

Receive update on Downtown Businesses use of public space.

Public Services Director Chris Ghione provided the report.

RESULT:	REPORT RECEIVED
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OTHER BUSINESS

7. ENGAGE MORGAN HILL YEAR END REVIEW AND ACKNOWLEDGEMENT OF COMMUNITY ADVISORY GROUP MEMBERS

Recommendation:

1. Receive report; and
2. Recognize Engage Morgan Hill Community Advisory Group Members.

Communications and Engagement Director Maureen Tobin provided a presentation and report.

The public comment opened at 7:57 pm. The following people were called to speak:

Nick Gaich

Brian Faircloth

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

RESULT:	REPORT RECEIVED
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12. CONSIDER CITY POSITIONS ON PROPOSED 2020 LAND USE AND HOUSING LEGISLATIONS

Recommendation:

1. Receive report; and
2. Direct staff to take no position or communicate City's position to the authors of the certain proposed 2020 legislation, local elected State representatives and the League of California Cities.

Assistant City Manager Leslie Little provided a presentation and report.

The public comment opened at 8:46 pm.

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

RESULT:	DIRECTION PROVIDED TO STAFF
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The meeting recessed at 8:54 pm.

The meeting reconvened at 9:00 pm.

8. PROVIDE DIRECTION REGARDING FEASIBILITY REPORTS FOR FUTURE RECREATION FACILITIES-SAND VOLLEYBALL FACILITY AND VILLA MIRA MONTE HISTORICAL SITE

Recommendation:

1. Receive reports relating to future park and recreation facilities; and
2. Provide feedback and additional direction to City staff as desired.

Public Services Director Chris Ghione provided a presentation and report.

The public comment opened at 9:44 pm.
 Kathy Sullivan was called to speak.
 There being no further requests to speak, the public comment closed.

RESULT: REPORT RECEIVED

9. PROVIDE DIRECTION REGARDING POTENTIAL REACH CODE IMPACTING NEW DEVELOPMENT

Recommendation:

Provide policy guidance to staff on issues to include in a future proposed ordinance.

Program Administrator Anthony Eulo provided a presentation and report.

The public comment opened at 10:24 pm.
 Steve Chappell was called to speak.
 There being no further requests to speak, the public comment closed.

RESULT: DIRECTION PROVIDED TO STAFF

10. MONTHLY BUDGET UPDATE; PRELIMINARY FY 19-20 FINANCIAL AND INVESTMENT REPORTS; AND CITY MANAGER AUTHORITY REPORT

Recommendation:

Accept and file report.

Finance Director Dat Nguyen provided a presentation and report.

MOTION:

Extending the meeting until 12:00 am.

RESULT: EXTENDED [UNANIMOUS]
MOVER: Yvonne Martinez Beltran, Mayor Pro Tem
SECONDER: Rich Constantine, Mayor
AYES: Constantine, Martinez Beltran, Carr, McKay, Spring

The public comment was opened at 11:02 pm.
 There being no requests to speak, the public comment closed.

RESULT: REPORT RECEIVED

11. RECEIVE UPDATE REGARDING REGIONAL HOUSING NEEDS ALLOCATION AND HOUSING ELEMENT REFORMS

Recommendation:

Receive report.

Community Development Director Jennifer Carman provided a presentation and report.

The public comment opened at 11:33 pm.
 There being no requests to speak, the public comment closed.

RESULT: REPORT RECEIVED

12. ITEM MOVED UP TO FOLLOW ITEM 7

FUTURE COUNCIL INITIATED AGENDA ITEMS

None.

CLOSED SESSION

City Attorney Donald Larkin announced the closed session items.

OPPORTUNITY FOR PUBLIC COMMENT

The public comment opened at 11:33 pm.

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

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 11:33 pm.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION (§54957)

Title: City Manager

PUBLIC EMPLOYEE PERFORMANCE EVALUATION (§54957)

Title: City Attorney

CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9.

One case

ADJOURNMENT

There being no further business, Mayor Constantine adjourned the meeting at 1:07 am in honor of Gary Guglielmo.

Minutes Prepared by:

Michelle Bigelow, Deputy City Clerk

DRAFT



Meeting Minutes City Council

Rich Constantine - Mayor
Yvonne Martinez Beltran - Mayor Pro Tem
Larry Carr - Council Member
John McKay - Council Member
Rene Spring - Council Member

Friday, July 24, 2020 9:00 am

Virtual Meeting
Link to join the meeting can be found below

MEETING GUIDELINES

The City Council Meeting will be live-streamed on Channel 17 and on the City's website. Those members of the public wishing to participate remotely may do so via the electronic meeting at: <https://bit.ly/CCGoalReviewWorkshop> or by calling in to: (669) 900-9128, then enter the meeting id: 886 6181 2855.

MID-YEAR GOAL REVIEW WORKSHOP

A Special Meeting of the City Council was called Friday, July 24, 2020 at 9:00 a.m. for the Mid-Year Goal Review Workshop.

CALL TO ORDER

Mayor Constantine called the meeting to order at 9:01 am.

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	Remote	
Yvonne Martinez Beltran	Mayor Pro Tem	Remote	
Larry Carr	Council Member	Remote	
John McKay	Council Member	Remote	
Rene Spring	Council Member	Remote	

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk Michelle Bigelow declared the posting of the agenda.

PUBLIC COMMENT

The public comment opened at 9:03 am.

Nick Gaich was called to speak.

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

MID-YEAR GOAL REVIEW WORKSHOP

MID-YEAR GOAL REVIEW WORKSHOP

Recommendation:

1. Review and discuss the 2020 - 2021 City Council Sustainable Morgan Hill Vision and Priorities;
2. Review City Council Norms and Policy 97-01: Rules for the Conduct of City Council Meetings (CP 97-01); and
3. Review and discuss the Strategic Priorities Work Plan, project and other updates, and City Council follow-up items.

City Manager Christina Turner along with Shawn Spano facilitated the workshop.

The public comment opened at 9:35 am.

Frank Leal was called to speak.

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

The meeting recessed at 10:15 am.

The meeting reconvened at 10:20 am.

The public comment opened at 11:17 am. The following people were called to speak:

Nick Gaich

Brian Sullivan

Joe Baranowski

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

The meeting recessed at 11:29 am.

The meeting reconvened at 11:35 am.

The public comment opened at 12:57 pm. The following people were called to speak:

Joe Baranowski

Sally Casas

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

ADJOURNMENT

There being no further business, the meeting adjourned at 1:07 PM.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: August 5, 2020

PREPARED BY: Christina Turner, City Manager

APPROVED BY: City Manager

APPROVE UPDATE TO SUSTAINABLE MORGAN HILL DOCUMENT

RECOMMENDATION(S)

Review and approve the COVID-19 and equity statement added to the City Council's Sustainable Morgan Hill document.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment and Preserving
Open Space and Agricultural Land
Maintaining Infrastructure
Supporting Our Youth
Seniors
and Entire Community
Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust
Preserving Our Community History
Enhancing Diversity and Inclusiveness
Advancing Regional Initiatives

2020-2021 Strategic Priorities

Community Engagement and Messaging
Economic Development
Financial Sustainability
Infrastructure
Regional Initiatives
Telecommunications
Agricultural Preservation
Cannabis Policy
High Speed Rail
Affordable Housing and Homelessness
Housing
Transportation

REPORT NARRATIVE:

On July 24, 2020, the City Council held its annual Mid-Year Goal Review Workshop. The purpose of this workshop is to review the goals and priorities set at the City Council Goal Setting Workshop held in January.

The City Council reviewed and discussed the current ongoing priorities and the strategic priorities, as well as workplan items, including those that are a result of the COVID-19 pandemic. Given that the COVID-19 global pandemic has had such an impact on all aspects of City Council's Goals and Priorities, it was recommended that the following statement be added to the Sustainable Morgan Hill document:

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

COMMUNITY ENGAGEMENT: Involve

The City Council Goal Setting Workshop was open to the public, broadcast live on the City's website and channel 17, and recorded for later viewing on the City's website.

ALTERNATIVE ACTIONS:

The Council could decide to make changes to Sustainable Morgan Hill, ongoing priorities, 2020-21 strategic priorities, or the added statement.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council sets and reviews its goals and priorities each year in January and mid-year.

FISCAL AND RESOURCE IMPACT:

Updating Sustainable Morgan Hill, ongoing priorities, and the strategic priorities does not have an immediate fiscal or resource impact. As implementation moves forward, staff will convey to the Council the resources necessary to achieve the desired outcomes in each area.

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.

LINKS/ATTACHMENTS:

1. Sustainable Morgan Hill 2020-2021

SUSTAINABLE MORGAN HILL



VISION

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

Choose Morgan Hill

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

City Council Ongoing Priorities

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

2020-2021 Strategic Priorities

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



CITY OF MORGAN HILL

2020 - 2021

STRATEGIC PRIORITIES:

Fiscal Sustainability

The City will continue to be financial stewards of its resources and assets to ensure longterm fiscal sustainability. Through the upcoming biennial budget development process, the City will continue to control and/or reduce costs to achieve a structurally balanced budget, while maintaining adequate fund balance reserves. The City will evaluate its existing user fee schedules to ensure reasonable costs of providing services are appropriately assessed. The City will explore new or expand existing tax revenue sources to address the City's unfunded needs and liabilities.

- Continue the Engage Morgan Hill efforts (conversation about services, funding and priorities)
- Consider a revenue measure in November 2020
- Employ a sustainable budget strategy and identify funding gap
- Define the funding plans for police and fire services, and the City's infrastructure needs

Affordable Housing and Homelessness

Morgan Hill will continue to improve, preserve, and develop new safe, quality, rental and ownership housing for residents at all income levels. To the extent possible, the City will respond to and reconcile new housing initiatives and legislative mandates. The City will explore opportunities to respond to changes that are beneficial to the community as well as compliant with the law.

The City of Morgan Hill will collaborate with Santa Clara County and the City of Gilroy to continue to build a South County homeless response system that integrates County Safety Net Services and provides rapid response to people in need. The City will continue to employ a balanced approach, offering resources and referrals to services, partnering with the faith-based community and non-profits to create appropriate local service points, while also utilizing code compliance to protect private and public property.

- 
- In preparation for the Statewide 6th Housing Cycle, update the Housing Element of the General Plan to respond to new production mandates and actively participate in the development of formula and allocations of "fair share" housing unit assignments
 - Engage the community in decisions about where to locate new housing density requirements and necessary on-going changes to objective design criteria which guide quality development
 - Continue to respond to the new and proposed housing legislative and policy matters to the benefit of the community
 - Respond to the Governor's 2020 Homelessness initiatives by advocating for direct local dollars and direct access to funding for communities of less than 50,000 population
 - Seek out partnerships with non-profit housing developers to create new housing opportunities directly aligned with the City's "fair share" Regional Housing Needs Allocation (RHNA)
 - Work with the non-profit owner of affordable units to rehabilitate and extend the life of vital housing supplies at Depot Commons, the Willows, Skeels Hotel, and Villa Ciolino

2020 - 2021

STRATEGIC PRIORITIES (CONTINUED):

Community Engagement and Messaging

The City will continue to engage the community through the Engage Morgan Hill process. Engage Morgan Hill is a conversation about services, funding, and priorities. The focus of this process is both educating and engaging the community regarding what services the City provides, how the services are provided, and the funding sources/options for the services as we look toward the future. While educating the community, the City will provide opportunities for the community to be part of the decision-making process to ensure the City's fiscal sustainability in the future. The City will continue to nurture connections with all facets of our community, finding the best ways to outreach and share important community information.

- Continue to facilitate the Engage Morgan Hill process
- Continue to inform the community about significant development projects
- Provide outreach and engagement with the community on the 2020 United States Census
- Continue to find better ways to reach members of the community that do not speak English

Economic Development

The City's Economic Development efforts will focus on implementing the Economic Blueprint strategies and actions in the areas of healthcare, innovation, retail, and tourism, to help build long-term fiscal sustainability and improve quality of life for residents. This will be achieved by attracting jobs and commercial investment which generate revenues to support general City services, improving access to fast and reliable wireless connectivity, and increasing telecommunications infrastructure.

- Complete Request for Proposal (RFP) process and select provider for telecommunications services for City facilities
- Complete an Industrial Land Preservation Policy
- Complete a Retail Concentration Strategy
- Economic Development Outreach and Education/Awareness Campaign



Transportation

The City has clearly identified traffic and transportation issues facing Morgan Hill as regional in nature. Morgan Hill will partner with the City of Gilroy to advocate for improvements and funding for the South Santa Clara County Transportation Corridor. The City will actively advocate on regional transportation planning issues. Locally, the City will prioritize funding for Vision Zero safety strategies over congestion management. The City will take actions to implement its goal to create a culture that prioritizes safety, creates livable streets, and seeks to eliminate traffic fatalities. Safety of pedestrians, bicyclists, drivers, and passengers is paramount.

- Respond to the Environmental Impact Report on the High-Speed Rail Authority's (HSRA) preferred alternative
- Continue efforts on Hale Avenue extension
- Advocacy will include:
 - Working with the Valley Transportation Authority (VTA), Caltrain, the County, the HSRA and the State to enhance service, secure funding for transportation projects and road maintenance, and protect the community from negative impacts of regional projects
 - Expansion of Highway 101 between Morgan Hill and Gilroy to reduce pass-through traffic and improve commute traffic for South County residents
 - Electrification of commuter rail from San Francisco to Gilroy
 - Funding for priority projects in South County



CITY OF MORGAN HILL

morganhill.ca.gov



CITY COUNCIL STAFF REPORT

MEETING DATE: August 5, 2020

PREPARED BY: Gina Paolini, Interim Principal Planner
APPROVED BY: City Manager

CONSIDER REQUEST TO IMPLEMENT GOVERNMENT CODE SECTION 65915(D)(2)(A) FOR ONE CONCESSION UNDER 14.04.090 TO WAIVE PROVISIONS OF CHAPTER 14.04 FOR A MARKET RATE HOUSING DEVELOPMENT PROJECT (SR2020-0020 HALF-DIVIDEND (CROSSWINDS))

RECOMMENDATION(S)

Adopt resolution denying the request for a concession under Government Code Section 65915(d)(2)(A) to waive the requirement to distribute Below Market Rate (BMR) units throughout the project.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Diversity and Inclusiveness

2020-2021 Strategic Priorities

Affordable Housing and Homelessness

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Project Description

Mission View Investors, LLC has submitted Design Review permit and Tentative Map applications. The project is a 269-unit market-rate residential housing development project, consisting of the following:

Courtyard Homes: 56 units
Duets: 64 units
Condominiums: 149 units

The project site is 28.9 acres. The site is bounded by Half Road to the east. Planned extensions of Mission Boulevard and De Paul Drive form the northern and the southern edges of the development. The land use of the site is Residential Attached Low (6-16 du/ac) and the zoning is Residential Attached Low Density (RAL 3,500). Details regarding the project have been provided (Attachment 1).

Concession Request

The project includes 40 moderate-income Below Market Rate (BMR) units complying with the City's required 15 percent inclusionary housing requirement. California Density Bonus Law allows, among other things, a market rate ownership project containing at least 10% moderate income units to seek one development concession from local

standards. However, inconsistent with the provisions of the City of Morgan Hill Inclusionary Housing Ordinance (IHO) regarding location and design of units, where BMR units are required to be separated and dispersed throughout a project site, the project proposes the BMR units to be located only within the condominium development portion of the project only, which is clustered in one section of the project. The applicant has requested development exception to the City's distribution requirement contained in the Inclusionary Housing Ordinance. The applicant's request dated June 11, 2020 (Attachment 2) states:

"Insofar as the townhome style units are clustered in one part of the Project site rather than throughout the Project, this was not intended to segregate the affordable units, but to address concerns of the residents of the Mission Ranch Homeowners Association that the higher density elements of the Project not directly face their homes. To accomplish this, the townhome style units are clustered away from their development.

To summarize, it is cost effective and therefore reasonable to provide all of the affordable units as townhome units, which include over half of the Project's total units, the Applicant's dispersion plan meets the intent of the IHO by ensuring that the affordable units are indistinguishable from the market rate units, and affordable units will be dispersed across all three phases of the Project. Most importantly, clustering the townhome units in one part of the Project site is not only reasonable, but will also provide a significant community benefit by satisfying residents' concerns about providing a buffer between their neighborhood and the higher density elements of the Project."

The applicant's proposal, to satisfy the homeowners association of another development of applicant, is contrary to the City's long-standing policy to avoid segregation of any single income group in one particular residential neighborhood, thereby providing housing opportunities in high quality neighborhoods to residents of all incomes. The City's inclusionary housing and below market rate programs are specifically designed to prevent this result. The Housing Element of the City's General Plan and Fair Housing obligations require distribution of housing types to provide individuals of all backgrounds and incomes access to all neighborhoods. The City has an obligation to provide adequate housing for all segments of the population in a variety of lot sizes and dwelling sizes and types; it must do this in a fashion which creates diversified neighborhood environments and income groups.

The applicant has requested a concession/deviation from this standard through the density bonus law without requesting an actual density bonus, and in fact is proposing to build a project substantially below the density allowed on this site. In this current session, staff has been working with State legislators to clarify that the State Density Bonus Law allow concessions only from development standards, and not from local community inclusionary housing laws and requirements.

The General Plan designation for the project area is Residential Attached Low with a net density range of 6 to 16 units an acre. The project is proposing a density of 9.3 units

an acre. Nevertheless, this applicant is entitled to request one concession pursuant to Government Code 65915 due to the project providing 15 percent moderate income homes. It is the City's position that the concession/incentive does not result in identifiable and actual cost reductions to provide affordable housing in compliance with the City's General Plan and Inclusionary Housing Ordinance. Further, this concession is in direct contradiction to the purpose of the density bonus law, which is intended to incentivize inclusionary housing, not to circumvent affordable housing requirements.

Pursuant to the Residential Development Design and Development Standards Checklist, Standard Requirement number 1, "Inclusionary Housing and Below Market Rate Program", the Project is required to comply with the City's Inclusionary Housing and Below Market Rate Program, including Inclusionary Housing Ordinance Numbers 2278 and 2299, codified in Morgan Hill Municipal Code Chapter 14.04. The proposal fails to comply with Section 14.04.040(f) "Location and Design of Inclusionary Units" and the Below Market Rate (BMR) Development Standards Adopted by City Council Resolution May 18, 2016, both of which require that the affordable units be distributed evenly throughout the project. Section 14.04.040(f) requires that:

"All inclusionary units shall be reasonably dispersed throughout the residential project and shall be comparable to the design of the market-rate units in the residential project in terms of distribution of model types, number of bedrooms, appearance, materials and quality of finishes. There shall not be significant identifiable differences between inclusionary units and market-rate dwelling units that are visible from the exterior of the dwelling units, and the size and design of the dwelling units shall be reasonably consistent with the market-rate units in the development. Occupants of inclusionary units shall be provided the same access to project amenities, recreational facilities, and common areas as occupants of market-rate units."

The application demonstrates that the proposed Inclusionary Housing Units are clustered in one area of the 30-acre project, specifically within the townhome product. Due to the design of the project, with specific product types separate from each other forming distinct neighborhoods, dispersal necessitates the inclusion of units in all product types proposed for the Project. City staff determined that the following BMR unit placement as "reasonably dispersed" to be as follows based on the total number of project units of 269:

BMR REASONABLE DISPERSMENT			
Product type	Number of Units	Percentage of Project	Number of BMRs
Single Family dwelling	56	21%	8
Attached duets	64	24%	10
Townhomes	149	55%	22
Total Units in Project	269	100%	40

The BMR's on the project plans should be re-designated to meet the "reasonable dispersed" requirement as provided in the above table.

Findings

Pursuant to Government Code 65915 (d)(1) the City must grant the concessions or incentives unless the City makes written findings, based upon substantial evidence to deny the application based upon the following:

- a. The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents of the targeted units to be set as specified in subdivision (c).

Concentrating all inclusionary housing units in the townhouse portion of the project does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs.

- b. The concession or incentive would have a specific, adverse impact, as defined in paragraph 2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

Impacts have not been identified as defined in Government Code sections 65915 and 65589.5, so this finding is inapplicable to this project. Requiring dispersal of the moderate inclusionary housing units does not render the project infeasible or increase the cost of the affordable housing. Further the City has exceeded its RHNA allocation in the moderate-income unit category, therefore restrictions on conditions identified by the Applicant do not apply.

- c. The concession or incentive would be contrary to state or federal law.

Concentrating all inclusionary housing units in the townhome portion of the project is not consistent with the Housing Element or the General Plan.

For these reasons, it is recommended that the City Council deny the request for the concession (Attachment 3). Due to the design of the project, with specific product types separate from each other forming distinct neighborhoods, the dispersal necessitates the inclusion of units in all product types proposed for the project, and therefore, the BMR's should be re-dispersed within the project.

COMMUNITY ENGAGEMENT: Inform

A project development web page has been created on the City website to inform the public of the project application. A site plan and project elevations have been provided

for public review. The City will continue to inform the public through the public engagement process as the Design Review permit and Tentative Map are processed.

ALTERNATIVE ACTIONS:

The City Council could consider one of the acceptable alternatives in Section 14.04.070 of the Morgan Hill Municipal Code, including payment by the applicant of an in-lieu fee. Staff is willing to discuss alternative options as the City has currently exceeded its RHNA numbers for moderate units so alternatives may provide a greater public benefit.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

The City development review functions are cost-recovery, with the fees collected from applicants to cover cost of services. These fees have been collected.

If the City Council elects to select the alternative option outlined above, the estimated in lieu fee from this project would be \$10.3 million.

CEQA (California Environmental Quality Act):

A project level environmental assessment will be prepared for the project in conformance with the California Environmental Quality Act. The environmental analysis will be considered during the Design Review permit and Tentative Map phase of the project.

LINKS/ATTACHMENTS:

1. Project Webpage - Site Plan and Elevations
2. BMR Dispersion Letter - Crosswinds
3. Resolution



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June 11, 2020

Via Email Only

Mr. Donald Larkin, Esq.
City Attorney/Risk Manager
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Re: ***Project Development Application (Dividend Homes Crosswinds Project)***
Our File No.: 14724-004

Dear Mr. Larkin:

This letter is on behalf of Crosswinds at Morgan Hill LLC, an affiliate of Dividend Homes, Inc. ("Applicant"), and is intended to supplement the project application for a proposed 269-home housing development project known as the Crosswinds Project (the "Project"). As you know, staff and Applicant disagree whether the Project complies with Morgan Hill Municipal Code ("MHMC") Section 14.04.040.F (the "Dispersion Requirement"), which is part of the City's Inclusionary Housing Ordinance (the "IHO"), and which generally requires that affordable units within a housing development project be "reasonably dispersed" throughout the project. In our phone call on June 8, 2020, you indicated that staff intends to deem the Project inconsistent with objective standards for purposes of the Housing Accountability Act (the "HAA") because the Project does not comply with staff's interpretation of the Dispersion Requirement. You also indicated that the Project will be submitted first to the City Council for consideration of an exception to the Dispersion Requirement before the Project application is reviewed by the Planning Commission.

Applicant does not oppose submitting the Project to the City Council before sending it to the Planning Commission, and understands that this will not suspend or delay processing,

Mr. Donald Larkin, Esq.
June 11, 2020

including environmental review. However, for reasons explained in Part I, below, the Project as proposed already complies with the Dispersion Requirement. Alternatively, Applicant is entitled to exceptions from the Dispersion Requirement, which Applicant hereby requests for reasons explained in Part II, below. Finally, as explained in Part III, the Dispersion Requirement is a subjective standard so that an inconsistency finding under the HAA would be improper.

I. THE PROJECT COMPLIES WITH THE DISPERSION REQUIREMENT

Applicant disagrees with staff's interpretation of the Dispersion Requirement. Staff has indicated that the affordable units should be dispersed uniformly throughout the Project, and should include units in all product types proposed for the Project. However, as indicated above, the IHO does not require that units be "uniformly" dispersed, but rather only that they should be "reasonably" dispersed. To comply with the IHO, the Project proposes 40 units affordable to families earning up to 120 percent of Area Median Income. These units would be dispersed throughout the 149-townhome style condominium units proposed for the Project. This approach satisfies the requirement of "reasonableness" for the following reasons:

1. As explained below in Part II of this letter, it would be significantly more expensive for Applicant to subsidize the cost of providing affordable units throughout all three product types proposed for the Project rather than to provide all its affordable units as townhome style units. Given this added cost, it is reasonable to provide all the affordable units as townhome style units.
2. The 149 townhome style condominium units comprise approximately 55 percent of the 269 units proposed for the Project. Therefore, the affordable units will not only be "comparable" in design to the market rate units as required by the IHO, but will be identical to the design of most of the Project's units. Applicant also proposes to disperse the affordable units uniformly throughout the townhome style product. By dispersing the affordable units throughout the predominant product type within the Project, the Project would satisfy the intent of the Dispersion Requirement by ensuring that the affordable units are indistinguishable from the market rate units.
3. Applicant proposes to build the Project in three phases, and to provide 15 percent of the units in each phase as affordable, so that the affordable units will be dispersed throughout all three phases.
4. Insofar as the townhome style units are clustered in one part of the Project site rather than throughout the Project, this was not intended to segregate the affordable units, but to address concerns of the residents of the Mission Ranch Homeowners Association that the higher density elements of the Project not directly face their homes. To accomplish this, the townhome style units are clustered away from their development.

To summarize, it is cost effective and therefore reasonable to provide all of the affordable units as townhome units, which include over half of the Project's total units, the Applicant's dispersion plan meets the intent of the IHO by ensuring that the affordable units are

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indistinguishable from the market rate units, and affordable units will be dispersed across all three phases of the Project. Most importantly, clustering the townhome units in one part of the Project site is not only reasonable, but will also provide a significant community benefit by satisfying residents' concerns about providing a buffer between their neighborhood and the higher density elements of the Project.

II. APPLICANT IS ENTITLED TO AN EXCEPTION TO THE DISPERSION REQUIREMENT

Even if the City Council rejects Applicant's argument that the Project complies with the Dispersion Requirement, Applicant is entitled to an exception to the requirement pursuant to both the Density Bonus Law (the "DBL") codified at Government Code Section 65915, and provisions of the IHO itself. In the alternative to the argument set forth above in Part I, Applicant hereby requests such an exception to the Dispersion Requirement.¹

1. DBL Concession or Incentive

The DBL provides four kinds of incentives for housing development projects to include affordable units, even if those units are required under local inclusionary zoning rules. (See *Latinos Unidos del Valle de Napa y Solano v. County of Napa* (2013) 217 Cal.App.4th 1160, 1169.) First, an applicant is entitled to an increase in project density above what local zoning rules otherwise allow. However, an applicant is not required to seek an increase in density to qualify for other types of incentives. (See Gov. Code, § 65915, subd. (f) ["For the purposes of this chapter, 'density bonus' means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, *including, but not limited to, no increase in density.*"], emphasis added.) The other three types of incentives include "concessions or incentives," waiver of development standards that physically preclude a project, and parking incentives.

Although Applicant is not seeking an increase in density for the Project above what existing zoning allows, the Project qualifies for a density bonus because Applicant proposes to provide more than 10 percent of the Project's units at a price affordable to moderate income households. (See Gov. Code, § 65915, subd. (b)(1)(D).) Therefore, Applicant is entitled to request one concession or incentive for the Project. (See *id.* at § 65915, subd. (d)(2)(A).) Government Code Section 65915(k) defines "concession or incentive" to include a reduction in development standards, approval of mixed-use zoning in conjunction with a housing development project, or any "[o]ther regulatory incentives or concessions proposed by the developer . . . that results in identifiable and actual cost reductions to provide for affordable

¹ If the City Council agrees with Applicant's position in Part I or decides that an exception to the Dispersion Requirement can be granted under the IHO alone, then Applicant reserves the right to use the concession or incentive to which it is entitled under the DBL to request a height increase for Project units.

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housing costs.” In other words, a “concession or incentive” includes any exception to a local regulatory requirement that reduces the applicant’s cost to provide affordable housing.

The Project proposes three product types, including the 149 townhome style units. The remaining 120 units would be duets and detached units. Applicant projects it will be able to sell the townhome style units for \$750,000 per two-bedroom unit and \$850,000 per larger townhome unit. The difference between these prices and an affordable housing cost for a household earning 120 percent of Area Median Income is approximately \$150,000 for a two-bedroom unit and \$105,000 for a larger unit. Given this difference in sales price, providing 40 townhome style units at an affordable price will cost Applicant approximately \$5 million. To disperse the affordable units proportionally throughout all three product types would require Applicant to designate 18 units as either duets or detached. The duet and detached units are projected to sell for over \$1 million each. This would add an additional \$3.5 million to Applicant’s cost to provide affordable units. Therefore, in addition to solving an identifiable community concern by providing a dispersion plan that places the higher density product away from the lower density neighbors, under Applicant’s proposal, the Project will realize a material cost savings if the City grants the requested concession or incentive by allowing Applicant to provide all of the affordable units as proposed.

Under Government Code Section 65915(d), the local agency bears the burden of showing that an applicant does not qualify for a requested concession or incentive. The bases for denial include the following:

1. The concession or incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs;
2. The concession or incentive would have an unavoidable specific, adverse impact on public health, safety, the physical environment, or any real property listed on the California Register of Historical Resources; or
3. The concession or incentive would be contrary to federal or state law.

Here, none of these findings can be made. Again, excepting Applicant from the requirement to disperse units uniformly throughout the entire Project will not only address an identified community concern, but will also reduce Applicant’s costs to provide for affordable housing. Also, the requested concession or incentive will not result in any physical changes to the Project at all, and no historical resources are located on the site. Finally, the Dispersion Requirement is a local requirement, not a state or federal requirement, so the proposed concession or incentive would not violate state or federal law.

Therefore, the Project qualifies for a concession or incentive under the DBL allowing Applicant to provide all of the affordable units as townhome units.

Mr. Donald Larkin, Esq.
June 11, 2020

2. IHO Incentive

MHMC Section 14.04.120.A.3 states that:

The Developer may request to provide Inclusionary Units that are of a different unit type than the Market-Rate units to be constructed within the Residential Project; provided, however, the Inclusionary Units shall have the same bedroom count in the same percentage distribution as the Market-Rate units.

Here, the affordable units will have the same bedroom count in the same percentage distribution as the market rate units, so that Applicant qualifies under Section 14.04.120.A.3 to provide all the affordable units as townhome units. Specifically, Applicant proposes the following unit mix:

Market Rate Units

Townhome Units:

2 BR → 27 units
3 BR → 82 units

Duets:

3 BR → 48 units
4 BR → 16 units

Detached:

3 BR → 28 units
4 BR → 28 units

Average ~ 3.01 bedrooms

Affordable Units

Townhome Units:

2 BR → 19 units
4 BR → 21 units

Average ~ 3.05 bedrooms

Accordingly, even assuming that the Dispersion Requirement necessitates Applicant to disperse the affordable units uniformly throughout the Project, and specifically throughout all three product types, Applicant is entitled to an exception to this requirement under both the DBL and the IHO.

III. THE DISPERSION REQUIREMENT IS NOT AN OBJECTIVE STANDARD

You have indicated that staff proposes to issue a determination under the HAA that the Project does not comply with all objective standards because it does not comply with staff's

Mr. Donald Larkin, Esq.
June 11, 2020

interpretation of the Dispersion Requirement. The HAA, codified at Government Code Section 65589.5, generally requires a local agency to approve a housing development project that complies with all applicable objective standards. Under subdivision (j)(2) of the statute, the agency has a limited time within which to determine whether the project complies with objective standards, and to identify those objective standards with which the project does not comply. "Objective" is defined at subdivision (h)(8) to mean a standard "involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official."

Here, the standard under the Dispersion Requirement is whether units are "reasonably dispersed." Reasonableness is a subjective standard because it depends upon the opinion of the decisionmaker. For example, as indicated above in Part I of this letter, Applicant believes the affordable units as proposed will be reasonably dispersed, whereas staff disagrees. Because the standard is open to interpretation, it would be improper to deem the Project inconsistent with objective standards solely based on the Dispersion Requirement.

Applicant respectfully requests that the City accept the application for processing, deem the application complete, and find that the Project complies with all objective standards. In Applicant's view, the Project complies with the Dispersion Requirement, but in the alternative Applicant is entitled to an exception to the requirement. Applicant agrees with staff's proposal to put these issues before the City Council before the Planning Commission considers the Project as a whole. I look forward to working together on this application. Please do not hesitate to reach out if you have any questions or comments.

Sincerely,

BERLINER COHEN, LLP



Erik Ramakrishnan
erik.ramakrishnan@berliner.com

Attachment: BMR Dispersion Letter - Crosswinds (2827 : Half-Dividend Concession Request)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DENYING THE REQUESTED CONCESSION TO WAIVE THE DEVELOPMENT STANDARD OF THE INCLUSIONARY HOUSING ORDINANCE DISPERSAL REQUIREMENTS FOR THE HALF-DIVIDEND (CROSSWINDS) PROJECT TO BE BOUNDED BY HALF ROAD TO THE EAST, WITH MISSION BOULEVARD AND DE PAUL DRIVE FORMING THE NORTHERN AND SOUTHERN EDGES OF THE DEVELOPMENT. (APN: 728-30-001, -002, -003, AND -004).

WHEREAS, Mission View Investors, LLC submitted an application for the Crosswinds Project (Project) a 269-unit residential development project consisting of townhomes, single family dwellings, and attached duets, each product type forming a separate and distinct neighborhood.

WHEREAS, City has determined the application to be incomplete for failure to comply with several items on the City's SB 330 checklist, including the failure to comply with the requirements of the City's Inclusionary Housing Ordinance.

WHEREAS, Mission View Investors, LLC has requested a concession for a waiver of a development standard pursuant to the Density Bonus Law (Government Code section 65915) for the Crosswind Project (Project) to waive the development standard established by Morgan Hill Municipal Code section 14.04.040(f), incorporated into the SB 330-required checklist, requiring reasonable dispersal of inclusionary units throughout projects.

WHEREAS, the City has an obligation to provide adequate housing for all segments of the population in a variety of lot sizes and dwelling sizes and types and strives to accomplish this in a fashion which creates diversified neighborhood environments and income groups.

WHEREAS, the Housing Element of the City's General Plan requires distribution of housing types to provide neighborhoods of ethnic and economic diversity.

WHEREAS, the dispersal requirement is long-standing in the City of Morgan Hill established prior to January 1, 2020, and is supported by the General Plan and Housing Element of the City of Morgan Hill to avoid concentrations of any single income group in one particular residential neighborhood.

WHEREAS, the inclusionary housing and below market rate programs are specifically designed to prevent the result of concentration of any single income group in one particular residential neighborhood.

WHEREAS, Mission View Investors, LLC has submitted a development application for a project which proposes to concentrate all inclusionary housing units in one portion of the 30-acre project within the townhome product.

WHEREAS, the Project is proposing to provide fifteen percent moderate rate inclusionary units onsite.

WHEREAS, the City has exceeded its share of the regional housing need allocation (RHNA) for the planning period for moderate income category proposed for the project.

WHEREAS, pursuant to Government Code Section 65915(b)(1)(D), the Project is allowed one concession.

WHEREAS, findings supported by substantial evidence are required for denial of the concessions pursuant to Government Code Section 65915(d)(1).

WHEREAS, the City is authorized to enforce standards adopted prior to January 1, 2020, unless they render the project infeasible, or if the standard increases the cost of affordable housing.

WHEREAS, Mission View Investors, LLC has requested that it be allowed to produce all inclusionary units a single product type as permitted by Morgan Hill Municipal Code Section 14.04.120.A.3.

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

Section 1. The City Council does hereby find that the foregoing recitals are true and correct.

Section 2. The City Council finds that requiring dispersal of the inclusionary housing units does not render the project infeasible or increase the cost of the affordable housing.

Section 3. The City Council finds that concentrating all inclusionary housing units in the townhouse portion of the project does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs.

Section 4. The City Council finds that concentrating all inclusionary housing units in the townhome portion of the project is contrary to state law as it is inconsistent with the Housing Element and the General Plan.

Section 5. City Council supports the inclusionary housing units being of only one product type as allowed by Morgan Hill Municipal Code Section 14.04.120.A., but only if the inclusionary units are reasonably dispersed.

Section 6. The City Council of the City of Morgan Hill hereby denies the requested concession for the Half-Dividend (Crosswinds) Project.

Section 7. This resolution shall take effect immediately upon adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 5th day of August 2020 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 20-0xx, adopted by the City Council at a regular meeting held on August 5, 2020.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution [Revision 4] (2827 : Half-Dividend Concession Request)



CITY COUNCIL STAFF REPORT

MEETING DATE: August 5, 2020

PREPARED BY: Rich Constantine, Mayor
APPROVED BY: City Manager

APPROVAL OF SECOND EMPLOYMENT AGREEMENTS FOR THE CITY MANAGER AND THE CITY ATTORNEY

RECOMMENDATION(S)

1. Approve the Second Employment Agreement with City Attorney Donald Larkin;
2. Approve the Second Employment Agreement with City Manager Christina Turner; and
3. Authorize the Mayor to execute the agreements and any related agreements.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure
Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Financial Sustainability

REPORT NARRATIVE:

The City Council directly appoints the City Manager and City Attorney and has approved employment agreements establishing the terms and conditions of employment for each position. Christina Turner has been the City Manager since October 1, 2017 and Donald Larkin has been the City Attorney since July 11, 2016. The Second Employment Agreements make changes to conform the terms for the City Attorney and City Manager agreements; eliminate cost of living adjustments for Fiscal Year 2020-21; adjust the interest rates for the employee's housing loans; change the deferred compensation rate from a fixed percentage to the federal limit; and suspend the cap on leave accruals. Neither agreement includes an increase in salary.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the proposed Second Employment Agreements for both the City Manager and City Attorney.

ALTERNATIVE ACTIONS:

By its terms, the previous employment agreements of the City Manager and City Attorney remain in effect. The City Council could take no action on this item and leave the prior agreements in effect.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council appointed the City Manager and approved the City Manager's Employment Agreement effective October 1, 2017.

The City Council appointed the City Attorney and approved the City Attorney's Employment Agreement effective July 11, 2016. On January 17, 2018, the City Council approved an Amended and Restated Employment Agreement for the City Attorney.

FISCAL AND RESOURCE IMPACT:

The change to the terms of both of the agreements is expected to have a net fiscal impact for FY 2020-21 of approximately \$26,000. There are sufficient funds available within the City Manager's and City Attorney's department budget to accommodate the increase.

CEQA (California Environmental Quality Act):

Amending the City Manager and City Attorney's Employment Agreements is an administrative governmental activity that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Second Employment Agreement - City Manager
2. Second Employment Agreement - City Attorney

SECOND EMPLOYMENT AGREEMENT
BETWEEN THE CITY OF MORGAN HILL
AND CHRISTINA TURNER

This Second Employment Agreement between the City of Morgan Hill ("CITY") and Christina Turner ("TURNER") is hereby executed by and between the parties this — day of August, 2020, with an effective date of July 1, 2020 (the "Effective Date").

RECITALS

The following recitals are a substantive portion of this Agreement:

- A. TURNER has been employed by CITY since March 7, 2016;
- B. On or about October 1, 2017, TURNER previously entered into an Employment Agreement with the City of Morgan Hill to serve as City Manager;
- C. TURNER also serves as the Executive Director of the Successor Agency to the Morgan Hill Redevelopment Agency;
- D. CITY and TURNER wish to enter into a Second Employment Agreement to memorialize changed terms; and
- E. At a duly noticed public meeting, the City Council approved this Agreement on August 5, 2020.

AGREEMENT

In consideration of the mutual promises set forth herein and for good and valuable consideration hereby acknowledged, the parties agree as follows:

- 1. **Parties:** The parties to this agreement ("Agreement") are CITY and TURNER (collectively "the Parties").
- 2. **Purpose:** The purpose of this Agreement is to provide the terms for the employment of TURNER as City Manager of CITY, as currently provided by Title 2, Chapter 2.08 of the Municipal Code of CITY.
- 3. **Duties:** CITY hereby agrees to employ TURNER to perform the functions and duties of City Manager for the CITY and as Executive Director of the Successor Agency to the Redevelopment Agency of CITY as specified in the Municipal Code of CITY, the Job Description (which is incorporated herein by this reference), applicable state statutes pertaining to Successor Agencies, any and all other applicable CITY ordinances, resolutions or policies, and to perform such other legally permissible and proper duties and functions as the CITY shall from time to time assign. TURNER agrees that, to the best of her ability and experience, she will at all times loyally and conscientiously perform all

of the duties and obligations required of her either expressly or impliedly by the terms of this Agreement.

4. Agreement Provisions:

- 4.1 **Term:** This Agreement shall commence on the Effective Date and terminate on June 30, 2021 (the "Termination Date") unless either: (1) the term is modified hereafter by written agreement of the Parties, or (2) the Agreement renews automatically in accordance with the provisions of Section 4.3 herein. TURNER agrees to remain in the exclusive employ of the CITY during the term of the Agreement and neither to accept other employment nor become employed by another employer until the Termination Date, unless the term is modified as provided herein.
- 4.2 **Exclusivity:** The term "exclusive employ of the CITY" as used in section 4.1 above shall not be construed to preclude occasional teaching, writing, or military service performed by TURNER as long as it does not conflict with her primary responsibilities as City Manager and Executive Director as described in this Agreement. Also, CITY and TURNER recognize the value of participation in League of California Cities and International City Managers' Association activities, and that speaking requests and teaching are valuable resources to the CITY. CITY may permit non-conflicting services to other entities upon prior approval of the City Council.
- 4.3 **Automatic Renewal:** At the conclusion of the term of this Agreement, it shall automatically renew each year, effective every July 1, unless terminated by the delivery of an Election of Non-Renewal by either party by no later than December 30 of the then current term. Notice of an Election of Non-Renewal shall be conveyed by written notice to the other party.

5. Separation from Employment:

- 5.1 **Employment At-Will:** The City Council may, subject to provisions set out below, terminate the services of TURNER at any time, it being expressly understood and agreed between the parties that TURNER serves as an at-will employee of the City Council. CITY must provide TURNER with thirty (30) days written notice prior to separation from employment. For any period following an election of the Mayor or a member of the City Council, CITY may not give notice of separation from employment to TURNER until sixty (60) days after such election. The intent of the time period is to allow the new City Council to have adequate time to review the City Manager's performance.

5.2 **Severance Payment:**

- 5.2.1 In the event of TURNER's separation from employment in accordance with Section 5.1 while TURNER is still willing and able to perform the

duties of City Manager, where such termination is without cause, TURNER shall be entitled to receive compensation, consisting of a lump-sum payment of six (6) months of base salary and benefits ("Severance Payment");

5.2.2 The Severance Payment shall include all benefits payable to or on behalf of TURNER with the exception of vacation not yet accrued as of the date of separation. Both salary and benefits shall be computed at the rates in effect as of the date of separation from employment;

5.2.3 TURNER's acceptance of the Severance Payment shall release CITY from any further-obligation under this Agreement, and also from any actual or alleged liability to TURNER that may be asserted in any claim of any nature by TURNER against CITY based upon or arising from her employment or her termination. Contemporaneously with the delivery of the Severance Payment and in consideration therefore, TURNER agrees to execute and deliver to CITY a release releasing CITY of all claims that TURNER may have against CITY. In return for such Severance Payment, TURNER further agrees to be available for consultation and assistance to the incoming acting, interim or permanent City Manager for a period of at least sixty (60) days.

5.2.4 TURNER shall **not** be entitled to the Severance Payment in the following events:

5.2.4.1 The Agreement expires and CITY elects not to renew this Agreement pursuant to Section 4.3, above;

5.2.4.2 TURNER is terminated because of her conviction of a felony or misdemeanor involving moral turpitude, or is convicted of any illegal act involving personal gain to herself; or

5.2.4.3 TURNER becomes incapable of discharging her responsibilities as described in this Agreement due to a permanent disability pursuant to Section 7 herein.

5.3 Termination By TURNER: TURNER may resign at any time from her position with CITY provided that she gives CITY sixty (60) days advance written notice. Should TURNER not provide CITY with sixty (60) days written notice, she shall not be entitled to cash-out of any benefit other than as required by law.

6. Abuse of Office: If TURNER is convicted of a crime involving an abuse of her office or position, she shall fully reimburse the CITY for the following items of costs to the CITY:

6.1 Leave salary paid to TURNER by CITY pending an investigation of the crime of which she is convicted;

- 6.2 Any funds paid by CITY for the legal defense of TURNER;
- 6.3 Any cash settlement paid to TURNER by CITY related to the termination of this Agreement;
- 6.4 Any payments by CITY to TURNER that were not agreed upon in this Agreement; and
- 6.5 For the purpose of this section the term "abuse of her office or position" means either:
 - a. an abuse of public authority including but not limited to waste, fraud, and violation of law under color of authority, or
 - b. a crime against public justice including but not limited to a crime described in Title 7 of Part 1 of the California Penal Code.
- 7. Disability: If, during the course of this Agreement, TURNER becomes permanently disabled or is otherwise unable to perform the full range of the essential functions of her position because of sickness, accident, injury, mental incapacity, or other health reason for a period of four (4) successive weeks beyond exhaustion of all accrued sick leave, CITY shall have the option to terminate this Agreement pursuant to Section 5.1.
- 8. Performance Evaluation:
 - 8.1 Annually, the City Council, in consultation with TURNER, shall define goals and performance objectives for the City Manager which they determine to be necessary for the proper operation of CITY; and
 - 8.2 The City Council shall review and evaluate the performance of TURNER at least annually and shall meet with TURNER to discuss the evaluation between October 1 and November 30 of each year. The review shall be in accordance with a process developed jointly by CITY and TURNER, which may be modified by mutual agreement. This evaluation shall be private and confidential, and the results shall be summarized and discussed in closed session, to the extent permitted by law, or through some other mutually acceptable format. The parties agree that the primary purpose of the evaluation is to facilitate open and frank discussion, define roles and expectations, identify performance strengths and weaknesses, and provide an opportunity for TURNER to take affirmative action to address weaknesses and areas needing improvement. TURNER shall be provided with a summary written statement of the findings of City Council, and she shall be provided with an opportunity to discuss her performance evaluation with City Council.
- 9. Compensation:
 - 9.1 Effective July 1, 2020 CITY agrees to pay TURNER, for her services rendered

pursuant hereto, an annual salary of Two Hundred Forty Six Thousand Three Hundred Seventy One dollars and 88 cents. (\$246,371.88) ("Base Salary") payable at the same time and in the same manner as other employees of the CITY are paid. Beginning July 1, 2021, and annually thereafter and except as otherwise provided in this Agreement, TURNER shall receive an annual cost of living adjustment ("COLA") in her base salary equal to the percentage increase in the San Francisco Oakland/San Jose Urban Wage Earner Index, Base Rate Index for the twelve month period ending on June 30. The City Council, in its sole discretion and at a duly noticed public meeting, may grant additional merit increases to TURNER during the term of this Agreement;

9.2 CITY agrees to provide TURNER a Five Hundred dollar (\$500) per month vehicle allowance;

9.3 TURNER shall be entitled to the same benefits provided to CITY employees in the range of the "A" group of the CITY's Management Salary Resolution, as it is amended from time to time by City Council action; and

9.4 TURNER shall make periodic payments to CalPERS in an amount commensurate with CITY employees in the range of the "A" group of the CITY's Management Salary Resolution.

10. Hours of Work, Administrative Leave: It is recognized that TURNER must devote a great deal of time outside of normal working hours to the business of CITY. To that end, TURNER is granted total annual administrative leave of one hundred twenty (120) hours per fiscal year, with no maximum accumulation. The removal of the maximum accumulation cap for vacation and administrative leave is retroactive for fiscal year 2019 – 2020. Administrative leave may be taken by TURNER at her discretion. The accrued amount up to the maximum of two hundred forty (240) hours of vacation and/or administrative leave may be cashed out at TURNER's option annually.

11. Deferred Compensation: TURNER shall be entitled to receive deferred compensation equal to the current 457(b) retirement plans elective deferral limit, not including any catch-up contributions, such amounts to be credited to her account as deferred compensation.

12. Professional Development: The CITY agrees to budget for and to pay membership fees/dues, conference/meeting registrations, and the travel and subsistence expenses of TURNER for professional development and official travel, meetings and occasions adequate to continue her professional development and to adequately pursue necessary official and other functions of CITY, including but not limited to the annual Conference of the League of California Cities ("LCC"), the LCC Spring City Manager's Department meeting, and annual ICMA Conference. Travel and conference expenses shall be reimbursed for reasonable expenses only and in accordance with the CITY's policies governing travel and conference expense reimbursement. The CITY further agrees to reimburse TURNER for tuition, fees, books, software and related educational expenses for professional development.

13. Housing Loan:

13.1 CITY agrees to loan TURNER a maximum of One Million-Three Hundred Thousand Dollars (\$1,300,000) to purchase a residence and property

("Property") in Morgan Hill. Loan proceeds shall be used to purchase Property within City limits which will be TURNER'S primary residence. The loan shall be evidenced by a Promissory Note made by TURNER payable to the CITY and secured by a First Deed of Trust on the Property. The principal amount of the loan shall bear interest at the 10 Year Treasury Rate as of July 1, 2020 of .69% plus one quarter percent (.25%) for a total of .94%, amortized over a thirty (30) year period. TURNER shall pay principal and interest for fifty percent (50%) of the loan amount and interest only for the remaining fifty percent (50%) of the loan amount. Principal and interest shall be amortized and payable in equal bi-weekly installments through an automatic payroll deduction with the entire balance due in 30 years. The loan may be prepaid earlier without penalty. Payoff of the Promissory Note shall occur within 12 months of voluntary or involuntary separation from employment with the CITY. TURNER agrees to a recourse loan. TURNER shall be responsible to pay all applicable taxes, insurance, and homeowner fees and shall be responsible at her expense to maintain the property in good and habitable conditions at all times. In the event that the Internal Revenue Service determines that additional taxes are due based upon the interest rate TURNER shall be solely responsible for those taxes.

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

15. Bonding: CITY shall bear the full cost of any fidelity or other bonds required of TURNER under any law or ordinance.

16. Other Terms and Conditions of Employment:

16.1 The City Council, in conjunction with TURNER, shall fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of TURNER, provided such terms and conditions are not inconsistent or in conflict with the provisions of this Agreement or applicable laws; and

16.2 In addition to the benefits enumerated specifically for the benefit of TURNER in this Agreement, all provisions of the CITY's Municipal Code, and regulations and rules of the CITY relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they may now exist or may be amended, shall also apply to TURNER as they now do to other CITY employees, except as provided in this Agreement. Absent any change to vacation benefits, TURNER will continue to accrue vacation at a rate of one hundred sixty (160) hours per year based on years of service with no maximum accumulation limit.

17. No Reduction in Benefits: CITY shall not at any time during the term of this Agreement reduce the salary, compensation or financial benefits to TURNER.

18. Notice: Notices pursuant to this Agreement shall be given by deposit in the custody of

the U.S. Postal Service. Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial proceedings. Notices shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the U.S. Postal Service to the addresses set forth below or as subsequently communicated by one party to the other in writing.

- 18.1 Notice to TURNER shall be sent to: Christina Turner, c/o City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037; and
- 18.2 Notice to CITY shall be sent to: Mayor, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037.

19. General Provisions:

- 19.1 The Agreement shall be binding and inure to the benefit of the heirs at law and executors of TURNER;
- 19.2 If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or enforceable, the remainder shall be deemed severable, shall not be deemed ineffective, and shall remain in full force and effect;
- 19.3 The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement;
- 19.4 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 subsequent mutual written agreement executed by CITY and TURNER;
- 19.5 This Agreement shall be interpreted under the laws of the State of California; and
- 19.6 This Agreement shall be interpreted as though prepared by both parties.

IN WITNESS WHEREOF the Parties hereby agree to the foregoing by executing below:

ATTEST:

THE CITY OF MORGAN HILL

Michelle Bigelow, Deputy City Clerk

Date: _____

Rich Constantine, Mayor

Date: _____

CHRISTINA TURNER

CHRISTINA TURNER

Title: City Manager

Date: _____

Approved as to Form:

Donald A. Larkin
City Attorney

SECOND EMPLOYMENT AGREEMENT
BETWEEN CITY OF MORGAN HILL AND
DONALD LARKIN

RECITALS

The following recitals are a substantive portion of this Agreement:

- A. LARKIN has been employed by CITY since July 11, 2016.
- B. On or about May 4, 2016 LARKIN and CITY entered into an Agreement wherein LARKIN agreed to serve as City Attorney and General Counsel of the Successor Agency ("SA") for CITY.
- C. CITY and LARKIN wish to enter into a Second Employment Agreement to memorialize changed terms.
- D. At a duly noticed public meeting, the City Council approved this Agreement on August 5, 2020.

AGREEMENT

In consideration of the mutual promises set forth herein and for good and valuable consideration hereby acknowledged, the parties agree as follows:

1. Parties: The parties to this agreement ("Agreement") Agreement are the CITY OF MORGAN HILL ("CITY") and DONALD LARKIN ("LARKIN").
2. Purpose: The purpose of the Agreement is to provide for the employment of LARKIN as City Attorney of CITY, as currently provided by Title 2, Chapter 2.09 of the Municipal Code of the City of Morgan Hill.
3. Duties: CITY hereby agrees to employ LARKIN to perform the functions and duties of City Attorney for the CITY and General Counsel of the Successor Agency for the CITY's Successor Agency ("SA") as specified in the Municipal Code of the City of Morgan Hill, the Job Description, and any other applicable Ordinances, Resolutions or Policies, and to perform such other legally permissible and proper duties and functions as the City council shall from time-to-time assign. LARKIN agrees that, to the best of his ability and experience, he will at all times loyally and conscientiously perform all of the duties and obligations required of him either expressly or implicitly by the terms of the Agreement. LARKIN also warrants that he meets the qualification for employment recited in the job description bulletin released by the CITY in connection with the position previously assumed by LARKIN. LARKIN agrees to work Full Time for the CITY and SA and not to engage in any other practice of law except as specifically permitted herein. The term "Full Time" shall not preclude LARKIN from working from time-to-time on pro bono legal services. Such work is expressly permitted so long as it does not interfere in any way with his work as City Attorney or present any conflict of interest that creates an

adverse consequence for the CITY. Further, working Full Time shall not be construed to preclude occasional teaching, writing or other pro bono service performed on LARKIN's time off.

4. Term of Agreement:

4.1 The Effective Date of this Agreement shall be July 1, 2020.

4.2 This Agreement shall commence on the Effective Date and terminate on June 30, 2021 (the "Termination Date") unless either (1) the term is modified hereafter by written agreement of the Parties, (2) the Agreement renews automatically in accordance with the provisions of 4.3 herein. LARKIN agrees to remain in the exclusive employ of the CITY during the term of the term of the Agreement and neither to accept other employment nor become employed by another employer until the Termination Date, unless the term is modified as provided herein.

4.3 At the conclusion of the term of this Agreement, it shall automatically renew each year, effective every July 1, unless terminated by the delivery of an Election of Non-Renewal by either party no later than December 30 of the then current term. Notice of an Election of Non-Renewal shall be conveyed by written notice of the other party.

5. Separation from Employment:

5.1 The City Council may terminate the services of LARKIN at any time, for any reason or no reason, it being expressly understood and agreed between the parties that LARKIN serves as an at-will employee of the City Council.

5.2 Only in the event of termination from employment by the City Council without "Good Cause," as defined below, shall LARKIN be entitled to receive compensation consisting of a lump-sum payment of six (6) months of base salary and Benefits, as defined below (collectively "Severance Payment"). "Good Cause" shall include, but not be limited to, breach of contract, embezzlement, fraud, disbarment or suspension from any state bar, self-dealing, abandonment of the job, conviction of any felony, conviction of a misdemeanor involving moral turpitude, any illegal act involving personal gain to LARKIN, or disability as defined in Paragraph 6, below. No Severance Payment shall be made if the term of the Agreement is complete and the Agreement is not renewed or extended.

"Benefits" shall include all benefits payable to or on behalf of LARKIN with the exception of: vacation, management leave, and administrative leave (other than those amounts already earned by LARKIN as of the date of separation). Both salary and benefits shall be computed as of the rates in effect as of the date of separation from employment.

The Severance Payment will release CITY from any further obligations under the Agreement, and any claims of any nature that LARKIN might have against the CITY by

virtue of his employment or termination thereof. Contemporaneously with the delivery of the Severance Payment and in consideration therefore, LARKIN agrees to execute and deliver to the CITY a signed document releasing CITY of all claims that LARKIN may have against CITY. In return for such Severance Payment, LARKIN agrees to be available for consultation and assistance to the Interim City Attorney or any other Council appointee.

If, and only if, LARKIN is not terminated for the Good Cause set forth above, LARKIN shall be entitled to severance in an amount equal to the difference between the Severance Payment and any amount of CITY insurance disability payments he received in the first year of Disability, defined below in paragraph 6. Such payment shall be made monthly or in a lump sum at the CITY's sole discretion. Such payment shall not exceed the Severance Payment and such payment shall not exceed the difference, in the first year, between the Severance Payment and any amount of CITY Insurance disability payments. Such payment shall be treated as the Severance Payment for all other purposes.

5.3 LARKIN may resign at any time from his position with the CITY provided that he gives the CITY thirty (30) days' written notice. Should LARKIN not provide the CITY with thirty (30) days' written notice, he shall not be entitled to cash out of any benefits other than as required by law.

6. **Disability:** "Disability" shall be defined as the inability to perform the full range of the duties and essential functions of the employee's position because of sickness, accident, injury, mental incapacity or other health reasons, for a period of four (4) successive weeks beyond exhaustion of all accrued sick leave and exhaustion of all leave available under the Americans with Disabilities Act, the California Fair Employment and Housing Act, the Family Medical Leave Act, the California Family Leave Act and any other statutorily provided leave.

7. **Compensation:**

7.1 CITY shall pay LARKIN the annual salary of Two Hundred Forty Four Thousand Nine Hundred Forty Dollars and sixty-four cents (\$244,940.64).

7.2 CITY agrees to provide LARKIN a car allowance of Five Hundred Dollars (\$500) per month.

7.3 CITY agrees to pay LARKIN's California State Bar membership dues and expenses reasonably incurred to satisfy his MCLE requirements. All other professional development, conference fees and similar expenses are to be paid out of the City Attorney's Department Budget as provided in Paragraph 11.

7.4 LARKIN shall be entitled to the same benefits provided to CITY employees in the range of the "A" group of the City's Management salary resolution to the extent that provision of such benefits are not in conflict, less than or duplicative of the specific benefits set forth in this Agreement.

7.5 LARKIN shall be entitled to receive deferred compensation equal to the current 457(b) retirement plans elective deferral limit, not including catch-up contributions. LARKIN may apportion the CITY's contribution between the CITY's plans as he desires, but in no event shall the CITY's total contribution exceed the maximum listed herein. Payments shall be made on the same schedule as salary payments.

7.6 Beginning July 1, 2021 and annually thereafter and except as otherwise provided in this Agreement, LARKIN shall receive an annual cost of living adjustment ("COLA") of his base salary equal to the percentage increase in the San Francisco Oakland/San Jose Urban Wage Earner Index, Base Rate Index for the twelve month period ending on June 30. The City Council in its sole discretion and at a duly noticed public meeting, may grant additional merit increases to LARKIN during the term of this Agreement.

8. **Performance Goals and Evaluation:** The City Council shall review and evaluate the performance of LARKIN annually between October 1 and November 30 of each year of his employment. These evaluations shall be private and confidential, and the results shall be summarized and discussed in closed session, to the extent permitted by law. Nothing in this provision shall prevent the parties from evaluation of performance at times other than as stated herein. Any delay or other failure to satisfy any or all of the evaluation steps described herein shall not affect the CITY's or LARKIN's rights regarding separation from employment or obligations under this Agreement.

9. **Sick Leave, Holidays, Vacation, Leave without Pay, Bereavement Leave, Sick Leave Buy Out and Management Leave:** LARKIN shall be entitled to accrue, and to have credited to his personal account, vacation at the annual accrual rate of one hundred sixty (160) hours per year based on years of service, with no maximum accumulation limit. Sick leave shall be as provided to department directors. Unless a greater amount is specified in this Agreement, LARKIN shall be entitled to holiday, leave without pay, bereavement leave and sick leave buy-out the same as other management employees of the CITY. It is recognized that Larkin must devote a great deal of time outside of normal working hours to the business of CITY. To that end, LARKIN is granted total annual administrative leave of one hundred twenty (120) hours per fiscal year with no maximum accumulation. The removal of the maximum accumulation cap for vacation and administrative leave is retroactive for fiscal year 2019-2020. Administrative leave may be taken at LARKIN'S discretion. The accrued amount up to the maximum of two hundred forty (240) hours of vacation and/or management leave may be cashed out at LARKIN's option annually.

10. **Retirement:** LARKIN shall make periodic payments to CalPERS in an amount commensurate with CITY employees in the range of the "A" group of the CITY's Management Salary Resolution. Beginning with CalPERS rates effective on July 1, 2014, LARKIN agrees to pay fifty percent (50%) of future rate increases charged by CalPERS to CITY as an employer.

11. **Professional Development:** The CITY hereby agrees to budget for and to pay membership fees/dues, conference/meeting registrations, and the travel and subsistence expenses of LARKIN for professional development and official travel, meetings and occasions adequate to

continue the professional development of the City Attorney and to adequately pursue necessary official and other functions of the CITY, including, but not limited to, the Annual Conference of the League of California Cities, and the Spring City Attorneys' Conference. Travel and conference expenses shall be reimbursed for reasonable expenses only, and in accordance with the City's standard policies governing travel and conference expense reimbursement.

12. **Housing loan:** CITY agrees to loan LARKIN a maximum of Nine Hundred Thousand Dollars (\$900,000) to purchase a residence and property (Property) within the City of Morgan Hill. Said loan proceeds shall be used to purchase Property within the Morgan Hill City limits should Larkin elect to do so; which Property would be LARKIN'S primary residence. Said loan shall be evidenced by a Promissory Note made by LARKIN payable to the CITY and secured by a First Deed of Trust on the Property. The principal amount of the loan shall bear interest at the 10 Year Treasury Rate as of July 1, 2020 of .69% plus one quarter percent (0.25%) for a total of .94% amortized over a thirty (30) year period. LARKIN shall pay principal and interest for fifty percent (50%) of the loan amount and interest only for the remaining fifty percent (50%) of the loan amount. Principal and interest shall be amortized and payable in equal bi-weekly installments through an automatic payroll deduction with the entire balance due in 30 years. The loan may be prepaid earlier without penalty. Payoff of the Promissory Note shall occur within 12 months of voluntary or involuntary separation from employment with the CITY. LARKIN agrees to a recourse loan. LARKIN shall be responsible to pay all applicable taxes, insurance and homeowner fees and shall be responsible at his expense to maintain the property in good and habitable conditions at all times. In the event that the Internal Revenue Service determines that additional taxes are due based upon the interest rate LARKIN shall be solely responsible for those taxes.

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

14. **Bonding:** CITY shall bear the full cost of any fidelity or other bonds required of LARKIN under any law or ordinance.

15. **Other Terms and Conditions of Employment:**

15.1 The City Council, in conjunction with LARKIN, shall fix any other terms and conditions of employment, as it may determine from time-to- time, relating to the performance of LARKIN, provided such terms and conditions are not inconsistent with or conflict with the provisions of this Agreement or other applicable law.

15.2 Except as provided herein, all provisions of the CITY's Municipal Code, and regulations and rules of the CITY relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to the City Attorney as they do other employees of the CITY, in addition to said benefits enumerated specifically for the benefit of LARKIN, except as to the extent that such rules and regulation are in conflict with this Agreement.

16. **No Reduction in Benefits:** The City shall not at any time during the term of this Agreement reduce the salary, compensation or financial benefits to LARKIN.

17. **Notice:** Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid. Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial proceedings. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service to the addresses set forth below or as subsequently communicated by one party to the other in writing.

17.1 Notice to LARKIN shall be sent to:

DONALD LARKIN
City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037

17.2 Notice to CITY shall be sent to:

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

And, City Manager
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

18. **General Provisions:**

18.1 The text herein shall constitute the entire agreement between the parties.

18.2 The Agreement shall be binding and inure to the benefit of the heirs at law and executors of LARKIN.

18.3 This Agreement shall become effective on the latest date listed below. This Agreement supersedes any other contract or agreement between the CITY and LARKIN.

18.4 If any provision, or any portion therefore, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be effective, and shall remain in full force and effect.

18.5 The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

18.6 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 subsequent mutual written agreement executed by CITY and LARKIN.

18.7 In the event that any action is commenced to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs.

18.8 This Agreement shall be interpreted as though prepared by both parties.

ATTEST:

THE CITY OF MORGAN HILL

Michelle Bigelow, Deputy City Clerk

Date: _____

Rich Constantine, Mayor

Date: _____

DONALD A. LARKIN

Approved as to Form

By: Donald A. Larkin

Gary M. Baum
Outside Counsel

Title: _____
City Attorney

Date: _____



Crosswinds at Morgan Hill

CITY COUNCIL AGENDA
ITEM NO. AUGUST 5, 2020
ITEM NO. 8



MISSION RANCH HOA

MISSION VIEW DRIVE

HALF ROAD

DEPAUL DRIVE



0 60 120 180

Overview

- The project complies with the dispersion requirement
- The applicant is entitled to a Density Bonus Law concession
- The applicant is entitled to a concession under MHMC § 14.04.120.A.3

The Project Complies

MHMC § 14.04.040(f):

- All inclusionary units shall be “**reasonably** dispersed” throughout the residential project.
- . . . And shall be of **comparable** design of the market-rate units in the residential project in terms of distribution of model types, number of bedrooms, appearance, material, and quality of finish.
- Occupants of inclusionary units shall be provided the **same access to amenities**, recreational facilities, and common areas as occupants of market-rate units.

MISSION RANCH HOA

MISSION VIEW DRIVE

HALE ROAD

DEPAUL DRIVE

1

2

3

3



Concession

Concessions are not limited to development standards. See GC 65915(k):

For the purposes of this chapter, concession or incentive means **any** of the following:

- (1) A reduction in site development standards
- (2) Approval of mixed-use zoning
- (3) **Other** regulatory incentives or concessions proposed by the developer

Concession: City's Burden to Deny

The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, **based upon** substantial evidence, of any of the following:

1. **The concession or incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs.**
2. The concession or incentive would have an unavoidable specific, adverse impact on public health, safety, the physical environment, or a historical property.
3. **The concession or waiver would be contrary to state law.**

Identifiable Cost Savings

As set forth in the June 11, 2020 letter in the agenda packet, providing inclusionary units proposed will cost the developer \$5 million in lost profits to subsidize the cost of the inclusionary units. The staff report cites no substantial evidence to the contrary.

Dispersing the inclusionary units throughout the project would require the applicant to:

1. Further subsidize the inclusionary units in the amount of \$3.5 million; or
2. Redesign the project, which the developer is not required to do to qualify for a concession. (See *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1347-1349.)

State and Federal Law

- No specific Housing Element Policy cited.
- The proposal will not segregate inclusionary units.
- The Density Bonus Law requires exceptions from local rules.

If a project is excepted from a local requirement, then the requirement is not applicable to the project. (Cf. *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1346-1347.)

MHMC § 14.04.120.A.3

“The Developer may request to provide Inclusionary Units that are different unit types than the Market-Rate units to be constructed within the Residential Project; provided, however, the Inclusionary Units shall have the same bedroom count in the same percentage distribution as the Market-Rate units.”

Questions?





DENSITY BONUS CONCESSION REQUEST: SR2020-0020 HALF-DIVIDEND (CROSSWINDS)



Density Bonus Concession Request



Project Description:

- 269-unit market-rate residential housing development project on 28.9 acres
 - o Courtyard Homes: 56 units
 - o Duets: 64 units
 - o Condominiums: 149 units
- 40 required Below Market Rate (BMR) moderate income units sited exclusively within condominiums

Density Bonus Concession Request



Request:

- One development concession from local standards based on Density Bonus Law
- Exception to the City's distribution requirement contained in the Inclusionary Housing Ordinance
- BMR units located within condominium portion of the project only

Density Bonus Concession Request

Original BMR Disbursement (red dot represents BMR unit):



Density Bonus Concession Request

Revised BMR Disbursement (red dot represents BMR unit):



Density Bonus Concession Request



Applicant's Justification

- Address concerns of the Mission Ranch Homeowners Association that the higher density elements of the Project not directly face their homes.
- Cost effective and reasonable to provide all affordable units as townhome units
- Dispersion plan meets the intent of the IHO by ensuring that the affordable units are indistinguishable from the market rate units
- Provides significant community benefit by satisfying residents' concerns about providing a buffer between their neighborhood and the higher density elements of the Project

Density Bonus Concession Request



Density Bonus Law

- Requesting a concession/deviation from the City standards through the Density Bonus Law without requesting an actual density bonus
- Proposing to build a project substantially below the density allowed – 9.3 units/acre (16 units/acre allowed)
- Concession is in direct contradiction to the purpose of the Density Bonus Law, which is intended to incentivize inclusionary housing, not to circumvent affordable housing requirements

Density Bonus Concession Request



Reasonable Disbursement in IHO

“All inclusionary units shall be reasonably dispersed throughout the residential project and shall be comparable to the design of the market-rate units in the residential project in terms of distribution of model types, number of bedrooms, appearance, materials and quality of finishes. There shall not be significant identifiable differences between inclusionary units and market-rate dwelling units that are visible from the exterior of the dwelling units, and the size and design of the dwelling units shall be reasonably consistent with the market-rate units in the development. Occupants of inclusionary units shall be provided the same access to project amenities, recreational facilities, and common areas as occupants of market-rate units.”

Density Bonus Concession Request

What is Reasonable Disbursement?

BMR REASONABLE DISPERSMENT			
Product type	Number of Units	Percentage of Project	Number of BMRs
Single Family dwelling	56	21%	8
Attached duets	64	24%	10
Townhomes	149	55%	22
Total Units in Project	269	100%	40

Density Bonus Concession Request



Findings

Pursuant to Government Code 65915 (d)(1) the City must grant the concessions or incentives unless the City makes written findings, based upon substantial evidence to deny the application.

Findings for Denial have been provided.

Density Bonus Concession Request



Finding No. 1

- a. The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents of the targeted units to be set as specified in subdivision (c).

Concentrating all inclusionary housing units in the townhouse portion of the project does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs.

Density Bonus Concession Request



Finding No. 2

- b. The concession or incentive would have a specific, adverse impact, as defined in paragraph 2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

Impacts have not been identified as defined in Government Code Sections 65915 and 65589.5, so this finding is inapplicable to this project. Requiring dispersal of the moderate inclusionary housing units does not render the project infeasible or increase the cost of the affordable housing. Further the City has exceeded its RHNA allocation in the moderate-income unit category, therefore restrictions on conditions identified by the Applicant do not apply.

Density Bonus Concession Request



Finding No. 3

- c. The concession or incentive would be contrary to state or federal law.

Concentrating all inclusionary housing units in the townhome portion of the project is not consistent with the Housing Element or the General Plan.

Density Bonus Concession Request



- The purpose of the “Inclusionary” housing policy is to create mixed-income developments, so that people from different socio-economic backgrounds are given the opportunity to access the same services and amenities, furthering equity and inclusion, and addressing state and federal fair housing obligations
- The 15% Affordability Requirement on the 269 Unit Project is 40.35 Moderate Income Below Market Rate Units
- The value or fee is \$10.2 Million ($520,861 \text{ SF} \times \$19.70 = \$10.2\text{M}$)

Density Bonus Concession Request



Recommendation

Adopt resolution denying the request for a concession under Government Code Section 65915(d)(2)(A) to waive the requirement to distribute Below Market Rate (BMR) units throughout the project.

Questions?



To: City Council, Planning Commission and Morgan Hill neighbors
From: Joe Baranowski

Regarding: August 5th, City Council Meeting Agenda Item #8: Crosswinds Residential Housing Project; Dividend Homes Applicant. Public Comment.

My name is Joe Baranowski and for full disclosure I live in Mission Ranch. I appreciate the work our HOA and Mr. Oliver have done in considering how the proposed Crosswinds project would interface to our development, but I did not participate in any of those discussions.

I fully support the City's long commitment to the BMR housing program and the policies that are intended to ensure it is executed in a way that physical housing elements support a truly integrated and inclusionary neighborhood. We need more BMR housing. The property in question has been zoned for residential use and something is going to be built there one day. I'll state the obvious - physical structures alone do not create 'neighborhoods'. Things like whether residents feel safe and comfortable in their immediate surroundings are certainly just as important, even though such characteristics are as subjective as 'reasonable' dispersion clearly is.

What I find to be incredulous is that staff concerned about whether grouping of Townhomes with indistinguishable BMR units, which I believe the applicant is committed to building, will create separate "neighborhoods" within a development, is at the same time working on, or has probably already finalized, a Statement of Overriding Considerations that will allow SIGNIFICANT noise, air pollution, traffic, and Emergency Response time concerns, for which there are no mitigations, to be ignored, so that a one million square foot Distribution Center can be built in the backyard of the proposed new development and of the existing Westmont Senior Living Center and DePaul Health Center. Unlike Shoe Palace, where fundamental legal requirements were completely ignored, the staff opposition to the applicant's request is now based on legal minutia including the unreasonable argument that 'reasonable' distribution of BMR units is an objective standard. Meanwhile, they barrel forward giving another applicant enthusiastic support for a project that would COMPLETELY DESTROY any notion of NEIGHBORHOOD for several residential and county health neighborhoods, including the proposal. When the City response talks about creating 'diversified neighborhood environments' is putting a Trucking Intensive, noise generating, polluting one million square foot Distribution Center right in the backyard of those neighborhoods considered 'diversification'?

I recognize the urgent need for more BMR units in our city.

I have no idea why Mr. Oliver or any developer would be willing to build on the property with the Trammell Crow project pending. If that project were to ever be built, the entire Crosswinds development and the other properties adjacent to the Distribution Center will *all* become BMR units. I have to assume Mr. Oliver expects the Responsible Growth for Morgan Hill Initiative to be approved by voters as I do.

I have no direct knowledge of whether other builders would be willing to do this project. I do know that Mr. Oliver and other Dividend employees live in Morgan Hill. I know firsthand they build modern, high-quality products. They build the kind of products that facilitate and **encourage neighborhoods** to develop. They don't build and then get out of town before the paint dries.

Given the City's support for a Mega Distribution Center in the backyard of this residential parcel, whoever builds is taking on financial risk that is far beyond anything being discussed this evening. Given all known factors and my belief that Mr. Oliver is committed to providing 40 indistinguishable BMR units; while I would probably not normally take a position on this, I believe Mr. Oliver deserves the benefit of doubt and I strongly support his position. I am sure it will be an inclusionary community and I look forward to meeting my new neighbors. I hope the neighborhood environment this City says is important and the ones already established are never DESTROYED by the proposed Trammell Crow project that should have never received 'enthusiastic support' from city staff and City leadership to begin with.

From: [D. Muirhead](#)
To: [CC Public Comment](#)
Subject: coment Morgan Hill City Council meeting August 5, 2020 Item #9: City manager Employment Agreement
Date: Monday, August 3, 2020 12:48:25 PM

Dear Morgan Hill City Council,
A comment for your meeting on August 5, 2020.
Item #9: Employment Agreements with City Attorney and City Manager

I would like you to give direction to the City Manager to provide longer lead times to review agenda packets. From what was said by Council Members and Public Members at the Goals workshop, there is a need for more time to properly prepare for Council meetings.

The Council can direct the City Manager to satisfy that requirement. The Council is the employer of the City Manager, yet acted as supplicants at the workshop.

The City Attorney likes to tell you that you only have a policy role. I have repeatedly suggested that you also have an oversight role.

This is what your Municipal Code says:

Chapter 2.08 - CITY MANAGER

2.08.010 - Office created.

The office of city manager is created and established.

The city manager shall be appointed by the city council on the basis of his experience, administrative and executive ability. He shall hold office at and during the pleasure of the city council.

2.08.040 - Powers and duties.

The city manager shall be the administrative head of the city government acting under the direction and control of the city council.

In addition to the city manager's general powers as chief administrator...

2.08.050 - Council orders and instructions - Restrictions.

The city council and its members shall deal with the administrative services of the city only through the city manager, except for the purpose of inquiry, ... The city manager shall take his orders and instructions from the city council only when given at a duly held meeting of the city council, and no individual councilman shall give any orders or instructions to the city manager.

I did try to get some background from the Deputy City Clerk on what might be current impediments and what impact the new Agenda Management system will have, but I did not get a response to my email sent a week ago.

Thank you, Doug Muirhead

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Item # 09

AGENDA DATE: 08/05/2020
SUPPLEMENT # 2

From: [Allan Abrams](#)
To: [CC Public Comment](#)
Subject: City Attorney
Date: Monday, August 3, 2020 1:56:01 PM

I am strongly against renewing the employment contract for Don Larkin. His performance over the years has been below par. He is arrogant and cares very little about the residents of the city.

While I do not argue against the City Attorney salary, I am outraged that during a time of financial crisis the City Council is considering extending him a hefty bonus and funding a loan at less than 1% interest rate to purchase a home.

There are plenty of attorneys who would be happy to work for our city and accept the std pay rate we offer without having to waste precious tax revenue on showering an employee with gifts.

Stop your nonsense. We are watching!

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Regular Meeting Agenda

City Council

Rich Constantine - Mayor
Yvonne Martinez Beltran - Mayor Pro Tem
Larry Carr - Council Member
John McKay - Council Member
Rene Spring - Council Member

Wednesday, August 5, 2020 7:00 p.m.

Virtual Meeting

Link to join the meeting can be found below

MEETING GUIDELINES

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. We will address the Order in the following ways:

Members of the public may NOT physically attend meetings at the Morgan Hill City Council Chamber.

The City Council Meeting will be live-streamed on Channel 17 and on the City's website. Those members of the public wishing to participate remotely may do so via the electronic meeting at: <https://bit.ly/08052020CCMeeting> or by calling in to: (669) 900-9128, then enter the meeting id: 850 5492 5039.

Public comment for City Council meetings will be accepted via email to ccpubliccomment@morganhill.ca.gov <<mailto:ccpubliccomment@morganhill.ca.gov>>. Members of the public participating in the electronic meeting wishing to speak may do so during public comment.

The City Council has adopted a policy that regular meetings shall not continue beyond 11:00 p.m. unless extended by a majority of the City Council.

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow

PRESENTATIONS

YAC Presentation
<https://www.youtube.com/watch?v=PDMori2vfks>

New and Retired Teammates

PROCLAMATIONS

Centennial Celebration of Women's Right to Vote and Women's Equality Week

RECOGNITIONS

Learning and Loving Center

Chaplain David Whitaker

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

PUBLIC COMMENT

Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the City Council is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. AMEND CONFLICT OF INTEREST CODE REPORTING CATEGORIES

Recommendation:

Adopt resolution amending the list of positions subject to the City's Conflict of Interest Code.

2. ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS - VALENCIA PHASE (PH) 1 TRACT 10312 & VALENCIA PH 2 TRACT 10433

Recommendation:

1. Accept the Subdivision Public Improvements for Valencia PH 1 – Tract 10312;
2. Accept the Subdivision Public Improvements for Valencia PH 2 – Tract 10433;
3. Authorize the City Engineer to sign the Notices of Completion; and
4. Direct the City Clerk to file the Notices of Completion with the County Recorder's Office.

3. APPROVE ENGINEERING RELATED SERVICE AGREEMENTS FOR DESIGN PROFESSIONALS FOR ON-CALL PROJECT MANAGEMENT & INSPECTION, ON-CALL ENGINEERING PLAN REVIEW & TECHNICAL SUPPORT SERVICES, AND ON-CALL MAP REVIEW & CITY SURVEYOR SERVICES

Recommendation:

Approve and authorize the City Manager to execute and administer four agreements with contingencies to be specifically authorized by the City Manager:

1. CSG Consultants, Inc. in the amount of \$784,000, with a \$235,200 contingency, for a total contract amount not to exceed \$1,019,200 to provide On-Call Project Management & Inspection Services for various Capital Improvement Program Projects; On-Call Engineering Plan Review & Technical Support Services, and On-Call Map Review & City Surveyor Services for Land Development Engineering;
2. Mott MacDonald Group, Inc. in the amount of \$200,000, with a \$60,000 contingency, for a total contract amount not to exceed \$260,000 to provide On-Call Project Management & Inspection Services for various Capital Improvement Program Projects;
3. Harris & Associates, Inc. in the amount of \$220,000, with a \$66,000 contingency, for a total contract amount not to exceed \$286,000 to provide On-Call Engineering Plan Review & Technical Support Services for Land Development Engineering; and
4. Associated Engineering Surveying Services, Inc. DBA Hanna-Brunetti, in the amount of \$58,000, with a \$17,400 contingency, for a total contract amount not to exceed \$75,400 to provide On-Call Map Review & City Surveyor Services for Land Development Engineering.

4. APPROVE A FIVE-YEAR CONTRACT WITH CENTRALSQUARE FOR TRAKIT PERMITTING SYSTEM

Recommendation:

Approve and authorize the City Manager to execute and administer a five-year contract with CentralSquare Solutions for the purchase of maintenance service, technical support, and software updates for the City's permit tracking software system (TRAKiT) for a not to exceed amount of \$525,197.

5. APPROVE THE JULY 22, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

6. APPROVE THE JULY 24, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

7. APPROVE UPDATE TO SUSTAINABLE MORGAN HILL DOCUMENT

Recommendation:

Review and approve the COVID-19 and equity statement added to the City Council's Sustainable Morgan Hill document.

OTHER BUSINESS

8. CONSIDER REQUEST TO IMPLEMENT GOVERNMENT CODE SECTION 65915(D)(2)(A) FOR ONE CONCESSION UNDER 14.04.090 TO WAIVE PROVISIONS OF CHAPTER 14.04 FOR A MARKET RATE HOUSING DEVELOPMENT PROJECT (SR2020-0020 HALF-DIVIDEND (CROSSWINDS))

Recommendation:

Adopt resolution denying the request for a concession under Government Code Section 65915(d)(2)(A) to waive the requirement to distribute Below Market Rate (BMR) units throughout the project.

Estimated Time: 90 Minutes

9. APPROVAL OF SECOND EMPLOYMENT AGREEMENTS FOR THE CITY MANAGER AND THE CITY ATTORNEY

Recommendation:

1. Approve the Second Employment Agreement with City Attorney Donald Larkin;
2. Approve the Second Employment Agreement with City Manager Christina Turner; and
3. Authorize the Mayor to execute the agreements and any related agreements.

Estimated Time: 15 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

SUSTAINABLE MORGAN HILL



VISION

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

Choose Morgan Hill

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

City Council Ongoing Priorities

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

2020-2021 Strategic Priorities

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



CERTIFICATE OF COMMENDATION

AWARDED TO

David Whitaker

The City of Morgan Hill would like to recognize Chaplain David Whitaker for his many years serving the Morgan Hill community. Chaplain David Whitaker's mission was to support and care for all members of the Morgan Hill Police Department, through a listening ear, supportive presence and individual counseling. He also served the community in response to critical incidents involving major loss, significant injuries or life altering circumstances.

Chaplain Whitaker servant's heart was felt by many in our community over the last 16 years of service.

The City of Morgan Hill recognizes Chaplain Whitaker for his support and dedication
to our community.

Presented this 5th day of August 2020



Rich Constantine, MAYOR

CERTIFICATE OF RECOGNITION

AWARDED TO

Learning & Loving Education Center

The City of Morgan Hill recognizes the Learning & Loving Education Center (LLEC) for 27 years of service in the Morgan Hill community. The LLEC has touched the lives of over 4,000 immigrant women and their families through literacy, technology, and basic skills education allowing the women to acquire abilities for further self-development while their preschoolers develop kindergarten readiness.

The City of Morgan Hill thanks the LLEC for their many years of service, support, and dedication to our community.

Presented this 5th day of August 2020



Rich Constantine, MAYOR



City Manager's Recognition Report



New Hires



Sean Bayard
Police Officer



Tommy Coreas
Animal Service Officer



Kodi De La Torre
Public Safety Dispatcher



Matthew Donatoni
Police Officer



Kenneth Hall
Police Officer



Jesse Lares
Maintenance Worker I



Kim Mancera
Municipal Services Assistant



Shanika Medina
Municipal Services Assistant



Jacob Moreno
Utility Worker I

New Hires



Katrina Olson
Police Officer



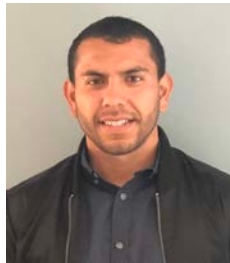
Adam Paszkowski
Principal Planner



Kira Sareli
Police Officer



Victor Vasquez
Utility Worker I



Agustin Vizcarra
Engineering Technician I

New Promotions



Vivian Hayes
Accounting Technician



Michael Horta
Human Resources Director



Jared Huddleston
Multi Service Officer



John Kuhlen
Police Corporal



Gina Nazareno
Senior Accountant



Elysa Olivares
Human Resources Analyst



Shane Palsgrove
Police Chief



Tyler Pecsok
Multi Service Officer



Sergio Pires
Police Corporal

New Promotions



Scott Purvis
Police Sergeant



Leonardo Rocha
Utility Worker II



Harjot Sangha
Assistant to City Manager



Maureen Tobin
Communications & Engagement
Director



Kyle Tolentino
Police Officer



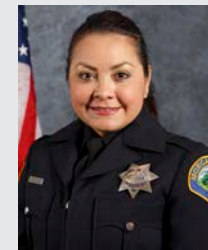
Oracio Vasquez
Senior Utility Worker



Judy Viegas
Financial & Policy Analyst



Chris Woodrow
Police Corporal



Melinda Zen
Police Corporal

Retirements



Robert Amaya
Senior Utility Worker



Rod Degallery
Senior Utility Worker



Cindy Murphy
Assistant City Manager Admin Services



Mark Rauscher
Engineering Technician II



Rodolfo Zamarron
Maintenance Worker I

CITY OF MORGAN HILL
PROCLAMATION
of the City of Morgan Hill
Proclaiming
August 22-29, 2020

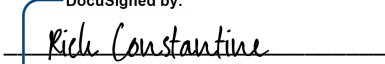
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The Centennial Celebration of Women's Right to Vote and Women's Equality Week

- WHEREAS,** on August 26, 1920 the 19th Amendment to the U.S. Constitution extended the vote to women - a major victory for the women's rights and gender equality movement; and
- WHEREAS,** In honor of Women's Equality Day, there will be a series of events throughout the week of August 22nd-29th to highlight the work women in our community do, and honor their accomplishments; with support from community organizations, local residents and businesses, the Morgan Hill Chamber of Commerce, and the City of Morgan Hill; and
- WHEREAS,** on the 100th anniversary of the 19th Amendment, Women's Equality Day, we celebrate the progress that has been made toward securing women's full participation in our democracy and renew our commitment to securing equal rights, freedoms, and opportunities for all women; and
- WHEREAS,** despite many advances, gender inequality remains pervasive and impacts every aspect of women's lives, including their economic security, safety, and health care; and
- WHEREAS,** fair pay equity policies, paid family leave, and affordable childcare have been shown to increase women's lifetime earnings and the economic security of families; and
- WHEREAS,** women have been leaders, not only in securing their own rights of Suffrage and equal opportunity, but also in the Abolitionist movement, the Emancipation movement, the Industrial Labor movement, the Civil Rights movement, the Environmentalist movement, the Me Too movement, the Black Lives Matter movement and other movements, especially the Peace movement, which have created a more fair and just society for all; and
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Now, therefore be it resolved that I, Rich Constantine, Mayor of the City of Morgan Hill on behalf of the City Council and all residents, hereby proclaim August 22nd-29th, 2020 as the Centennial Celebration of Women's Right to Vote and Women's Equality Week and invite all community members to join us in discussion, celebration, and support for women of all ages, races, socio-economic status, cultures, ethnicities, languages, education, religion or sexual orientation.

In witness whereof, I have hereunto set my hand and cause the Seal of the City of Morgan Hill to be affixed this 5th day of August 2020.

DocuSigned by:

82FAF5B057884E7
Rich Constantine, Mayor

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Kim Mancera

kim.mancera@morganhill.ca.gov

Municipal Services Assistant

City of Morgan Hill

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You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

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To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at michelle.bigelow@morganhill.ca.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

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- ii. send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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CITY OF MORGAN HILL

PROCLAMATION

of the City of Morgan Hill
Proclaiming

August 22-29, 2020

as

The Centennial Celebration of Women's Right to Vote and Women's Equality Week

- WHEREAS,** on August 26, 1920 the 19th Amendment to the U.S. Constitution extended the vote to women - a major victory for the women's rights and gender equality movement; and
- WHEREAS,** In honor of Women's Equality Day, there will be a series of events throughout the week of August 22nd-29th to highlight the work women in our community do, and honor their accomplishments; with support from community organizations, local residents and businesses, the Morgan Hill Chamber of Commerce, and the City of Morgan Hill; and
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In witness whereof, I have hereunto set my hand and cause the Seal of the City of Morgan Hill to be affixed this 5th day of August 2020.

Rich Constantine, Mayor

Public Comment

AGENDA DATE: 08/05/2020

SUPPLEMENT # 1

From: [marco pimentel](#)
To: [CC Public Comment](#)
Subject:
Date: Tuesday, July 28, 2020 6:33:34 PM

Sent from my iPhone please please don't cut the budget cut for the San Martin animal shelter like helping animals TNR program abandon animals and helping family with pets also strays.. these animals need a place to be safe especially at these times especially owner who abandon them.. these animals will be a bad situation if these happens..

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From: [Martin Ayora](#)
To: [CC Public Comment](#)
Subject: Save the animal shelter in San Martin
Date: Friday, July 31, 2020 9:57:49 PM

Hey there,
Please look for an alternative to save the San Martin Animal shelter.

Thanks,

Martin Ayora
Morgan Hill CA

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From: [Grace Johnson](#)
To: [CC Public Comment](#)
Subject: Hi there
Date: Saturday, August 1, 2020 2:07:53 PM

Hey,

I hope you, your family, and friends stay safe by taking the proper precautions as we enter in to confusing and troubling times as we watch a worldwide pandemic unfold with this Coronavirus.

Could there be something more deeper going on with all of this? Could we be seeing the signs of the times unfolding? Could this be a door of opportunity for people to open their hearts to what God has to say?

Jesus says to His disciples concerning the last days, "For nation will rise against nation, and kingdom against kingdom. And there will be famines, pestilences, and earthquakes in various places. All these are the beginning of sorrows" (Matthew 24:7-8).

We have been seeing a record setting amount of Earthquakes world-wide in various places, including places that normally do not receive Earthquakes. Now with this Coronavirus, could this be one of the pestilences that will fall upon us in the last days as spoken by Jesus? Where will it leave our economy? Did you know the Bible teaches there will be a cashless society in the last days? Will this be a major stepping stone in bringing that about?

You may have seen on NBC news just months ago concerning the implantable RFID microchip that is gaining ground in Sweden where people are getting this microchip implanted in their hand.

Would you allow a microchip to be placed inside your body that has the ability to track where you go and what you do? How about if you knew it matched perfectly with Bible prophecy where God warns us not to take it during the future reign of the Antichrist, otherwise we will receive the fullness of His wrath (Revelation 14:9-11)?

This may be the most important message you will read in these times...please do not ignore this! This message reveals what the Mark of the Beast is, and the meaning behind counting a number people have been pondering for centuries, 666. This is truly a message from God!

In the Revelation of Jesus Christ given to the apostle John, we read:

...."Also he (the false prophet who deceives many by his miracles) compels all, the small and the great, and the rich and the poor, and the free men and the slaves, to be given a mark on their right hand or on their forehead signifying allegiance to the beast, and that no one will be able to buy or sell, except the one who has the mark, either the name of the beast or the number of his name. Here is wisdom. Let the person who has enough insight calculate the number of the beast, for it is the number of a man; and his number is six hundred and sixty-six" (Revelation 13:16-18 AMP)....

Speaking of the last times, this could only be referring to a society where physical currency is no more, which we have yet to see, but we are making our way towards. Why so? Otherwise

we could still buy or sell without receiving the mark between one another if physical currency was still valid. It logically deduces itself to this conclusion.

The mark of the beast can't be something spiritual, because the word references two distinct physical spots. If it were to be spiritual, it would just say in the forehead.

Here is where it really starts to come together. It is shocking how accurate the Bible is concerning the RFID microchip. These are notes from a man named Carl Sanders who worked with a team of engineers to help develop this microchip in the late 1960's.

Carl Sanders sat in seventeen New World Order conferences with heads-of-state officials such as Henry Kissinger and Bob Gates of the C.I.A. to discuss their agenda on how to bring about this one-world system. The government commissioned Mr. Sanders to invent a microchip for identifying and controlling the peoples of the nations—a microchip that might be inserted underneath the skin with a hypodermic needle (a fast, convenient process that would be progressively accepted by society).

Mr. Sanders, with a group of engineers with him, with US grant monies provided by US tax dollars, took on this task and designed a RFID chip that is powered by a lithium battery, rechargeable by way of the temperature changes in our skin. Without having knowledge of the biblical scriptures (Sanders was not a Christian at the time), these engineers spent one and a half million dollars gathering information on the best and most convenient spot to have the RFID chip placed in the body.

Guess what? These researchers found that the forehead and the back of the hand (the two spots Revelation says the mark will be received) aren't just the most convenient spots, however are additionally the only viable spots for constant, consistent temperature changes in the skin to recharge the lithium battery. The RFID chip is around seven millimeters in length, .75 millimeters in diameter, about the size of a grain of rice. It's capable of storing pages of details about you. All your general data, work information, crime records, health records, and financial data could be saved on this chip.

Mr. Sanders believes that this RFID chip, which he regretfully helped design, is the "beast's mark" described in Revelation 13:16-18. The original Greek word for "mark" is "charagma," which means a "scratch or etching." Additionally it is fascinating to be aware that the number 666 is actually a word in the original Greek language. The word is "chi xi stigma," with the final word, "stigma," additionally meaning "to stick or prick." Mr. Sanders believes that is alluding to the use of a hypodermic needle being poked into the human flesh to insert the RFID chip.

Mr. Sanders asked a Boston Medical Center doctor what would happen if the lithium contained within the RFID microchip leaked into the body. The doctor responded that if the microchip broke inside a human body, the lithium would cause a severe and painful wound filled with pus. This is what the book of Revelation says:

"And the first (angel) went and poured out his bowl into the land— and a bad and evil sore came upon the people having the mark of the beast and the ones giving worship to his image" (Revelation 16:2 DLNT).

THE HIDDEN MEANING BEHIND THE NUMBER 666 REVEALED!

Scripture tells us that we will not be able to buy or sell without having the mark of the beast, or the number of its name. That is the number of the beast, 666. Scripture tells us to calculate the number 666. How can we calculate 666?

Here is where it becomes an eye opener. Counting the number of the beast, 666, has been long discussed all throughout centuries, however has now been revealed in these last days by God. What you'll read confirms itself with the scriptures the true meaning to calculate 666.

Throughout the scriptures, God uses the number 3 to affirm things. A few examples are shared below:

...."For three be, that give witnessing in heaven, the Father, the Son, and the Holy Ghost; and these three be one" (1 John 5:7 WYC)....

...."And that he was buried, and that he arose the third day, according to the Scriptures" (1 Corinthians 15:4 GNV)....

...."Holy, holy, holy, Lord God Almighty, Who was and is and is to come!" (Revelation 4:8 NKJV)....

What is fascinating is the the mark is revealed in detail in 3 different verses (Revelation 13:16,17,18), and each verse lists 3 different characteristics of the given topic. The final 3 being the number six used 3 times in a row. That is a key factor to deciphering the way to calculate the number 666.

What does it suggest to calculate? It means to add up. How could we add up 666? Recall my previous point concerning God confirming in 3's. So logically, what can be the most sensible way to add up the number 666? To add it up equally in 3's based off the number. It is not sensible to count it equally as $600+60+6$, this would also bring us back to the beginning. We can't count it as $600+600+600$, or $60+60+60$, because there are no zeroes in between or at the end of 666. The only rational option is $6+6+6=18$. What is fascinating is that the verse that reveals for us to count the number of the beast itself is verse 18, being the 3rd verse out of 3 verses that describe the mark. What is 18 divided by 3? 6. So $3 \times 6=18$, or $6+6+6=18$.

Another interesting key point is that the two other combinations (making a total of 3 possible combinations) for moving the "+" symbol in between the sixes are $66+6=72$, and $6+66=72$. Count both 72's together and you get 144. Why the number 144 is interesting is because the verse following Revelation 13:18 is the first instance in the scriptures where the 144,000 are being mentioned in detail:

...."Then I looked, and behold, the Lamb stood on Mount Zion, and with Him 144,000 men who had His name and His Father's name inscribed on their foreheads" (Revelation 14:1 AMPC)....

Now if you add up all 3 numbers by counting 666 by shifting the "+" symbol around in all 3 possible combinations, it would be $72+72+18=162$. What is interesting in regards to the number 162, is, if you divide 144,000 by 162, you get 888. The name for Jesus in Greek gematria adds up to 888. The New Testament was originally written in the Greek language. Revelation 14:1 not only mentions the 144,000, but additionally the Lamb of God who is Jesus.

What's interesting in regards to the the number for Jesus, 888, is that if you apply this same formula, you get $8+8+8=24$. Now why the number 24? Revelation chapter four tells us there are 24 elders seated around the throne of God. That is the same throne where Jesus sits:

"Immediately I was in the Spirit; and behold, a throne set in heaven, and One sat on the throne. And He who sat there was like a jasper and a sardius stone in appearance; and there was a rainbow around the throne, in appearance like an emerald. Around the throne were twenty-four thrones, and on the thrones I saw twenty-four elders sitting, clothed in white robes; and they had crowns of gold on their heads" (Revelation 4:2-4).

Now if you take $8+8+8=24$, and $8+88=96$, and $88+8=96$, you get $24+96+96=216$. Take 144,000 divided by 216 and you get 666. Consider that this was the identical formula to get the value 162 out of counting 666 that produced the value 888 when dividing 144,000 by 162. It's perpetual.

With utilizing the same method of counting by adding the "+" symbol in between the numbers, why do all these numbers relate in such a way?

The book of Revelation contains the use of the number 7 in various forms. For instance 7 seals, 7 trumpets, and 7 bowls. What is interesting about the number 37 (three sevens) is if you divide any number that contains the same single digit three times in a row, such as 111 to 999, it comes out to the value of if you were to add all three numbers up. For example 888 divided by 37 equals 24. So $8+8+8=24$. Or 666 divided by 37 equals 18. So $6+6+6=18$. Could this be another way of God's word confirming itself that the mystery behind calculating the number 666 indeed is 18?

Another fascinating point to be aware is that if you add up all of the numbers from 1 to 36 ($1+2+3...+36$), it totals 666. The number 36, as in three sixes? Could this be a hint that we should add up three sixes instead of perceiving the number as six-hundred sixty six?

So what could this suggest? Well we all know in this world we are identified by numbers in various forms. From our birth certificate to our social security card, also with our drivers license, being identified founded on a system of ruler ship. So it's conceivable that this RFID chip will contain a new identification that has a complete total of 18 characters.

"here the wisdom is, the one having the mind let him calculate the number of the wild beast, number for "of human" it is, and the number of it 666" (Revelation 13:1, Greek Translation).

The Greek word "anthropos" being used in verse 18 where it says "of human" is the Greek strong's concordance G444. The first two definitions of the word are "a human being, whether male or female", and, "generically, to include all human individuals". Could the number of the beast apply to all mankind?

In the Greek (the New Testament was originally written in the Greek language), and other translations, you will notice the beast is described as an "it", instead of "him". The reason I'm making this point is because when a translation says "His number is 666", this would imply a singular person, the Antichrist. But by saying "the number of it 666", implies that it is of the beast system as a whole.

We can know the number of the beast cannot be to identify products (like a new barcode) to

buy or sell because scripture says we cannot buy or sell without the number of the beast. What am I getting at? There will be instances where you could buy something someone made themselves and it wouldn't have a store branded identification on it. But for this number to be in our chips, that is where it must be to conclude ultimately that we cannot buy or sell without having the number of the beast. As previously mentioned in Revelation 13:18, the number of the beast ($6+6+6=18$) is a "human number", definition "generically, to include all human individuals".

Could this be the identification of the beast, the number of its name? The one-world beast system that is identified by 18 characters? This may match the scriptures that speaks of a mark that we ought to have to buy or sell in our right hand or forehead, and that it also carries the number of the beast, throughout a future cashless money society.

Go to: 666-revealed.voice-truth.com|awake.voice-truth.com|blog.voice-truth.com|go.voice-truth.com|home.voice-truth.com|rfid.voice-truth.com|speak.voice-truth.com|one.voice-truth.com|hear.voice-truth.com|god.voice-truth.com|seek.voice-truth.com|tv.voice-truth.com|radio.voice-truth.com|station.voice-truth.com] to see all the proof!

God's word warns us in the end times that a false prophet will rise up doing miracles deceiving many to receive the mark of the beast:

...."But the beast was captured, and with it the false prophet who had performed the signs on its behalf. With these signs he had deluded those who had received the mark of the beast and worshiped its image. The two of them were thrown alive into the fiery lake of burning sulfur" (Revelation 19:20 NIV)....

No matter the cost, DO NOT TAKE IT!

"Then a third angel followed them, saying with a loud voice, "If anyone worships the beast and his image, and receives his mark on his forehead or on his hand, he himself shall also drink of the wine of the wrath of God, which is poured out full strength into the cup of His indignation. He shall be tormented with fire and brimstone in the presence of the holy angels and in the presence of the Lamb. And the smoke of their torment ascends forever and ever; and they have no rest day or night, who worship the beast and his image, and whoever receives the mark of his name" (Revelation 14:9-11).

We are dwelling in very prophetic times with very important Biblical prophecies being fulfilled.

When Donald Trump recognized Jerusalem as capital of Israel on December 6th of '17, this was a big step to bring forth the Third Temple foretold within the words of God.

God's Holy scriptures tells us that the Antichrist will seat himself in this temple:

"...and the man of sin is revealed, the son of perdition, who opposes and exalts himself above all that is called God or that is worshiped, so that he sits as God in the temple of God, showing himself that he is God" (2 Thessalonians 2:3-4).

In the Islamic religion, there is a person called the Mahdi, referred to as their messiah who they're awaiting to appear. There are many testimonies from individuals on-line who imagine

this man shall be Barack Obama who is to be the biblical Antichrist. I myself have had strange dreams about Barack. He got on stage proclaiming himself to be a follower of Christ with no affiliation to the Muslim religion, but was later revealed by his circle of relatives that he certainly is a faithful Muslim.

So what's in the name? The meaning of someones name can say a lot about a person. God throughout history has given names to people that have a specific meaning tied to their lives. How about the name Barack Obama? Let us take a look at what may be hiding beneath the surface...

Jesus says, "And He said to them, 'I saw Satan fall like lightning from heaven'" (Luke 10:18).

In Hebrew, the word "Barack" means "lighting", and the use of "Bama" (Strongs Hebrew phrase 1116) is used to mean the "heights" of heaven.

The day after the election of Barack Obama (11/04/08), the prevailing choose 3 lotto numbers in Illinois (Obama's domestic state) for 11/5/08 were 666.

Obama had been U.S. senator for the state of Illinois, and his zip code was 60606.

Regardless, whomsoever seats himself in the Third Temple that is to be built in Jerusalem, declaring himself to be God IS THE ANTICHRIST. DO NOT BE LEAD ASTRAY.

Why do we need Jesus Christ?

"for all have sinned and fall short of the glory of God" (Romans 2:23).

"For the wages of sin is death, but the gift of God is eternal life in Christ Jesus our Lord" (Romans 6:23).

Our own works cannot save our souls from the wrong we've committed. If we step in front of a judge, being responsible for committing a crime, the judge won't judge us by the good that we've carried out, but rather the crimes we've committed. If we as fallen humanity, created in God's image, pose this type of moral justice, how much greater a perfect, righteous, and Holy creator?

God has brought down to us His ethical regulation's by means of the 10 commandments given to Moses at Mt. Siani. These legal guidelines were not given so we can be justified, however in order that we might see the need for a saviour. They're the mirror of God's character of what He has put in each of us, with our conscious bearing witness that we know that it's wrong to steal, lie, dishonor our parents, and so forth.

We can strive to comply with all the ethical laws of the 10 commandments, however we will by no means catch up to them to be justified before a Holy God. That same word of the law received by Moses was brought forth as flesh over 2000 years ago in the body of Jesus Christ. He was brought forth to be our justification by perfectly fulfilling the law, living a sinless life that only God could accomplish.

The gap between us and the law can by no means be reconciled by our own merit, but the arm of Jesus is stretched out by the grace and mercy of God. And if we are to seize hold of, by

means of faith in Him, He will pull us forward being the one to justify us. As in the court of law, if somebody steps in and pays your fine, despite the fact that you are guilty, the judge can do what's legal and just and set you free. This is what Jesus did almost 2000 years in the past on the cross. It was a legal transaction being fulfilled in the spiritual realm by the shedding of His blood, with His final words being, "...It is finished!..." (John 19:30).

Now why did Jesus have to die for us?

Due to the fact that God is Holy and just, the wrath that we deserve could not be overlooked. Because of the perfect righteousness and justice of God's character, it ought to be reconciled, it ought to be quenched and satisfied.

For God takes no pleasure in the dying of the wicked (Ezekiel 18:23). This is why in Isaiah chapter 53, where it speaks of the coming Messiah and His soul being a sacrifice for our sins, why it says it satisfied God to crush His only begotten Son.

This is because the wrath that we deserve was justified by being poured out upon His Son. For if it was poured out on us who deserve it, we would all die and go to hell. God created a way of escape by pouring it out on His Son who's soul could not stay in Hades, however was raised and seated on the right hand of God in power.

So now when we put on the Lord Jesus Christ (Romans 13:14), God no longer sees the individual who deserves His wrath, but the glorious image of His perfect Son living inside of us, justifying us as if we received the wrath we deserve, making a way of escape from the curse of death.

Now what we ought to do is repent and trust in the saviour, confessing and turning from our sins. This is not only a head knowledge of believing in Jesus, instead receiving His words, taking them to heart. In which we no longer live to exercise sin, however turn away from our sins and exercise righteousness:

"Do you not know that the unrighteous will not inherit the kingdom of God? Do not be deceived. Neither fornicators, nor idolaters, nor adulterers, nor homosexuals, nor sodomites, nor thieves, nor covetous, nor drunkards, nor revilers, nor extortioners will inherit the kingdom of God. And such were some of you. But you were washed, but you were sanctified, but you were justified in the name of the Lord Jesus and by the Spirit of our God" (1 Corinthians 6:9-11).

By doing so we will come to be transformed into the image of God by means of faith in His Son Christ Jesus Who's willing to give the Holy Spirit to people who ask of Him:

"Most assuredly, I (Jesus) say to you, unless one is born of water and the Spirit, he cannot enter the kingdom of God. That which is born of the flesh is flesh, and that which is born of the Spirit is spirit. Do not marvel that I said to you, 'You must be born again.' (John 3:5-6).

"But you are not in the flesh but in the Spirit, if indeed the Spirit of God dwells in you. Now if anyone does not have the Spirit of Christ, he is not His" (Romans 8:9).

So what are you waiting for? Our Father in heaven only wishes the best for us, restoring every thing this world has stolen from us. This is what it means to be "holy". To be made whole.

He is waiting to hear from you. That God given tongue to speak language, by means of faith, pray to Him, ask Him to forgive you by confessing to Him your sins and be willing to forsake them; that you accept the sacrifice of His Son Jesus on the cross, and that you want His Holy Spirit dwelling inside you transforming you into a child of God.

Jesus says, "but whoever drinks of the water that I shall give him (the Holy Spirit) will never thirst. But the water that I shall give him will become in him a fountain of water springing up into everlasting life."

Did you know that Jesus spoke more about hell than any one in the Bible, even more than He spoke about heaven?! For this very cause He was brought forth to die for us, to rescue us from this place that we earned by our sins.

He describes hell as a actual place where,

"Their worm does not die
And the fire is not quenched" (Mark 9:44).

And where,

"There will be weeping and gnashing of teeth..." (Luke 13:28).

Jesus tells us who to fear,

"And do not fear those who kill the body but cannot kill the soul. But rather fear Him who is able to destroy both soul and body in hell" (Matthew 10:28).

"Now I saw a new heaven and a new earth, for the first heaven and the first earth had passed away. Also there was no more sea. Then I, John, saw the holy city, New Jerusalem, coming down out of heaven from God, prepared as a bride adorned for her husband. And I heard a loud voice from heaven saying, 'Behold, the tabernacle of God is with men, and He will dwell with them, and they shall be His people. God Himself will be with them and be their God. And God will wipe away every tear from their eyes; there shall be no more death, nor sorrow, nor crying. There shall be no more pain, for the former things have passed away.'

Then He who sat on the throne said, 'Behold, I make all things new.' And He said to me, 'Write, for these words are true and faithful.'

And He said to me, 'It is done! I am the Alpha and the Omega, the Beginning and the End. I will give of the fountain of the water of life freely to him who thirsts. He who overcomes shall inherit all things, and I will be his God and he shall be My son. But the cowardly, unbelieving, abominable, murderers, sexually immoral, sorcerers, idolaters, and all liars shall have their part in the lake which burns with fire and brimstone, which is the second death.'" (Revelation 21:1-8).

Out of all of the world religions, how can we make certain the Bible got it right? The scientific facts has established and continues to support that the universe once had a beginning in which space, time and matter were created. Many know this as the big bang.

"The non-biblical religions tell us that god or god's create within space and time that eternally

exist. The Bible stands alone and says that time and space don't exist until God creates the universe." - Astronomer (Phd) Hugh Ross

The Bible not only got it all correct that space, time and matter all came into existence at the start of the universe, it also states in 7 different scriptures that the universe is continuing to expand thousands of years before scientists discovered these facts.

Did you already know that the actual Noah's Ark was found in the place where God's holy word told us it would be with the right dimensions? As well as proof for the destruction of the cities of Sodom & Gomorrah and the Exodus account of the Red Sea crossing?

The Bible is the most translated and examine book in the history of the world, packed with predictive prophecies, matching what we find in the book of nature. Wouldn't you assume God's word to be so?

God is calling you!

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From: [Diya Kandhra](#)
To: [CC Public Comment](#)
Subject: Re: Council Meeting Public Comment
Date: Wednesday, August 5, 2020 7:27:12 PM

On Wed, Aug 5, 2020 at 6:33 PM Diya Kandhra <102178@students.mhusd.org> wrote:

My name is Diya Kandhra, a rising junior at Ann Sobrato HS and have been a resident of MH for 9 years. As someone who has lived and went to school here for so many years, I've had to experience the effects of climate change first hand - at times when unconventional November rain floods have made the roads unsafe and traffic-bound at Britton Middle School, and at others when I've coughed through throat-scorching wildfire smoke during outdoor activities or PE classes at Sobrato, which can double down on my seasonal asthma. Unprecedented changes in climate has even impacted my whole family, one notable time being the PG&E power outages accompanying last year's wildfires that left my family in the dark for 3-5 days and caused food to spoil in our fridge, electronics having to charge at sporadic times, and even forced me to do homework by candlelight. Beyond myself and my family, it is my responsibility as a resident and all of your duties' as our elected government to ensure that our fellow residents won't have to suffer the consequences of unprecedented climate change. We can no longer discuss and enforce action on an annual basis without set guidelines, and must move towards a sustainable climate action plan that can work with the city's initiatives to ensure a livable future for our residents. Morgan Hill can no longer be one of the only cities in Santa Clara County without a Climate Action Plan that lays the necessary targets to achieve more eco-conscious practices in our businesses and homes. Since the future of our climate depends on our action taken now, and I urge all of you councilmembers, and those in the meeting as constituents of the City of Morgan Hill, to strongly consider the creation and integration of a Climate Action Plan in the near future. Thank you!

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